

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

G. Thomas Cooper, Circuit Court Judge  
Jocelyn Newman, Circuit Judge

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APPELLATE CASE NO. 2018-000948  
CASE NO. 2015-CP-40-5598

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Modesta Brinkman, David  
Brinkman, James Coleman,  
Carl Foster, Karen Foster,  
Robert Collins,

Appellants,

v.

City of Columbia, South  
Carolina, North American  
Pipeline Management and  
Layne Inliner,

Respondents.

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**RECORD ON APPEAL**

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**VOLUME I**

**RECEIVED**

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SC Court of Appeals

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Robert Collins,

Appellants,

v.

City of Columbia, South  
Carolina, North American  
Pipeline Management and  
Layne Inliner,

Respondents.

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**RECORD ON APPEAL**

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STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

MODESTA BRINKMAN, DAVID  
BRINKMAN, JAMES COLEMAN, CARL  
FOSTER, KAREN FOSTER, ROBERT  
COLLINS, PAMELA COLLINS,

Civil Action No. 2015-CP-40-5598

Plaintiffs,

**ORDER GRANTING DEFENDANT  
NORTH AMERICAN PIPELINE  
MANAGEMENT'S MOTION FOR  
SUMMARY JUDGMENT AS TO  
PLAINTIFFS' ARCHAEOLOGY  
CLAIMS PURSUANT TO S.C. CODE  
ANN. SECTION 16-11-780**

vs.

WESTON & SAMPSON ENGINEERS,  
INC., CITY OF COLUMBIA, SOUTH  
CAROLINA, NORTH AMERICAN  
PIPELINE MANAGEMENT AND  
LAYNE INLINER,

Defendants.

This matter comes before the Court upon Defendant North American Pipeline Management ("Defendant" or "NAPM") Motion for Summary Judgment as to Plaintiffs Modesta Brinkman, David Brinkman, James Coleman, Carl Foster, Karen Foster, Robert Collins and Pamela Collins' (collectively "Plaintiffs") archaeology claims for destruction of archaeological structures pursuant to S.C. Code Ann. § 16-11-780(I) (Supp. 2017).

A hearing was held before the undersigned on May 8, 2018 in Columbia, South Carolina. Present at the hearing were: 1) counsel for NAPM, R. Trippett Boineau, III, Esquire; 2) counsel for Layne Inliner, Rett Kendall, Esquire and Brandon Gottschall, Esquire; 3) counsel for Weston & Sampson Engineers, Inc., Amy H. Wooten, Esquire; and 4) counsel for the City of Columbia, South Carolina, Mike Hemlepp, Esquire. Plaintiffs were represented by John Adams Hodge, Esquire and Geoffrey K. Chambers.

After considering Defendant's Motion, Memorandum in Support and other supporting documents and hearing arguments on the matter, for the reasons stated below, I find that there exists no genuine issue of material fact and Defendant is entitled to judgment as a matter of law on Plaintiffs' claims pursuant to S.C. Code Ann. § 16-11-780(I). Therefore, Defendant's Motion for Summary Judgment is hereby **granted**.

#### **STATEMENT OF FACTS**

This real property dispute arises out of alleged damage to Plaintiffs' properties resulting from a City of Columbia construction project to evaluate and repair the West Columbia Basin Sanitary Sewer System.

In 2007, Plaintiff David Brinkman discovered some large rock arrangements, which he believes to have been old bridge abutments, on his property located at 154 Castle Road, Columbia, South Carolina. In order to gather more information, Mr. Brinkman contacted Dr. Jonathan Leader, South Carolina's State Archaeologist, to come and inspect the rocks. Thereafter, Mr. Brinkman and Dr. Leader continued to keep in contact on a professional and social basis.

In May 2008, in response to Mr. Brinkman's request for the bridge abutments to be considered for listing on the National Registry, the South Carolina Archives and History Center declined the request stating, in short, "that a great deal more research and archaeological investigation and assessment will be necessary. . . ." More specifically, the State Historic Preservation Office questioned "whether there is a sufficient amount of physical remains from the ferry and bridge site to convey in any tangible way the history of this area of the river before, during and immediately following the Civil War" despite an "abundance of documentary material" compiled and submitted by Mr. Brinkman.

In or around 2012, The City of Columbia ("the City") began a construction project to evaluate and repair the West Columbia Basin Sanitary Sewer System. The City engaged Weston & Sampson Engineers, Inc. ("Weston and Sampson") to provide certain services on the project including reviewing CCTV footage of the sewer lines and helping identify manholes requiring repair. The City also contracted with Layne Inliner to serve as the contractor for the project. Layne Inliner, in turn, engaged NAPM to assist with the work. In order to access several manholes located along Plaintiffs' properties, NAPM needed to create access along the City's sewer line easement. Plaintiffs allege that the creation of this means of access to repair the sewer line disturbed and/or destroyed the rock arrangements found by Mr. Brinkman.

Plaintiffs contend NAPM and Layne Inliner, at and upon the recommendation of Weston and Sampson, built a "road"<sup>1</sup> across their properties that exceeded the scope and purpose of the City's sewer line easement. Plaintiffs further allege that some of their properties contained archaeological structures that were destroyed by the construction of this road.

As a result, Plaintiffs filed suit against Weston and Sampson, the City, NAPM and Layne Inliner alleging various causes of action, including one for the destruction of archaeological structures pursuant to S.C. Code Ann. § 16-11-780(I).

However, despite Plaintiffs' allegations to the contrary, NAPM alleges it was never aware of any historical structures, has never seen any documentation of any historical structures and began its work without any knowledge of the area in question having a historical designation. Further, NAPM alleges it neither intentionally, maliciously or recklessly destroyed any historical structure nor did NAPM ever knowingly or maliciously move or displace any

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<sup>1</sup> This "road" was a temporary dirt access way and not an established, paved public road.

rocks allegedly part of a historical structure. Finally, NAPM alleges it did not enter Plaintiffs' property(ies) for the purpose of destroying or defacing any historical or archaeological resource.

#### STANDARD OF REVIEW

A motion for summary judgment shall be granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Staubes v. City of Folly Beach*, 331 S.C. 192, 500 S.E.2d 160 (1998); *Sumner v. Carpenter*, 328 S.C. 336, 492 S.E.2d 55 (1997). A motion for summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Standard Fire Insurance Co. v. Marine Contracting and Towing Co.*, 301 S.C. 418, 392 S.E.2d 460 (1990).

In determining whether any triable issues of fact exist, as would preclude summary judgment, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the non-moving party. *Koester v. Carolina Rental Center, Inc.*, 313 S.C. 490, 443 S.E.2d 392 (1994). If triable issues exist, those issues must go to the jury. A party opposing a properly supported motion for summary judgment may not rest on the mere allegations or denials of the pleading, but must set forth or point to specific facts showing there is a genuine issue of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A party's response to the motion must set forth specific facts, admissible in evidence, showing there is a genuine issue for trial. If that party does not so respond, summary judgment should be entered against that party. *Moody v. McLellan*, 295 S.C. 157, 367 S.E.2d 449 (Ct.App. 1988). Moreover, the existence of a mere scintilla of evidence in support of the non-moving

party's position is not sufficient to overcome a motion for summary judgment. *Dickert v. Metropolitan Insurance Co.*, 306 S.C. 311, 411 S.E.2d 672, 673, (Ct.App: 1991), *rev'd in part on other grounds*, 311 S.C. 218, 428 S.E.2d 700 (1993).

In a motion for summary judgment, the evidence and all reasonable inferences thereof must be viewed in the light most favorable to the non-moving party. *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857 (2002)(citing *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997)).

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

NAPM asserts there exists no genuine issue of material fact and it is entitled to judgment as a matter of law because: 1) NAPM did not willfully, knowingly or maliciously enter Plaintiffs' property(ies) for the sole purpose of discovering, uncovering, moving, removing or attempting to remove an archeological resource; and 2) to date, the archeological resource/archaeological structure(s) at issue have not been designated as historic by any applicable and/or governing preservation and/or conservation authority(ies).

**I. BASED ON THE PLAIN LANGUAGE OF THE STATUTE, S.C. CODE ANN. § 16-11-780 IS INAPPLICABLE IN THIS CASE.**

By way of background and to provide context for the statute at issue, the South Carolina General Assembly enacted S.C. Code Ann. § 16-11-780 as part of South Carolina's criminal code. The statute is located in Chapter 11 of Title 16 (Crimes and Offenses of the South Carolina Code of Laws) for "Offenses Against Property." Section 16-11-780(C) provides:

it is unlawful for a person to willfully, knowingly, or maliciously enter upon the lands of another or the posted lands of the State and disturb or excavate a prehistoric or historic site *for the purpose of discovering, uncovering, moving, removing, or attempting to remove an archaeological resource.* . . .

S.C. Code Ann. § 16-11-780(C) (Supp. 2016)(emphasis added). Further, § 16-11-780(I) provides that a “landowner, in the case of private lands, . . . may bring a civil action for a violation of this section to recover the greater of the archaeological resource’s archaeological value or commercial value, and the cost of restoration and repair of the site where the archaeological resource was located, plus attorney’s fees and court costs.” S.C. Code Ann. § 16-11-780(I). More importantly, § 16-11-780(K)(3) contains an exception to the above cited rules and provides that nothing outlined in § 16-11-780 “shall limit or interfere with . . . the lawful acts of a utility worker acting in the scope of and in the course of his employment. . . .” S.C. Code Ann. § 16-11-780(K)(3).

In applying the statute to this case, the court find that it must first look to the rules of statutory construction for guidance in determining whether or not Plaintiffs actually have a civil claim under the statute. In doing so, the court is persuaded that the statute is inapplicable to the facts of this case and, therefore, NAPM is entitled to judgment as a matter of law.<sup>2</sup>

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court’s place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election*

<sup>2</sup> The court notes that Plaintiffs’ request to have appoint the State Archaeologist as an expert under S.C. Code Ann. § 16-11-780(B) was denied by Order filed September 10, 2017. In its Order, this court specifically interpreted “this statute to allow appointment of the State Archaeologist *in a criminal matter involving a violation of Section 16-11-780.*” (emphasis added).

*Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995)). Further and more importantly, “[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” *Hodges v. Rainery*, 341 S.C. 79, 85, 533 S.E. 2d 578, 581 (2000) (quoting Norman J. Singer, *Sutherland Statutory Construction* §46:03 at 94 (5th ed. 1992)).

“[W]hen a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant.” *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991). The statutory language must be construed in light of the intended purpose of the statute. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). “A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.” *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) (quotation marks and citation omitted). “In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose.” *Roberts*, 393 S.C. at 342, 713 S.E.2d at 283.

“In offenses at common law, and under statutes which do not disclose a contrary legislative purpose, to constitute a crime, the act must be accompanied by a criminal intent, or by such negligence or indifference to duty or to consequences as is regarded by the law as equivalent to a criminal intent.” *State v. Ferguson*, 302 S.C. 269, 272, 395 S.E.2d 182, 183 (1990) (quoting *State v. Am. Agric. Chem. Co.*, 118 S.C. 333, 337, 110 S.E. 800, 802 (1922)). “Therefore, whether knowledge and intent are necessary elements of a statutory crime must be determined from the language of the statute, construed in the light of its purpose and design.” *Guinyard v. State*, 260 S.C. 220, 227, 195 S.E.2d 392, 395 (1973). In a criminal case in South Carolina, the State cannot rely on civil concepts of negligence and recklessness, i.e. statutory

violations, to meet its burden of proving a defendant's state of mind; the import of the terms negligence and recklessness as used in civil law and in criminal law are neither equivalent nor interchangeable. *State v. Rowell*, 326 S.C. 313, 317, 487 S.E.2d 185, 187 (1997).

In reading the plain language of § 16-11-780(C), it is clear that the legislature intended this criminal statute to apply in situations where a person *willfully, knowingly or maliciously* enters another's lands *for the sole purpose* of discovering, uncovering, moving, removing or attempting to remove an archeological resource. Therefore, reading the plain and unambiguous language of § 16-11-780(C), based on the record presented, there is no evidence NAPM entered upon Plaintiffs' properties for the sole purpose of finding and removing—to any degree—an archaeological resource. As noted above, the only reason NAPM was in and about Plaintiffs' properties was to evaluate and repair the West Columbia Basin Sanitary Sewer System. If Plaintiffs cannot point to any evidence that the above named Defendants were on their properties only to find and disturb an archaeological resource, then there cannot be a violation of the statute.

NAPM was never aware of any historical structures; has never seen any documentation of any historical structures and began its work without any knowledge of the area in question having a historical designation. (Affidavit of Shannon Herford, ¶¶ 2-3, 7). Further, NAPM neither intentionally, maliciously or recklessly destroyed any historical structure nor did NAPM ever knowingly or maliciously move or displace any rocks allegedly part of a historical structure. (*Id.* at ¶¶ 4-5). Finally, NAPM did not enter Plaintiffs property(ies) for the purpose of destroying or defacing any historical or archaeological resource. (*Id.* at ¶ 6).

Based on the above, it is clear the plain language of S.C. Code Ann. § 16-11-780(C) and the legislative intent behind the statute requires some level of intent before the statute can apply

to the facts of this case. Since this criminal statute requires an intent to enter Plaintiffs' property(ies) for the sole purpose of disturbing/destroying a known historical/archaeological resource, Plaintiffs must come forth with some evidence that NAPM knowingly violated the terms of the statute. However, no such evidence is available from the record before the court; therefore, S.C. Code Ann. § 16-11-780 is inapplicable in this case and NAPM is entitled to judgment as a matter of law on Plaintiffs' claims pursuant to S.C. Code Ann. § 16-11-780(1).

**II. TO DATE, THE ARCHEOLOGICAL RESOURCE/ARCHAEOLOGICAL STRUCTURE(S) AT ISSUE HAVE NOT BEEN DESIGNATED AS HISTORIC BY ANY APPLICABLE AND/OR GOVERNING PRESERVATION AND/OR CONSERVATION AUTHORITY(IES).**

As outlined above, in 2007, Plaintiff David Brinkman discovered large rock arrangements on his property which he believes to have been old bridge abutments. In order to gather more information, Mr. Brinkman contacted Dr. Jonathan Leader, South Carolina's State Archaeologist, to come and inspect the rocks. Thereafter, in May 2008, in response to Mr. Brinkman's request for a listing on the National Registry, the South Carolina Archives and History Center - State Historic Preservation Office determined, among other things, additional research and other steps needed to be complete before the site could be eligible for consideration. (See generally Letter to David Brinkman from State Historic Preservation Office, May 30, 2008). More specifically, the State Historic Preservation Office questioned "whether there is a sufficient amount of physical remains from the ferry and bridge site to convey in any tangible way the history of this area of the river before, during and immediately following the Civil War" despite an "abundance of documentary material" compiled and submitted by Mr. Brinkman. (*Id.*). As a result, the State Historic Preservation Office did "not believe the site is eligible for the National Register" and could not "recommend that a formal nomination be prepared." (*Id.*).

Therefore, based on the above, Plaintiffs cannot point to any evidence that the alleged archeological resource/archaeological structure(s) at issue have been designated as historic by any applicable and/or governing preservation and/or conservation authority(ies). As a result, their claims under S.C. Code Ann. § 16-11-780 fail as a matter of law.

Since no authoritative body has designated this site as historically significant and Plaintiffs' own archaeological expert believes additional archaeological work and research are needed, Plaintiffs' claims under Section 16-11-780 fail as a matter of law. As a result, NAPM is entitled to summary judgment on Plaintiffs' claims pursuant to S.C. Code Ann. § 16-11-780(I).

**III. EVEN IF S.C. CODE § 16-11-780 APPLIED, NAPM FALLS UNDER THE UTILITY WORKER EXCEPTION FOUND IN § 16-11-780(K)(3).**

Even if the court were to assume, *arguendo*, that S.C. Code Ann. § 16-11-780(C) and the legislative intent behind the statute *did not* require some level of intent before the statute can apply in this case and that an authoritative body has designated the site at issue as historically significant, NAPM's work falls under the utility worker exception found in the statute. Section 16-11-780(K)(3) contains an exception to liability and provides that nothing outlined in § 16-11-780 "shall limit or interfere with . . . the lawful acts of a utility worker acting in the scope of and in the course of his employment. . . ." S.C. Code Ann. § 16-11-780(K)(3). As outlined above, the work performed by NAPM at issue was part of a larger project to evaluate and repair the West Columbia Basin Sanitary Sewer System. During arguments, Plaintiffs acknowledged NAPM was on their property(ies) for the purpose of doing utility work. Thus, NAPM's presence on Plaintiffs' property(ies) was in the course and scope of their employment as a utility worker. As a result, NAPM cannot be liable for any alleged damage to any archaeological resource(s) located on Plaintiffs' property(ies) under the terms of § 16-11-780(K)(3). Therefore, even assuming § 16-11-780 applies to the facts of this case, Plaintiffs' claims for destruction of

archaeological structures pursuant to S.C. Code Ann. § 16-11-780(I) fail as a matter of law as to NAPM.

**CONCLUSION**

In viewing the facts in the light most favorable to Plaintiffs, there remains no genuine issue of material fact and NAPM is, therefore, entitled to summary judgment on Plaintiffs' claims pursuant to S.C. Code Ann. § 16-11-780(I). It is clear the plain language of S.C. Code Ann. § 16-11-780(C) and the legislative intent behind the statute requires some level of intent before the statute can apply to the facts of this case. Since this criminal statute requires an intent to enter Plaintiffs' property(ies) for the sole purpose of disturbing/destroying a known historical/archaeological resource, Plaintiffs must come forth with some evidence that NAPM knowingly violated the terms of the statute. However, no such evidence is available from the record before the court; therefore, S.C. Code Ann. § 16-11-780 is inapplicable in this case.

Further, no authoritative body has designated this site as historically significant and Plaintiffs' own archaeological expert believes additional archaeological work and research are needed. Finally, even assuming the legislative intent behind the statute *did not* require some level of intent before the statute can apply in this case and that an authoritative body has designated the site at issue as historically significant, NAPM's work falls under the utility worker exception found in § 16-11-780(K)(3). As a result, NAPM is entitled to judgment as a matter of law on Plaintiffs' claims for pursuant to S.C. Code Ann. § 16-11-780(I).

**IT IS THEREFORE ORDERED** that Defendant North American Pipeline Management's Motion for Summary Judgment as to Plaintiffs' claims under S.C. Code Ann. § 16-11-780 is hereby **GRANTED** for the reasons outlined hereinabove:

**AND IT IS SO ORDERED.**

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G. Thomas Cooper, Jr.  
Presiding Judge  
Fifth Judicial Circuit

\_\_\_\_\_, 2018  
Columbia, South Carolina

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Richland Common Pleas

**Case Caption:** Modesta Brinkman , plaintiff, et al vs Weston And Sampson Inc ,  
defendant, et al  
**Case Number:** 2015CP4005598  
**Type:** Order/Summary Judgment

So Ordered

s/ Honorable G. Thomas Cooper, Jr. Circuit  
Judge 2126

Electronically signed on 2018-05-16 13:41:52 page 13 of 13

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Modesta Brinkman, David Brinkman, James Coleman, Carl Foster, Karen Foster, Robert Collins, and Pamela Collins,

Plaintiffs,

v.

Weston & Sampson, Inc.; Weston & Sampson Engineers, Inc.; Weston & Sampson Services, Inc.; Weston & Sampson CMR, Inc.; City of Columbia, SC; North American Pipeline Management; and Layne Inliner,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2015-CP-40-05598

**ORDER ON DEFENDANT CITY OF COLUMBIA'S MOTION FOR SUMMARY JUDGMENT**

This matter comes before the Court upon Motion for Summary Judgment by Defendant City of Columbia, which was filed on October 20, 2017. A hearing was conducted at the Richland County Judicial Center on January 3, 2018. Plaintiffs were represented by John Hodge, Esquire and Geoffrey Chambers, Esquire; Defendant Weston and Sampson Engineers Inc. was represented by Amy H. Wooten, esquire; Defendant City of Columbia was represented by Jeanne Lisowski, Esquire; Defendant North American Pipeline Management was represented by R. Trippett Boineau, III, Esquire; and Defendant Layne Inliner was represented by Rett Kendall, Esquire and Brandon Gottschall, Esquire.

For the reasons set forth below, Defendant City of Columbia's Motion for Summary Judgment is GRANTED IN PART and DENIED IN PART.

### FINDINGS OF FACT

Plaintiffs are landowners and residents of parcels of real property located on Castle Road in the City of Columbia, South Carolina ("the City"). The City owns and operates the sewer lines that run beneath a portion of the Plaintiffs' properties. Each parcel of land has a sewer easement held by the City, running across a back portion of each of the properties between Castle Road and approximately fifty feet from the banks of the Broad River. The easement grants to the City the right "to construct, operate and maintain together with the right of ingress and egress at all times for the purpose of constructing, operating, and maintaining a sewer main and with the right to remove shrubbery, trees and other growth from the right-of-way and construction area provided that the property will be restored as nearly as practicable to its original condition upon completion of the construction and damaged shrubbery and trees will be replaced with the same variety from nursery stock of a practicable size..."

Pursuant to a Consent Decree with the U.S. Environmental Protection Agency, the City is engaged in a comprehensive inspection, remediation and maintenance program for its sewer lines, including the sewer line running across the Plaintiffs' properties. After an inspection of those sewer lines revealed that "slip lining" maintenance was needed, Defendant North American Pipeline Management ("NAPM") began clearing the easements of obstructions, including vegetation, shrubbery and trees that had grown over the easements since the sewer lines were installed in the early 1980's. It is also undisputed that the entire portion of the properties upon which NAPM was working was a wooded, overgrown portion of the property without improvements.

The City hired various contractors (including the other defendants in this action) to perform services specific to this effort, such as clearing of sewer easements, smoke testing, and visual

inspections of the lines, construction repairs and remediation of the property after the completion of the project. However, before the project's completion, Plaintiffs objected to the work and demanded all work cease; and Defendants complied. Defendants were, therefore, unable to complete the slip lining or post-project remediation of the area. To date, this work remains incomplete.

Plaintiffs filed their Complaint on September 11, 2015, an Amended Complaint on December 16, 2015, and a Second Amended Complaint on January 13, 2016. The seven plaintiffs sued eight defendants, asserting causes of action for trespass, gross negligence, nuisance, violation of S.C. Code Ann. §16-11-780 for "destruction of archaeological structures," "taking," negligence, and negligence *per se*.

Six of the plaintiffs are the owners of real property on Castle Road. Plaintiffs Modesta and David Brinkman own the property and reside at 154 Castle Road; Plaintiff James Coleman owns the property and resides at 150 Castle Road; Plaintiffs Carl and Karen Foster own the property and reside at 142 Castle Road; and Plaintiff Robert Collins owns the real property located at 156 Castle Road, which is undeveloped, but do not reside there. It is also undisputed that Plaintiff Pamela Collins is not a record owner of the property at 156 Castle Road.

#### CONCLUSIONS OF LAW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRPC. The party moving for summary judgment bears the initial burden of pointing to the absence of a genuine issue of material fact. *Richardson v. State Record Co., Inc.*, 330 S.C. 562, 499 S.E.2d 822 (Ct. App. 1998). The burden then shifts to the non-moving

party to respond with specific facts to show that there is a triable issue of fact. *City of Columbia v. Town of Irmo*, 316 S.C. 193, 195, 447 S.E.2d 855, 857 (1994). The Court must view the facts and inferences therefrom in the light most favorable to the non-moving party. *Strother v. Lexington County Recreation Commission*, 332 S.C. 54, 504 S.E.2d 117 (1998).

**I. Plaintiff Pamela Collins is Dismissed as a Plaintiff.**

Plaintiff Pamela Collins has failed to present evidence that she is an owner of record of the real property located at 156 Castle Road as alleged in the Plaintiffs' Second Amended Complaint or that she otherwise has a legally recognized and protectable interest in that property.

South Carolina courts have long adhered to the requirement of standing to institute and prosecute an action. *See, e.g., Joytime Distrib. & Amusement v. State*, 338 S.C. 634, 639, 528 S.E.2d 647 (1999) ("Standing to sue is a fundamental requirement in instituting an action.") In assessing whether a party has standing, the State adheres to the stringent standing test set forth in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). *Id.* The *Lujan* test requires the Plaintiff to demonstrate the following:

First, the plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not 'conjectural' or 'hypothetical.' Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court."<sup>23</sup> Third, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'

*Id.* (citing *Lujan*, 504 U.S. at 559-61).

The uncontroverted evidence before the Court as to Mrs. Collins' standing confirms that she is not identified as an owner on the real property records for 156 Castle Road. Further, no evidence of any other legal interest that would confer upon her standing to maintain suit to recover

for alleged property damage has been presented. Put simply, Mrs. Collins has failed to establish any element of the *Lujan* test for standing. Accordingly, Defendant City of Columbia is entitled to judgment as a matter of law as to Plaintiff Pamela Collins' claims.

**II: Plaintiffs' Claims for Violation of S.C. Code Ann. §16-11-780 are Dismissed.**

In their Second Amended Complaint Plaintiffs also seek damages for the City's alleged violation of S.C. Code Ann. §16-11-780. Specifically, Plaintiffs contend that Defendants' maintenance of the subject sewer line disturbed two historic bridge abutments.

By Order filed on May 16, 2018, this Court determined that the statute upon which Plaintiffs rely for this claim is wholly inapplicable to this case. Specifically, the Court finds that there is no governing preservation or conservation authority which recognizes the alleged archeological structures as either archeological resources or historic structures. Additionally, a plain reading of S.C. Code Ann. §16-11-780(K)(3) would exempt the parties in this action from any liability under this statute. The remainder of the conclusions of law contained in the Court's May 16, 2018, are hereby incorporated by reference; and Defendant City of Columbia is entitled to judgment as a matter of law as to Plaintiffs' claims for damages to and destruction of archaeological structures.

IT IS THEREFORE ORDERED that Defendant City of Columbia's Motion for Summary Judgment is GRANTED IN PART.

IT IS FURTHER ORDERED that Plaintiff Pamela Collins is DISMISSED as a party to this action.

IT IS FURTHER ORDERED that Plaintiffs' claims for violation of S.C. Code Ann. §16-11-780 are DISMISSED as to Defendant City of Columbia.

IT IS FURTHER ORDERED that the remainder of Defendant City of Columbia's Motion for Summary Judgment is DENIED.

AND IT IS SO ORDERED.

May 22, 2018  
Columbia, South Carolina.

---

Jocelyn Newman  
Circuit Court Judge



Richland Common Pleas

**Case Caption:** Modesta Brinkman , plaintiff, et al vs Weston And Sampson Inc ;  
defendant, et al  
**Case Number:** 2015CP4005598  
**Type:** Order/Summary Judgment

So Ordered

Jocelyn Newman

Electronically signed on 2018-05-22 21:25:35 page 7 of 7

Modesta Brinkman, et al.

Weston & Sampson, Inc. et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for:  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- 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:

Plaintiffs' Motion for Summary Judgment on the Trespass claim is **DENIED**. There are factual issues regarding the trespass.

This Court agrees that the temporary construction easement in the executed documents expired upon completion of the construction of the sewer line. The plain and unambiguous language of the documents clearly provide for a permanent easement in perpetuity for the maintenance of the sewer line and temporary easements for purposes of constructing the sewer line. The temporary construction easement terminated when upon completion of the sewer line. The language does not contemplate that each time maintenance of the sewer line was required there would be a 50 foot temporary easement. As cited by Plaintiffs in Footnote 1 of their Memorandum, "A temporary easement is defined as 'An easement granted for a specific purpose and applicable for a specific time period. A construction easement, for example, is terminated after the construction of the improvement and the unencumbered fee interest in the land reverts to the owner.' Appraisal Institute, The Dictionary of Real Estate Appraisal, Fifth Edition, Chicago, 2010, p. 195." Such is the case here. With the exception of the easement granted by Richard Cranston that provides the temporary easement is "null and void after six months", all the remaining temporary easements expired upon the completion of the sewer line construction project.

Plaintiffs cite to deposition testimony for factual support of the elements of trespass specifically, knowing, willful and intentional acts to exceed the 15-foot wide permanent easement and to impute that knowledge to all of the contractors and their employees on the property. This court views the references as vague and not clearly imputing knowing, willful and intentional conduct by all defendants. Plaintiffs can renew their claims during trial.

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
		\$ _____
		\$ _____
		\$ _____

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 2118 Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

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

\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

**Court Reporter** \_\_\_\_\_  
\_\_\_\_\_

ELECTRONICALLY FILED - 2018 May 18 4:16 PM - RICHLAND - COMMON PLEAS - CASE#2015CP4005598



Richland Common Pleas

**Case Caption:** Modesta Brinkman, plaintiff, et al vs Weston And Sampson Inc, defendant, et al.  
**Case Number:** 2015CP4005598  
**Type:** Order/Form 4

**IT IS SO ORDERED!**

s/ Alison Renee Lee

Electronically signed on 2018-05-18 15:53:45 page 3 of 3

ELECTRONICALLY FILED - 2018 May 18 4:16 PM - RICHLAND - COMMON PLEAS - CASE #2015CP4005598

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015-CP-40-05598

Modesta Brinkman, et al.

Weston & Sampson, Inc. et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for:  Plaintiff  Defendant or  Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonfit);  
 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.

Plaintiff's motion to appoint the State Archeologist pursuant to SC Code Section 16-11-780 is denied. This Court interprets this statute to allow appointment of the State Archeologist in a criminal matter involving a violation of Section 16-11-780. The appointment may occur to assist the court in determining the "archeological value, commercial value, or cost of restoration and repair of an archeological resource." The statute also allows a private right of action by the landowner to recover monetary damages plus attorney fees and court costs. The statute does not discuss the appointment of the State Archeologist in a private action. However, nothing in the statute prohibits a landowner in a private action from utilizing any expert witness to establish archeological value, commercial, value and/or cost or restoration and repair to an archeological resource site. This Court declines to appoint the State Archeologist for that purpose.

The propriety of utilizing the State Archeologist as an expert witness due to any professional or personal relationship he may have with the Plaintiff should be addressed in a motion on limine before the trial judge.

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

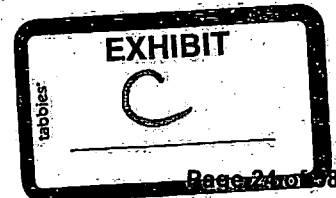
INFORMATION FOR THE PUBLIC INDEX

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
		\$
		\$
		\$

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 Al Shue Lee Judge Code 2118 Date 9/20/2017



**For Clerk of Court Office Use Only**

This judgment was entered on the 20 day of Sept, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

Court Reporter: \_\_\_\_\_  
\_\_\_\_\_

*Jeannette W. McBride*

STATE OF SOUTH CAROLINA, )  
 )  
COUNTY OF RICHLAND )  
 )  
MODESTA BRINKMAN, DAVID )  
BRINKMAN, JAMES COLEMAN, CARL )  
FOSTER, KAREN FOSTER, ROBERT )  
COLLINS, PAMELA COLLINS )  
 )  
Plaintiffs, )

vs. )  
 )  
WESTON & SAMPSON, INC, WESTON & )  
SAMPSON ENGINEERS, INC., WESTON & )  
SAMPSON SERVICES, INC., WESTON & )  
SAMPSON CMR, INC., CITY OF )  
COLUMBIA, SC, NORTH AMERICAN )  
PIPELINE MANAGEMENT, LAYNE )  
INLINER AND ROBERT HORNER, P.E. )  
 )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

SECOND AMENDED SUMMONS

Civil Action No. 2015-CP-40-5598

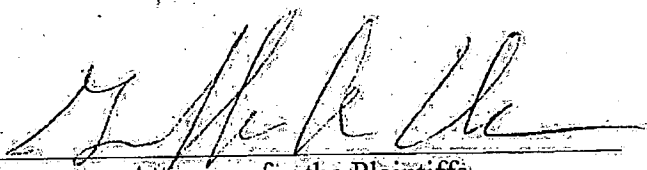
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REGISTRATION UNIT

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

Columbia, South Carolina

Dated: January 11, 2015

  
Attorneys for the Plaintiffs

John Adams Hodge  
Box 25553  
Columbia, S.C. 29224  
SC Bar 2450

Geoffrey K. Chambers  
411 Walnut Street #10646  
Green Cove Springs, FL 32043-3443

STATE OF SOUTH CAROLINA, )  
 )  
 COUNTY OF RICHLAND )  
 )  
 MODESTA BRINKMAN, DAVID )  
 BRINKMAN, JAMES COLEMAN, KAREN )  
 FOSTER, CARL FOSTER, ROBERT )  
 COLLINS, AND PAMELA COLLINS )  
 )  
 Plaintiffs, )

IN THE COURT OF COMMON PLEAS  
 FIFTH JUDICIAL CIRCUIT

2015 JUN 13 PM 2:42  
 RICHLAND COUNTY S.C.  
 CLERK OF COURT

vs.

Civil Action No: 2015-CP-40-5598

WESTON & SAMPSON, INC., WESTON & )  
 SAMPSON ENGINEERS, INC., WESTON & )  
 SAMPSON SERVICES, INC., WESTON & )  
 SAMPSON CMR, INC., CITY OF )  
 COLUMBIA, SC, NORTH AMERICAN )  
 PIPELINE MANAGEMENT, INC., LAYNE )  
 INLINER, LLC AND ROBERT HORNER, P.E. )  
 )  
 Defendants. )

SECOND AMENDED COMPLAINT

The Plaintiff, above named, complaining of the Defendant herein, would respectfully show unto this Honorable Court:

**THE PARTIES**

1. The Plaintiffs David and Modesta Brinkman are residents of Richland County and reside at 154 Castle Road, Columbia, South Carolina.
2. The Plaintiffs Carl and Karen Foster are residents of Richland County and reside at 142 Castle Road in Columbia, South Carolina.
3. The Plaintiff James Coleman is a resident of Richland County and resides at 150 Castle Road in Columbia, South Carolina.
4. The Plaintiffs Robert and Pam Collins are residents of Richland County and are the owners of property located at 156 Castle Road in Columbia, South Carolina.

5. The Defendant City of Columbia is a political subdivision of the State of South Carolina and is located in Richland County.
6. The Defendant Layne Inliner, LLC (Layne) is a corporation headquartered in the State of Texas and is a contractor doing business in Richland County, South Carolina.
7. North American Pipeline Management, Inc. (NAPM) is a corporation headquartered in the State of Georgia. NAPM holds a South Carolina General Contractors License and has an agent for service in Lexington County, South Carolina. Through information and belief, NAPM is doing business in the State of South Carolina, County of Richland.
8. The Defendant Weston & Sampson, Inc. is a corporation registered in Massachusetts and maintains offices and conducts business in Richland County, South Carolina. Weston & Sampson, Inc. is not registered with the South Carolina Secretary of State. Upon information and belief, Weston & Sampson Engineers, Inc. Weston & Sampson CMR, Inc. and Weston & Sampson Services, Inc. are subsidiaries of Weston & Sampson, Inc. and are used interchangeably with Weston & Sampson Inc. They are all in the line of business of designing, constructing, and maintaining municipal wastewater treatment systems. Hereinafter, the Weston & Sampson entities are referred to collectively as 'Weston & Sampson'.
9. On information and belief, Robert Horner, P.E. is a resident of Charleston County, South Carolina. The Defendant Horner is an employee of Defendant Weston & Sampson. The Defendant Horner is being sued in his individual and professional capacity.

10. For the purpose of this action, Defendant or Defendants refers to the party or parties, their agents, successors, and assigns.

### **THE FACTS AND LEGAL PRINCIPLES UNDERLYING THIS ACTION**

11. The Plaintiffs (Brinkman, Foster, Coleman, and Collins, hereinafter collectively referred to as the Plaintiffs) own residential property along Castle Road in the City of Columbia and Richland County, South Carolina.
12. The Defendant City of Columbia has a 15-foot wide easement across the Plaintiffs' properties for the purpose of maintaining a sewer line.
13. The City of Columbia's sewer line easement does not state that the easement is for the purposes of building a road.
14. The Defendants Horner and Weston & Sampson recommended to the City of Columbia the building of a road across Plaintiffs' properties. This recommendation and proposed contract is articulated in a Memo dated November 7, 2014.
15. The Defendant City of Columbia contracted with the Defendant Layne to enter the lands of the Plaintiffs for the purpose of building a paved access road and inspecting and repairing the City's sewer line across the Plaintiffs' properties.
16. The Defendant City of Columbia did not obtain an easement from the Plaintiffs regarding the building of a road across their properties.

17. The Defendants Layne, City of Columbia, and North American Pipeline Management built a road through the back yards of the Plaintiffs' residential properties on or about February 10, 2015.
18. The road built through the Plaintiffs' back yards exceeded both the dimensions and scope of the Defendant City of Columbia's easement for sewer line maintenance.
19. There existed two bridge abutments outside of the City of Columbia's sewer easement. These bridge abutments were the oldest existing structures in the Midlands. The bridge abutments were built by John Compy in the 1700s and were made of carved rock.
20. The City of Columbia's contract to build the road through the Plaintiffs' back yards provided extra compensation to Layne and NAPM for the removal of rock; thus incentivizing the removal of rock structures such as the bridge abutments.
21. The existence of the two historic bridge abutments were matters of public knowledge that could have been easily ascertained from public and private historic and cultural resource sources.
22. Employees working for the Defendants Layne and North American Pipeline Management Company were told about the historic bridge abutments by the Plaintiff James Coleman.
23. The Defendant City of Columbia, the Defendant Layne, and the Defendant North American Pipeline Management Company willfully and wantonly destroyed the historic bridge abutments.

24. Since February 10, 2015, the slope that was created by the Defendants' actions and omissions has resulted in soil erosion, slumping, and failure of the slope and road created by the Defendants. These occurrences are ongoing and continue through this day.

**For a First Cause of Action**

**Trespass**

25. The Plaintiffs reallege and reincorporate the allegations set forth in paragraphs 1 through 23 as if set forth verbatim.

26. The Defendants City of Columbia, Layne, and North American Pipeline Management did not have a right to be outside of the 15-foot easement and did not have the right to be on the easement for purposes other than maintaining the sewer line, such as building a road.

27. The Defendants City of Columbia, Layne, and North American Pipeline Management forcefully entered the area outside of the easement with heavy equipment.

28. The Defendants City of Columbia, Layne, and North American Pipeline Management intended to be on property outside of the sewer maintenance easement and intended to exceed the scope of the easement.

29. The Defendants City of Columbia, Layne, and North American Pipeline Management caused damage on the Plaintiffs' property by removing vegetation, trees, and soil in such a manner as to cause slope instability and erosion problems, created a road, created a cut

bank, created a debris field of dirt and vegetation, destroyed historic bridge abutments, and drove stakes into the ground for a silt fence.

### For a Second Cause of Action

#### **Gross Negligence**

30. The Plaintiffs reallege and reincorporate the allegations set forth in paragraphs 1 through 28 as if set forth verbatim.
31. The Defendant City of Columbia, the Defendant Weston & Sampson, and the Defendant Horner have a duty to keep the scope of projects within the property rights and property boundaries of easements granted to the City. The boundaries of the easements granted to the City are matters of public record.
32. The Defendant City of Columbia, the Defendant Weston & Sampson, and the Defendant Horner knew or should have known that the road exceeded the size and scope of the easement held by the City of Columbia.
33. The Defendants City of Columbia, Weston & Sampson, and Horner willfully and wantonly breached the aforementioned duty by failing to design or negligently designing and building a road through the Plaintiffs' back yards.
34. The Defendants City of Columbia's, Weston & Sampson's and Horner's failure to design or negligent project design, which exceeds the size and scope of property rights granted to

the City of Columbia, is the cause and proximate cause of damage to the Plaintiffs' properties.

35. The Plaintiffs were damaged by the Defendants' designing and building a road through their back yards.

### For a Third Cause of Action

#### **Gross Negligence**

36. The Plaintiffs reallege and reincorporate the allegations set forth in paragraphs 1 through 34 as if set forth verbatim.

37. The Defendants City of Columbia, Weston & Sampson, Layne, and North American Pipeline Management have a duty to obtain the proper permits prior to commencing construction activities.

38. In order to build a road through a floodplain and a bridge across a stream, and to fill a wetland, permits are required from state and federal environmental agencies.

39. On information and belief, in order to build a road, a permit is also required from Richland County and the City of Columbia.

40. In the permitting process for most of these agencies, identification of property rights and identification of archaeological structures is a requirement.

41. The Defendants City of Columbia, Weston & Sampson, Layne, and North American Pipeline Management willfully and wantonly breached the duty to obtain proper permits prior to building a road, building a bridge, and filling a wetland.

42. The Defendants' breach of duty was the cause and proximate cause of damage to the Plaintiffs' properties and destruction of archaeological structures.

43. The willful and wanton actions of the Defendants caused property damage and injury to the Plaintiffs which have resulted in the destruction of rare archaeological structures, loss of soil, adverse impact to the stability of the slope of the Plaintiffs' land, loss of access to their property, change in topographic layout of their property, loss of trees and vegetation, destruction of low lying areas that are presumed to be wetlands, side casting of soil from the Plaintiffs' property into the flood plain of the Broad River, and loss of property value.

44. The actions of the Defendants have opened up the lands of the Plaintiffs and provided access to trespassers, thus adversely affecting the Plaintiffs' use and enjoyment of their property.

#### **For a Fourth Cause of Action**

##### **Nuisance**

45. The Plaintiffs reallege and reincorporate the allegations set forth in paragraphs 1 through 43 as if set forth verbatim.

46. The actions of the Defendants have created a nuisance that has denied the Plaintiffs use and enjoyment of their property.

**For a Fifth Cause of Action**

**Destruction of Archeological Structures**

47. The Plaintiffs reallege and reincorporate the allegations set forth in paragraphs 1 through 52 as if set forth verbatim.
48. The Defendants City of Columbia, Layne, and National Pipeline Management knowingly entered upon the lands of another.
49. The Defendants City of Columbia, Layne, and National Pipeline Management removed and destroyed the two bridge abutments for Compt's first bridges over the Broad River.
50. Pursuant to Section 16-11-780(I), the Defendants are liable to the Plaintiffs for the destruction of the two bridge abutments for the greater of the archeological value, commercial value, or cost of restoration, plus attorneys' fees.

**For a Sixth Cause of Action**

**Taking I.**

51. The Plaintiffs reallege and reincorporate the allegations set forth in paragraphs 1 through 49 as if set forth verbatim.
52. The City of Columbia, by and through its independent contractors, created a road through the backyards of residents on Castle Road, including the Plaintiffs' properties.
53. The City of Columbia's road is wider than the 15-foot easement, and creation of a road exceeds the scope of the easement.

54. The destruction of slope above the road and the debris field below the road are also outside of the City of Columbia's easement.
55. The City of Columbia's road has created an unstable slope, further threatening and devaluing property and structures outside of the City of Columbia's 15-foot easement.
56. The City of Columbia's easement did not allow for the building of a road.
57. The Defendants' actions and omissions caused the destruction to the two very important and oldest standing structures in the Midlands of South Carolina that date from the 1700s.
58. The City of Columbia's road, the resulting slope instability, and the debris field have devalued the Plaintiffs' properties, taken the use and enjoyment of their properties, and made it harder for the Plaintiffs to access part of their properties and the river.
59. The actions of the Defendants in placing fill in the flood plain and in suspected wetlands have adversely increased the risk of property damage and erosion from flooding of the Broad River.
60. The City of Columbia did not obtain the easement necessary for the activities that occurred with the building of this road.
61. The City of Columbia, by and through the aforementioned actions and omissions, and the acts and omissions of its contractors, engineers, and agents, have appropriated the Plaintiffs' property, resulting in a taking of portions of their properties without just compensation, which is prohibited by the South Carolina Constitution and the U.S. Constitution.

**For a Seventh Cause of Action**

**Taking II.**

62. The Plaintiffs reallege and reincorporate the allegations set forth in paragraphs 1 through 60 as if set forth verbatim.
63. The City of Columbia, by and through its independent contractors, created a road through the back yards of residents on Castle Road, including the Plaintiffs' properties.
64. No easement exists that allows for the building of the road through the Plaintiffs' properties.
65. The slope stability issues created by building the road, destruction of slope above the road, and the debris field below the road are also outside of the City of Columbia's easement and scope of easement.
66. The City of Columbia's road has created an unstable slope, further threatening and devaluing property and structures.
67. There is no easement allowing for the destruction of two very important and oldest standing structures in the Midlands of South Carolina that date from the 1700s. Destruction of these structures exceeded the scope of any existing easement.
68. The City of Columbia's road, plus resulting slope instability, and debris field have devalued the Plaintiffs' properties, taken the use and enjoyment of the properties, and made it harder for the Plaintiffs to access part of their properties and the river.

69. The actions of the Defendants in placing fill in the flood plain and in suspected wetlands has adversely increased the risk of property damage and erosion from flooding of the Broad River.
70. The City of Columbia did not obtain the easement necessary for the activities that occurred with the building of this road.
71. The City of Columbia, by and through the aforementioned actions and omissions, has appropriated the Plaintiffs' property that has resulted in a taking of portions of their properties without just compensation, which violates the takings and due process clauses of the 5th and 14th Amendments of the United States Constitution.

**For an Eighth Cause of Action**

**Negligence Per Se**

72. The Defendants should have and were required to obtain various permits prior to construction of a road.
73. Upon information and belief, no permits from Richland County and from state and federal environmental agencies were obtained by any of the Defendants prior to commencing construction on the road.
74. Permits require the identification of easements and identification of culturally and archeologically important structures.

75. Had the Defendants obtained necessary permits from state and federal environmental agencies, the lack of necessary easements and existence of the Compty Bridge Abutments would have or should have been identified in the permitting process.
76. The necessary permitting laws and regulations for both state and federal agencies have the purpose of protecting the public and important cultural and archeological resources from harm such as that complained of in this litigation.
77. Failure to apply for necessary permits prior to construction of the road was the cause, the proximate cause, is directly related to, and resulted in damage to the Plaintiffs and to the archeological and cultural resources on the building site.
78. Failure to apply for and obtain necessary permits prior to construction is negligence per se.

### **For an Ninth Cause of Action**

#### **Negligence**

79. The Defendants Horner and Weston and Sampson have a duty to supervise and check the work of unlicensed employees.
80. Upon information and belief an employee who not licensed as a professional engineer recommended building the road across private property without checking or securing an easement, without obtaining permits and without geotechnical engineering studies and remedies. Defendants allowed this recommendation and follow up work to proceed with both Defendant Horner and Defendant Weston and Sampson named on the recommendation.

81. Defendants Horner and Weston & Sampson breached the duty of care and duty to supervise when they allowed an employee to send an email and memo to the Defendant City of Columbia recommending the building of the road. This duty was further breached when the employee continued to work with other defendants to facilitate building the road without necessary easements or engineering work.

82. The Defendant's breach of duty was the proximate cause and the cause of damage to the Plaintiffs. Plaintiffs were damaged by a road built across their property that exceeded the scope of any existing easement. Plaintiffs were further damaged because of slope stability issues on their property, loss of use of property, defacing the landscape and the destruction of archeological resources.

WHEREFORE, the Plaintiffs pray that this Court:

(1) Issue its judgment that the Defendants are liable to the Plaintiffs in that:

(a) The Defendants' actions were willful, wanton, knowing, intentional, negligent, and grossly negligent.

(b) The Defendants are liable to the Plaintiffs for their damages, including both actual and punitive damages.

(c) Award the Plaintiffs the costs and attorneys' fees for bringing this action as allowed by law.

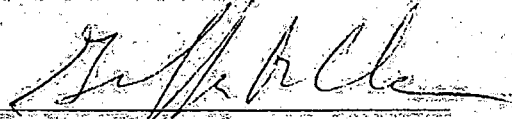
(d) Grant such other relief as may be just, proper, and appropriate.

Respectfully Submitted:

JOHN ADAMS HODGE & ASSOCIATES, LLC

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Box 25553  
Columbia, SC 29224  
(803) 386-1504  
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S.C. Bar 78415

January 11, 2015  
Columbia, South Carolina

**INDEX TO MOTION FOR SUMMARY JUDGMENT**

Modesta Brinkman, David Brinkman, James Coleman, Karen Foster, Carl Foster, Robert Collins and Pamela Collins vs. Weston & Sampson, Inc., Weston & Sampson Engineers, Inc., Weston & Sampson Services, Inc., Weston & Sampson CMR, Inc., City of Columbia, SC, North American Pipeline Management, Inc., Layne Inliner, LLC and Robert Homer, PC  
Our File No. 20495-16011

1	NAPM	Motion for Summary Judgment	
2	NAPM	Affidavit of Shannon Herford	
3	NAPM	Memorandum in Support of Motion for Summary Judgment	

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

MODESTA BRINKMAN, DAVID  
BRINKMAN, JAMES COLEMAN, CARL  
FOSTER, KAREN FOSTER, ROBERT  
COLLINS, PAMELA COLLINS,

Civil Action No. 2015-CP-40-5598

Plaintiffs,

**DEFENDANT NORTH AMERICAN  
PIPELINE MANAGEMENT'S NOTICE  
OF MOTION AND MOTION FOR  
SUMMARY JUDGMENT AS TO  
PLAINTIFFS' ARCHAEOLOGY  
CLAIMS**

vs.

WESTON & SAMPSON ENGINEERS,  
INC., CITY OF COLUMBIA, SOUTH  
CAROLINA, NORTH AMERICAN  
PIPELINE MANAGEMENT AND  
LAYNE INLINER,

Defendants.

TO: JOHN ADAMS HODGE, ESQUIRE AND GEOFFREY K. CHAMBERS, ESQUIRE,  
ATTORNEYS FOR PLAINTIFFS MODESTA BRINKMAN, DAVID BRINKMAN,  
JAMES COLEMAN, CARL FOSTER, KAREN FOSTER, ROBERT COLLINS AND  
PAMELA COLLINS:

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service of this Notice upon you or as soon thereafter as counsel may be heard, the undersigned attorneys for Defendant North American Pipeline Management ("Defendant") will move before the presiding Judge of the Richland County Court of Common Pleas for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting Defendant summary judgment as to Plaintiffs Modesta Brinkman, David Brinkman, James Coleman, Karen Foster, Carl Foster, Robert Collins and Pamela Collins' (collective "Plaintiffs") claims for destruction of archaeological structures pursuant to S.C. Code Ann. § 16-11-780(I) (Supp. 2017) against Defendant on the grounds that there is no genuine issue as to any material fact and Defendant is entitled to judgment as a matter of law.

Specifically, Defendant asserts there exists no genuine issue of material fact and it is entitled to judgment as a matter of law because: 1) Defendant did not willfully, knowingly or maliciously enter Plaintiffs' property(ies) for the sole purpose of discovering, uncovering, moving, removing or attempting to remove an archeological resource; and 2) to date, the archeological resource/archaeological structure(s) at issue have not been designated as historic by any applicable and/or governing preservation and/or conservation authority(ies).

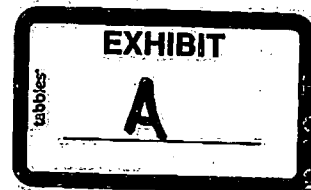
Defendant's Motion is based upon the pleadings, discovery, affidavits, exhibits, deposition transcripts and other admissible evidence as well as the applicable South Carolina Rules of Civil Procedure, common and statutory law of the State of South Carolina and any Memorandum in Support that may be presented prior to or at the time of any hearing on the matter.

McANGUS GOUDELOCK & COURIE, L.L.C.

s/R. Trippett Boineau, III  
R. Trippett Boineau, III SC Bar No: 73769  
Heath M. Stewart, III SC Bar No: 74190  
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ATTORNEYS FOR DEFENDANT NORTH AMERICAN PIPELINE MANAGEMENT

April 27, 2018  
Columbia, South Carolina



FILED ELECTRONICALLY FILED - 2018 Apr 27 9:58 AM - RICHLAND - COMMON PLEAS - CASE#2015CP4005598

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

MODESTA BRINKMAN, DAVID )  
BRINKMAN, JAMES COLEMAN, CARL )  
FOSTER, KAREN FOSTER, ROBERT )  
COLLINS, PAMELA COLLINS, )

Civil Action No. 2015-CP-40-5598

**AFFIDAVIT OF SHANNON HERFORD**

Plaintiffs,

vs.

WESTON & SAMPSON, INC., WESTON )  
& SAMPSON ENGINEERS, INC., )  
WESTON & SAMPSON SERVICES, )  
INC., WESTON & SAMPSON CMR, )  
INC., CITY OF COLUMBIA, SOUTH )  
CAROLINA, NORTH AMERICAN )  
PIPELINE MANAGEMENT, LAYNE )  
INLINER AND ROBERT HOMER, PE, )

Defendants.

PERSONALLY APPEARED BEFORE ME, the undersigned, Shannon Herford, who, after being duly sworn, deposes and states:


1. I am currently an employee of North American Pipeline Management and worked on the project which is the subject of this lawsuit.
2. At no point was I or anyone from North American Pipeline Management aware of there being any historical structures on the property in question.
3. I have never seen any documentation of any historical bridge abutments on the property in question and performed our work without any knowledge of the area being designated as historical.
4. I, nor anyone from North American Pipeline Management never intentionally, maliciously, or recklessly destroyed any historical structure.

5. I, nor anyone from North American Pipeline Management, ever moved to displace knowingly or with malicious intent any rocks which are alleged to have been historical.

6. I, nor anyone from North American Pipeline Management, ever entered the property of the Plaintiffs for the purpose of moving or destroying or defacing any historical figures or historical landmarks or archeological resources.

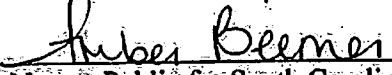
7. To this date, I have not been made aware of any designation of any part of the Plaintiffs' property as being historical and/or archeologically significant in nature.

FURTHER, AFFIANT SAYETH NAUGHT.

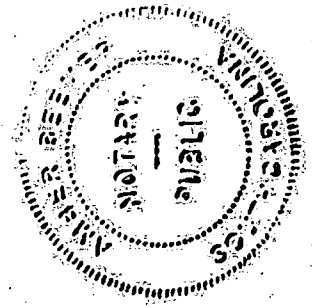
  
Shannon Herford

SWORN TO AND SUBSCRIBED BEFORE ME

This 26 day of April, 2018.

  
Notary Public for South Carolina

My Commission Expires: April 13, 2026



STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

MODESTA BRINKMAN, DAVID  
BRINKMAN, JAMES COLEMAN, CARL  
FOSTER, KAREN FOSTER, ROBERT  
COLLINS, PAMELA COLLINS,

Civil Action No. 2015-CP-40-5598

Plaintiffs,

**DEFENDANT NORTH AMERICAN  
PIPELINE MANAGEMENT'S  
MEMORANDUM IN SUPPORT OF ITS  
MOTION FOR SUMMARY  
JUDGMENT AS TO PLAINTIFFS'  
ARCHAEOLOGY CLAIMS**

vs.

WESTON & SAMPSON ENGINEERS,  
INC., CITY OF COLUMBIA, SOUTH  
CAROLINA, NORTH AMERICAN  
PIPELINE MANAGEMENT AND  
LAYNE INLINER,

Defendants.

Pursuant to the applicable South Carolina Rules of Civil Procedure and for the reasons set forth herein, Defendant North American Pipeline Management ("Defendant" or "NAPM"), by and through its undersigned counsel, submits this Memorandum in Support of its Motion for Summary Judgment as to Plaintiffs Modesta Brinkman, David Brinkman, James Coleman, Carl Foster, Karen Foster, Robert Collins and Pamela Collins' (collectively "Plaintiffs") archaeology claims for destruction of archaeological structures pursuant to S.C. Code Ann. § 16-11-780(I) (Supp. 2017).

#### **STATEMENT OF FACTS**

This real property dispute arises out of alleged damage to Plaintiffs' properties resulting from a City of Columbia construction project to evaluate and repair the West Columbia Basin Sanitary Sewer System.

In 2007, Plaintiff David Brinkman discovered some large rock arrangements, which he believes to have been old bridge abutments, on his property located at 154 Castle Road, Columbia, South Carolina. In order to gather more information, Mr. Brinkman contacted Dr. Jonathan Leader, South Carolina's State Archaeologist, to come and inspect the rocks. Thereafter, Mr. Brinkman and Dr. Leader continued to keep in contact on a professional and social basis, including through their respective memberships of the Columbia chapter of the Explorer's Club.

In May 2008, in response to Mr. Brinkman's request for the bridge abutments to be considered for listing on the National Registry, the South Carolina Archives and History Center declined the request stating, in short, "that a great deal more research and archaeological investigation and assessment will be necessary. . . ." (Letter to David Brinkman from State Historic Preservation Office, May 30, 2008)(Exhibit "A"). More specifically, the State Historic Preservation Office questioned "whether there is a sufficient amount of physical remains from the ferry and bridge site to convey in any tangible way the history of this area of the river before, during and immediately following the Civil War" despite an "abundance of documentary material" compiled and submitted by Mr. Brinkman. (*Id.*).

In or around 2012, The City of Columbia ("the City") began a construction project to evaluate and repair the West Columbia Basin Sanitary Sewer System. The City engaged Weston & Sampson Engineers, Inc. ("Westin and Sampson") to provide certain services on the project including reviewing CCTV footage of the sewer lines and helping identify manholes requiring repair. The City also contracted with Layne Inliner to serve as the contractor for the project. Layne Inliner, in turn, engaged NAPM to assist with the work. In order to access several manholes located along Plaintiffs' properties, NAPM needed to create access along the City's

sewer line easement. Plaintiffs allege that the creation of this means of access to repair the sewer line disturbed and/or destroyed the rock arrangements found by Mr. Brinkman.

Plaintiffs contend NAPM and Layne Inliner, at and upon the recommendation of Weston and Sampson, built a "road"<sup>1</sup> across their properties that exceeded the scope and purpose of the City's sewer line easement. Plaintiffs further allege that some of their properties contained archaeological structures that were destroyed by the construction of this road.

As a result, Plaintiffs filed suit against Weston and Sampson, the City, NAPM and Layne Inliner alleging various causes of action, including one for the destruction of archaeological structures pursuant to S.C. Code Ann. § 16-11-780(I).

However, despite Plaintiffs' allegations to the contrary, NAPM was never aware of any historical structures, has never seen any documentation of any historical structures and began its work without any knowledge of the area in question having a historical designation. (Affidavit of Shannon Herford, ¶¶ 2-3, 7)(Exhibit "B"). Further, NAPM neither intentionally, maliciously or recklessly destroyed any historical structure nor did NAPM ever knowingly or maliciously move or displace any rocks allegedly part of a historical structure. (*Id.* at ¶¶ 4-5). Finally, NAPM did not enter Plaintiffs property(ies) for the purpose of destroying or defacing any historical or archaeological resource. (*Id.* at ¶ 6).

As discussed more fully below, NAPM asserts it is entitled to judgment as a matter of law as NAPM did not enter Plaintiffs' property(ies) for the sole purpose of moving or removing an archeological resource and the archeological resource/archaeological structure(s) at issue have not been designated as historic.

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<sup>1</sup> It is important to note that this "road" was a temporary dirt access way and not an established, paved public road as Plaintiffs contend.

## STANDARD OF REVIEW

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." S.C.R. Civ.P. 56(c). In determining whether any triable issues of fact exist, the Court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Brock Bank v. Best Capital Corp.*, 341 S.C. 372, 534 S.C.2d 688 (2000).

In order to resist a motion for summary judgment, the non-moving party must come forward with specific facts showing genuine issues necessitating trial. *NationsBank v. Scott Farm*, 320 S.C. 299, 302 (1995). When a plaintiff is faced with a defendant's motion for summary judgment that is supported by evidence, the plaintiff cannot defeat the motion by relying on the allegations of his Complaint, but must disclose the facts he intends to rely on by affidavit or the proof. *Shupe v. Settle*, 315 S.C. 510, 516 (1994). A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment. *Id.* at 516-517. "The trial court should grant summary judgment against a party who fails to make a showing sufficient to establish the existence of an essential element of the party's case." *Fender and Latham, Inc. v. First Union Nat. Bank of S.C.*, 316 S.C. 48, 50 (1994).

## ARGUMENT

At the outset, Defendant asserts there exists no genuine issue of material fact and NAPM is entitled to judgment as a matter of law because: 1) Defendant did not willfully, knowingly or

maliciously enter Plaintiffs' property(ies) for the sole purpose of discovering, uncovering, moving, removing or attempting to remove an archeological resource; and 2) to date, the archeological resource/archaeological structure(s) at issue have not been designated as historic by any applicable and/or governing preservation and/or conservation authority(ies).

**I. BASED ON THE PLAIN LANGUAGE OF THE STATUTE, S.C. CODE ANN. § 16-11-780 IS INAPPLICABLE IN THIS CASE.**

By way of background and to provide context for the statute at issue, it should be noted that the South Carolina General Assembly enacted S.C. Code Ann. § 16-11-780 as part of South Carolina's criminal code. The statute is located in Chapter 11 of Title 16 (Crimes and Offenses of the South Carolina Code of Laws) for "Offenses Against Property." Section 16-11-780(C) provides:

*it is unlawful for a person to willfully, knowingly, or maliciously enter upon the lands of another or the posted lands of the State and disturb or excavate a prehistoric or historic site for the purpose of discovering, uncovering, moving, removing, or attempting to remove an archaeological resource. . . .*

S.C. Code Ann. § 16-11-780(C) (Supp. 2016)(emphasis added). Further, § 16-11-780(I) provides that a "landowner, in the case of private lands, . . . may bring a civil action for a violation of this section to recover the greater of the archaeological resource's archaeological value or commercial value, and the cost of restoration and repair of the site where the archaeological resource was located, plus attorney's fees and court costs." S.C. Code Ann. § 16-11-780(I). More importantly, § 16-11-780(K)(3) contains an exception to the above cited rules and provides that nothing outlined in § 16-11-780 "shall limit or interfere with . . . the lawful acts of a utility worker acting in the scope of and in the course of his employment. . . ." S.C. Code Ann. § 16-11-780(K)(3). In applying the statute to this case, NAPM would submit that the court must first look to the rules of statutory construction for guidance in determining whether or not

Plaintiffs actually have a civil claim under the statute. In doing so, the ultimate conclusion is that the statute is inapplicable to the facts of this case and, therefore, NAPM is entitled to judgment as a matter of law.<sup>2</sup>

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election Comm'n*, 317 S.C. 434, 454 S.E.2d 890 (1995)). Further and more importantly, "[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Hodges v. Rainery*, 341 S.C. 79, 85, 533 S.E. 2d 578, 581 (2000) (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46:03 at 94 (5th ed. 1992)).

"[W]hen a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant." *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991). The statutory language must be construed in light of the intended purpose of the statute. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). "A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and

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<sup>2</sup> It should be noted that Plaintiffs' request to have this court appoint the State Archaeologist as an expert under S.C. Code Ann. § 16-11-780(B) was denied by Order filed September 10, 2017. (Exhibit "C"). In its Order, this court specifically interpreted "this statute to allow appointment of the State Archaeologist in a criminal matter involving a violation of Section 16-11-780." (*Id.*) (emphasis added).

policy of the lawmakers.” *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) (quotation marks and citation omitted). “In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose.” *Roberts*, 393 S.C. at 342, 713 S.E.2d at 283.

“In offenses at common law, and under statutes which do not disclose a contrary legislative purpose, to constitute a crime, the act must be accompanied by a criminal intent, or by such negligence or indifference to duty or to consequences as is regarded by the law as equivalent to a criminal intent.” *State v. Ferguson*, 302 S.C. 269, 272, 395 S.E.2d 182, 183. (1990) (quoting *State v. Am. Agric. Chem. Co.*, 118 S.C. 333, 337, 110 S.E. 800, 802 (1922)). “Therefore, whether knowledge and intent are necessary elements of a statutory crime must be determined from the language of the statute, construed in the light of its purpose and design.” *Guinyard v. State*, 260 S.C. 220, 227, 195 S.E.2d 392, 395 (1973). In a criminal case in South Carolina, the State cannot rely on civil concepts of negligence and recklessness, i.e. statutory violations, to meet its burden of proving a defendant’s state of mind; the import of the terms negligence and recklessness as used in civil law and in criminal law are neither equivalent nor interchangeable. *State v. Rowell*, 326 S.C. 313, 317, 487 S.E.2d 185, 187 (1997).

In reading the plain language of § 16-11-780(C), it is clear that the legislature intended this criminal statute to apply in situations where a person *willfully, knowingly or maliciously* enters another’s lands *for the sole purpose* of discovering, uncovering, moving, removing or attempting to remove an archeological resource. Therefore, reading the plain and unambiguous language of § 16-11-780(C), NAPM would submit there is no evidence that any of the Defendants entered upon Plaintiffs’ properties for the sole purpose of finding and removing—to any degree—an archaeological resource. As noted above, the only reason any of the Defendants

where in and about Plaintiffs' properties was to evaluate and repair the West Columbia Basin Sanitary Sewer System. Anything else that may or may not have allegedly occurred on Plaintiffs' properties has no bearing on the issues currently before the court. If Plaintiffs cannot point to any evidence that any of the above named Defendants were on their properties only to find and disturb an archaeological resource, then there cannot be a violation of the statute.

To be sure, NAPM was never aware of any historical structures, has never seen any documentation of any historical structures and began its work without any knowledge of the area in question having a historical designation. (Exhibit B, ¶¶ 2-3, 7). Further, NAPM neither intentionally, maliciously or recklessly destroyed any historical structure nor did NAPM ever knowingly or maliciously move or displace any rocks allegedly part of a historical structure. (*Id.* at ¶¶ 4-5). Finally, NAPM did not enter Plaintiffs property(ies) for the purpose of destroying or defacing any historical or archaeological resource. (*Id.* at ¶ 6).

Based on the above, it is clear the plain language of S.C. Code Ann. § 16-11-780(C) and the legislative intent behind the statute requires some level of intent before the statute can apply to the facts of this case. Since this criminal statute requires an intent to enter Plaintiffs' property(ies) for the sole purpose of disturbing/destroying a known historical/archaeological resource, Plaintiffs must come forth with some evidence that NAPM knowingly violated the terms of the statute. As NAPM has shown, no such evidence is available from the record before the court; therefore, S.C. Code Ann. § 16-11-780 is inapplicable in this case and NAPM is entitled to judgment as a matter of law on Plaintiffs' claims for destruction of archaeological structures pursuant to S.C. Code Ann. § 16-11-780(I).

**II. TO DATE, THE ARCHEOLOGICAL RESOURCE/ARCHAEOLOGICAL STRUCTURE(S) AT ISSUE HAVE NOT BEEN DESIGNATED AS HISTORIC BY ANY APPLICABLE AND/OR GOVERNING PRESERVATION AND/OR CONSERVATION AUTHORITY(IES).**

As outlined above, in 2007, Plaintiff David Brinkman discovered some large rock arrangements on his property which he believes to have been old bridge abutments. In order to gather more information, Mr. Brinkman contacted Dr. Jonathan Leader, South Carolina's State Archaeologist, to come and inspect the rocks. Thereafter, in May 2008, in response to Mr. Brinkman's request for a listing on the National Registry, the South Carolina Archives and History Center determined, among other things, "that a great deal more research and archaeological investigation and assessment will be necessary . . ." before the site could be eligible for consideration. (Exhibit A).

More specifically, the State Historic Preservation Office questioned "whether there is a sufficient amount of physical remains from the ferry and bridge site to convey in any tangible way the history of this area of the river before, during and immediately following the Civil War" despite an "abundance of documentary material" compiled and submitted by Mr. Brinkman. (*Id.*) Mr. Brinkman was referred to professionals at the South Carolina Institute of Archaeology and Anthropology "to determine what additional research and archaeological investigations might be advisable . . . to answer some of the questions still outstanding." (*Id.*) As a result, the State Historic Preservation Office did "not believe the site is eligible for the National Register" and could not "recommend that a formal nomination be prepared." (*Id.*) Therefore, based on the above, Plaintiffs cannot point to any evidence that the alleged archeological resource/archaeological structure(s) at issue have been designated as historic by any applicable and/or governing preservation and/or conservation authority(ies). As a result, their claims under S.C. Code Ann. § 16-11-780 fail as a matter of law.

Even still, Plaintiffs moved this court to appoint the State Archaeologist, Dr. Jonathan Leader, to provide certain testimony pursuant to S.C. Code Ann. § 16-11-780(B) related to their alleged archaeological damages. NAPM, along with others, opposed this appointment and the court ultimately denied Plaintiffs' request by Order filed September 20, 2017. However, Plaintiffs have engaged Dr. Leader as an unpaid expert and rely on his expertise to calculate their alleged archaeological damages. Despite this fact, Dr. Leader has testified he has not done any independent research, excavation, archaeological research or other testing that would result in any governing authority issuing a historical designation for the site at issue. (*See generally* Deposition of Dr. Jonathan Leader, February 16, 2018, p. 20, ll. 9-14; p. 25, ll. 7-10; p. 32, l. 8 through p. 33, l. 6; p. 41, ll. 5-12; p. 41, ll. 20-25; p. 42, ll. 1-5; p. 43, ll. 3-6; p. 43, l. 23 through p. 44, l. 10; p. 46, ll. 6-13; p. 91, l. 24 through p. 92, l. 5; p. 103, ll. 7-14; p. 160, ll. 17-25). In fact, Dr. Leader's opinions and damage calculations are based on the *assumption* that a historical site is located on Plaintiffs' property(ies). (*Id.* at p. 91, l. 24 through p. 92, l. 5). More importantly, Dr. Leader believes that while Mr. Brinkman's research is impressive, there still remains significant work to do to verify his ultimate conclusions regarding the historical nature of the property(ies). (*Id.* at p. 20, ll. 9-14; p. 25, ll. 7-10; p. 32, l. 8 through p. 33, l. 6; p. 41, ll. 5-12; p. 41, ll. 20-25; p. 42, ll. 1-5; p. 43, ll. 3-6; p. 43, l. 23 through p. 44, l. 10; p. 46, ll. 6-13; p. 91, l. 24 through p. 92, l. 5; p. 103, ll. 7-14; p. 160, ll. 17-25).

Therefore, since no authoritative body has designated this site as historically significant and Plaintiffs' own archaeological expert believes additional archaeological work and research are needed, Plaintiffs' claims under Section 16-11-780 fail as a matter of law.

### CONCLUSION

For the reasons set forth above, Defendant North American Pipeline Management's

Motion for Summary Judgment as to Plaintiffs Modesta Brinkman, David Brinkman, James Coleman, Carl Foster, Karen Foster, Robert Collins and Pamela Collins' (collectively "Plaintiffs") archaeology claims for destruction of archaeological structures pursuant to S.C. Code Ann. § 16-11-780(I) should be granted in this matter.

McANGUS GOUDELÖCK & COURIE, L.L.C.

s/R. Trippett Boineau, III

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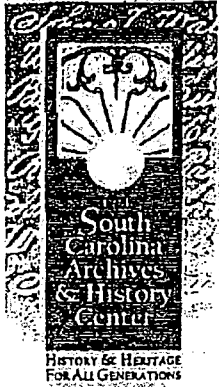
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ATTORNEYS FOR DEFENDANT NORTH  
AMERICAN PIPELINE MANAGEMENT

May 8, 2018

Columbia, South Carolina



May 30, 2008

Mr. David Brinkman  
154 Castle Road  
Columbia, SC 29210

Re: Broad River Ferry and Bridge Site [1791-1900], 154 Castle Road [Richland County]

Dear Mr. Brinkman:

Thank you for the Preliminary Information Form [PIF] on the Broad River Ferry and Bridge Site. Please forgive our delay in getting a formal, written response to you before now, and any inconvenience it has caused you. We appreciate your interest in history and historic preservation, and all the thorough work you put into the PIF for this resource. We also appreciate you allowing several of my colleagues and me to visit your property on May 13th. It was also good to see Al Roberson of the Confederate Relic Room and Warner Montgomery of the *Columbia Star* there.

Our staff committee on National Register eligibility reviewed your application and proposal when it met earlier this week and agrees with the conclusion we made on site that a great deal more research and archaeological investigation and assessment will be necessary before a positive determination of eligibility could be made. Based on the information that we now have in hand, we do not believe the site is eligible for the National Register and cannot recommend that a formal nomination be prepared. Your compilation of data so far is impressive and your hypotheses are interesting and intriguing; however, too many questions remain in terms of the identification and location of elements of the bridge abutments and supports in the riverbed. Despite the abundance of documentary material that you have compiled on the site's history, we question whether there is a sufficient amount of physical remains from the ferry and bridge site to convey in any tangible way the history of this area of the river before, during and immediately following the Civil War.

We do, however, recommend that you contact Steve Smith of the South Carolina Institute of Archaeology and Anthropology [SCIAA], and his colleague, Jim Legg, both of whom have worked extensively on Revolutionary War and Civil War battle and related sites, to determine what additional research and archaeological investigations might be advisable in this case to answer some of the questions still outstanding. They can be reached at 803-777-8170. You may also be interested in consulting with both Tracy Power [803-896-6182] and Patrick McCawley [803-896-6103], two of my colleagues here at Archives and History who have particular expertise in military and Civil War history.

S. C. Department of Archives & History • 8301 Parklane Road • Columbia • South Carolina • 29223-4905 • (803) 896-6100 • [www.state.us/scdah](http://www.state.us/scdah)



CITY OF COLUMBIA 000105

Mr. David Brinkman  
May 30, 2008  
page 2

I'm sorry that our response cannot be a positive one, but must give you our best professional assessment of your chances of having the property listed in the Register. The National Register criteria are objective and strict federal standards by which all properties being considered for designation are evaluated.

If you have any questions, please do not hesitate to contact me by phone at [803] 896-6179 or by e-mail at [chandler@scdah.state.sc.us](mailto:chandler@scdah.state.sc.us).

Sincerely,



Andrew W. Chandler  
Architectural Historian/National Register Co-Coordinator  
State Historic Preservation Office

cc: Mr. Allen Roberson, Confederate Relic Room.  
Mr. Warner Montgomery, *Columbia Star*  
Mr. Steven D. Smith, SCIAA  
Mr. James B. Legg, SCIAA  
Ms. Robin Waites, Executive Director, Historic Columbia Foundation

**STATE OF SOUTH CAROLINA**

**COUNTY OF RICHLAND**

Modesta Brinkman, David Brinkman,  
James Coleman, Carl Foster, Karen Foster,  
Robert Collins, Pamela Collins

Plaintiffs,

Weston & Sampson, Inc., Weston &  
Sampson Engineers, Inc., Weston &  
Sampson Services, Inc., Weston &  
Sampson CMR, Inc., City of Columbia, SC,  
North American Pipeline Management,  
Layne Inliner.

Defendants.

**IN THE COURT OF COMMON PLEAS**

**FIFTH JUDICIAL CIRCUIT**

**PLAINTIFFS' MEMO IN OPPOSITION  
TO NAPM'S MOTION FOR SUMMARY  
JUDGMENT**

**INTRODUCTION**

The Defendant North American Pipeline Management, Inc. (NAPM) seeks summary judgment on two grounds. First, it claims essentially that it did not violate Section 16-11-780 (C) of the South Carolina Code of Laws in destroying two historic bridge abutments that now lie in ruins on two of the Plaintiffs' properties, and secondly, it claims that there is no genuine issue of material fact that these bridge abutments were not designated as historic by any applicable historic preservation or conservation authorities. Both of these claims are incorrect, and sufficient evidence in this matter presents genuine issues of material fact sufficient to deny NAPM's motion for summary judgment.

**STANDARD FOR SUMMARY JUDGMENT**

Rule 56(c) of the South Carolina Rules of Civil Procedure provide that summary

judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Cunningham v. Anderson County*, 741 S.E.2d 545, 549 (S.C. App. 2013), citing *Jackson v. Bermuda Sands, Inc.*, 667 S.E.2d 612, 614 n.2 (S.C. App. 2009). The party seeking summary judgment has the burden of clearly establishing the absence of genuine issues of material fact. *McCall v. State Farm Mut. Auto. Ins. Co.*, 597 S.E.2d 181, 183 (S.C. App. 2004). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot rest on mere allegations or denials contained in the pleadings. *Regions Bank v. Schmauch*, 582 S.E.2d 432, 438 (S.C. App. 2003). The nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 609 S.E. 2d 565, 568 (S.C. App. 2005). The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003), quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E. 2d 868, 874 (2001).

#### **STATEMENT OF FACTS**

In September 2014, the Defendants proposed building a road across the backyards of the Plaintiffs along the Broad River. Without notice to the Plaintiffs, the Defendants planned to build the access road and then commenced building the road in February 2015 (Exhibit A). The City of Columbia had an easement that was fifteen (15) feet wide for the purpose of maintaining a sewer line; however, the road that was built created permanent damage to the Plaintiffs' property outside of the easement. This work was conducted

outside of the easement. The Defendants added additional money to the budget to remove rock from the site. (Exhibit B) The City, by and through its contractors, destroyed two historic bridge abutments that were built by a French engineer, John Compty, in the 1790s. The abutments, that date back to the time of George Washington's presidency, were two of the oldest historic structures in Central South Carolina. Since the road was built, erosion of the cut bank that was created by the Defendants has occurred, and evidence of structural damage to two of the Plaintiffs' homes has been documented. The Plaintiffs filed this action seeking recovery of damages for the alleged nuisance, trespass, taking, negligence, gross negligence, and destruction of archaeological structures:

**THE PRESENCE OF THESE BRIDGE HISTORIC ABUTMENTS WAS CLEARLY ASCERTAINABLE FROM PUBLIC SOURCES, BUT THESE DEFENDANTS PERFORMED NO DUE DILIGENCE**

NAPM claims in its motion that the bridge abutments, or "archaeological resource/archaeological structure(s) at issue have not been designated as historic by any applicable and/or governing preservation and/or conservation authority(ies)." This claim is utterly without foundation, and contrary to the evidence developed in discovery in this case.

First, it is undisputed that neither NAPM nor any other Defendant conducted an investigation to determine if there were any historic or cultural sites on the Plaintiffs' property prior to digging a road through the Plaintiffs' backyards that resulted in the intentional destruction of the bridge abutments that date back to the era of George Washington's presidency. Had the Defendants conducted a usual and customary cultural resources investigation, they would have known that such structures existed on our clients' property. It is further undisputed that none of the Defendants have produced

evidence that the Plaintiffs were notified in advance of this work, and all of the Plaintiffs deny that they were contacted by any Defendant. Had the Defendants contacted the Plaintiffs regarding the scope of the proposed work, they would have learned of the historic nature of the structures, and they would have been instructed to avoid these structures. In addition, it is undisputed that the Defendants failed to obtain permits in advance for their actions that resulted in the illegal fill of jurisdictional wetlands that are regulated by the U.S. Army Corps of Engineers (USACE or Corps). It is further undisputed that had the Defendants first sought a permit from the USACE, they would have been required to conduct and submit to the Corps a cultural resources evaluation.

The South Carolina Department of Archives and History, an agency of the State, maintains a website, [shpo.sc.gov](http://shpo.sc.gov). Had these Defendants entered their job location into the ArchSite query form, they would have immediately known that it was the site of historic bridge abutments. The first page of the website has a "Quick Links" section that takes one to the "ArchSite (GIS)" database. Once one clicks on the address of the Plaintiffs, a polygon appears that indicates that a historic site exists over the Plaintiffs' properties. Exhibit C is a screen shot of the identification of the bridge abutments. Archsite indicates that there are bridge abutments adjacent Castle Road and the Broad River on the two properties owned by the Plaintiffs. The public database identifies the Plaintiffs' property at **"Historic Areas: Broad River Ferry and Bridge Site...Date of Resource: 1791-1900."**

In addition to the aforementioned, Dr. Jonathan Leader, South Carolina State Archaeologist, testified regarding the documentation of these bridge abutments in the records of the SC Department of Archives and History and in the South Carolina Institute of Archaeology and Anthropology. In his deposition, Dr. Leader testified:

Q: Okay. Okay. You earlier testified that the bridge abutment has been determined to be a historical site pursuant to the State file -- the State site files, correct?

A: Pursuant to the Office of the State Archaeologist, it is a historic site.

Q: Okay. When -- when was that determined?

A: Basically when we first got to it. It's been considered a historic site since day one.

Q: Would that have been in 2007?

A: Yeah. As soon as it was found on private property, it was protected -- we thought or believed at that time. And since it was a historic structure with materials demonstrating from a historic period, we considered it to be a historic site from that time period on private property.

(Exhibit D; Deposition of Dr. Jonathan Leader, State Archaeologist, March 21, 2017.)

As such, there is no credible argument that the SC Department of Archives and History, and the South Carolina Institute of Archaeology and Anthropology did not designate these bridge abutments as historic sites, and that these sites were not known as historic archaeological resources.

**LIABILITY UNDER SECTION 16-11-780 DOES NOT DEPEND ON DESIGNATION BY HISTORIC PRESERVATION ORGANIZATIONS**

Liability under Section 16-11-780 does not depend on whether a site is "designated as historic by any applicable and/or governing preservation and/or conservation authorities" as Defendant NAPM asserts. The statute requires that a site is a "prehistoric or historic site", but it does not require that it be formally designated by any specific organization. Such designation does not depend on listing in the National Register of Historic Places, but solely whether a site is "prehistoric or historic." As demonstrated above, the Plaintiffs' properties were designated as historic sites in

ArchServe by the foremost historic preservation agencies in South Carolina, the South Carolina Department of Archives and History, the South Carolina Institute of Archaeology and Anthropology, and by the Office of the State Archaeologist.

**THE DEFENDANT NAPM VIOLATED SECTION 16-11-780 (C)**

NAPM's motion and supporting affidavit misstate the principles of liability that govern the Defendants under Section 16-11-780 (C). NAPM seeks an order from the Court that it did not "willfully, knowingly or maliciously enter the Plaintiffs' properties" that its "sole purpose" was not to destroy the historic bridge abutments that were in our clients' backyards. (See Herford affidavit) The Herford affidavit relied upon by the Defendant NAPM is fatal to its cause, in that Mr. Herford claims that neither he nor NAPM "intentionally, maliciously, or recklessly destroyed any historical structure." Missing from Herford's affidavit is the word "willful." Herford's statement does not avoid the liability provisions of Section 16-11-780.

First, it is undisputed that the NAPM and the other Defendants willfully and knowingly entered the Plaintiffs' property for the alleged purpose of building a road over a sewer easement. (Exhibit A – Construction Progress Meeting 9-18-2014) They intended to build a road and remove rock (Exhibit B, November 7, 2014 memorandum regarding access road). They knowingly exceeded the scope of the easement. (See Plaintiffs' Motion for Summary Judgment and Return and Exhibit D and E Depositions of Pierce and Shue). It is further undisputed that the Defendant NAPM drove the earth moving equipment that destroyed the bridge abutments on the Coleman and Brinkman properties (Exhibit F and G, Depositions of Foster and Coleman).

In one instance, Dr. James Coleman told NAPM employees to avoid the bridge.

abutment on his property. He told them that it was a historic structure, but when he returned, the abutment was reduced to a pile of rubble. (Exhibit G, Coleman Deposition). Thus, prior to its destruction, Defendant NAPM was on actual notice that the bridge abutment was a historic structure and it knew or should have known that it had no right or permission to go outside of the easement and destroy these bridge abutments.

In order to be liable under Section 16-11-780 of the Code, a Defendant must:

1. "willfully or knowingly enter upon the lands of another and,"
2. "disturb or excavate a prehistoric or historic site"
3. "for the purpose of...uncovering, moving, removing, or attempting to remove an archaeological resource."

One does not have to "intentionally, maliciously, or recklessly destroy a historical structure" as Layne claims in its motion to be liable under 16-11-780 (C). In his deposition, Dr. Leader testified that he was involved with the legislature when this statute was drafted. When asked whether a party had to know that the thing that was damaged was an archaeological structure at the time that the damage occurs, he replied "No."

"Given the discussion that occurred at—with the folks at the legislature when they were putting the act together, and the specific case which kicked the whole thing off, the answer is no. All they have to do or have done was caused the damage. They do not have to know that the hill they were going up was a mound. They do not have to know that the thing was a burial, they simply have had to cause the damage."

(Exhibit H, Deposition of Dr. Jonathan Leader, State Archaeologist, February 16, 2018, pages 172-173)

The material facts in the record support the conclusion that:

1. NAPM intended to enter our clients' property and in fact did enter our clients' property without knowledge or permission of the landowners. They worked outside the easement.
2. NAPM intended to conduct land-disturbing activities that included the removal of rocks.
3. NAPM knew that it was excavating, moving, removing, or attempting to remove these standing rocks and surrounding soils. In this case, they knew or should have known that these structures were historical structures.
4. Had NAPM or the other Defendants performed due diligence regarding the presence of historic structures, the presence of the bridge abutments was easily ascertainable.
5. It is undisputed NAPM, even after it was warned, proceeded to excavate, uncover, move, and remove a historical site. These actions were intentional and knowing, particularly after being warned by one of the Plaintiffs.
6. Section 16-11-780 (C) does not require that the party who damages a historic site know that the site is historic at the time that the destruction takes place.

### CONCLUSION

Contrary to its assertion, NAPM willfully and knowingly entered upon the lands of the Plaintiffs and knowingly went outside of the easement, *and* disturbed a historic site for the purpose of removing the rock, in an archaeological resource, bridge abutments from the 1790s. Section 16-11-780 says, "enter upon the lands of another and disturb" not enter upon the lands of another *to* disturb. This statute says, "an archaeological resource;" not necessarily "an archaeological resource known to a defendant." NAPM cannot claim that they did not know of the existence of the bridge.

abutments because, as demonstrated, these abutments were easily ascertainable in public records, and Plaintiff Jay Coleman specifically told NAPM that these abutments were historical structures and that they should be avoided prior to the destruction of the bridge abutment on his property. It is undisputed that no one contacted the Plaintiffs in advance to obtain permission to work outside of the easement. Had he been contacted, Mr. Brinkman would have certainly told NAPM to avoid his abutment. If NAPM and the other Defendants had not trespassed, the destruction of the bridge abutments would never have happened.

This motion is based upon the pleadings, discovery, and record in this case as well as the applicable law relied upon herein.

Respectfully submitted,

CPERL GROUP, LLC

s/Geoffrey Chambers

Geoffrey Chambers  
411 Walnut Street  
Number 10646  
Green Cove Springs, FL 32043-3443  
(864) 508-0899  
[geoffrey@cperlgroup.com](mailto:geoffrey@cperlgroup.com)  
S.C. Bar 78415

JOHN ADAMS HODGE & ASSOCIATES, LLC

s/John Adams Hodge

John Adams Hodge  
Box 25553  
Columbia, SC 29224  
(803) 386-1504

[johnhodge@johnhodgelaw.com](mailto:johnhodge@johnhodgelaw.com)  
S.C. Bar 2540

May 7, 2018  
Columbia, South Carolina

**SS7218 Construction Progress  
Meeting Minutes  
September 18, 2014 @ 10 AM**

1136 Washington St.  
7<sup>th</sup> Floor Conference Room

1. Progress Meeting was attended by Michael Shue, Emilia Floyd, and Alan Cockrell of the City of Columbia; Steve Coker and Don Robertson of NAPM; Shannon Herford of Layne; and Meghan Moody of Weston & Sampson
2. Contractor reported on going work and anticipated schedule for CIPP manufacture and delivery. CIPP is expected to be installed by second week of October and will be complete by beginning of December. Weston & Sampson is reviewing the CIPP shop drawings.
3. Discussed the status of the 6" sewer line replacement along Rivermont Dr. The City strongly considering self-performing and may use SS7218 funds to purchase materials. Final decision to be made within next week following further discussions with Robert Judy and Bill Davis.
4. Discussed the proposed access road—clear 15' easement and grade for a 12' access road. Layne to provide pricing by linear foot in order to give City flexibility with budget. Concern for large rock formations being along route—pricing will include cost for excavating rock. Additionally the construction contract is proposed to be extended if the access road is added to the scope. Current budget is estimated to be under contract amount by approximately \$550,000.
5. The western I-126 crossing that was proposed to be repaired during the SSES phase of project may not have been repaired as of yet. Emilia will check on status of any repairs to that pipe.
6. Contractor raised concerns about risk of CIPP installation under Boozer Shopping center. Should a problem occur during installation while crossing underneath the building it would be very difficult and costly to correct the problem and would significantly affect the business within the building. Weston & Sampson will review the CCTV and make a recommendation to the City on how best to proceed.

EXHIBIT B

672 Marina Drive, Suite 204  
Charleston, SC 29492  
tel: 843-881-9804 fax: 843-881-8807  
www.westonandsampson.com

**Weston & Sampson**

MEMORANDUM

**TO:** Michael Sheu, PE  
**FROM:** Robert Horner  
Meghan Moody  
**DATE:** November 7, 2014  
**SUBJECT:** SS7218 WC-02 Sub-Basin Rehabilitation, 4000 LF Access Road

During the pre-rehabilitation CCTV portion of this project, it was found that a significant length of sewer main along the Broad River would be inaccessible for required repairs. The contractor's protégé, NAPM, discussed the need to create access to those areas and proposed clearing the sewer easement and constructing a compacted dirt road. The road would also provide an added benefit of allowing for future service access to the City of Columbia staff.

The City of Columbia inspector for the project, Alan Cockrell, in conjunction with the contractor identified a 4,000 LF section of the sewer main that would be best served by the construction of an access road. The contractor presented an estimate and proposed quantities for consideration. The consulting engineer, Weston & Sampson, concurred with the pricing and recommended quantities. Please, find attached a proposed cost for the work in the amount of \$409,250.00. This proposal also includes an allowance for off-site fill as well as the excavation of rock.

It is recommended that the access road be added to the SS7218 contract. Funding is available through the excess funds that exist within the project and the client-controlled contingency.

87

**Weston & Sampson**  
*environmental/infrastructure consultants*  
 Robert L. Horner, PE  
 Meghan E. Moody, EIT

City of Columbia  
 SS7218 WC02 Rehab  
 Layne Inliners/NAPM

Item	Qty	Unit	Unit Price	Item Total	Extended Total
Clearing	4000	LF	\$ 21.00	\$ 84,000.00	\$ 84,000.00
Grading & Restoration (does not include rock)	4000	LF	\$ 48.00	\$ 192,000.00	\$ 276,000.00
Creek Crossing	480	IDF	\$ 10.00	\$ 4,800.00	\$ 280,800.00
Silt Fence	8000	LF	\$ 3.40	\$ 27,200.00	\$ 308,000.00
Fill Allowance	250	CY	\$ 57.00	\$ 14,250.00	\$ 322,250.00
Rock Excavation Allowance	250	CY	\$ 308.00	\$ 77,000.00	\$ 399,250.00
Permitting	1	LS	\$ 2,000.00	\$ 2,000.00	\$ 401,250.00
Detail Drawings & Construction Admin	1	LS	\$ 8,000.00	\$ 8,000.00	\$ 409,250.00

**Total Cost = \$ 409,250.00**

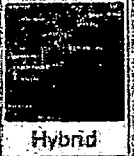
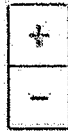


## Public View Map

Legend

SC ArchSite Public Web Map

Castle Rd, Columbia, S



### Legend

#### National Register Points



#### National Register Polygons

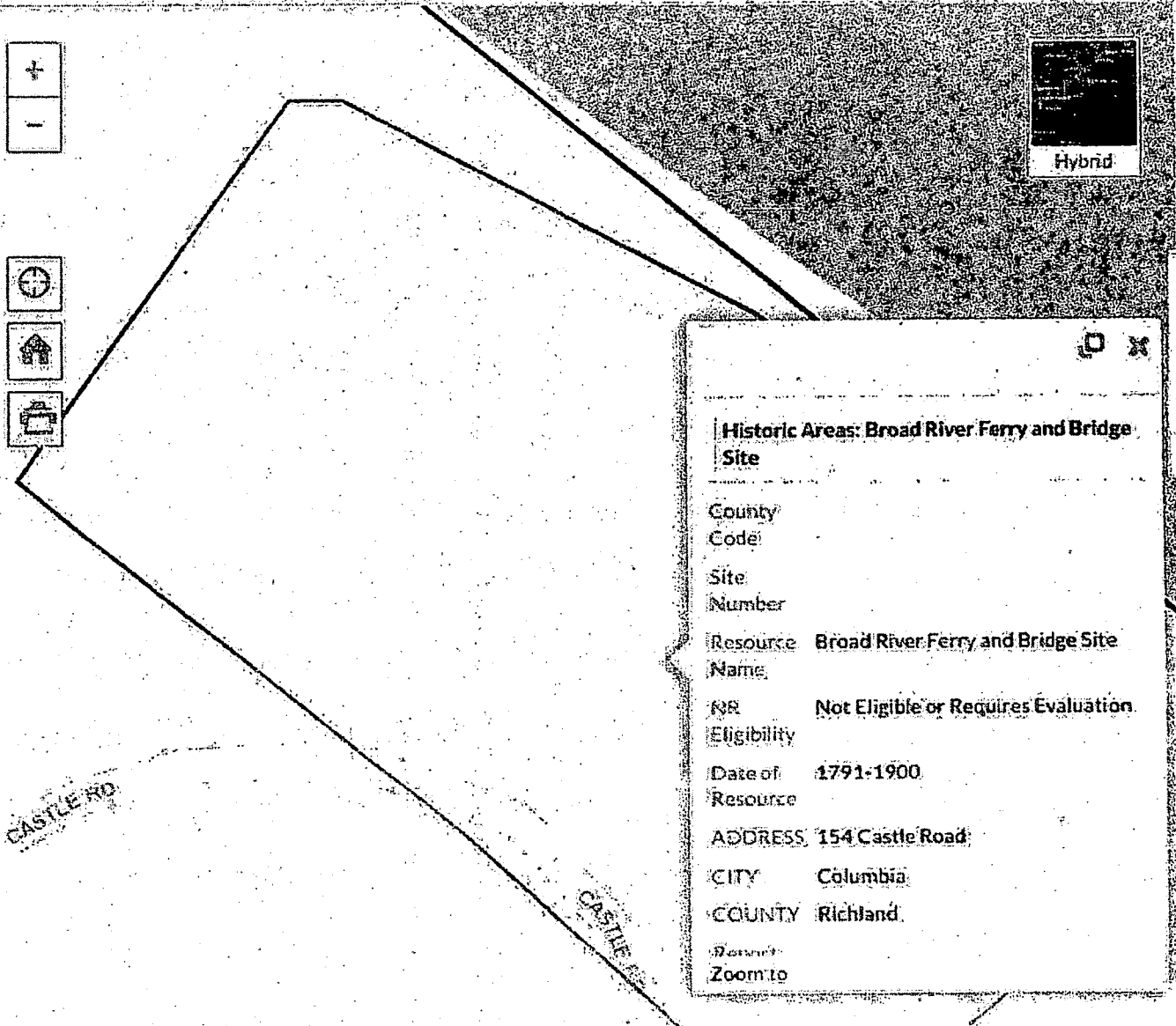


#### Historic Structures

- Not Eligible or Requires Evaluation
- Eligible

#### Historic Areas

- Not Eligible or Requires Evaluation
- Significant Resource/Requires Evaluation



**Historic Areas: Broad River Ferry and Bridge Site**

County Code

Site Number

Resource Name: Broad River Ferry and Bridge Site

NR Eligibility: Not Eligible or Requires Evaluation

Date of Resource: 1791-1900

ADDRESS: 154 Castle Road

CITY: Columbia

COUNTY: Richland

Download

Zoom to

EXHIBIT C

1 recall who --

2 A. Not immediately.

3 Q. -- might have made a request.

4 A. Sorry.

5 Q. Okay. Okay. You earlier testified that the  
6 bridge abutment has been determined to be a  
7 historical site pursuant to the State file -- the  
8 State site files, correct?

9 A. Pursuant to the Office of the State  
10 Archaeologist, it is a historic site.

11 Q. Okay. When -- when was that determined?

12 A. Basically when we first got to it. It's  
13 been considered a historic site from day one.

14 Q. Would that have been in 2007?

15 A. Yeah. As soon as it was found on private  
16 property, it was protected -- we thought or  
17 believed at that time. And since it was a  
18 historic structure with materials demonstrating  
19 from a historic period, we considered it to be a  
20 historic site from that time period on private  
21 property.

22 Q. Okay. So that would not have occurred until  
23 after your initial meeting with Mr. Brinkman?

24 A. Immediately after.

25 Q. Okay. Regarding the State site files --

Q: Do you recall when the grading started?

A: Early February.

Q: Where -- were you there when it started?

A: I was not there the day it started.

Q: Were you there at any point while it was going on?

A: Yes..

Q: When you walked out there and looked at what was done, what were your impressions of it?

A: They had cleared the easement to gain access. I mean, it looked liked they had done what needed to be done to complete their rehab on the sewer lines.

Q: Did it look to you like it was wider than the 15 foot easement?

A: Yes.

Q: Was it significantly wider than the 15 foot easement?

MS. WOOTEN: Object to the form.

A: I didn't measure it.

MR. GOTTSCHALL: Same objection.

MR. STEWART: Same objection.

Q: When was the first time that anything was said about the work having exceeded the easement dimensions?



A: I do not.

Q: What were the original -- what was the original area to be cleared according to number four?

A: It says, clear 15 foot easement.

Q: And how wide was the road to be?

A: 12 feet.

Q: Is that what happened?

MS. WOOTEN: Object to the form.

MR. GOTTSCHALL: Same objection.

A: I mean, the easement was exceeded.

Q: So, it says that Layne is gonna provide pricing by linear foot. What does that mean?

A: It means they'll provide a price to build the road at a cost per linear foot.

Q: Did they do that?

A: I don't know.

Q: Was Meghan the go-to person on this project at that time?

MS. WOOTEN: Object to the form.

A: I believe so.

Q: Up at the top, it has an address of 1201 Main Street, Suite 1850, Columbia, South Carolina.

Is that your address?

A: It is.

Q: Does mean this is a Weston and Sampson



A: No..

Q: So you believe that everybody out there knew that that easement was being exceeded when it -- when that road was being built?

MS. WOOTEN: Object to the form.

MR. GOTTSCHALL: Object to the form.

A: I think we were aware that the easement was being exceeded.

Q: Okay.

MR. CHAMBERS: All right, John, I'm done. You done?

Q: Thank you, Gene..

MR. GOTTSCHALL: We have two quick questions.

MR. CHAMBERS: Yes..

MR. PIERCE - EXAMINATION BY MR. GOTTSCHALL:

Q: Mr. Pierce, Brandon Gottschall for Layne Inliner. Just to clarify something that I think earlier in the deposition, there was talk about the project as a whole, meaning the entire West Columbia basin project versus kind of the Castle Road portion of the project. I just wanted to confirm that as far as Layne's work lining pipes, you did not see Layne and Layne, in fact, did not line pipes within that Castle Road area, is that right?

A: That's correct.



easement allowed you to build a road across the plaintiff's properties?

MR. GOTTSCHALL: Object to form.

A: I believe the easement allows us to access the -- our easement -- along our easement sufficient with -- sufficiently to allow the equipment we need to get in there to maintain our sewer line.

Q: Does the easement use the word road?

MR. GOTTSCHALL: Objection to the form.

A: I don't know.

Q: Okay. You don't know but you testified that the easement allowed you to build a road?

A: We seem to be arguing about the definition of road. The easement gives us the -- empowers us to enter on that property for purposes of maintaining our sewer line.

Q: Okay. So then is it your interpretation that that easement that allowed you to maintain the sewer line also allowed you to build a road?

MS. WOOTEN: Object to the form.

A: We believe that it allows us to level that sufficiently to get our equipment in to maintain that line.

Q: Okay. Do you -- is it -- is it your belief



that that easement allowed you to exceed 15 feet to perform maintenance of the sewer line?

A: No. The easement is for 15 feet.

Q: Okay.

A: It's unfortunate it did -- that operation did exceed the 15 feet ---

Q: Okay.

A: --- and we had no opportunity to remediate that or repair it since then.

Q: Okay.

A: Nor did we line the pipe which is the object of this whole exercise.

Q: Okay. Now I'm going to show you another memo on October 16, 2014, which has been previously entered into evidence and -- off the record for a second.

(Off the Record)

Q: Okay. Mr. Sheu, we're back on the record. I'm showing you what's been marked as Exhibit 116. And can you describe what this document is?

(Plaintiff's Exhibit Number 116 was marked while off the record and introduced into the record.)

A: It's a meeting minutes from the progress meeting of October 16th, 2014.

Q: Okay. Were you present at this meeting?



1 access road was being built?

2 A: No. I'm not an inspector.

3 Q: Had you been out there before the road was  
4 built?

5 A: No. I wasn't out there until it became an  
6 issue.

7 Q: Okay. When was the first time you went to the  
8 site?

9 A: Late February, early March. I think it was a  
10 meeting -- you might've have -- you might well  
11 have been there. We started to have several  
12 meetings out there.

13 Q: Okay. About long after the -- the work had  
14 stopped were you there?

15 A: Two to four weeks.

16 Q: What did the site look like at that point, do  
17 you remember?

18 A: It had been cleared and leveled. I don't think  
19 we'd gone in to do the seeding, which we did  
20 some time in March.

21 Q: Uh-huh. Was the clearing wider than the 15  
22 foot easement?

23 A: Yes.

24 Q: You know about how -- how much wider?

25 A: It varied. It goes up slope and down slope.



1 Q: Did the City have the land owners permission to  
2 operate outside the easement?

3 A: No specific permission: No.

4 Q: But you believe that the City had a right to  
5 operate outside the easement?

6 A: I believe it did operate outside the easement.

7 Q: And what's the basis for that belief?

8 A: Because we were trying to clear the area within  
9 our easement.

10 Q: Say again.

11 A: That we were trying to clear the area within  
12 our easement, so that we could access our sewer  
13 line.

14 Q: So you have a belief that the City could have  
15 worked outside the easement, but you can't tell  
16 me the basis of the belief, is that right?

17 A: The basis of the belief is it did go outside  
18 the easement.

19 Q: Yeah. So would you agree with me the prior  
20 documents that you had testified to referenced  
21 working within the 15 foot easement, correct?

22 A: That was the desire, yes.

23 Q: And would you agree with me the prior documents  
24 contemplated a 12 foot road within the 15 foot  
25 easement?



2 A: At least a 12 foot cleared area to carry the  
3 trucks, yes.

4 Q: Okay. But you admit that the work exceeded the  
5 15 foot easement?

6 A: It did in that ---

7 Q: Okay.

8 A: --- particular location. Yes.

9 Q: I want to know in your vast years of experience  
10 -- you've been doing engineering a long time.  
11 When were you first licensed as a PE again?

12 A: 1975 or '76.

13 Q: Okay. So from 1975 to the present your  
14 experience as a professional engineer, what is  
15 -- what is your basis for believing that work  
16 could be legally conducted outside of the  
17 easement?

18 MS. WOOTEN: Object to form.

19 MR. GOTTSCHALL: Object to the form.

20 MR. HEMLEPP: Object to the form.

21 MR. BOINEAU: Object to the form.

22 MR. HODGE: I'll ask it one more time -- we could  
23 ask it 10 times ---

24 MR. HEMLEPP: Yeah. Yeah. And I'll object 10  
25 times. You asked him the question. He  
answered the question. You've already asked



the equipment?

A. Well, I thought I heard them for -- for days, but I -- that was SC&G.

Q. And how did you respond when you first saw the trackhoe?

A. When I -- when I saw it I -- I walked up the hill a little bit and I saw my -- my rent -- the neighbor, the young fella that was renting the neighbors house and he was talking to somebody. And so I went over to join their discussion that -- that other person -- that person that -- that Reed was talking to was apparently a spotter for the trackhoe. And he was telling Reed that what -- that they were contracted with the City of Columbia. His boss was running the trackhoe and asked if we wanted to talk to the boss.

I knew that I had a 15 foot easement because I'd only bought the property two years earlier and that deed was part of our -- our papers, closing documents.

I watched -- I watched the -- the shovel, the big trackhoe scooping and dumping. I couldn't see the back because we were up the bank. I couldn't see what it was scooping but I could see that it was dumping on the other -- on the other side.

towards the river.

The boss came up, he gave me a card, he was with North American Pipeline.

Q. So the spotter and the trackhoe driver, as you understand, were --

A. Right. Talk -- talk --

Q. -- from North American --

A. -- there were the four of us. They were on the property, yes.

Q. And they were from North American Pipeline?

A. Right.

Q. Do you know their names by any chance?

A. I have the card and I believe his last name was Nesmith.

Q. How do you spell that; do you know?

A. N-E-S-M-I-T-H.

Q. That's the name of the gentleman who was driving the --

A. The trackhoe.

Q. -- trackhoe? The name of the spotter do you happen to know that by chance?

A. I have no idea.

Q. Okay. And tell me about that conversation, what was the context and what was the substance of the conversation?

JAMES COLEMAN

1 bulldozer.

2 A Well, they were both -- they were both there.

3 Q Okay. So there was one guy on a bulldozer,  
4 correct?

5 A And a guy, I guess standing there, I guess.

6 Q Okay. Was there anybody other than those  
7 two, that you saw on your property?

8 A No.

9 Q Okay. And you said that you told them there  
10 was a valued Columbia monument, "probably the first  
11 bridge." What does that mean, "the first bridge?"

12 A From what I had learned, including the  
13 photographs I guess that are available somewhere, that  
14 this -- in historical work done, the John Comptey Bridge,  
15 which I've learned until 2015, were the oldest -- this  
16 bridge abutment and the one on the Brinkman property were  
17 the oldest structures standing on a Columbia property.  
18 Now it's the Seibels' house, is the oldest.

19 Q Okay. And you said that you yelled at them  
20 as loud as you could to relay that information. What  
21 response did you receive?

22 A It's kind of like an -- I think I saw a nod  
23 of some sort from the guy who was standing.

24 Q Okay.

25 A I -- I just didn't know what to do. I -- I

JAMES COLEMAN

1 was astonished by what had happened.

2 Q Did you see the driver of the bulldozer  
3 acknowledge you in any way?

4 A I -- I couldn't be sure about the driver of  
5 the bulldozer. He was faced away from me.

6 Q Oh, okay. Okay. So what happened next?

7 A Well, I -- I left the deck.

8 Q And where did you go?

9 A Well, I went back to my house.

10 Q Okay. And did you take any steps at that  
11 point to find out what was going on, on your property?

12 A I did, the next morning. I tried to call the  
13 Columbia engineer -- City of Engineers. I talked to some  
14 -- I still don't know who I talked to -- Assistant City  
15 Engineer. And I -- I didn't write it down, at the time.  
16 I mean he was pretty busy and I had other things doing.  
17 And I was told that fliers had been sent out to the  
18 neighborhood. Nobody I've talked to has seen a flier,  
19 including me.

20 The original sewer was put in, in 1985, by  
21 the -- during the tenure of the previous owner. And they  
22 did a beautiful job of not destroying the property. You  
23 would hardly even know that the sewer was there. And  
24 they had sent out fliers at that time to alert people  
25 that a sewer was being put in.

EXHIBIT I

Robertson et al. v.  
Sutton & Sampson et al.

Johnathan M Leader, PhD  
February 16, 2018

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1 use and misuse of this case of the database raises  
2 serious concerns to me. The final determination of  
3 whether it was in truth a violation of that law or  
4 not is a matter for the Court and I am more than  
5 willing to leave it in the hands of the Court. But  
6 as far as I am concerned, again, had I been asked,  
7 I would have said go talk to a prosecuting  
8 attorney, go find a magistrate, file a complaint,  
9 not civil, file criminal, and you know, have them  
10 make the final determination because they're  
11 attorneys and I am not. That is as close as I can  
12 get to an answer on that one.

13 Q. Do you have an opinion as to whether a  
14 party that wilfully entered someone else's land has  
15 to know that an object that they might impact would  
16 be an archaeological structure --

17 MR. KENDALL: Object to the form.

18 MS. WOOTEN: Object to the form.

19 MR. STEWART: Same objection.

20 BY MR. HODGE:

21 Q. To be liable under this act?

22 A. Given the discussion that occurred at  
23 -- with the folks at the legislature when they were  
24 putting the act together, and the specific case  
25 which kicked the whole thing off, the answer is no.

A W R

A. WILLIAM ROBERTS, JR. & ASSOCIATES (800) 743-DEPO  
scheduledepo.com

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1 All they have to do or have done was caused the  
2 damage. They do not have to know that the hill  
3 they were going up and down was a mound. They do  
4 not have to know that the thing was a burial, they  
5 simply have had to cause the damage.

6 Q. Just to headache sure our record is  
7 clear today, performing damage assessments under  
8 section 16-11-780 is a part of your normal job  
9 duties as state archaeologist?

10 A. As far as I'm concerned it is. Whether  
11 if I'm asked by anybody I will be happy to do it.

12 Q. Okay.

13 A. It doesn't have to be the defense or  
14 the plaintiff. If I'm asked, it will be produced.

15 Q. Okay.

16 A. At no cost.

17 Q. So Dr. Leader, what was the cost of  
18 putting together your report that is Exhibit 25?  
19 Was there a cost of that?

20 A. I did not parse out any cost because  
21 I'm not billing anybody.

22 Q. Okay.

23 A. I didn't get paid any extra for my  
24 salary. It's simply, as far as I'm concerned, once  
25 the law was passed, it simply was an extra thing I

**STATE OF SOUTH CAROLINA**

**COUNTY OF RICHLAND**

Modesta Brinkman, David Brinkman,  
James Coleman, Carl Foster, Karen Foster,  
Robert Collins, Pamela Collins

Plaintiffs,

Weston & Sampson, Inc., Weston &  
Sampson Engineers, Inc., Weston &  
Sampson Services, Inc., Weston &  
Sampson CMR, Inc., City of Columbia, SC,  
North American Pipeline Management,  
Layne Inliner

Defendants.

**IN THE COURT OF COMMON PLEAS**

**FIFTH JUDICIAL CIRCUIT**

**ORDER**

**INTRODUCTION**

On April 22, 2018, the Defendant North American Pipeline Management (NAPM) filed a Motion for Summary Judgment asserting that there were no genuine issues of material fact that it did not: 1. "willfully, knowingly or maliciously enter Plaintiffs' property(ies) for the sole purpose of discovering, uncovering, moving, removing or attempting to remove an archeological resource, and 2. That the archeological resource/archaeological structure(s) at issue have not been designated as historic by any applicable and/or governing preservation and/or conservation authority(ies)." The Plaintiffs have alleged in its complaint, liability under Section 16-11-780 of the South Carolina Code of Laws, as amended, for the alleged destruction of two historic bridge abutments that it claims the Defendants destroyed on two of the Plaintiffs' properties. Defendant NAPM is seeking summary judgment on these claims. A hearing was held on

May 8, 2018. After hearing the arguments of the parties, and considering the motion, briefs, and exhibits that were submitted to the Court, the Court hereby issues its judgment in the matter.

### FINDINGS OF FACT

The basis for the Defendant NAPM's motion is the affidavit in support of its motion by Shannon Hertford, an employee of NAPM, which states in part that neither he nor anyone else at NAPM was aware that historical structures existed on the Plaintiffs' properties; he had not seen any documentation that historic bridge abutments existed thereon, nor did he have knowledge that the area had been designated as historical. Secondly, he stated that neither he nor anyone from NAPM had ever intentionally, maliciously, or recklessly destroyed any historical structure. He further stated that neither he nor anyone from NAPM had ever moved or displaced any rocks that were alleged to be historical or "entered the property of the Plaintiffs for the purpose of moving, or destroying or defacing any historical figures or historical landmarks or archaeological resources."

In opposing NAPM's Motion for Summary Judgment, the Plaintiffs provided a printout from the ArchSite database that is maintained by the South Carolina Department of Archives and History, which indicates that the Plaintiffs' property is covered by a polygon denoting it as a historical site (Exhibit C). The notation attached to the polygon states in part, "Historic Areas: Broad River Ferry and Bridge Site." It further references the date of the resource as being 1791-1900. There is a notation that the site is "not eligible or needs further evaluation." NAPM produced a letter from Mr. Andrew W. Chandler of the South Carolina Department of Archives and History to Plaintiff David Brinkman dated May 30, 2008 indicating that while Mr. Brinkman's work was described

as "impressive," the site was not eligible for inclusion into the National Register of Historic Places at that time because additional evaluation needed to be performed on the site.

The Plaintiff cited testimony from Dr. Jonathan Leader, the South Carolina State Archaeologist, who testified that the property was designated as a historical site in 2007 after its historical significance was realized.

The Plaintiffs allege in their brief and at oral argument that it was undisputed that neither NAPM nor the other Defendants had performed any sort of cultural resources survey prior to undertaking their land disturbing activities on the Plaintiffs' properties. The Defendants did not object to this characterization nor did they offer any evidence to the contrary.

In reply to the affidavit of Shannon Hertford, the Plaintiffs produced the minutes of a preconstruction meeting that occurred on September 18, 2014. This meeting was attended by NAPM and the other Defendants. The memo discussed the building of a road across the Plaintiffs' land, referenced the existence of a fifteen (15) foot wide easement, and further indicated the need to remove "large rock formations" that were along the way. In addition, the Plaintiffs set forth in Exhibit B a proposed scope of work and budget that was prepared by the Defendant Weston and Sampson. The document, a memorandum from Defendant Weston and Sampson to the Defendant City of Columbia, references the road building and rock removal, along with a budget for each. Each of the Defendants is referenced in Exhibit B, and presumably each Defendant had seen or been aware of this document prior to the work being performed. The Plaintiffs argue that Exhibits A and B demonstrate that NAPM and the others intended to enter the Plaintiffs' backyards for the purpose of land disturbing activities which would involve the road building and rock

removal. One could reasonably conclude from these exhibits that NAPM and the other Defendants had a concerted plan to enter the property of the Plaintiffs, and NAPM in fact did enter the Plaintiffs' property and conducted land-disturbing activities.

The Plaintiffs further allege that work was performed outside of the easements that were granted to the City for maintenance of a sewer line. The Defendants do not argue that the rocks which were identified as historic bridge abutments were within the fifteen (15) foot wide easement, and the Plaintiffs alleged that the two abutments were outside of the aforementioned easement. The Plaintiffs state that had the Defendants performed a cultural resources survey, NAPM and the others would have known they were working on a previously identified historical site. The Plaintiffs further argue that had they been given advance notice of the proposed work, that they would have told NAPM and the others to avoid the historic bridge abutments. The Plaintiffs produced Exhibits E and F, the testimony of Gene Pierce, P.E. of Weston and Sampson and Michael Shue, P.E. of the City of Columbia, indicating that the work which was done exceeded the dimensions of the easements. This testimony suggests that at the time the work was being done, some if not all of the Defendants, including NAPM knew that the easement was being exceeded.

The Plaintiffs cite the testimony of the State Archaeologist for the premise that the legislature did not require knowledge that a site which is damaged is an archaeological resource (Exhibit I). Dr. Leader provided an example of a case that was considered by the Legislature when he was consulted about the bill in which person(s) damaged a Native American mound and did not know that the mound was an archaeological resource. Dr. Leader testified that under the statute, the person disturbing a structure did not have to know that it was an archaeological resource (Exhibit I). In addition, the Plaintiff cites the testimony of Plaintiff Dr. James Coleman, who stated that he warned NAPM employees

that the bridge abutment was a historical structure and advised them not to disturb it (Exhibit H).

### CONCLUSIONS OF LAW

Rule 56 (c) of the South Carolina Rules of Civil Procedure provide that summary judgment shall be granted when: "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Cunningham v. Anderson County*, 741 S.E.2d 545, 549 (S.C. App. 2013), citing *Jackson v. Bermuda Sands, Inc.* 667 S.E.2d 612, 614 n.2 (S.C. App. 2009). The party seeking summary judgment has the burden of clearly establishing the absence of genuine issues of material fact. *McCall v. State Farm Mut. Auto. Ins. Co.*, 597 S.E.2d 181, 183 (S.C. App. 2004).

Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot rest on mere allegations or denials contained in the pleadings. *Regions Bank v. Schmauch*, 582 S.E.2d 432, 438 (S.C. App. 2003). The nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *Rife v. Hitachi Constr. Mach. Co., Ltd.* 609 S.E. 2d 565, 568 (S.C. App. 2005). The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003), quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E. 2d 868, 874 (2001).

In order to be liable under Section 16-11-780 (C) of the South Carolina Code of Laws as amended, a Defendant must:

- I. "willfully or knowingly enter upon the lands of another and,"

2. "disturb or excavate a prehistoric or historic site?"
3. "for the purpose of...uncovering, moving, removing, or attempting to remove an archaeological resource."

The evidence before the Court indicates that NAPM intended to enter the Plaintiffs' property, and willfully and intentionally did so: NAPM intended to, and in fact did, engage in land disturbing activities as part of their operations to build a road across Plaintiffs' properties. NAPM admitted that stones which were previously characterized by others as bridge abutments had been reduced to a "pile of rocks." The identification of the site as historical in the ArchSite public database (Plaintiff's Exhibit C) and the testimony of the State Archaeologist that the site has been designated as historic since 2007 is sufficient to conclude that the location of the bridge abutments is a historic site and archaeological resource. Just because the site was not granted nomination to the National Register of Historic Places does not diminish the fact that it had been identified by historic agencies in South Carolina as a historic site. The Court can conclude that NAPM knowingly and willfully entered the lands of the Plaintiffs and conducted earth-moving activities that apparently damaged what had previously been identified as historic structures.

NAPM's motion then turns on whether Section 16-11-780 (C) requires a party to know at the time of entry and damage that the thing or site which is damaged is a historical structure. NAPM alleges that the statute should be read to require the specific knowledge by a defendant that the site which is being affected is an archaeological resource. The statute states that:

It is unlawful for a person to willfully, knowingly, or maliciously enter upon the lands of another or the posted lands of the State and disturb or excavate a prehistoric site for the purpose of discovering,

uncovering, moving, removing, or attempting to remove an archaeological resource...

This statute can be reasonably read to mean that one does not necessarily have to know that the object which is being disturbed is an archaeological resource. The operative language is that liability is premised upon the requirement that one "enter the lands of another *and* disturb" an archaeological resource, not enter the lands of another *to* disturb an archaeological resource. The statute does not say that liability requires that the disturbance must be to "an archaeological resource known" as such by the defendant.

NAPM's interpretation, if applied, would lead to an absurd result in which people who destroy such archaeological resources would be rewarded for their ignorance. Basically, under NAPM's interpretation, contractors such as NAPM would be rewarded and insulated from liability due to their failure to check for historical resources. Such application would be contrary to the purpose of the statute. In addition, the impossibility of proving advance knowledge would render the statute ineffective as any defendant could claim a purpose other than disturbing or discovering an archaeological resource and gain immunity. NAPM's interpretation would encourage persons to avoid due diligence and negate a duty of inquiry whether a site was or contained an archaeological resource.

The interpretation of the statute by the State Archaeologist that one does not need to know that the disturbed site was an archaeological resource at the time of disturbance is reasonable, and it reflects a plain language reading of the statute. It appears that the purpose of the statute is to address situations similar to the facts in this case where there is a willful or knowing entry on land belonging to someone else, there is a disturbance or excavation, and the purpose of the entry is to effectuate disturbance or excavation of a site where there is an archaeological resource. For the purposes of liability, the statute does not state the violator must know that what is being disturbed or excavated is an

archaeological resource.

The warning by Dr. Coleman to NAPM employees that the bridge abutment on his property was historic and should be avoided prior to its destruction further suggests that NAPM was on notice prior to reducing the abutment on his property to "a pile of rocks." Such notice by Plaintiff Coleman is clearly contrary to the assertions regarding lack of knowledge contained in the affidavit by Shannon Hertford.

In regards to the purpose of discovering, uncovering, moving, removing, or attempting to remove an archaeological resource, NAPM is asserting that their purpose was something different. The documents supplied by Defendants in discovery, such as Plaintiffs' Exhibits A and B, show that the Defendants identified the rocks constituting the historical structures as something that would need removal. The Defendants placed extra funds in the budget for removal of the rocks constituting the abutments (Exhibit B). The Defendants showed up with heavy equipment and proceeded to remove the archeological resource. A landowner notified Defendants that the rocks were an important archeological resource half way through the destruction. The Defendants continued to excavate and remove the archeological resource after explicit notice. All of these facts point to a purpose of removing the rock bridge abutment structures.

Section 16-11-780 (1) provides a private right of action as follows:

The landowner, in the case of private lands, or the State, in the case of State lands, may bring a civil action for a violation of this section to recover the greater of the archaeological resources's archaeological value or commercial value, and the cost of restoration and repair of the site where the archaeological resource was located, plus attorney's fees and court costs.

This Section does not expressly require a criminal prosecution under the statute as a prerequisite for a civil action. Judge Lee had previously ruled in this case that the Plaintiffs have a private right of action under the statute.

NAPM further raised in their argument that liability under Section 16-11-780 does not apply because it states:

(K) Nothing contained in this section shall limit or interfere with:

(3) the lawful acts of a utility worker acting in the scope of and in the course of his employment.

This argument is inapplicable, as the evidence has indicated that the work was conducted outside of the easement, and was thus not a lawful act. In addition, the Plaintiffs' Exhibits A and B references the intention to build the road within the easement.<sup>1</sup> Since the work admittedly was performed outside of the easement where there was no permission, this section is inapplicable. In addition, this Section does not state explicitly that there is no liability for utility workers acting in the course and scope of their employment.

In responding the Defendant NAPM's motion, the Plaintiffs have set forth numerous issues of material facts that are contrary to the assertions and arguments of NAPM. This Court concludes that sufficient issues of material fact exist to deny Defendants NAPM's Motion for Summary Judgment.

#### CONCLUSION

Having considered the motion filed by NAPM, and the briefs and arguments of both parties, the Court finds that the Plaintiffs have set forth sufficient evidence in this matter to demonstrate that there remain genuine issues of material fact in this case. For the reasons set forth herein, Defendant NAPM's Motion for Summary Judgment is hereby denied.

---

<sup>1</sup> This order does not address the propriety of whether the easement allowed building the road; however, the evidence before the court indicates that the acts of NAPM were outside the scope and course of their employment.

IT IS SO ORDERED.

---

The Honorable G. Thomas Cooper, Jr.  
Circuit Court Judge  
1121 Broad Street, Rm. 313  
Post Office Box 1557  
Camden, SC 29021

May \_\_, 2018

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Modesta Brinkman, David Brinkman, James Coleman, Carol Foster, Karen Foster, Robert Collins, Pamela Collins,

Plaintiff,

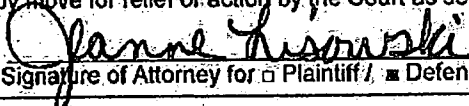
City of Columbia, et al.

Defendant.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

C/A No.: 2015-CP-40-5598

MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET

<b>Plaintiff's Attorney:</b> John Adams Hodge, Esquire Hodge & Associates, LLC Post Office Box 25553 Columbia, SC 29224		<b>Defendant City of Columbia's Attorney:</b> Jeanne Lisowski, Esquire SC Bar #69429 Office of the City Attorney Post Office Box 667, Columbia, SC 29202, phone (803) 737-4242; fax (803) 737-4250	
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER / CONSENT ORDER (complete SECTIONS II and III)			
<b>SECTION I: Hearing Information</b>			
Nature of Motion: Motion for Summary Judgment Estimated Time Needed: 30 minutes		Court Reporter Needed: <input type="checkbox"/> Yes / <input type="checkbox"/> No	
<b>SECTION II: Motion/Order Type</b>			
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form motion / order I hereby move for relief or action by the Court as set forth in the attached proposed order.			
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant		10/20/17 Date submitted	
<b>SECTION III: Motion Fee</b>			
<input checked="" type="checkbox"/> PAID AMOUNT: Please bill Office of the City Attorney's account <input type="checkbox"/> EXEMPT: (check reason)			
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status: <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> 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: _____ <input type="checkbox"/> Other: _____			
<b>JUDGE'S SECTION</b>		<b>JUDGE</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____		CODE: _____ Date: _____	
<b>CLERK'S VERIFICATION</b>			
Collected by: _____ <input type="checkbox"/> MOTION FEE COLLECTED <input type="checkbox"/> CONTESTED B AMOUNT DUE: _____		Date Filed: _____	

2017 OCT 20 PM 4:15  
 JEANETTE M. MCGRIDE  
 C.C.P. & C.S.  
 FILED

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
 )  
Modesta Brinkman, David Brinkman, James )  
Coleman, Carl Foster, Karen Foster, Robert )  
Collins, Pamela Collins, )

Plaintiffs, )

vs. )

Weston & Sampson, Inc., Weston & )  
Sampson Engineers, Inc., West & Sampson )  
Services, Inc., Weston & Sampson CMR, )  
Inc., City of Columbia, SC, North American )  
Pipeline Management, Layne Inline and )  
Robert Horner, P.E., )

Defendants: )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

C/A File No.: 2015-CP-40-5598

NOTICE OF MOTION AND  
MOTION FOR SUMMARY JUDGMENT  
BY DEFENDANT CITY OF COLUMBIA

FILED  
2011 OCT 20 PM 4:15  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.  
RICHLAND COUNTY

TO: JOHN HODGE AND GEOFFREY CHAMBERS, ESQUIRE, ATTORNEYS FOR  
PLAINTIFFS ABOVE-NAMED

YOU WILL PLEASE TAKE NOTICE that the Defendant, City of Columbia, by and through its undersigned attorney, will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Judicial Center in Columbia, South Carolina on the 10<sup>th</sup> day after service hereof, or as soon thereafter as counsel may be heard for an Order Granting Summary Judgment to the Defendant City of Columbia pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

The Defendant's Motion for Summary Judgment shall be based upon the following grounds, to wit:

1. The Defendant is immune from suit in this matter pursuant to the provisions of S.C. Tort Claims Act, specifically Sections 15-78-60(1), 15-78-60(2), 15-78-60(3), 15-78-60(4), 15-78-60(5), 15-78-60(7), 15-78-60(9), 15-78-60(17), and 15-78-60(20) of the South Carolina Code of Laws, 1976, as amended.

2. The Defendant is entitled to Summary Judgment as a matter of law because there is no evidence in the record to establish the essential elements of inverse condemnation.

3. There is no evidence in the record to establish a private duty owed by the Defendant to the Plaintiffs which is different from the duty, if any, owed to the public at large.

4. There is no evidence in the record to establish the elements of a private right of action for the destruction of archaeological structures under S.C. Code Ann. §16-11-780.

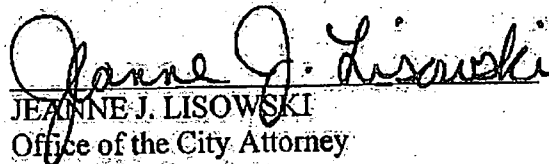
5. The South Carolina Tort Claims Act is the exclusive remedy available in an action against the City under S.C. Code Ann. §15-78-200.

6. The Defendant is immune from the award of punitive or exemplary damages, attorneys' fees, or interest prior to judgment, pursuant to S.C. Code Ann. §15-78-120 and relevant case law.

7. Any recovery by the Plaintiffs against the Defendant is limited as a matter of law by the provisions of S.C. Code Ann. §15-78-120.

8. The Defendant is immune from suit in this matter pursuant to S.C. Code Ann. §16-11-780(K)(3).

The Defendant shall rely upon the pleadings in this case, Rule 56 of the South Carolina Rules of Civil Procedure, affidavits, deposition testimony, applicable statutes and case law.



JEANNE J. LISOWSKI  
Office of the City Attorney  
Post Office Box 667  
Columbia, South Carolina 29202  
(803) 737-4242

Attorney for Defendant City of Columbia

October 20, 2017  
Columbia, South Carolina

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Modesta Brinkman, David Brinkman, James Coleman, Carl Foster, Karen Foster, Robert Collins, Pamela Collins, )

Plaintiffs, )

vs. )

Weston & Sampson, Inc., Weston & Sampson Engineers, Inc., West & Sampson Services, Inc., Weston & Sampson CMR, Inc., City of Columbia, SC, North American Pipeline Management, Layne Inliner and Robert Horner, P.E., )

Defendants. )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

C/A File No.: 2015-CP-40-5598

**DEFENDANT CITY OF COLUMBIA'S  
MEMORANDUM  
IN SUPPORT OF ITS  
MOTION FOR SUMMARY  
JUDGMENT**

RICHLAND COUNTY  
FILED  
2018 JAN -3 AM 8:48  
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.

This matter is before the Court on the motion of Defendant City of Columbia ("City") for summary judgment based upon Rule 56(c) of the South Carolina Rules of Civil Procedure. The City respectfully submits this memorandum in support of its motion for summary judgment.

**STATEMENT OF THE CASE**

This action is brought by the Plaintiffs, six landowners and/or residents of properties on Castle Road in Columbia (and one non-landowner), which properties each have a sewer easement, held by the City of Columbia, running across a back portion of the properties. See Exhibit A, attached hereto. Pursuant to a Consent Decree with the U.S. Environmental Protection Agency, the City is engaged in a comprehensive inspection, remediation and repair program (the "Program") for its sewer lines "to achieve and maintain full compliance with the

CWA, the SCPCA, and the NPDES Permit, including the goal of eliminating all future SSOs.” EPA Consent Decree, Section III, p. 8, May 21, 2014, attached hereto as Exhibit B. Michael Sheu Dep. 69:2-10, 175:6 – 177:14, September 19, 2017, attached hereto as Exhibit C.

The Plaintiffs’ properties are located in what Defendant City has designated as its West Columbia Basin (the “Basin”). The City hired various contractors to perform services specific to the Program, such as clearing of sewer easements, smoke testing, visual inspections of the lines, construction repairs and slip lining of the sewer lines. Sheu Dep. 67:1-68:7, Exhibit C. After inspection of the lines under the sewer easements located on Plaintiffs’ properties determined the sewer line required slip lining, Defendants began clearing the easements of obstructions, including heavy vegetation, shrubbery and trees that had overgrown the easements since the sewer lines were installed in the early 1980s. Before Defendants could complete clearing the easements, Plaintiffs stopped Defendants from continuing the project and filed this instant action, claiming various causes of action for property damage. Sheu Dep. 77:8-9, Exhibit C. The Plaintiffs filed their Complaint on September 11, 2015, an Amended Complaint on December 16, 2015, and a Second Amended Complaint on January 13, 2016. The seven Plaintiffs sued eight defendants, asserting nine causes of action: trespass, two causes of action for gross negligence, nuisance, destruction of archaeological structures, two causes of action for taking, negligence, and negligence *per se*.

#### **UNDISPUTED FACTS**

Six of the Plaintiffs are the owners of real property on Castle Road within the City of Columbia. Plaintiffs Modesta and David Brinkman own the property and reside at 154 Castle Road. Plaintiff James Coleman owns the property and resides at 150 Castle Road. Plaintiffs

Carl and Karen Foster own the property and reside at 142 Castle Road. Plaintiff Robert Collins own the real property located at 156 Castle Road, which property is undeveloped. It is undisputed that Mr. and Mrs. Collins do not reside at 156 Castle Road. It is also undisputed that Pamela Collins is not a record owner of the property at 156 Castle Road.

Defendant City is the owner and operator of the sewer system for the West Columbia Basin and owns and operates the sewer lines that run beneath a portion of Plaintiffs' property. Defendant City has duly-executed and properly recorded easements for the sewer lines in question. See Easements, attached hereto as Exhibit A. The easements grant to the City the right "to construct, operate and maintain together with the right of ingress and egress at all times for the purpose of constructing, operating, and maintaining a sewer main and with the right to remove shrubbery, trees and other growth from the right-of-way and construction area provided that the property will be restored as nearly as practicable to its original condition upon completion of the construction and damaged shrubbery and trees will be replaced with the same variety from nursery stock of a practicable size..." Id.

It is also undisputed that the City did not complete the Project because the Plaintiffs stopped the Defendants from completing the clearing of the easement, then instituted this action and refused to allow the Defendants to conduct the sewer lining and complete post-project remediation of the area during the pendency of this litigation. Sheu Dep. 77:8-9, 96:6-7, 99:6-100:3, 147:17-20, 177: 17-24, 184:5-9, Exhibit C. The City will, at some future date, proceed with the Project to ensure the integrity of the sewer lines under Plaintiffs' property and, as is the City's standard practice, will conduct the remediation measures required by the Project and the easement documents. Sheu Dep. 148:5-13, 150:11-14, 152:1-5, 181:10-15, Exhibit C.

## STANDARD OF REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. "[T]he evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party." Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001); Byrd v. City of Hartsville, 365 S.C. 650, 656, 620 S.E.2d 76, 79 (2005).

## ARGUMENT

Plaintiffs have alleged causes of action against the City for trespass, gross negligence, nuisance, destruction of archaeological structures, takings, and negligence *per se*. Each of these causes of action should, as a matter of law, be dismissed. Plaintiffs alleged a cause of action for negligence also, but only against the Weston & Sampson defendants.

### I. The Court should dismiss Pamela Collins as a Plaintiff.

It is undisputed that Pamela Collins is not a record owner of the property that is the subject of this property damages lawsuit. Robert Collins Dep. 80:12 – 81:12, April 11, 2017, attached hereto as Exhibit D. Because Pamela Collins has no property interest in the property at 156 Castle Road, Mrs. Collins does not have standing to bring a property damages lawsuit for damages to 156 Castle Road. Nor does Mrs. Collins have standing to bring a private action for destruction of an archaeological structure, even if 156 Castle Road did contain an historic or archaeological structure, because only landowners have standing to sue under the Destruction of Archaeological Structures Act. S.C. Code Ann. §16-11-780(I). Therefore, Pamela Collins's

causes of action against the Defendants should be dismissed and she should be dismissed as a Plaintiff in this case.

**II. The Court should dismiss Robert and Pamela Collins' and Carl and Karen Fosters' claims and causes of action for damages to historical or archaeological structures.**

Any alleged historical or archaeological structures located on the Plaintiffs' properties are only located on the properties of David and Modesta Brinkman, and James Coleman. Carl Foster Dep. 27:18 – 28:15, April 18, 2017, attached hereto as Exhibit E. Robert Collins Dep. 48:1 - 22, April 11, 2017, attached hereto as Exhibit D. Because Plaintiffs Foster and Robert Collins do not assert that they have any historic or archaeological structures located on their properties and they do not have standing to sue for damages to structures not located on their properties, their causes of action against the Defendants for the damage to or destruction of archaeological structures should be dismissed.

**III. The Court should dismiss this action for Plaintiffs' failure to allege facts sufficient to constitute a cause of action or to provide evidence to prove their causes of action.**

**A. Gross negligence**

The Plaintiffs have not produced any evidence that the City acted grossly negligently or caused any damages to the Plaintiffs. Plaintiffs allege two separate gross negligence causes of action, based on separate facts. They allege the City was grossly negligent in exceeding the size and scope of the easement held by the City (Second Amended Complaint, ¶32) and in failing to obtain the proper permits (Second Amended Complaint, ¶¶37, 41).

In a negligence action, a Plaintiff must show (1) the Defendant owes a duty of care; (2) the Defendant breached the duty by a negligent act or omission; (3) the breach was the actual and

proximate cause of the Plaintiff's injury, and (4) Plaintiff suffered an injury or damages. Andrade v. Johnson, 356 S.C. 238, 588 S.E.2d 588 (2003). Proximate cause is the efficient or direct cause of an injury. Willis v. Floyd Brace Co., 279 S.C. 458, 309 S.E.2d 295 (Ct. App. 1983). Negligence is not actionable unless it is a proximate cause of the injury, and negligence may be deemed a proximate cause only when without such negligence the injury would not have occurred or could have been avoided. Ellis v. Oliver, 323 S.C. 121, 473 S.E.2d 793 (1996).

In the instant case, Plaintiffs have not alleged negligence against the City but have alleged gross negligence. "Negligence is the failure to exercise due care, while gross negligence is the failure to exercise slight care." Solanki v. Wal-Mart Store No. 2806, 410 S.C. 229, 237, 763 S.E.2d 615, 619 (Ct. App. 2014) (citing Clyburn v. Sumter Cnty. Sch. Dist. # 17, 317 S.C. 50, 53, 451 S.E.2d 885, 887 (1994)).

1. No Evidence of Duty

Plaintiffs have not produced any evidence demonstrating that the City has any duty under the facts alleged. Plaintiffs allege in both their causes of action for gross negligence and negligence *per se* that the City was negligent as the result of failing to obtain "the proper permits", but does not specify what those permits were or the statute that required them.

The "public duty rule" states that statutes that create or define the duties of a public office do not create a duty of care toward individual members of the general public. Arthurs ex rel. Estate of Munn v. Aiken County, 346 S.C. 97, 105, 551 S.E.2d 579, 583 (2001). Public officials are not held liable to individuals for negligence in discharging public duties because the duty is owed to the public at large and not to any one individual. Washington v. Lexington Cnty Jail, 337 S.C. 400, 523 S.E.2d 204 (Ct. App. 1999). Further, to establish a duty under negligence *per*

*se*, there must be a duty of care arising from the statute at issue followed by evidence that the defendant violated the statute. Whitlaw v. Kroger Co., 306 S.C. 51, 410 S.E.2d 251 (1991). In this action, the Plaintiffs' have not alleged that the City violated a particular statute, but instead they make a vague allegation that the City failed to obtain "the proper permits". Neither did the Plaintiffs provide any testimony or evidence of any applicable statute that created a duty of care for the City. Accordingly, the City is entitled to judgment as a matter of law on Plaintiffs' gross negligence and negligence *per se* causes of action for their failure to establish that the City owed the Plaintiffs a particular duty of care.

## 2. No Evidence of Damages

All Plaintiffs, except Pamela Collins, have been deposed in this matter. Not one of these persons was able to produce evidence of any damage to their property or to any alleged historical or archaeological structures on their property. Some Plaintiffs allege they have cracks in their walls or foundations, or that the slope on their property is eroding or that alleged archaeological structures have been toppled, but none have provided receipts or other proof for the repairs they allege were necessitated by the acts of the Defendants; nor have they provided proof that any of these alleged damages were caused by the Defendants clearing the easement on the lower portion of the Plaintiffs' property.

Additionally, although Plaintiffs designated several experts during discovery, as of the date of this memorandum, none have provided an expert opinion regarding the Defendants' alleged duties, the breach of those duties, or Plaintiffs alleged damages. One of those experts appeared for deposition, but expressly disclaimed he was acting as an expert for the Plaintiffs because he believed he had a conflict of interest. Andrew Tolleson Depo. 48:2-25, September 1,

2017, attached hereto as Exhibit F. Another Plaintiffs' expert, Allan Abbata, testified that he had not formulated a final opinion, refused to answer many of the Defendants' questions and refused to produce his file, including over 100 photographs, claiming attorney-client privilege with Plaintiffs' counsel. See Defendant North American Pipeline Management's Notice of Motion and Motion to Show Cause Concerning Allan Abbata, P.E., filed on December 21, 2017 in this case. Plaintiffs' expert, Dr. Jonathan Leader, also testified that he has not formulated a final opinion in this matter. See Defendants' Joint Motion to Exclude Testimony of Dr. Jonathan Leader and for Costs, filed on December 21, 2017 in this matter. As Plaintiffs have not presented any evidence, either from the Plaintiffs themselves or from their experts, of damages, the City is entitled to summary judgment as a matter of law on these causes of action.

#### **B. Inverse Condemnation/Taking**

The Plaintiffs have asserted what appears to be a cause of action for inverse condemnation against the City. The Complaint states that the clearing of the easement beyond the boundaries of the easement constituted a taking of Plaintiffs' property. See Complaint, ¶¶53-61 and ¶¶63 - 71, which appear to be identical. However, the Complaint alleges no conduct that both constitutes an affirmative act that is a taking for public use and has a degree of permanence.

If inverse condemnation results from a physical appropriation of private property, the elements of an inverse condemnation are: 1) affirmative conduct on the part of the government agency; 2) a taking; and 3) the taking is for a public use; and 4) the taking has some degree of permanence. Marietta Garage, Inc. v. South Carolina Dep't of Pub. Safety, 352 S.C. 95, 101, 572 S.E.2d 306, 308 (Ct.App.2002); Gray v. South Carolina Dep't of Highways & Pub. Transp., 311

S.C. 144, 149, 427 S.E.2d 899, 902 (Ct.App.1992); Byrd v. City of Hartsville, 365 S.C. 650, 620 S.E.2d 76 (2005).

Plaintiffs cannot establish the elements of an inverse condemnation. The City did not physically appropriate any of Plaintiffs' property for public use with any degree of permanence. Title to the property remained with the Plaintiffs at all times. It is well-established that the City, as a matter of standard practice, restores easements and surrounding areas if the City disturbs the ground or clears vegetation, within the requirements of the easements and the obligation of the City to maintain access to its easement. See Exhibit C. Thus, but for the Plaintiffs stopping the Defendants from completing the Project, which included restoration, the City would have returned the work areas to the condition they were in prior to the work, or better. In fact, the City will do the restoration work after completion of the Project at some point in the near future. There is no degree of permanence to this alleged taking, nor is there any taking at all. Thus, Plaintiffs claims for taking or inverse condemnation against the City should be dismissed.

### C. Nuisance

To the extent Plaintiffs' Complaint alleges a cause of action for nuisance, it too, lacks merit. The doctrine of sovereign immunity was judicially abolished in South Carolina for torts committed by the State and local governments who are agents of the State for governmental purposes in McCall v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985). Tort claims against governmental entities are now governed by the South Carolina Tort Claims Act, S.C. Code Ann. §§15-78-10, *et seq.* (Rev. 2005) enacted by the General Assembly pursuant to article XVII, section 2 of the State Constitution. S.C. Code Constitution, art. XVII, §2 (Rev.2009). That Act provides that, "neither should the government be subject to unlimited nor unqualified liability for

its actions.” S.C. Code Ann. §15-78-20 (a). The Act limits the amount of damages that may be recovered and provides thirty-one specific exceptions to the waiver of sovereign immunity. The seventh exception states: “The governmental entity is not liable for a loss resulting from ... a nuisance.” §15-78-60 (7). However, nuisance-like activities by the government have frequently been the focus of inverse condemnation lawsuits to the extent they involve an affirmative and aggressive act by the government. See, e.g., Gasque v. Town of Conway, 194 S.C. 15, 8 S.E.2d 871 (1940) (A denial of a building permit did not grow out of a positive act or aggressive step by the government and thus was not a taking.); Hansen v. U.S., 65 Fed. Cl. 76 (2005).

Thus, any attempt by Plaintiffs to allege a cause of action for nuisance should be dismissed as a separate cause of action because (1) the Tort Claims Act expressly precludes an action for nuisance against a governmental entity and (2) it is encompassed in an inverse condemnation claim, which Plaintiffs also pleaded and has been discussed above.

In addition, Plaintiffs have failed to allege facts sufficient to constitute a cause of action for nuisance. In their Second Amended Complaint, in pleading their Fourth Cause of Action, Nuisance, Plaintiffs merely state:

45. The Plaintiffs reallege and reincorporate the allegations set forth in paragraphs 1 through 43 as if set forth verbatim.
46. The actions of the Defendants have created a nuisance that has denied the Plaintiffs use and enjoyment of their property.

Plaintiffs allege no facts nor even identify the “nuisance” that has been allegedly created by the Defendants. In this case, the Plaintiffs have not alleged any independent allegations of acts or omissions that would constitute a nuisance created by the Defendants. The Plaintiffs’ legal conclusion that the Defendants have created a nuisance is not supported by any well-pleaded

allegations in the complaint and should therefore be dismissed. See DeBerry v. McCain, 275 S.C. 569, 574-575, 274 S.E. 2d 293, 296 (1981).

**D. Negligence *per se***

Plaintiffs allege that the Defendants "should have and were required to obtain various permits" and that the Defendants' "failure to apply for and obtain necessary permits prior to construction...resulted in damage to the Plaintiffs and to the archaeological and cultural resources on the building site." Second Am. Compl. ¶¶72, 78. However, nowhere in Plaintiffs' Complaints or testimony do they specify which permits were required, nor do they establish which statutes required the Defendants to obtain permits to clear the easements on Plaintiffs' properties. As the Plaintiffs cannot establish the source of a duty or name a statute that the Defendants have violated, they cannot establish a duty under negligence *per se* and this cause of action should be dismissed.

In addition, violation of a statute is not conclusive of liability. Whitlaw v. Kroger Co., 306 S.C. 51, 51, 410 S.E.2d 251, 253 (1991). Even if Plaintiffs can identify a statute that establishes a duty of the Defendants to obtain permits for the work they performed on the Plaintiffs' properties, the Plaintiffs then must prove that the essential purpose of the statute allegedly violated is to protect a class of person from the kind of harm that the Plaintiffs have suffered and that the Plaintiffs are part of the class of persons the statute was designed to protect. Id. Although Plaintiffs have made vague references to the need to obtain land disturbance permits or road permits, such regulatory requirements were not enacted to protect the Plaintiffs from the harm they claim – i.e., the destruction of archaeological and cultural resources – but to ensure compliance with building standards. As the Plaintiffs cannot establish (1) a statutory duty

to the Plaintiffs, (2) violation of that statutory duty by the Defendants, and (3) that they are the intended protected class of the statute, the Plaintiffs' cause of action for negligence *per se* should be dismissed.

**E. Trespass**

Even assuming facts most favorable to the Plaintiffs, that the Defendants exceeded the width of the easement during their work on the easement, Plaintiffs have failed to define the scope of the damages, describe the nature of the damages, or place a monetary value on the damages caused by the Defendants, which value would be nominal, at most. In addition, Plaintiffs have failed to mitigate any damages by preventing the Defendants from entering the properties to conduct remediation work, as was originally contemplated. See Exhibit C. The City, in its completion of the Project at a near future date will, at that time, remediate any and all work areas as appropriate and in accordance with standard City practices and easement requirements. *Id.* Accordingly, the Plaintiffs' cause of action for trespass should be dismissed.

**IV. The Court should dismiss all tort claims against the Defendant City of Columbia as the City is immune from liability under the Tort Claims Act.**

There has been no evidence presented that any activity conducted by the City has caused the harm complained of in Plaintiffs' Complaint, that is, the destruction of archaeological structures or cultural resources located on Plaintiffs' Brinkman's and Coleman's properties, or in later deposition testimony regarding cracks in the walls of residential dwellings, retaining walls, and the possible erosion of soil on the properties. However, the City is not liable to the Defendants for a loss resulting from various governmental actions under the South Carolina Tort Claims Act. Affirmative defenses to governmental liability should be liberally construed to limit liability. Richland County v. Carolina Chloride, 382 S.C. 634, 677 S.E.2d 892 (Ct.App. 2009).

rehearing denied, certiorari granted, affirmed in part, reversed in part 394 S.C. 154, 714 S.E.2d 869, rehearing granted, rehearing dismissed 396 S.C. 311, 721 S.E.2d 441, certiorari denied 133 S.Ct. 168, 568 U.S. 821, 184 L.Ed.2d 36. Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 396, 520 S.E.2d 142, 154 (1999).

**A. Legislative, judicial or quasi-judicial actions**

The City's operation and maintenance of its sewer lines constitutes quasi-judicial, discretionary acts for which the City is not liable under the Tort Claims Act. S.C. Code Ann. §15-78-60(1). In a very similar case, the Court found that a city's design and maintenance of its drainage system was a quasi-judicial function subject to governmental immunity under the Tort Claims Act. Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Cl.App. 2004). Here, the City's operation and maintenance of its sewer lines, which includes the maintenance and clearing, if necessary, of its sewer easements, is also a quasi-judicial, discretionary act for which the City enjoys governmental immunity. Therefore, the Plaintiff's claims should be dismissed.

**B. Administrative action or inaction of a legislative, judicial or quasi-judicial nature**

To the extent that the Plaintiffs' allege that the City's actions constituted administrative action or inaction, such as the failure to obtain permits for a project, those administrative actions are similarly exempt from liability under the Tort Claims Act. S.C. Code Ann. §15-78-60(2). Therefore, the Plaintiff's claims against the City should be dismissed.

**C. Execution, enforcement, or implementation of the order of any court or execution, enforcement, or implementation of any process**

It is undisputed that the City is subject to a consent decree filed in U.S. District Court in May 2014. By its express terms, the City is obligated to "implement the Work pursuant to this

Consent Decree". See Exhibit B. It is also undisputed that the sewer line maintenance Project that is the subject of this litigation fulfills the Objectives of the Consent Decree. Therefore, to the extent that the Plaintiffs attempt to impose liability upon the City for its performance of Work under the Consent Decree, the City is exempt from liability for its execution, enforcement or implementation of the orders of any court under S.C. Code Ann. §15-78-60(3).

**D. Adoption, enforcement or compliance with any law**

It is equally undisputed that the City's Work under the Consent Decree fulfills the objective of City compliance with the Clean Water Act, the South Carolina Pollution Control Act, and the City's NPDES permit. See Exhibit B. Thus, the City's work to clear the easement as a part of its sewer line maintenance Project is exempt from liability under S.C. Code Ann. §15-78-60(4).

**E. The exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act of service which is in the discretion of judgment of the governmental entity or employee**

The decision to clear the sewer line easement on the Plaintiffs' properties, in order to access the manholes and perform the necessary sewer line repairs was a discretionary act within the purview of City employees. Therefore, to the extent the Plaintiffs' claims proceed under a theory of negligent clearing of the easement, such claims are barred by the discretionary immunity provisions of the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-60(5).

**F. Entry upon any property where the entry is expressly or impliedly authorized by law**

As discussed *supra*, it is undisputed that the City has valid, recorded easements, which Plaintiffs acknowledge exist on their properties. Those easements are for defined areas as described in the easement documents, but also allow for rights of ingress and egress to and from

the easement. To the extent that Plaintiffs claim a loss resulting from the entry upon their land for the purpose of accessing the City's easement, such entry is expressly authorized by the law of easements and by the easement documents themselves and the City is immune from liability under S.C. Code Ann. §15-78-60(9).

**G. Employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude**

To the extent that the Plaintiffs allege that a City employee acted with actual malice or intent to harm within the scope of his duties on the Project, the City is immune from liability under S.C. Code Ann. §15-78-60(17).

**H. An act or omission of a person other than any employee including but not limited to the criminal actions of third parties**

Plaintiffs allege the negligence of the various Defendants without specificity as to which Defendant performed a specific act or omission that damages the Plaintiffs. However, to the extent that any acts alleged to cause the Plaintiffs harm were conducted by defendants other than the City, the City is immune from liability under S.C. Code Ann. §15-78-60(20).

**V. Destruction of Archaeological Structures**

Plaintiffs allege a private cause of action against the Defendants under S.C. Code Ann. §16-11-780(I), which allows a landowner to bring a civil action for a violation of S.C. Code Ann. §16-11-780, for the Defendants' alleged destruction of historic bridge abutments located on the properties of Plaintiffs Brinkman and Coleman. Section 16-11-780 is a criminal statute that declares it unlawful for any person to "willfully, knowingly, or maliciously enter upon the lands of another ... and disturb or excavate a prehistoric or historic site for the purpose of discovering,

uncovering, moving removing, or attempting to remove an archaeological resource." For various reasons, this cause of action should be dismissed against the Defendants.

**A. No intent**

This statute contains an intent element. Section 16-11-780 prohibits a person from going onto another person's property, or the posted lands of the State, *with intent to discover, uncover, move, remove, or attempt to remove* an archaeological resource. S.C. Code Ann. § 16-11-780(C); see Op. S.C. Atty. Gen., February 11, 2013 (2013 WL 650579)(emphasis added). Although the Complaint alleges that the Defendants intentionally entered onto the Plaintiffs' lands<sup>1</sup>, it does not allege, and Plaintiffs' testimony confirms that there was no intent on the part of the Defendants to destroy any archaeological structures on Plaintiffs' properties. Robert Collins Dep. 107:16 – 108:1, Exh. D. In fact, part of Plaintiffs' argument centers on Defendants failing to secure certain permits which, if the Defendants had secured, allegedly would have led Defendants to perform a cultural resources study and to discover the existence of the alleged historical structures. Second Am. Compl. ¶21. This argument indicates the Plaintiffs are aware of the fact that the Defendants did not know that alleged archaeological structures existed on the properties.

In their Complaint, Plaintiffs attempt to impose a strict liability standard on the Defendants – that if the Defendants intentionally enter the lands of another and incidentally move an archaeological resource of which they have no knowledge, they are liable. However, this argument does not comport with the plain language of the statute, which requires the intent to enter onto lands of another “for the purpose of discovering, uncovering, moving removing, or attempting to remove an archaeological resource.”

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<sup>1</sup> “Defendants...knowingly entered onto the lands of another.” Second Am. Compl. ¶48.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Garvin v. State, 365 S.C. 16, 21, 615 S.E.2d 451, 453 (2005); Georgia-Carolina Bail Bonds, Inc. v. County of Aiken, 354 S.C. 18, 22, 579 S.E.2d 334, 336 (Ct.App.2003); Knotts v. S.C. Dept. of Natural Resources, 348 S.C. 1, 10, 558 S.E.2d 511, 516 (2002). ““What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.” “Knotts, 348 S.C. at 10, 558 S.E.2d at 516 (quoting Norman J. Singer, *Sutherland Statutory Construction*, § 46.03 at 94 (5th Ed.1992)); Bayle v. South Carolina Dep't of Transp., 344 S.C. 115, 122, 542 S.E.2d 736, 740 (Ct.App.2001). “The legislature's intent should be ascertained primarily from the plain language of the statute.” State v. Landis, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct.App.2004); State v. Morgan, 352 S.C. 359, 366, 574 S.E.2d 203, 206 (Ct.App.2002); Stephen v. Avins Constr. Co., 324 S.C. 334, 338, 478 S.E.2d 74, 76 (Ct.App.1996).” ““Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the Court has no right to impose another meaning.” Vaughn v. Bernhardt, 345 S.C. 196, 198, 547 S.E.2d 869, 870 (2001)(citing Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000)). “[T]he words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation.” Municipal Ass'n of South Carolina v. AT&T Communications of S. States, Inc., 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004)(citing Hitachi Data Sys. Corp. v. Leatherman 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992)).” Eagle Container Co., LLC v. County of Newberry, 366 S.C. 611, 621-622, 622 S.E.2d 733, 738 (Ct. App. 2005). Here, the Plaintiffs attempt to force a meaning to the statute when the plain language is sufficient and no statutory construction is necessary.

The Plaintiffs did not allege that the Defendants intended to destroy historical structures on their land and, in fact, testified that they did not believe the Defendants intended to destroy any historical structures on their land; therefore, as a matter of law, Plaintiffs' cause of action under §16-11-780(I) should be dismissed.


**B. Utility work exception**

In addition to the provisions cited above, section 16-11-780(K) states clearly that "nothing in this section shall limit or interfere with: ... the lawful acts of a utility worker acting in the scope of and in the course of his employment." In this matter, it is undisputed that Defendants were acting as utility workers clearing a utility easement in preparation for sewer re-lining. As such, they were operating within this exclusion and, as a matter of law, their actions are exempt from the other provisions of §16-11-780. It appears that this exception was designed to address precisely the issue in this case: circumstances where utility workers, in the course and scope of their duties, inadvertently impact an unknown potential archaeological structure. Accordingly, the Plaintiffs' cause of action against the Defendants under §16-11-780 should be dismissed.

**CONCLUSION**

The City is immune from liability for the Plaintiffs' tort causes of action under the South Carolina Tort Claims Act. The Plaintiffs also fail to allege facts sufficient to constitute a cause of action against the City for takings, nuisance, trespass, destruction of archaeological resources, gross negligence, and negligence *per se*. Plaintiff Pamela Collins does not have standing to sue for property damages on 156 Castle Road. Plaintiffs Robert Collins and Carl and Karen Foster do not have standing to sue under a private right of action for damages to archaeological structures

that are not located on their properties. For these reasons, and because there are no genuine issues of material fact, summary judgment is appropriate as to the City for all causes of action found in Plaintiffs' Complaint.

  
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January 3, 2018  
Columbia, South Carolina

**EXHIBIT A**

**Sewer line easements over Plaintiffs' properties**

1985-0613

LD 758 PAGE 671

STATE OF SOUTH CAROLINA

EASEMENT

COUNTY OF RICHLAND

RECORDED  
CLERK OF COURSE  
1985 SEP 16 PM 11:11

In consideration of the sum of One (\$1) Dollar, each to the other party, receipt of which is hereby acknowledged, I, Marcia H. Watkins

do does hereby grant unto the said The City of Columbia, South Carolina, its successors or assigns, an easement and right-of-way 15 feet in width, with an additional width of 10 and 25 feet for construction purposes only, to construct, operate and maintain... with the right of ingress and egress at all times for the purpose of construction and maintaining a sewer main and with the right of access to trees and shrubs from the right-of-way and construction... that the property will be restored as nearly as practicable to its original condition upon completion of the construction and the trees and shrubs will be replaced with the same variety from nursery... easement and right-of-way to run through the property... in which M/H/W has have an interest, situate...

In the State of South Carolina, County of Richland, near the City of Columbia and being further identified as a portion of lot 6, block 3, sheet 09101, of tax maps prepared by the office of the Richland County Tax Assessor, LR 12-83.

A permanent easement, fifteen (15) feet in width, the centerline beginning at the northern property line of the aforementioned lot 6, at a point two hundred four and zero seven hundredths (204.07) feet N64°59'19"W of the northeastmost property corner of said lot 6, thence extending S90°11'22"E for a distance of one hundred forty-nine and twenty-eight one hundredths (149.28) feet, thence turning and extending S6°05'35"W for a distance of fifteen and zero tenths (15.0) feet to intersect with the southeastern property line of the aforementioned lot 6, thence terminating.

Also, a temporary construction easement, ten (10) feet in width, shall extend along the entire length of, and adjacent to, the west boundary of the aforementioned permanent easement.

Also, a temporary construction easement, twenty-five (25) feet in width, shall extend along the entire length of, and adjacent to, the east boundary of the aforementioned permanent easement.

These easements are more clearly delineated on a plat of easement to be obtained for Broad River 12" diameter sanitary sewer trunk line, Project 65A256-4/5-66, sheet 1 of 3, dated July 30, 1985, last revised September 4, 1985, prepared by Johnson, Knowles, Burgin and Boutright, Inc., Engineers, Architects, and Planners, for the City of Columbia, South Carolina and being on file in the office of the City's Director of Utilities and Engineering under file reference C-11.

E-5-14

LD 758 PAGE 671

ORIGINAL  
Stamped in Red

Exhibit C

LD 758 use 672

TO HAVE AND TO HOLD the aforesaid rights to the grantee, its successors and assigns, as aforesaid.

And the Grantor(s) agree(s) to warrant and forever defend the above granted rights against himself or his heirs and against any other person lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, we/it has have hereunto set our/my/its hand(s) and seal(s) this 11<sup>th</sup> day of SEPTEMBER, in the year of our Lord, One Thousand Nine Hundred and Eighty FIVE.

WITNESSES:

Lee V. Spradley Marcia H. Watkins  
Meeker

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

PERSONALLY APPEARED before me Lee V. Spradley and made oath that she/he saw the within named MARCIA H. WATKINS sign, seal, and as their/his/her/its act and deed deliver the within written instrument for the uses and purposes therein mentioned and that she/he with

M. E. MILLS witnesses the execution thereof.

Subscribed to before me this 11<sup>th</sup> Lee V. Spradley

day of SEPTEMBER, 19 85.

M. E. MILLS (L.S.)  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES 2/4/90

LD 758 use 672



1985-0618

FD 758 <sup>REV. 6-44</sup>

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

EASEMENT

FILE  
REGISTER OF PLANS AND EASEMENTS  
LOCAL OFFICE  
1985 SEP 16 PM 1:41

In consideration of the sum of One (\$1) Dollar, each to the other paid,  
receipt of which is hereby acknowledged, We, Brooks C. Metts and June K. Metts

do does hereby grant unto the said the City of Columbia, South Carolina, its  
successors or assigns, an easement and right-of-way 15 feet in width, with  
an additional width of 10 and 25 feet for construction purposes only, to  
construct, operate and maintain there with the right of ingress and egress at  
all times for the purpose of constructing, operating, and maintaining a  
sewer main and with the right to remove utility, trees and  
other growth from the right-of-way and construction area provided that the  
property will be restored as nearly as practicable to its original condition upon  
completion of the construction and the charge utility and trees will be  
replaced with the same variety from nursery stock of a practical size, said  
easement and right-of-way to run through the property which we/I/it owns  
or in which we/I/it has have an interest, situated lying and being

In the State of South Carolina, County of Richland, near the City of Columbia  
and being further identified as a portion of lot 7, block 3, sheet 09101, of tax  
maps prepared by the office of the Richland County Tax Assessor, 12-83.

A permanent easement, fifteen (15) feet in width, the centerline beginning at  
the southern property line of the aforementioned lot 7, at a point seventeen and  
fifty-eight hundredths (17.58) feet S80° 32' 11" W of the easternmost property  
corner of said lot 7, thence extending N6° 05' 35" E for a distance of forty and  
fifty-two hundredths (40.52) feet to intersect the eastern property line of said  
lot 7, thence terminating.

Also, a temporary construction easement, ten (10) feet in width, shall extend  
along the entire length of, and adjacent to, the west boundary of the  
aforementioned permanent easement.

Also, a temporary construction easement, twenty-five (25) feet in width, shall  
extend along the entire length of, and adjacent to, the east boundary of the  
aforementioned permanent easement.

These easements are more clearly delineated on a plat of easement to be  
obtained for Broad River 12" diameter sanitary sewer trunk line, Project SSA256-  
4/5-66; sheet 1 of 5, dated July 10, 1985, prepared by Johnson, Knowles, Burgin and  
Dunknight, Inc., Engineers, Architects, and Planners, for the City of Columbia,  
South Carolina and being on file in the office of the City's Director of Utilities  
and Engineering under file reference G-41.

E-9-14

FD 758 <sup>REV. 6-44</sup>

ORIGINAL  
Stamped in Red

Exhibit B

TO HAVE AND TO HOLD the aforesaid rights to the grantee, its successors and assigns, as aforesaid.

And the Grantor(s) agree(s) to warrant and forever defend the above grantee rights against himself or his heirs and against any other person lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, we/it has have hereunto set our/my/its hand(s) and seal(s) this: 5<sup>th</sup> day of September, in the year of our Lord, One Thousand Nine Hundred and Eighty Five.

WITNESSES:

Lee V. Spaulley                      June K. Metts  
B. Cole Bowers                      Brooks C. Metts

STATE OF SOUTH CAROLINA )

PROBATE

COUNTY OF RICHMOND )

PERSONALLY APPEARED before me Lee V. Spaulley and made oath that she/he saw the within-named JUNE K. METTS and BROOKS C. METTS sign, seal, and as their/his/hers/its act and deed deliver the within written instrument for the use and purposes therein mentioned and that she/he with

B. Cole Bowers witnesses the execution thereof.

DONE to before me this 6<sup>th</sup> day of September, 1985 at Lee V. Spaulley

B. Cole Bowers (L.S.)  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES 3/21/1993

ED 758use 645

ED 758use 645

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

MORTGAGE RELEASE

AD 758-646

KNOW ALL MEN BY THESE PRESENTS THAT \_\_\_\_\_

\_\_\_\_\_ for certain valuable consideration do does hereby  
release from the lien and operation of a mortgage recorded in the office of the  
Clerk of Court for Richland County in Mortgage Book \_\_\_\_\_ at Page \_\_\_\_\_  
the right-of-way conveyed by the within instrument so that the said right-of-way  
shall be free and unaffected by said mortgage.

WITNESS \_\_\_\_\_ hand and seal this \_\_\_\_\_ day of \_\_\_\_\_  
19\_\_\_\_\_  
in the presence of

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

PERSONALLY APPEARED BEFORE ME \_\_\_\_\_ and made oath that:

he saw the within-named \_\_\_\_\_  
sign, seal and as \_\_\_\_\_ act and deed deliver the within written instrument for  
the uses and purposes therein mentioned and that he with \_\_\_\_\_  
witnesses the execution thereof.

SHOW to before me this \_\_\_\_\_  
day of \_\_\_\_\_ 19\_\_\_\_\_  
\_\_\_\_\_  
(L.S.)

AD 758-646

1987-0040

CLERK OF SUPERIOR COURT  
CLARA L. BAY

715

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

1985 OCT 29

28  
EASEMENT BY CREEK (CONDEMNATION)

In consideration of the sum of Eleven thousand and No/100 (\$11,000.00) Dollars to me in hand paid by The City of Columbia, South Carolina, receipt of which is hereby acknowledged, and pursuant to the Order of the Honorable John Hamilton Smith, Judge, Fifth Judicial Circuit, dated December 17, 1986. (Civil Action No. 86-CF-40-0120) in Condemnation proceedings against Richard E. Barnett and Beth H. Barnett, I do hereby grant unto the said The City of Columbia, South Carolina, its successors and assigns:

A permanent easement and right-of-way fifteen (15') feet in width with an additional temporary easement of ten (10') and twenty-five (25') feet in width for the initial construction purposes only, to construct, operate and maintain, together with the right of ingress and egress at all times for the purpose of constructing, operating and maintaining a sewer main and with the right to remove shrubbery, trees and other growth from the right-of-way and construction area provided that the property will be restored as nearly as practicable to its original condition upon completion of the construction and the damaged shrubbery and trees will be replaced with the same variety from nursery stock of a practicable size, said easement and right-of-way to run through the property of landowner described as follows:

In the State of South Carolina, County of Richland, near the City of Columbia and being further identified as a portion of Lots 4 and 5, Block 3, Sheet 091D1, of tax maps prepared by the office of the Richland County Tax Assessor dated IR1283, being on the east side of Billmark Drive.

A permanent easement fifteen (15') feet in width the centerline beginning at the southern property line of the aforementioned Lot 5 at a point Two Hundred Four and seven-hundredths (204.07') feet N 64° 59' 19" W of the southeastern property corner of said Lot 5, said property corner being located on the western bank of the Broad River, thence extending N 0° 11' 22" W for a distance of Two Hundred Thirty-one and twenty-five hundredths (231.25') feet, thence turning and extending N 27° 06' 22" W for a distance of Forty-four and two-tenths (44.2') feet to intersect with the northwestern property line of the aforementioned Lot 4 at a point Two Hundred Thirty-two (232') feet S 45° 05' 22" W of the northernmost property corner of said Lot 4, said property corner being located on the western bank of the Broad River, thence terminating.

Also, a temporary construction easement ten (10') feet in width shall extend along the entire length of, and adjacent to, the west boundary of the aforementioned permanent easement.

Also, a temporary construction easement twenty-five (25') feet in width shall extend along the entire length of, and adjacent to, the east boundary of the aforementioned permanent easement.

These easements are more clearly delineated on a plat of easement to be obtained for Broad River, 12" diameter sanitary sewer trunk line Project SS4256-4/5-86, Sheet 1 of 3, dated July 30, 1985, last revised September 4, 1985, prepared by Johnson, Kwoles, Burgin and Bookright, Inc., Engineers, Architects and Planners, for the City of Columbia, South Carolina, and being on file in the office of the City's Director of Utilities and Engineering under File Reference G-41.

Exhibit D

ORIGINAL  
Stamped in Red

TO HAVE AND TO HOLD the aforesaid rights to the grantee, its successors and assigns, as aforesaid:

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 29th day of December, in the year of our Lord One thousand nine hundred and Eighty-six.

Barbara A. Scott  
Barbara A. Scott, CLERK OF COURT

WITNESSES:

Branda J. Dail  
David Murphy

Landowner(s): RICHARD E. BENNETT AND  
BETH H. BENNETT

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

PERSONALLY appeared before me Branda J. Dail  
and made oath that s/he saw the within-named Barbara A. Scott, Clerk of Court for Richland County, sign, seal and as his/hers act and deed deliver the within-written instrument for the uses and purposes therein mentioned and that s/he with David Murphy witnessed the execution thereof.

Branda J. Dail

SWORN to before me this  
29th day of December, 1986.  
David Murphy (L.S.)  
Notary Public for South Carolina  
My Commission expires: Nov. 29 1994

STATE OF SOUTH CAROLINA

EASEMENT

COUNTY OF RICHLAND

FILED  
IN THE OFFICE OF THE CLERK OF COURTS  
FOR THE COUNTY OF RICHLAND  
SOUTH CAROLINA  
2005 SEP 16 PM 4:42

In consideration of the sum of Three Hundred (\$300.00) Dollars, receipt of which is hereby acknowledged, I, Richard Rodney Croston

do does hereby grant unto the said The City of Columbia, South Carolina, its successors or assigns, an easement and right-of-way 15 feet in width, with an additional width of 10 and 25 feet for construction purposes only, to construct, operate and maintain together with the right of ingress and egress at all times for the purpose of constructing, operating, and maintaining a sewer main and with the right to remove shrubbery, trees and other growth from the right-of-way and construction area provided that the property will be restored as nearly as practicable to its original condition upon completion of the construction and the damaged shrubbery and trees will be replaced with the same variety from nursery stock of a practicable size, said easement and right-of-way, to run through the property which we/I/it own(s) or in which we/I/it has have an interest, situate, lying and being:

In the State of South Carolina, County of Richland, near the City of Columbia and being further identified as a portion of Lot 3, Block 3, sheet 09101, of tax maps prepared by the office of the Richland County Tax Assessor, LR 12-83.

A permanent easement, fifteen (15) feet in width, the centerline beginning at the southeastern property line of the aforementioned lot 3, at a point two hundred thirty-two and sixp tenths (232.6) feet S45°-05'-22"W of the southeastern property corner of said lot 3, said property corner is located on the western bank of the Broad River, thence extending N27°-06'-22"W for a distance of thirty-four and sixtenty one hundredths (34.16) feet, thence turning and extending N0°-45'-50"W for a distance of one hundred twenty-five and forty-three hundredths (125.43) feet, thence turning and extending S31°-13'-03"E for a distance of ninety-nine and thirteen hundredths (99.13) feet, thence turning N8°-20'-26"E for a distance of forty-five and thirty-three hundredths (45.33) feet to intersect the northern property line of said lot 3 at a point S60°-02'-00"W of the northeastern property corner of said lot 3, said property corner being located on the western bank of the Broad River, thence terminating.

Also, a temporary construction easement, ten (10) feet in width, shall extend along the entire length of, and adjacent to, the west boundary of the aforementioned permanent easement.

Also, a temporary construction easement, twenty-five (25) feet in width, shall extend along the entire length of, and adjacent to, the east boundary of the aforementioned permanent easement.

Exhibit E

These easements are more clearly delineated on a plat of easement to be obtained for Broad River 12" diameter sanitary sewer trunk line, Project SSA256-4/500, sheet 1 of 4, dated July 30, 1985, last revised September 4, 1985, prepared by Richard R. Crompton, Martin and Associates, Inc., Engineers, Architects, and Planners, for the City of Columbia, South Carolina and being on file in the office of the City Engineer of Utilities and Engineering under file reference C-41.

RD 758-677

It is further agreed that the abovesaid temporary construction easements shall be deemed null and void six (6) months after commencement of construction of the sewer with no property or damages.

It is further agreed that all trees 4" in diameter, or larger that are necessary to be preserved, shall be cut in three (3) foot lengths and attached on the east side of the permanent easement.

TO HAVE AND TO HOLD the abovesaid rights to the grantee, its successors and assigns, as aforesaid.

And the Grantor(s) agree(s) to warrant and forever defend the above grantee rights against himself or his heirs and against any other person lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, we/1/it has have hereunto set our/hy/its hand(s) and seal(s) this 12<sup>th</sup> day of September, in the year of our Lord, One thousand Nine hundred and eighty Five.

WITNESSES:  
Claude S. Healy Richard R. Crompton  
Lee V. Spaulley

STATE OF SOUTH CAROLINA ) PROBATE  
COUNTY OF RICHMOND

PERSONALLY APPEARED before me CLAUDE S. HEALY and made oath that she/he was the within named RICHARD R. CROMPTON sign, seal, and as their/his/har/its act and deed deliver the within written instrument for the uses and purposes therein mentioned and that she/he with Lee V. Spaulley witnesses the execution thereof.

WITN to before me this 12<sup>th</sup> day of September, 1985.  
Claude S. Healy  
Lee V. Spaulley (L.S.)  
NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA  
MY COMMISSION EXPIRES 2-11-92

RD 758-677

BOOK D0776 PAGE 893

1986-0088

STATE OF SOUTH CAROLINA

EASEMENT

COUNTY OF RICHLAND

J.B.B.

Five Hundred (\$500.00)

In consideration of the sum of One (1) Dollar, receipt of which is hereby acknowledged, I, Josephine E. Brown

do hereby grant unto the said The City of Columbia, South Carolina, its successors or assigns, an easement and right-of-way 15 feet in width, with an additional width of 10 and 25 feet for construction purposes only, to construct, operate and maintain together with the right of ingress and egress at all times for the purpose of constructing, operating, and maintaining a sewer main and with the right to remove shrubbery, trees and other growth from the right-of-way and construction area provided that the property will be restored as nearly as practicable to its original condition upon completion of the construction and the damaged shrubbery and trees will be replaced with the same variety from nursery stock of a practicable size; said easement and right-of-way to run through the property which we/I/it own(s) or in which we/I/it has have an interest, situate, lying and being

In the State of South Carolina, County of Richland, near the City of Columbia and being further identified as a portion of an unidentified strip or parcel of land lying between lot 14 and lot 15 as shown on a plat of Riverland Terrace Subdivision, prepared for C. Wilmont Brown by Barber Seals and Associates, Inc., Engineers, Columbia, South Carolina, dated June 22, 1948 and being on file in the office of record conveyance for Richland County in plat book N, page 188.

A permanent easement fifteen (15) feet in width, the center line beginning at the southern property line of said strip of land at a point seventy-six and fifty-one hundredths (76.51) feet S60°-02'-00"-W of the southeastern property corner of said strip of land, said property corner is located on the western bank of the Broad River, thence extending N08°-20'-26"E for a distance of twenty-two and eighty-three one hundredths (21.83) feet, thence turning and extending N24°-05'-29"W for a distance of thirty-two and ninety-one hundredths (32.91) feet to intersect the northern property line of said strip of land, thence terminating.

Also, a temporary construction easement ten (10) feet in width shall extend along the entire length of, and adjacent to, the western boundary of the aforementioned permanent easement.

Also, a temporary construction easement twenty-five (25) feet in width shall extend along the entire length of, and adjacent to, the eastern boundary of the aforementioned permanent easement.

These easements are more clearly delineated on a plat of easements to be obtained for Broad River, 12" in diameter sanitary sewer trunk line, project SRA256-4/5-G5, sheet 2 of 5, dated July 30, 1985 and revised August 13, 1985, prepared by Johnson, Snowles, Burpin and Bourright, Inc., Engineers, Architects and Planners for the City of Columbia, South Carolina and being on file in the office of the City's Director of Utilities and Engineering under file reference G-41.

E-3-5

ORIGINAL  
Embossed in Red

BOOK D0776 PAGE 893

FILED  
OFFICE OF RECORD CONVEYANCE  
COLUMBIA, SOUTH CAROLINA  
1986 DEC 9 PM 12

Exhibit F

TO HAVE AND TO HOLD the aforesaid rights to the grantee, its successors and assigns, as aforesaid.

And the Grantor(s) agree(s) to warrant and forever defend the above granted rights against himself or his heirs and against any other person lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, we/I/it has have hereunto set our/my/its hand(s) and seal(s) this 3rd day of October, in the year of our Lord, One thousand nine hundred and eighty five.

BOOK D0770 PAGE 894

WITNESSES:

Wilmot B. Irvin Josephine B. Brown  
Carolyn J. Carter

STATE OF SOUTH CAROLINA )

PROBATE

COUNTY (OF RICHLAND)

PERSONALLY APPEARED before me Wilmot B. Irvin and made oath that ~~they~~ he saw the within-named Josephine B. Brown sign, seal, and as ~~she~~ he/they/act and deed deliver the within written instrument for the uses and purposes therein mentioned and that ~~she~~ he with

Carolyn J. Carter witnesses the execution thereof.

SWORN to before me this 3rd

day of October, 19 85.

Carolyn J. Carter (S.S.)  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES 7/5/94

BOOK D0770 PAGE 894

1985-0614

STATE OF SOUTH CAROLINA )

750 0774

EASEMENT

COUNTY OF RICHLAND )

RECEIVED BY JAMES L. ...  
CLERK OF RICHLAND COUNTY  
SEP 18 PM 4:42

In consideration of the sum of Three Hundred (\$300.00) Dollars,  
receipt of which is hereby acknowledged, I, George T. Holder

do does hereby grant unto the said the City of Columbia, South Carolina, its  
successors or assigns, an easement and right-of-way 15 feet in width, with  
an additional width of 10 and 25 feet for construction purposes only, to  
construct, operate and maintain together with the right of ingress and egress at  
all times for the purpose of constructing, operating, and maintaining a  
sewer main and with this right to remove shrubbery, trees and  
other growth from the right-of-way and construction area provided that the  
property will be restored as nearly as practicable to its original condition upon  
completion of the construction and the damaged shrubbery and trees will be  
replaced with the same variety from nursery stock of a practicable size, said  
easement and right-of-way to run through the property which we/I/it own(s)  
or in which we/I/it has have an interest, situate, lying and being

In the State of South Carolina, County of Richland, near the City of Columbia  
and being further identified as a portion of lot 2, block 4, sheet 09101, of tax  
maps prepared by the office of the Richland County Tax Assessor, LR 12-83.

A permanent easement, fifteen (15) feet in width, the centerline beginning at  
the southeastern property line of the aforementioned lot 2, at a point sixty-five  
and zero tenths (65.0) feet S60°-02'-00"W of the easternmost property corner of  
said lot 2, said property corner is located on the western bank of the Broad River,  
thence extending N24°-08'-29"W for a distance of one hundred sixteen and thirty  
five hundredths (116.35) feet, thence turning and extending N60°-49'-04"W for a  
distance of thirty-eight and zero tenths (38.0) feet to intersect the northern  
property line of aforementioned lot 2, thence terminating.

Also, a temporary construction easement, ten (10) feet in width, shall extend  
along the entire length of, and adjacent to, the southwestern boundary of the  
aforementioned permanent easement.

Also, a temporary construction easement, twenty-five (25) feet in width, shall  
extend along the entire length of, and adjacent to, the northeastern boundary of  
the aforementioned permanent easement.

These easements are more clearly delineated on a plot of easement to be  
obtained for Broad River 12" diameter sanitary sewer trunk line, Project SSA156-  
4/5-66, sheet 2 of 5, dated July 30, 1985, last revised September 4, 1985, prepared  
by Johnson, Knowles, Burgin and Bouknight, Inc., Engineers, Architects, and  
Blowers, for the City of Columbia, South Carolina and being on file in the office  
of the City's Director of Utilities and Engineering under file reference C-41.

It is further agreed that the aforesaid temporary construction easements  
shall become null and void six (6) months after commencement of construction of the  
sewer main on property of Grantor.

It is further agreed that all trees, 4" in diameter, or larger that are  
necessary to be removed, shall be cut in three (3) foot lengths and stacked on the  
west side of the permanent easement.

E-5-14

ORIGINAL  
Stamped in Red

Exhibit G

TO HAVE AND TO HOLD the aforesaid rights to the grantee, its successors and assigns, as aforesaid.

And the Grantor(s) agree(s) to warrant and forever defend the above grantee rights against himself or his heirs and against any other person lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, wo/it has have hereunto set our/my/its hand(s) and seal(s) this 12<sup>th</sup> day of September, in the year of our Lord, the Thousand Nine Hundred and Eighty FIVE.

ED 758-675

WITNESSES:

Claude Shealy                      George T. Halder  
Lee V. Spaulley                      \_\_\_\_\_

STATE OF SOUTH CAROLINA )

PROBATE

COUNTY OF RICHLAND )

PERSONALLY APPEARED before me Claude Shealy and made oath that she/he saw the within-named George T. Halder sign, seal, and as their/his/hers/its act and deed deliver the within written instrument for the uses and purposes therein mentioned and that she/he with Lee V. Spaulley witnesses the execution thereof.

SHOWN to before me this 12<sup>th</sup> Claude Shealy  
day of September, 19 75.

Lee V. Spaulley (L.S.)  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES 2-10-92

ED 758-675

1985-0697

702 142 909

STATE OF SOUTH CAROLINA )

EASEMENT

COUNTY OF RICHLAND )

In consideration of the sum of Six Hundred (\$600.00) Dollars, each to other paid; receipt of which is hereby acknowledged, I, Anne Griffin Moore

do does hereby grant unto the said The City of Columbia, South Carolina, its successors or assigns, an easement and right-of-way 15 feet in width, with an additional width of 10 and 25 feet for construction purposes only, to construct, operate and maintain together with the right of ingress and egress at all times for the purpose of constructing, operating, and maintaining a sewer main and with the right to remove shrubbery, trees and other growth from the right-of-way and construction area provided that the property will be restored as nearly as practicable to its original condition upon completion of the construction and the damaged shrubbery and trees will be replaced with the same variety from nursery stock of a practicable size, said easement and right-of-way to run through the property which we/it own(s) or in which we/it has have an interest, situate, lying and being

In the State of South Carolina, County of Richland, near the City of Columbia and being further identified as a portion of lot 1, block 4, sheet 09101, of tax maps prepared by the office of the Richland County Tax Assessor, TR 12-81.

A permanent easement, fifteen (15) feet in width, the centerline beginning at the southern property line of the aforementioned lot 1, at a point fifty-two (52) feet southeast of the southeastern property corner of said lot 1, said property corner being on the western bank of the Broad River, thence extending N60°-49'-04"W for a distance of forty and thirty-two hundredths (40.32) feet, thence turning and extending N48°-44'-37"W for a distance of one hundred seventy-two and sixty-eight hundredths (172.68) feet, thence turning and extending N41°-21'-33"W for a distance of seventy-six and sixty-seven hundredths (76.67) feet, thence turning and extending N70°-46'-44"W for a distance of three and four tenths (3.0) feet to intersect the northwestern property line of aforementioned lot, thence terminating.

Also, a temporary construction easement, ten (10) feet in width, shall extend along the entire length of, and adjacent to, the southwestern boundary of the aforementioned permanent easement.

Also, a temporary construction easement, twenty-five (25) feet in width, shall extend along the entire length of, and adjacent to, the northeastern boundary of the aforementioned permanent easement.

These easements are more clearly delineated on a plat of easement to be obtained for Broad River 12" diameter sanitary sewer trunk line, Project SS2256-4/5-06, sheet 2 of 5, dated July 30, 1985, prepared by Johnson, Knowles, Burgin and Bouknight, Inc., Engineers, Architects, and Planners, for the City of Columbia, South Carolina and being on file in the office of the City's Director of Utilities and Engineering under file reference G-11.

P-4-14

ORIGINAL  
Stemmer 122

702 142 909

Exhibit H

TO HAVE AND TO HOLD the aforesaid rights to the grantee, its successors and assigns, as aforesaid.

And the Grantor(s) agree(s) to warrant and forever defend the above grantee rights against himself or his heirs and against any other person lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, we/I/it has have hereinto set our/my/its hand(s) and seal(s) this 30<sup>th</sup> day of September, in the year of our Lord, One Thousand Nine Hundred and Eighty FIVE.

WITNESSES:

[Signature]  
[Signature]

Anne Griffin Moore

STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF SARASOTA

PERSONALLY APPEARED before me, [Signature] and made oath that she/he saw the within-named ANNE GRIFFIN MOORE sign, seal, and as those/his/her/they act and send deliver the within written instrument for the uses and purposes therein mentioned and that she/he with [Signature] witnesses the execution thereof.

SOBN to before me this 30<sup>th</sup>

day of September, 1985.

NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES 9/30/88

1985-0706

STATE OF SOUTH CAROLINA )

= 0763 PAGE 899

EASEMENT

COUNTY OF RICHLAND )

REC'D OCT 17 1985

In consideration of the sum of Three Hundred (\$300.00) Dollars, receipt of which is hereby acknowledged, I. David E. Tribble

do does hereby grant unto the said the City of Columbia, South Carolina, its successors or assigns, an easement and right-of-way 15 feet in width, with an additional width of 10 and 25 feet for construction purposes only, to construct, operate and maintain, together with the right of ingress and egress at all times for the purpose of constructing, operating, and maintaining a sewer main and with the right to remove shrubbery, trees and other growth from the right-of-way and construction area provided that the property will be restored as nearly as practicable to its original condition upon completion of the construction and the damaged shrubbery and trees will be replaced with the same variety from nursery stock of a practicable size, said easement and right-of-way to run through the property which we/I/it own(s) or in which we/I/it has have an interest, situate, lying and being

In the State of South Carolina, County of Richland, near the City of Columbia and being further identified as a portion of lot 21, block 2, sheet 07113, of the maps prepared by the office of the Richland County Tax Assessor, DR 12-83.

A permanent easement, fifteen (15) feet in width, the centerline beginning at the eastern property line of the aforementioned lot 21, at a point ninety (90) feet southwest of the northeastern property corner of said lot 21, said property corner being on the western bank of the Broad River, thence extending N70°-46'-44"W for a distance of one hundred sixteen and fifteen hundredths (116.15) feet, thence turning and extending S86°-17'-26"W for a distance of thirty-eight and fifty-one hundredths (38.51) feet to intersect the western property line of said lot 21 at a point forty-four and forty-seven hundredths (44.47) feet S00°-10'-00"W of the northwestern property corner of said lot 21, thence terminating.

Also, a temporary construction easement, ten (10) feet in width, shall extend along the entire length of, and adjacent to, the southern boundary of the aforementioned permanent easement.

Also, a temporary construction easement, twenty-five (25) feet in width, shall extend along the entire length of, and adjacent to, the northern boundary of the aforementioned permanent easement.

These easements are more clearly delineated on a plat of easement to be obtained for Broad River 12" diameter sanitary sewer trunk line, Project SA256-4/5-66, sheet 2 of 5, dated July 30, 1985, prepared by Johnson, Knowles, Burgin and Booknight, Inc., Engineers, Architects, and Planners, for the City of Columbia, South Carolina and being on file in the office of the City's Director of Utilities and Engineering under file reference G-41.

B-3-14

ORIGINAL  
Stamped in Red

= 0763 PAGE 899

Exhibit I

= 8783 146 960

TO HAVE AND TO HOLD the aforesaid rights to the grantee, its successors and assigns, as aforesaid.

And the Grantor(s) agree(s) to warrant and forever defend the above granted rights against himself or his heirs and against any other person lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, we/it has have herunto set our/my/its hand(s) and seal(s) this 10<sup>th</sup> day of October, in the year of our Lord, One Thousand Nine Hundred and Eighty Five.

WITNESSES:

Judy Miller Lee V. Spadley

Lee V. Spadley

STATE OF SOUTH CAROLINA )

PROBATE

COUNTY OF Richland )

PERSONALLY APPEARED before me Judy Miller and made

oath that she/he saw the within-named DAVID E. TRIBBLE

sign, seal, and as their/his/hers/its act and deed deliver the within written instrument for the uses and purposes therein mentioned and that she/he with

Lee V. Spadley witnesses the execution thereof.

SWORN to before me this 10<sup>th</sup> Judy Miller

day of OCTOBER, 19 85.

Lee V. Spadley (L.S.)

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES 3-10-92.

LD 759-act 649

RECEIVED IN THE OFFICE OF THE CLERK OF THE COURT  
SEP 23 AM 11:31

STATE OF SOUTH CAROLINA )

EASEMENT

COUNTY OF RICHLAND )

In consideration of the sum of One (61) Dollar, each to the other paid, receipt of which is hereby acknowledged, I, Walker Henry Garrison

do hereby grant unto the said The City of Columbia, South Carolina, its successors or assigns, an easement and right-of-way 15 feet in width, with an additional width of 10 and 25 feet for construction purposes only, to construct, operate and maintain together with the right of ingress and egress at all times for the purpose of constructing, operating, and maintaining a sewer main and with the right to remove shrubbery, trees and other growth from the right-of-way and construction area provided that the property will be restored as nearly as practicable to its original condition upon completion of the construction and the damaged shrubbery and trees will be replaced with the same variety from nursery stock of a practicable size, said easement and right-of-way to run through the property which we/I/we own(s) or in which we/I/we have an interest, situate, lying and being

In the State of South Carolina, County of Richland, near the City of Columbia and being further identified as a portion of lots 19 and 20, block 2, sheet 07313, of tax maps prepared by the office of the Richland County Tax Assessor, IR 12-83.

A permanent easement, fifteen (15) feet in width, the centerline beginning at the eastern property line of the aforementioned lot 20, at a point forty-four and sixty-seven hundredths (44.67) feet 80°-40'-00"W of the northeastern property corner of said lot 20, thence extending S86°-17'-26"W for a distance of sixty-one and sixty-four hundredths (61.64) feet thence turning and extending S65°-13'-32"W for a distance of one hundred three and forty-five hundredths (103.45) feet, thence turning and extending S40°-15'59"W for a distance of nine and fourteen hundredths (9.14) feet to intersection the northern property line of the aforementioned lot 19, thence terminating.

Also, a temporary construction easement, ten (10) feet in width, shall extend along the entire length of, and adjacent to, the southern boundary of the aforementioned permanent easement.

Also, a temporary construction easement, twenty-five (25) feet in width, shall extend along the entire length of, and adjacent to, the northern boundary of the aforementioned permanent easement.

These easements are more clearly delineated on a plat of easement to be obtained for Broad River 12" diameter sanitary sewer trunk line, Project SSA256-4/5-66, sheet 2 of 3, dated July 30, 1965, prepared by Johnson, Knowles, Burgin and Rocknight, Inc., Engineers, Architects, and Planners, for the City of Columbia, South Carolina and being on file in the office of the City's Director of Utilities and Engineering under file reference G-41.

Exhibit J

LD 759-act 649



In consideration of the sum of fifteen hundred (\$1,500.00) dollars, receipt of which is hereby acknowledged, and of the agreements set forth herein, I, Josephine B. Irvin do hereby grant unto the said The City of Columbia, South Carolina, its successors or assigns, an easement and right-of-way 15 feet in width, with an additional width of 10/25 feet for construction purposes only, to construct, operate and maintain together with the right of ingress and egress at all times the purpose of constructing, operating, and maintaining a gravity flow sewer and with the right to remove shrubbery, trees and other growth from the right-of-way and construction area provided that the property will be restored as nearly as practicable to its original condition upon completion of the construction and the damaged shrubbery and trees will be replaced with the same variety from nursery stock of a practicable size, said easement and right-of-way to run through the property which I own or in which I have an interest, situate, lying and being

In the State of South Carolina, County of Richland, partially in the City of Columbia and being further identified as a portion of lots 14, 15, and 16, block 2, sheet 07313 and lot 1, block 2, sheet 07381 and lot 2, block 2, sheet 07314, of tax maps prepared by the office of the Richland County Tax Assessor, LR 12-83.

A permanent easement, fifteen (15) feet in width, the centerline beginning at the northern property line of the aforementioned lot 15, at a point three hundred sixty-three and sixty-eight hundredths (363.68) feet N89°-20'-00"W of the southeastern property corner of said lot 15, said property corner being located on the west bank of the Broad River; thence extending N40°-15'-59"W for a distance of one hundred thirty and twenty hundredths (130.20) feet, thence turning and extending N50°-31'-59"E for a distance of one hundred nineteen and fifty-eight hundredths (119.58) feet, thence turning and extending N00°-40'-59"E for a distance of forty-three and forty-nine hundredths (43.49) feet, thence turning and extending N33°-37'-45"W for a distance of two hundred forty-eight and nineteen hundredths (248.19) feet, thence turning and extending N77°-23'-00"W for a distance of one hundred ninety-six and ninety-four hundredths (196.94) feet; thence turning and extending N60°-26'-45"W for a distance of seventy-six and twenty-seven hundredths (76.27) feet, thence turning and extending N46°-49'-35"W for a distance of one hundred twenty-five and sixty-three hundredths (125.63) feet, thence turning and extending N19°-06'-45"W for a distance of one hundred fifty-one and sixty-six hundredths (151.66) feet, thence turning and extending N45°-55'-27"W for a distance of forty-eight and eighty-one hundredths (48.81) feet, thence turning and extending N79°-05'-55"W for a distance of eighty-four and ten hundredths (84.10) feet, thence turning and extending N49°-39'-03"W for a distance of one hundred forty-two and thirty-nine hundredths (142.39) feet, thence turning and extending N30°-28'-29"W for a distance of one hundred ninety-seven and eighty-eight hundredths (197.88) feet, thence turning and extending N46°-27'-33"W for a distance of eighty-nine and fifty-nine hundredths (89.59) feet, thence turning and extending N09°-53'-51"E for a distance of eighty-two and thirty-three hundredths (82.33) feet to intersect a northern property line of the aforementioned lot 2 at a point one hundred sixty-eight and sixty-eight hundredths (168.68) feet S75°-03'-38"W of the northeastern property corner of said lot 2, said property corner is located on the western bank of the Broad River, thence terminating.

Also, a temporary construction easement, ten (10) feet in width, shall extend along the entire length of, and adjacent to, the western boundary of the aforementioned permanent easement.

Also, a temporary construction easement, twenty-five (25) feet in width, shall extend along the entire length of, and adjacent to, the eastern boundary of the aforementioned permanent easement.

ORIGINAL  
Signed in Red

Exhibit K

These easements are more clearly delineated on a plat of easement to be obtained for Broad River 12" diameter sanitary sewer trunk line, Project 65A256-4/5-66, sheets 3 and 4 of 5, dated July 30, 1965, last revised October 3, 1985, prepared by Johnson, Knowles, Dargis and Boulright, Inc., Engineers, Architects, and Planners, for the City of Columbia, South Carolina and being on file in the office of the City's Director of Utilities and Engineering under file reference G-41.

It is expressly agreed and understood that the grant of this easement is limited to the construction, operation and maintenance of the substantially underground gravity flow sewer main to be constructed in accordance with the plans and specifications on file in the office of the City's Director of Utilities and Engineering under file reference G-41.

It is further expressly agreed and understood that Grantor, her successors and assigns, shall be permitted by the Grantee, its successors and assigns, to build a dam at the position of the elevated sewer line between manhole numbers 26 and 28, which dam may or may not enclose the said sewer line within its dimensions, at any time during the term of this easement. The design and construction of the dam shall be subject to the reasonable approval of the City Engineer, and shall not damage or prevent access to the sewer main.

It is further expressly agreed and understood that Grantor, her successors and assigns, have the right to pave the surface of the premises which are subject to this easement or construct recreational facilities thereon; provided, however, that access to the sewer main will not be prevented and the design and construction of these improvements shall be subject to the reasonable approval of the City Engineer. In the event maintenance is required to the sewer line beneath such paving or recreational facilities, Grantee, its successors and assigns, agree to restore the paving or recreational facilities to its original condition upon completion of the maintenance.

It is further expressly agreed and understood that, in consideration of the grant of this easement, Grantor, her successors and assigns, shall have the right to tap onto the sewer main, upon request, at any time during the term of this easement providing, however, such request is made in accordance with the City's usual rules, regulations, tap-in fees and monthly service charges, normally required by the City at the point in time application for the connection is made.

E-10-5

FORM 007201-6836

Doc 0077 Grant 857

TO HAVE AND TO HOLD the aforesaid rights to the grantee, its successors and assigns, as aforesaid.

And the Grantor(s) agree(s) to warrant and forever defend the above grantee rights against himself or his heirs and against any other person lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, we/it has have herunto set our/my/its hand(s) and seal(s) this 3<sup>rd</sup> day of October, in the year of our Lord, One Thousand Nine Hundred and Eighty 5 (Five)

WITNESSES:

Josephine B. Irvin  
Carolyn J. Carter

STATE OF SOUTH CAROLINA )

PROBATE

COUNTY OF RICHLAND )

PERSONALLY APPEARED before me Wilmot B. Irvin and made

oath that she/they saw the within-named Josephine B. Irvin

sign, seal, and as they/each of them act and deed deliver the within written instrument for the uses and purposes therein mentioned and that she/they with

Carolyn J. Carter witnesses the execution thereof.

SWORN to before me this 3rd October day of

October, 19 85

Carolyn J. Carter (L.S.)

NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES 7/5/94

D-765 PAGE 475

STATE OF SOUTH CAROLINA )

1985-9780

EASEMENT

COUNTY OF RICHLAND )

ORIGINAL  
Stamped in Red

RECORDED  
IN THE  
OFFICE OF THE  
CLERK OF COURTS  
RICHMOND COUNTY  
SOUTH CAROLINA  
1985 OCT 30 PM 2:31

In consideration of the sum of Two Thousand Five Hundred (\$2,500) Dollars,  
receipt of which is hereby acknowledged, I, Nell M. Petty

do hereby grant unto the said The City of Columbia, South Carolina, its  
successors or assigns, an easement and right-of-way 15 feet in width, with  
an additional width of 10 and 25 feet for construction purposes only, to  
construct, operate and maintain together with the right of ingress and egress at  
all times for the purpose of constructing, operating, and maintaining a  
sewer main and with the right to remove shrubbery, trees and  
other growth from the right-of-way and construction area provided that the  
property will be restored as nearly as practicable to its original condition upon  
completion of the construction and the damaged shrubbery and trees will be  
replaced with the same variety from nursery stock of a practicable size, said  
easement and right-of-way to run through the property which we/I/it own(s)  
or in which we/I/it has have an interest, situate, lying and being

In the State of South Carolina, County of Richland, near the City of Columbia,  
and being further identified as a portion of lot 3, block 2, sheet 07314, of tax  
maps prepared by the office of the Richland County Tax Assessor, IR 12-83.

A permanent easement, fifteen (15) feet in width, the centerline beginning at  
the southern property line of the aforementioned lot 3, at a point one hundred  
sixty-eight and sixty-eight hundredths (168.68) feet S75°-03'-38"W of the  
southeastern property corner of said lot 3, said property corner is located on the  
western bank of the Broad River, thence extending N79°-55'-51"E for a distance of  
fifteen and fifty-nine hundredths (15.59) feet, thence turning and extending N19°-  
03'-27"W for a distance of one hundred fifty and twelve hundredths (150.12) feet,  
thence turning and extending N01°-16'-01"W for a distance of ninety-nine and zero  
nine hundredths (99.09) feet, thence turning and extending N11°-45'-16"W for a  
distance of forty-six and fifty-five hundredths (46.55) feet, thence turning an  
existing N76°-02'-34"W for a distance of one hundred one and twenty-four hundredths  
(101.24) feet, thence turning and extending N30°-15'-39"E for a distance of one and  
fifty-nine hundredths (1.59) feet to intersect the northern property line of said  
lot 3, at a point two hundred twenty-five and ninety-two hundredths (225.92) feet  
S79°-02'-00"W of the northeastern property corner of the aforementioned lot 3,  
thence terminating.

Also, a temporary construction easement, ten (10) feet in width, shall extend  
along the entire length of, and adjacent to, the west boundary of the  
aforementioned permanent easement.

Also, a temporary construction easement, twenty-five (25) feet in width, shall  
extend along the entire length of, and adjacent to, the east boundary of the  
aforementioned permanent easement.

Exhibit L

D-765 PAGE 475

These easements are more clearly delineated on a plat of easement to be obtained for Broad River 12" diameter sanitary sewer trunk line, Project 55A256-4/5-C6, sheet 4 of 5, dated July 30, 1985, revised August 21, 1985, prepared by Johnson, Kneidel, Bargin and Bousnight, Inc., Engineers, Architects, and Planners, for the City of Columbia, South Carolina and being on file in the office of the City's Director of Utilities and Engineering under file reference G-41.

It is further agreed that this sewer main construction, across Grantor's Property, will be completed in four (4) months or less after commencement.

E-11-1d:

TO HAVE AND TO HOLD the aforesaid rights to the grantee, its successors and assigns, as aforesaid.

And the Grantor(s) agree(s) to warrant and forever defend the above grantee rights against himself or his heirs and against any other person lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, we/I/it has have hereunto set our/my/its hand(s) and seal(s) this 24<sup>th</sup> day of OCTOBER, in the year of our Lord, One Thousand Nine Hundred and Eighty FIVE.

WITNESSES:

Thomas M. Petty \_\_\_\_\_  
Lee V. Spradley \_\_\_\_\_

STATE OF SOUTH CAROLINA )

PROBATE

COUNTY OF BULLHEAD )

PERSONALLY APPEARED before me Thomas M. Petty and made oath that she/he was the within-named NELL M. Petty

sign, seal, and as their/his/hers/its act and deed deliver the within written instrument for the uses and purposes therein mentioned and that she/he with Lee V. Spradley witnesses the execution thereof.

Signed to before me this 24<sup>th</sup> Thomas M. Petty  
day of OCTOBER, 1985.

Lee V. Spradley (L.S.)  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES 2-10-92

11  
D-165 REC 476

11  
D-165 REC 476

STATE OF SOUTH CAROLINA )

DDM 00767 PAGE 325

EASEMENT

COUNTY OF RICHLAND )

1985-0787

REC'D  
OFFICE OF THE CLERK  
SOUTH CAROLINA  
COLUMBIA, S.C. 29201  
JUL 11 1985  
10:40 AM

In consideration of the sum of One (\$1) Dollar, each to the other paid in receipt of which is hereby acknowledged, I, Thomas M. Petty, Jr., do hereby grant unto the said The City of Columbia, South Carolina, its successors or assigns, an easement and right-of-way 15 feet in width, with an additional width of 10 and 25 feet for construction purposes only, to construct, operate and maintain together with the right of ingress and egress at all times for the purpose of constructing, operating, and maintaining a sewer main and with the right to remove shrubbery, trees and other growth from the right-of-way and construction area provided that the property will be restored as nearly as practicable to its original condition upon completion of the construction and the damaged shrubbery and trees will be replaced with the same variety from nursery stock of a practicable size, said easement and right-of-way to run through the property which I own or in which I have an interest, situate, lying and being:

In the State of South Carolina, County of Richland, near the City of Columbia and being further identified as a portion of lot 4, block 2, sheet 07114, of tax maps prepared by the office of the Richland County Tax Assessor, LR 12-83.

A permanent easement, fifteen (15) feet in width, the centerline beginning at the southern property line of aforementioned lot 4, at a point two hundred twenty-five and ninety-two hundredths (225.92) feet S73°-02'-00"W of the southeastern property corner of said lot, said property corner being located on the western bank of the Broad River, thence extending N30°-15'-39"E for a distance of one hundred forty-two and forty-eight hundredths (142.48) feet, thence turning and extending N0°-18'-25"W for a distance of one hundred sixty-four and eighty-five hundredths (164.85) feet, thence turning and extending N00°-54'-01"W for a distance of one hundred sixty and ninety-two hundredths (160.92) feet, thence turning and extending N26°-42'-59"W for a distance of fifty-four and ninety-nine hundredths (54.99) feet, thence turning and extending N37°-43'-41"E for a distance of eight and eighty-two hundredths (8.82) feet to intersect the southern right-of-way of Broad River Road (U.S. Highway #176), thence terminating.

Also, a temporary construction easement, ten (10) feet in width, shall extend along the entire length of, and adjacent to, the west boundary of the aforementioned permanent easement.

Also, a temporary construction easement, twenty-five (25) feet in width, shall extend along the entire length of, and adjacent to, the east boundary of the aforementioned permanent easement.

These easements are more clearly delineated on a plat of easement to be obtained for Broad River 12" diameter sanitary sewer trunk line, Project SSA256-4/5-66, sheet 5 of 5, dated July 30, 1985, last revised September 17, 1985, prepared by Johnson, Knowles, Bargin and Brunklight, Inc., Engineers, Architects, and Planners, for the City of Columbia, South Carolina and being on file in the office of the City's Director of Utilities and Engineering under file reference G-41.

ORIGINAL  
Stamped in Red

DDM 00767 PAGE 325

Exhibit M

Also, it is further agreed that no trees, four inches and more in diameter, shall be removed from the aforesaid temporary construction easement areas.

Also, it is further agreed that, after construction, the ground slope shall be restored as nearly as practicable to the present slope.

E-15-14

TO HAVE AND TO HOLD the aforesaid rights to the grantee, its successors and assigns, as aforesaid.

And the Grantor agree to warrant and forever defend the above grantee rights against himself or his heirs and against any other person lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 21 day of October, in the year of our Lord, One Thousand Nine Hundred and Eighty-Five.

WITNESSES:

[Signature] \_\_\_\_\_ Thomas M. Petty, Jr.

Reinbaumen \_\_\_\_\_

COUNTRY OF FRANCE ) ESCOAGE

PROVINCE OF LA-MORLAINE )

PERSONALLY APPEARED before me John W. Rudy and made oath that she/he saw the within named Thomas M. Petty, Jr.

sign, seal, and as their/his/hers/thes act and deed deliver the within written instrument for the uses and purposes therein mentioned and that she/he with

Reinbaumen witnesses the execution thereof.

SWORN to before me this 21 day of October, 1985.

NOTARY PUBLIC (U.S.)  
MY COMMISSION EXPIRES \_\_\_\_\_

1985-10-21 in presence of witnesses  
1. Reinbaumen PETTY, Thomas  
2. John W. Rudy JPS



BOOK D0767 PAGE 326

BOOK D0767 PAGE 326

STATE OF SOUTH CAROLINA )

1986-0021

EASEMENT

COUNTY OF RICHLAND )

BOOK D0788 PAGE 442

FILED  
CLERK OF COURTS  
COLUMBIA, SOUTH CAROLINA  
1985 NOV 13 PM 1:21

In consideration of the sum of One (\$1) dollar, each to the other paid, Dorothy Alleene Petty Krauch ~~DAPL~~, receipt of which is hereby acknowledged, I, ~~Allen Krauch~~, do hereby grant unto the said The City of Columbia, South Carolina, its successors or assigns, an easement and right-of-way 15 feet in width, with an additional width of 10 and 25 feet for construction purposes only, to construct, operate and maintain together with the right of ingress and egress at all times for the purpose of constructing, operating, and maintaining a sewer main and with the right to remove shrubbery, trees and other growth from the right-of-way and construction area provided that the property will be restored as nearly as practicable to its original condition upon completion of the construction and the damaged shrubbery and trees will be replaced with the same variety from nursery stock of a practicable size, said easement and right-of-way to run through the property which I own or in which I have an interest, situate, lying and being

In the State of South Carolina, County of Richland, near the City of Columbia and being further identified as a portion of lot 4, block 2, sheet 07314, of tax maps prepared by the office of the Richland County Tax Assessor, IR 12-83.

A permanent easement, fifteen (15) feet in width, the centerline beginning at the southern property line of aforementioned lot 4, at a point two hundred twenty-five and ninety-two hundredths (225.92) feet 57°-02'-00"W of the southeastern property corner of said lot, said property corner being located on the western bank of the Broad River, thence extending N30°-15'-39"E for a distance of one hundred forty-two and forty-eight hundredths (142.48) feet, thence turning and extending N0°-18'-26"W for a distance of one hundred sixty-four and eighty-five hundredths (164.85) feet, thence turning and extending N10°-54'-01"W for a distance of one hundred sixty and ninety-two hundredths (160.92) feet, thence turning and extending N26°-42'-59"W for a distance of fifty-four and ninety-nine hundredths (54.99) feet, thence turning and extending N07°-43'-41"E for a distance of eight and eighty-two hundredths (8.82) feet to intersect the southern right-of-way of Broad River Road (U.S. Highway #176), thence terminating.

Also, a temporary construction easement, ten (10) feet in width, shall extend along the entire length of, and adjacent to, the west boundary of the aforementioned permanent easement.

Also, a temporary construction easement, twenty-five (25) feet in width, shall extend along the entire length of, and adjacent to, the east boundary of the aforementioned permanent easement.

These easements are more clearly delineated on a plat of easement to be obtained for Broad River 12" diameter sanitary sewer trunk line, Project SBA256-4/S-C6, sheet 5 of 5, dated July 30, 1985, last revised September 17, 1985, prepared by Johnson, Knudsen, Burgin and Rodnight, Inc., Engineers, Architects, and Planners, for the City of Columbia, South Carolina and being on file in the office of the City's Director of Utilities and Engineering under file reference G-41.

ORIGINAL  
Stamped in Red

Exhibit M

Also, it is further agreed that no trees, four inches and more in diameter, shall be removed from the aforesaid temporary construction easement areas.

Also, it is further agreed that, after construction, the ground slope shall be restored as nearly as practicable to the present slope.

E-20-14

TO HAVE AND TO HOLD the aforesaid rights to the grantee, its successors and assigns, as aforesaid.

And the Grantor agrees to warrant and forever defend the above granted rights against himself or his heirs and against any other person lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal(s) this 30th day of October, in the year of our Lord, One Thousand Nine Hundred and Eighty-Five.

WITNESSES:

Juan Moya

Dorothy Allene Petty Kracht  
X Dorothy Allene Petty Kracht O.A.P.  
Allene Warren Kracht

Francisco Morales  
The Spanish State  
COUNTRY OF SPAIN  
Province and City of Madrid  
PROVINCE of the United States  
of America

PRESENT

PERSONALLY APPEARED before me, Susan Mary Scruble, American Vice Consul  
Kracht  
Alene Warren Kracht Dorothy Allene Petty Oapp  
and acknowledged that she did  
sign, seal, and as back her has act and deed deliver the within written  
instrument for the uses and purposes therein mentioned and that she has been

Juan Moya  
Francisco Morales witnessed the execution thereof.  
SEEN to before me this 30th day of October, 19 85  
Susan Mary Scruble  
Vice Consul of the United States of America

(L.S.)

BY COMMISSION EXHIBITS n/a

THIS DOCUMENT CONSISTS OF 2 PAGES

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

1986-0022

RESOLUTION

BOOK D0768 PAGE 440

FILED  
IN THE OFFICE OF THE  
CLERK OF THE  
SOUTH CAROLINA  
01 APR 20 1986

In consideration of the sum of Two Thousand Five Hundred (\$2,500.00) Dollars receipt of which is hereby acknowledged, I, Allan S. Nehl, do hereby grant unto the said The City of Columbia, South Carolina, its successors or assigns, an easement and right-of-way 15 feet in width, with an additional width of 10 and 25 feet for construction purposes only, to construct, operate and maintain together with the right of ingress and egress at all times for the purpose of constructing, operating, and maintaining a sewer main and with the right to remove shrubbery, trees and other growth from the right-of-way and construction area provided that the property will be restored as nearly as practicable to its original condition upon completion of the construction and the damaged shrubbery and trees will be replaced with the same variety from nursery stock of a practicable size, said easement and right-of-way to run through the property which I own or in which I have an interest, situate, lying and being

In the State of South Carolina, County of Richland, near the City of Columbia and being further identified as a portion of lot 4, block 2, sheet 07314, of tax maps prepared by the office of the Richland County Tax Assessor, IR 12-83:

A permanent easement, fifteen (15) feet in width, the centerline beginning at the southern property line of aforementioned lot 4, at a point two hundred twenty-five and ninety-two hundredths (225.92) feet  $S79^{\circ}02'00''W$  of the southeastern property corner of said lot, said property corner being located on the western bank of the Broad River, thence extending  $N30^{\circ}15'39''E$  for a distance of one hundred forty-two and forty-eight hundredths (142.48) feet, thence turning and extending  $N0^{\circ}18'25''W$  for a distance of one hundred sixty-four and eighty-five hundredths (164.85) feet, thence turning and extending  $N10^{\circ}54'01''W$  for a distance of one hundred sixty and ninety-two hundredths (160.92) feet, thence turning and extending  $S26^{\circ}42'59''W$  for a distance of fifty-four and ninety-nine hundredths (54.99) feet, thence turning and extending  $S37^{\circ}43'41''E$  for a distance of eight and eighty-two hundredths (8.82) feet to intersect the southern right-of-way of Broad River Road (U.S. Highway #176), thence terminating.

Also, a temporary construction easement, ten (10) feet in width, shall extend along the entire length of, and adjacent to, the west boundary of the aforementioned permanent easement.

Also, a temporary construction easement, twenty-five (25) feet in width, shall extend along the entire length of, and adjacent to, the east boundary of the aforementioned permanent easement.

These easements are more clearly delineated on a plat of easement to be obtained for Broad River 12" diameter sanitary sewer trunk line, Project 65A256-4/2-66, sheet 5 of 5, dated July 30, 1985, last revised September 17, 1985, prepared by Johnson, Knowles, Bumpin and Baulnight, Inc., Engineers, Architects, and Planners, for the City of Columbia, South Carolina and being on file in the office of the City's Director of Utilities and Engineering under file reference C-41.

Also, it is further agreed that no trees, four inches and more in diameter, shall be removed from the aforescribed temporary construction easement areas.

Also, it is further agreed that, after construction, the ground slope shall be restored as nearly as practicable to the present slope.

E-13-14

ORIGINAL

Exhibit M

TO HAVE AND TO HOLD the aforesaid rights to the grantee, its successors and assigns; as aforesaid.

And the Grantor(s) agree(s) to warrant and forever defend the above grantee rights against himself or his heirs and against any other person lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, we/it has have herunto set our/my/its hand(s) and seal(s) this 11<sup>th</sup> day of October, in the year of our Lord, One Thousand Nine Hundred and Eighty Five.

WITNESSES:

John P. Kelly Jr. Allene S. Helle  
Linda C. Steele

STATE OF SOUTH CAROLINA )

PROBATE

COUNTY OF Richland )

PERSONALLY APPEARED before me John P. Kelly Jr. and made oath that she/he saw the within-named ALLENE S. HELLE

sign, seal, and as their/his/hers/its act and deed deliver the within written instrument for the uses and purposes therein mentioned and that she/he with

Linda C. Steele witnesses the execution thereof.

SHOWN to before me this 11<sup>th</sup> John P. Kelly Jr.

day of October, 1985.

Virginia J. Reeves (L.S.)  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES 4-7-92.

1988 D0792 PAGE 731

1888-0358

STATE OF SOUTH CAROLINA ) 1988 MAY 27 AM 11:44

EASEMENT

COUNTY OF RICHLAND )

In consideration of the sum of One (\$1) Dollar, each to the other paid, receipt of which is hereby acknowledged, It, Bridge Pointe Partners,

A Limited Partnership

do does hereby grant unto the said the City of Columbia, South Carolina; its successors or assigns, an easement and right-of-way 15 feet in width, with an additional width of 10 and 23 feet for construction purposes only, to construct, operate and maintain together with the right of ingress and egress at all times for the purpose of constructing, operating, and maintaining a sewer main and with the right to remove auxiliary, trees and other growth from the right-of-way and construction area provided that the property will be restored as nearly as practicable to its original condition upon completion of the construction and the donated shrubbery and trees will be replaced with the same variety from nursery stock of a practicable size, said easement and right-of-way to run through the property which we/it own(s) or in which we/it has have an interest, situate lying and being

In the State of South Carolina, County of Richland, near the City of Columbia and being further identified as a portion of lot 11, block 3, sheet 07311, of tax maps prepared by the office of the Richland County Tax Assessor, 12-12-83.

A permanent easement, fifteen (15) feet in width, the centerline beginning at the northern right-of-way of Broad River Road (U.S. Highway 176) near the western bank of the Broad River, twenty-one and thirty-two hundredths (21.32) feet N82°36'-37"E of a South Carolina Highway Department concrete right-of-way monument, thence extending N02°33'30"W for a distance of fifty-four and ninety-three hundredths (54.93) feet, thence terminating.

Also, a temporary construction easement, ten (10) feet in width, shall extend along the entire length of, and adjacent to, the west boundary of the aforementioned permanent easement.

Also, a temporary construction easement, twenty-five (25) feet in width, shall extend along the entire length of, and adjacent to, the east boundary of the aforementioned permanent easement.

These easements are more clearly delineated on a plat of easement to be obtained for Broad River 12" diameter sanitary sewer trunk line, Project SSA256-4/5-86, sheet 5 of 5, dated July 30, 1985, prepared by Johnson, Knoles, Burgin and Boulright, Inc., Engineers, Architects, and Planners, for the City of Columbia, South Carolina and being on file in the office of the City's Director of Utilities and Engineering under file reference G-41.

P-12-14

ORIGINAL  
Stamped in Red

Exhibit N

1988 D0792 PAGE 731

Acceptance of the within easement by the City of Columbia, South Carolina shall guarantee to Bridge Points Partners, A Limited Partnership, its successors and assigns, adequate sanitary sewer service to 237 apartment units and related facilities. It is further understood and agreed that the aforementioned 12" diameter sanitary sewer trunk line will be constructed at no costs to the Grantor, however, the City does not waive any of the usual rules, regulations, tap fees or monthly service charges normally required by the City, at the time application for these services is made.

TO HAVE AND TO HOLD the aforesaid rights to the grantee, its successors and assigns, as aforesaid.

And the Grantor(s) agree(s) to warrant and forever defend the above grantee rights against himself or his heirs and against any other person lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, we/I/it has have hereunto set our/my/its hand(s) and seal(s) this 18th day of MARCH, in the year of our Lord, One thousand Nine Hundred and Eighty Six.

WITNESSES: Cheryl C. Otto, Bridge Points Partners, A Limited Partnership, Harry D. Snow, Jr., General Partner. STATE OF SOUTH CAROLINA Georgia, COUNTY Fulton PROBATE

PERSONALLY APPEARED before me Cheryl C. Otto and made Bridge Points Partners, A Limited Partnership, by Harry D. Snow, Jr., its General Partner, oath that she/he saw the within-named sign, seal, and as their/his/hers/its act and deed deliver the within written instrument for the uses and purposes therein mentioned and that she/he with James B. Wilburn witnesses the execution thereof.

SWORN to before me this 18 day of March, 1996. Patricia A. Couch (U.S.) NOTARY PUBLIC FOR SOUTH CAROLINA MY COMMISSION EXPIRES

Notary Public, Georgia, State at Large My Commission Expires Aug. 30, 1998

1985-0706

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

D763 FILE 899

EASEMENT

REC'D 6:17 PM 3-26

In consideration of the sum of Three Hundred (\$300.00) Dollars,  
receipt of which is hereby acknowledged, I. David E. Tribble

do does hereby grant unto the said The City of Columbia, South Carolina, its  
successors or assigns, an easement and right-of-way 15 feet in width, with  
an additional width of 10 and 25 feet for construction purposes only, to  
construct, operate and maintain together with the right of ingress and egress at  
all times for the purpose of constructing, operating, and maintaining a  
sewer main and with the right to remove shrubbery, trees and  
other growth from the right-of-way and construction area provided that the  
property will be restored as nearly as practicable to its original condition upon  
completion of the construction and the damaged shrubbery and trees will be  
replaced with the same variety from nursery stock of a practicable size, said  
easement and right-of-way to run through the property which we/I/it own(s)  
or in which we/I/it has have an interest, situate, lying and being

In the State of South Carolina, County of Richland, near the City of Columbia  
and being further identified as a portion of lot 21, block 2, sheet 07313, of tax  
maps prepared by the office of the Richland County Tax Assessor, LR 12-83.

A permanent easement, fifteen (15) feet in width, the centerline beginning at  
the eastern property line of the aforementioned lot 21, at a point ninety (90) feet  
southeast of the northeastern property corner of said lot 21, said property corner  
being on the western bank of the Broad River, thence extending N70°-45'-44"W for a  
distance of one hundred sixteen and fifteen hundredths (116.15) feet, thence  
turning and extending S86°-17'-26"W for a distance of thirty-eight and fifty-one  
hundredths (38.51) feet to intersect the western property line of said lot 21 at a  
point forty-four and forty-seven hundredths (44.47) feet S00°-40'-00"W of the  
northeastern property corner of said lot 21, thence terminating.

Also, a temporary construction easement, ten (10) feet in width, shall extend  
along the entire length of, and adjacent to, the southern boundary of the  
aforementioned permanent easement.

Also, a temporary construction easement, twenty-five (25) feet in width, shall  
extend along the entire length of, and adjacent to, the northern boundary of the  
aforementioned permanent easement.

These easements are more closely delineated on a plat of easement to be  
obtained for Broad River 12" diameter sanitary sewer trunk line, Project 88A256-  
4/5-06, sheet 2 of 5, dated July 30, 1985, prepared by Johnson, Knowles, Bumpin and  
Bourknight, Inc., Engineers, Architects, and Planners, for the City of Columbia,  
South Carolina and being on file in the office of the City's Director of Utilities  
and Engineering under file reference G-41.

E-3-14

ORIGINAL  
City of Columbia 00042  
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ED 759 647

RECEIVED  
CITY OF COLUMBIA  
SEPT 23 11 31 AM '31

STATE OF SOUTH CAROLINA )

)

ESSEX

COUNTY OF RICHLAND )

In consideration of the sum of One (\$1) Dollar, each to the other paid,  
receipt of which is hereby acknowledged, J. Walter Henry Garrison

do does hereby grant unto the said The City of Columbia, South Carolina, its  
successors or assigns, an easement and right-of-way 15 feet in width, with  
an additional width of 10 and 25 feet for construction purposes only, to  
construct, operate and maintain together with the right of ingress and egress at  
all times for the purpose of constructing, operating, and maintaining a  
water main and with the right to remove shrubbery, trees and  
other growth from the right-of-way and construction area provided that the  
property will be restored as nearly as practicable to its original condition upon  
completion of the construction and the damaged shrubbery and trees will be  
replaced with the same variety from nursery stock of a practicable size; said  
easement and right-of-way to run through the property which W/T/1's own(s)  
or in which W/T/1 has have an interest, situate, lying and being

In the State of South Carolina, County of Richland, near the City of Columbia  
and being further identified as a portion of Lots 29 and 30, block 2, sheet 07313,  
of tax maps prepared by the office of the Richland County Tax Assessor, LA 12-83.

A permanent easement, fifteen (15) feet in width, the centerline beginning at  
the eastern property line of the aforementioned lot 20, at a point forty-four and  
forty-seven hundredths (44.47) feet 50°-40'-00"W of the northeastern property  
corner of said lot 20; thence extending S85°-17'-25"W for a distance of sixty-one  
and sixty-four hundredths (61.44) feet thence turning and extending S65°-15'-11"W  
for a distance of one hundred three and forty-five hundredths (103.45) feet, thence  
turning and extending S40°-15'-55"W for a distance of nine and fourteen hundredths  
(9.14) feet to intersection the northern property line of the aforementioned lot  
19, thence terminating.

Also, a temporary construction easement, ten (10) feet in width, shall extend  
along the entire length of, and adjacent to, the southern boundary of the  
aforementioned permanent easement.

Also, a temporary construction easement, twenty-five (25) feet in width, shall  
extend along the entire length of, and adjacent to, the northern boundary of the  
aforementioned permanent easement.

These easements are more clearly delineated on a plot of easement to be  
obtained for Broad River 12" diameter sanitary sewer trunk line, Project 530256-  
4/5-06, sheet 2 of 2, dated July 30, 1932, prepared by Johnson, Kneeler, Purpin and  
Kendrick, Inc., Engineers, Architects, and Planners, for the City of Columbia,  
South Carolina and being on file in the office of the City's Director of Utilities  
and Engineering under file reference C-41.

ED 759 647

1985-0697

BD 702 MR 909

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

ASSESSMENT

In consideration of the sum of Six Hundred (\$600.00) Dollars, each to the other paid, receipt of which is hereby acknowledged, I, Ann Griffin Moore

do does hereby grant unto the said the City of Columbia, South Carolina, its successors or assigns, an easement and right-of-way 15 feet in width, with an additional width of 10 and 25 feet for construction purposes only, to construct, operate and maintain together with the right of ingress and egress at all times for the purpose of constructing, operating, and maintaining a sewer main and with the right to remove shrubbery, trees and other growth from the right-of-way and construction area provided that the property will be restored as nearly as practicable to its original condition upon completion of the construction and the damaged shrubbery and trees will be replaced with the same variety from nursery stock of a practicable size, said easement and right-of-way to run through the property which wa/it own(s) or in which wa/it has have an interest, situate, lying and being

In the State of South Carolina, County of Richland, near the City of Columbia and being further identified as a portion of lot 1, block 4, sheet 09101, of tax map prepared by the office of the Richland County Tax Assessor, EA 12-83,

A permanent easement, fifteen (15) feet in width, the centerline beginning at the southern property line of the aforementioned lot 1, at a point fifty-two (52) feet southeast of the southeastern property corner of said lot 1, said property corner being on the western bank of the Broad River, thence extending  $86^{\circ}-49'-04''$  for a distance of forty and thirty-two hundredths (40.32) feet, thence turning and extending  $84^{\circ}-44'-37''$  for a distance of one hundred seventy-two and sixty-eight hundredths (172.68) feet, thence turning and extending  $84^{\circ}-21'-33''$  for a distance of seventy-eight and sixty-seven hundredths (78.67) feet, thence turning and extending  $87^{\circ}-46'-44''$  for a distance of three and zero tenths (3.0) feet to intersect the northeastern property line of aforementioned lot, thence terminating.

Also, a temporary construction easement, ten (10) feet in width, shall extend along the entire length of, and adjacent to, the southeastern boundary of the aforementioned permanent easement.

Also, a temporary construction easement, twenty-five (25) feet in width, shall extend along the entire length of, and adjacent to, the northeastern boundary of the aforementioned permanent easement.

These easements are more clearly delineated on a plat of easement to be obtained for Broad River 12" diameter sanitary sewer trunk line, Project SBR256-4/5-C6, sheet 2 of 5, dated July 10, 1983, prepared by Johnson, Rowless, Burpin and McNight, Inc., Engineers, Architects, and Planners, for the City of Columbia, South Carolina and being on file in the office of the City's Director of Utilities and Engineering under file reference C-41.

E-4-14

BD 702 MR 909

ORIGINAL  
Stamps to file

1985-0706

SOME OF SOUTH CAROLINA )  
 )  
COURTY OF RICHLAND )

= D.763 FILE 899

EXHIBIT

REC'D DEC 17 1985

In consideration of the sum of Three Hundred (\$300.00) Dollars,  
receipt of which is hereby acknowledged, I. David E. Tribble

do does hereby grant unto the said The City of Columbia, South Carolina, its  
successors or assigns, an easement and right-of-way 15 feet in width, with  
an additional width of 10 and 25 feet for construction purposes only, to  
construct, operate and maintain together with the right of ingress and egress at  
all times for the purpose of constructing, operating, and maintaining a  
sewer main and with the right to remove shrubbery, trees and  
other growth from the right-of-way and construction area provided that the  
property will be restored as nearly as practicable to its original condition upon  
completion of the construction and the damaged shrubbery and trees will be  
replaced with the same variety from nursery stock of a practicable size, said  
easement and right-of-way to run through the property which we/I/it own(s)  
or in which we/I/it has have an interest, situate, lying and being

In the State of South Carolina, County of Richland, near the City of Columbia  
and being further identified as a portion of lot 21, block 2, sheet 07313, of tax  
maps prepared by the office of the Richland County Tax Assessor, IR 12-83.

A permanent easement, fifteen (15) feet in width, the centerline beginning at  
the eastern property line of the aforementioned lot 21, at a point ninety (90) feet  
southeast of the northeastern property corner of said lot 21, said property corner  
being on the western bank of the Broad River, thence extending N70°-46'-44"W for a  
distance of two hundred sixteen and fifteen hundredths (116.15) feet, thence  
turning and extending S06°-17'-26"W for a distance of thirty-eight and fifty-one  
hundredths (38.51) feet to intersect the western property line of said lot 21 at a  
point forty-four and forty-seven hundredths (44.47) feet S00°-40'-00"W of the  
northwestern property corner of said lot 21, thence terminating.

Also, a temporary construction easement, ten (10) feet in width, shall extend  
along the entire length of, and adjacent to, the southern boundary of the  
aforementioned permanent easement.

Also, a temporary construction easement, twenty-five (25) feet in width, shall  
extend along the entire length of, and adjacent to, the northern boundary of the  
aforementioned permanent easement.

These easements are more clearly delineated on a plat of easement to be  
obtained for Broad River 12" diameter sanitary sewer trunk line, Project 68256-  
4/5-05, sheet 2 of 5, dated July 30, 1985, prepared by Johnson, Knowles, Duppin and  
Wright, Inc., Engineers, Architects, and Planners, for the City of Columbia,  
South Carolina and being on file in the office of the City's Director of Utilities  
and Engineering under file reference G-41.

B-3-14

ORIGINAL  
City of Columbia 40045  
Stamped in Red

763 11190

TO HAVE AND TO HOLD the aforesaid rights to the grantee, its successors and assigns, as aforesaid.

And the Grantor(s) agree(s) to warrant and forever defend the above grantee rights against himself or his heirs and against any other person lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, we/it has have hereunto set our/hg/lts hand(s) and seal(s) this 10th day of October, in the year of our Lord, One thousand Nine Hundred and Eighty FIVE.

WITNESSES:

Judy Miller, Lee V. Stanley, State of South Carolina, PROBATE

COUNTY OF Richland

PERSONALLY APPEARED before me JUDY MILLER and made oath that she/hs saw the within-named DAVID E. TRIBBLE

sign, seal, and as their/his/hor/its act and deed deliver the within written instrument for the uses and purposes therein mentioned and that she/hs with

Lee V. Stanley witnesses the execution thereof.

Signed to before me this 10th day of October, 1985

Notary Public for South Carolina, My Commission Expires 3-10-92

LD 759nc647

ALL RIGHTS RESERVED  
DANAL PUBLISH  
65 SEP 23 AM 11 31

CITY OF COLUMBIA )

Recorder

COUNTY OF RICHLAND )

In consideration of the sum of One (\$1) Dollar, each to the other paid, receipt of which is hereby acknowledged, L. Walker Berry Garrison

do does hereby grant unto the said the City of Columbia, South Carolina, its successors or assigns, an easement and right-of-way 15 feet in width, with an additional width of 10 and 25 feet for construction purposes only, to construct, operate and maintain together with the right of ingress and egress at all times for the purpose of constructing, operating, and maintaining a sewer main and with the right to remove shrubbery, trees and other growth from the right-of-way and construction area provided that the property will be restored as nearly as practicable to its original condition upon completion of the construction and the damaged shrubbery and trees will be replaced with the same variety from nursery stock of a practicable size, said easement and right-of-way to run through the property which is/are owned or in which is/it has have an interest, situate lying and being

In the State of South Carolina, County of Richland, near the city of Columbia and being further identified as a portion of lots 19 and 20, Block 2, sheet 07113, of tax maps prepared by the office of the Richland County Tax Assessor, 12-83.

A permanent easement, 44 feet (44) feet in width, the centerline beginning at the eastern property line of the aforementioned lot 20, at a point forty-four and forty-seven hundredths (44.47) feet S20°40'00"W of the northeastern property corner of said lot 20, thence extending S55°17'25"W for a distance of sixty-one and forty-four hundredths (61.44) feet thence turning and extending N55°13'32"W for a distance of one hundred eleven and forty-five hundredths (111.45) feet, thence turning and extending N40°15'54"W for a distance of nine and fourteen hundredths (9.14) feet to intersection the eastern property line of the aforementioned lot 19, thence continuing.

Also, a temporary construction easement, ten (10) feet in width, shall extend along the entire length of, and adjacent to, the southern boundary of the aforementioned permanent easement.

Also, a temporary construction easement, twenty-five (25) feet in width, shall extend along the entire length of, and adjacent to, the northern boundary of the aforementioned permanent easement.

These easements are more clearly delineated on a plat of easement to be obtained for Broad River 12" diameter sanitary sewer trunk line, Project 890256-4/5-CF, sheet 2 of 5, dated July 30, 1983, prepared by Johnson, Braxton, Burgin and Redright, Inc., Engineers, Architects, and Planners, for the City of Columbia, South Carolina and being on file in the office of the City's Director of Utilities and Engineering under file reference G-41.

LD 759nc647

ED 759-650

As further consideration for this easement, the City of Columbia agrees to provide one single residential sewer tap (400 gallons of estimated average input per day into the sewer system) for the above-described property without fee. The City does not waive any of the usual rules, regulations, or monthly service charges normally required by the City at the point in time application for this sewer connection is made. It is understood and agreed that the City will provide the sewer connection at the easement line nearest the building to be served and that the property owner will install the necessary service lines from the point of connection to the point of intended use. It is further understood and agreed that this instrument must be presented at the time application for the sewer tap is made. It is further understood and agreed that unless application for this sewer connection is made within a period of time (3) years from the date of this easement, this provision is null and void and the applicant must pay the prevailing fee for connection to the main line.

B-2-14

TO HAVE AND TO HOLD the aforesaid rights to the grantee, its successors and assigns, as aforesaid.

And the Grantor(s) agree(s) to warrant and forever defend the above granted rights against himself or his heirs and against any other person lawfully claiming or to claim the same or any part thereof.

I, WITNESS WHEREOF, on 13<sup>th</sup> day of September, in the year of our Lord, One Thousand Nine Hundred and Ninety Five.

WITNESSES:

Walter Henry Garrison      Lee V. Spadey  
Notary Public for South Carolina      Notary

ORDER OF REMIANCE

PERSONALLY APPEARED before me Lee V. Spadey and made oath that she/he was the within-named WALTER HENRY GARRISON sign, seal, and as their/his/hers/its act and deed deliver the within written instrument for the uses and purposes therein declared and that she/he with

Lee V. Spadey witnesses the execution thereof.  
Signed to before me this 13<sup>th</sup> day of September, 1995.

Lee V. Spadey (L.S.)  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES 2-10-97

ED 759-650

1985-0697

ES 762 ma 909

STATE OF SOUTH CAROLINA )

CASHMENT

COUNTY OF RICHLAND )

In consideration of the sum of Six Hundred (\$600.00) Dollars, each to the other paid, receipt of which is hereby acknowledged, I, Arns Griffin Moore

do does hereby grant unto the said the city of Columbia, South Carolina, its successors or assigns, an easement and right-of-way 15 feet in width, with an additional width of 10 and 25 feet for construction purposes only, to construct, operate and maintain together with the right of ingress and egress at all times for the purpose of constructing, operating, and maintaining a sewer main and with the right to remove shrubbery, trees and other growth from the right-of-way and construction area provided that the property will be restored as nearly as practicable to its original condition upon completion of the construction and the damaged shrubbery and trees will be replaced with the same variety from nursery stock of a practicable size, said easement and right-of-way to run through the property which we/I/it own(s) or in which we/I/it has have an interest, situate, lying and being

In the State of South Carolina, County of Richland, near the city of Columbia and being further identified as a portion of lot 1, block 4, sheet 09101, of tax map prepared by the office of the Richland County Tax Assessor, 12-12-83.

A permanent easement, fifteen (15) feet in width, the centerline beginning at the southern property line of the aforementioned lot 1, at a point fifty-two (52) feet northwest of the southeastern property corner of said lot 1, said property corner being on the western bank of the Broad River, thence extending S60°-49'-04"W for a distance of forty and thirty-two hundredths (40.32) feet, thence turning and extending N48°-44'-37"W for a distance of one hundred seventy-two and sixty-eight hundredths (172.68) feet, thence turning and extending N41°-21'-32"W for a distance of seventy-nine and sixty-seven hundredths (79.67) feet, thence turning and extending N70°-46'-44"W for a distance of three and zero tenths (3.0) feet to intersect the northwestern property line of aforementioned lot, thence terminating.

Also, a temporary construction easement, ten (10) feet in width, shall extend along the entire length of, and adjacent to, the southwestern boundary of the aforementioned permanent easement.

Also, a temporary construction easement, twenty-five (25) feet in width, shall extend along the entire length of, and adjacent to, the northeastern boundary of the aforementioned permanent easement.

These easements are more closely delineated on a plat of easement to be obtained for Broad River 12" diameter sanitary sewer trunk line, Project #9226-4/5-06, sheet 2 of 5, dated July 30, 1985, prepared by Johnson, Knowles, Hargis and Wadright, Inc., Engineers, Architects, and Planners, for the City of Columbia, South Carolina and being on file in the office of the City's Director of Utilities and Engineering under file reference G-41.

E-4-14

ORIGINAL  
Stamped in Red

ES 762 ma 909



# **EXHIBIT B**

**EPA Consent Decree dated May 21, 2014**

**Pages 1 - 15**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
Columbia Division

THE UNITED STATES OF AMERICA ) Civil Action No. 3:13-2429-TLW  
 )  
 and )  
 )  
 STATE OF SOUTH CAROLINA by and )  
 through the DEPARTMENT OF HEALTH )  
 AND ENVIRONMENTAL CONTROL, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 THE CITY OF COLUMBIA, ) CONSENT DECREE  
 )  
 )  
 Defendant. )

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WHEREAS, Plaintiff, the United States of America ("United States"), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the United States Environmental Protection Agency ("EPA"), has filed a Complaint contemporaneously with the lodging of this Consent Decree alleging that Defendant, the City of Columbia, South Carolina ("Columbia"), has violated and continues to violate Section 301 of the Clean Water Act ("CWA"), 33 U.S.C. § 1311, and the terms and conditions of its National Pollutant Discharge Elimination System ("NPDES") permit issued under Section 402 of the CWA, 33 U.S.C. § 1342;

WHEREAS, Plaintiff, the South Carolina Department of Health and Environmental Control ("DHEC"), on behalf of the State of South Carolina ("State"), has joined in the Complaint and seeks injunctive relief and civil penalties for Columbia's alleged violations of the South Carolina Pollution Control Act ("SCPCA"), S.C. Code Ann. §§ 48-1-10 *et seq.*, and the regulations promulgated pursuant thereto. Section 309(e) of the CWA, 33 U.S.C. § 1319(e), requires the state in which a municipality is located to be joined as a party whenever the municipality is a party to a civil action brought by the United States under Section 309 of the CWA;

WHEREAS, Columbia is a "municipality" pursuant to Section 502 of the CWA, 33 U.S.C. § 1362;

WHEREAS, DHEC has been authorized by EPA to administer the NPDES program pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b);

WHEREAS, Columbia's Wastewater Collection and Transmission System ("WCTS") transports wastewater to a publicly owned wastewater treatment plant ("WWTP"),

the Columbia Metro WWTP, which is operated by Columbia pursuant to NPDES Permit Number SC0020940. A map of the service area for the Sewer System is attached hereto as Appendix A;

WHEREAS, Columbia has reported to EPA and DHEC numerous Sanitary Sewer Overflows ("SSOs") and other violations of the NPDES Permit in the past five years. The United States and the State contend that these reported events are violations of the CWA, SCPCA, and Columbia's NPDES Permit;

WHEREAS, Columbia has voluntarily undertaken various capital improvement projects intended to improve its WCTS and WWTP as well as reduce the occurrence of SSOs, which, over the past five years, have resulted in significant expenditures of resources by Columbia;

WHEREAS, this Consent Decree requires Columbia to develop, submit, finalize, and implement existing and additional plans for the continued improvement of its WCTS and WWTP, with the goal of eliminating future SSOs and other violations of the NPDES Permit;

WHEREAS, the Parties to this Consent Decree have negotiated in good faith and have reached a settlement of the issues raised in the Complaint;

WHEREAS, Columbia does not admit any liability to the United States or the State arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest;

NOW THEREFORE, with the consent of the Parties, it is hereby ORDERED, ADJUDGED and DECREED as follows:

## I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and over the Parties. This Court has supplemental jurisdiction over the state law claims asserted by the State pursuant to 28 U.S.C. § 1367. Venue is proper in the District of South Carolina pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in this judicial district, and pursuant to 28 U.S.C. § 1391. For purposes of this Decree, or any action to enforce this Decree, Columbia consents to the Court's jurisdiction over this Decree and any such action and over Columbia and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Columbia agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and 28 U.S.C. §§ 516 and 519 and SCPCA, S.C. Code Ann. §§ 48-1-10 *et seq.*

## II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and the State, and upon Columbia and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of any part of the Sewer System, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Columbia of its obligation to ensure that the terms of the Consent Decree are implemented, unless (1) the

transferee agrees in writing to be bound by and assume responsibility for compliance with applicable provisions of this Consent Decree and to submit to the jurisdiction of the Court for its enforcement by becoming a Party under the Consent Decree and (2) the United States, in consultation with DHBC, approves the substitution of the transferee and consents to relieve Columbia of the applicable obligations. The United States' decisions shall not be subject to judicial review. At least thirty (30) Days prior to such proposed transfer, Columbia shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region IV, the United States Attorney for the District of South Carolina, the United States Department of Justice and DHBC, in accordance with Section XVI of this Decree (Notices). Any attempt to transfer ownership or operation of the Sewer System without complying with this Paragraph constitutes a violation of this Decree. This Paragraph will not apply to the transfer of a portion of the WCTS to Richland County pursuant to the Lower Richland Sewer Service Agreement attached hereto as Appendix B.

5. Columbia shall provide a copy of this Consent Decree to all officers, employees, and agents with responsibility for overseeing implementation of work required under this Consent Decree, as well as to any consultant or contractor retained to perform Work required under this Consent Decree. Columbia shall condition any such contract upon performance of the Work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Columbia shall not raise as a defense the failure by any of its officers, directors, employees, agents or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

### III. OBJECTIVES

7. The objective of the plans, measures, reports, construction, maintenance, operational requirements, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree is to cause Columbia to achieve and maintain full compliance with the CWA, the SCPCA, and the NPDES Permit, including the goal of eliminating all future SSOs.

### IV. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the CWA or in regulations promulgated pursuant to the CWA shall have the meanings assigned to them in the CWA, 33 U.S.C. §§ 1251 *et seq.*, and regulations promulgated under the CWA, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "Building Backup" shall mean a release of wastewater into a building or onto private property that is caused by blockages, flow conditions, or other malfunctions in the WCTS. A wastewater backup or release that is caused by blockages, flow conditions, or other malfunctions of a Private Lateral or other piping/conveyance system that is not owned or operationally controlled by Columbia is not a Building Backup.
- b. "Bypass" shall have the meaning set forth at 40 C.F.R. § 122.41(m).
- c. "Calendar Quarter" shall mean the three-month period ending on March 31, June 30, September 30, or December 31.
- d. "Calendar Year" shall mean the 12-month period starting on January 1 and

ending on December 31.

e. "Certification" or "Certify" shall mean compliance with the certification requirements in Section VI (Review of Deliverables) of this Consent Decree.

f. "Columbia" shall mean the City of Columbia, South Carolina, including all of its departments, agencies, instrumentalities such as the Public Works Department, and any successor thereto.

g. "Complaint" shall mean the complaint filed by the United States and the State in this action.

h. "Consent Decree" or "Decree" shall mean this consent decree document and all appendices attached hereto (listed in Section XXV). In the event of a conflict between this document and any appendix, this document shall control.

i. "CWA" shall mean the Clean Water Act, as amended, 33 U.S.C. §§ 1251, *et seq.*

j. "Date of Entry" shall mean the date on which this Consent Decree is entered by the United States District Court for the District of South Carolina.

k. "Date of Lodging" shall mean the date this Consent Decree is lodged with the Clerk of the Court for the United States District Court for the District of South Carolina.

l. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall

on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

m. "Defendant" shall mean the City of Columbia, South Carolina and any successor thereto.

n. "Deliverable" shall mean any written document required to be prepared and/or submitted by or on behalf of Columbia pursuant to this Consent Decree.

o. "DHEC" shall mean the South Carolina Department of Health and Environmental Control and any successor departments or agencies of the State.

p. "Discharge Monitoring Report" or "DMR" shall mean the monitoring report which Columbia is required to submit to DHEC on a monthly basis pursuant to its NPDES Permit.

q. "DOJ" shall mean the United States Department of Justice.

r. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

s. "Effective Date" shall have the definition provided in Section XVII.

t. "Excessive Inflow / Infiltration" or "Excessive I/I" shall have the meaning provided in 40 C.F.R. § 133.103(d) and 40 C.F.R. § 35.2005(b)(16).

u. "Force Main" shall mean any pipe that receives and conveys, or whose purpose is to receive and convey, wastewater under pressure from the discharge side of a pump.

v. "Gravity Sewer Line" or "Gravity Sewer" shall mean any pipe that receives, contains and conveys, or whose purpose is to receive, convey, and contain, wastewater not normally under pressure, but unassisted under the influence of gravity.

w. "Infiltration" shall mean water other than wastewater that enters the WCTS (including sewer service connections and foundation drains) from the ground through such means as, but not limited to, defective pipes, pipe joints, connections, or manholes. Infiltration does not include and is distinguishable from Inflow.

x. "Inflow" shall mean water other than wastewater that enters the WCTS (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, sump pumps, foundation drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm water, surface runoff, street wash waters, or drainage. Inflow does not include and is distinguished from Infiltration.

y. "I/I" shall mean the total quantity of water from Inflow, Infiltration, and rainfall induced Infiltration.

z. "Major Gravity Sewer Line" shall mean any of the following:

(i). a Gravity Sewer Line that is fifteen (15) inches in diameter or larger;

(ii). a Gravity Sewer Line that conveys wastewater from one pumping station service area to another pumping station service area; and

(iii). a Gravity Sewer Line that has caused or contributed to, or that Columbia knows or should know will likely cause or contribute to, capacity-related unpermitted overflows.

aa. "Major Pump Station" shall mean a pump station receiving flow from a sewer line of 15 inches in diameter or greater.

bb. "MOM" or "Management, Operations, and Maintenance" shall mean a program of accepted industry practices to properly manage, operate and maintain sanitary wastewater collection, transmission and treatment systems, investigate capacity-constrained areas of these systems, and respond to SSO events.

cc. "NPDES" shall mean the National Pollutant Discharge Elimination System authorized under Section 402 of the CWA, 33 U.S.C. § 1342.

dd. "NPDES Permit" shall mean NPDES permit number SC0020940 issued to Columbia Metro WWTP pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, and any future extended, modified, or reissued permits.

ee. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral.

ff. "Parties" shall mean the United States of America on behalf of EPA, the State of South Carolina by and through DHEC, and Columbia.

gg. "Plaintiffs" shall mean the United States of America on behalf of EPA and the State of South Carolina by and through DHEC.

hh. "Private Lateral" shall mean that portion of a sanitary sewer conveyance pipe that extends from the wastewater right-of-way or utility easement to the single-family, multi-family, apartment, or other dwelling unit or commercial or industrial structure to which Columbia's wastewater service is or has been provided.

ii. "Publicly Owned Treatment Works" or "POTW" shall mean a publicly owned treatment works or POTW as defined in 40 C.F.R. § 403.3(q), and includes the WCTS and the WWTP as defined in this Consent Decree.

jj. "Pump Station" shall mean facilities comprised of pumps which lift wastewater to a higher hydraulic elevation, including all related electrical, mechanical, and structural systems necessary to the operation of the facilities.

kk. "Sanitary Sewer Overflow" or "SSO" shall mean an overflow, spill, or release of wastewater from Columbia's Sewer System including: (a) Unpermitted Discharges; (b) overflows, spills, or releases of wastewater that may not have reached waters of the United States or the State of South Carolina; and (c) all Building Backups.

ll. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

mm. "Sewerbasin" shall mean all hydraulically linked portions of Columbia's Wastewater Collection and Transmission System that are tributary to a trunk sewer which directly leads to the WWTP. Each Sewerbasin is independent of other Sewerbasins. The Sewerbasins in Columbia's WCTS are shown on the map attached as Appendix C.

- nn. "Sewer System" shall mean the WCTS and the WWTP.
- oo. "State" shall mean the State of South Carolina.
- pp. "SORP" shall mean the Sewer Overflow Response Plan that Columbia has developed and which is attached as Appendix D to this Consent Decree.
- qq. "Subbasin" shall mean a subdivision of a Sewerbasin which consists of hydraulically linked sewers that are tributary to a common point in the sewer system. Sewer system evaluation techniques are undertaken on a Subbasin basis. A Subbasin typically consists of 10,000 to 50,000 linear feet of sewer. The Subbasins in Columbia's WCTS are shown on the map attached as Appendix C.
- rr. "Subparagraph" shall mean a portion of a paragraph identified by lowercase letters.
- ss. "SCPCA" shall mean the South Carolina Pollution Control Act, South Carolina Code Ann. §§ 48-1-10 *et seq.*
- tt. "United States" shall mean the United States of America, acting on behalf of EPA.
- uu. "Unpermitted Discharge" shall mean a discharge of pollutants which reaches waters of the United States or the State from (a) the Sewer System, (b) the WWTP through a point source not specified in an NPDES Permit, or (c) the WWTP which constitutes a prohibited Bypass.

vv. "Wastewater Collection and Transmission System" or "WCTS" shall mean the municipal wastewater collection, retention and transmission system, including all pipes, Force Mains, Gravity Sewer Lines, Pump Stations, pumps, manholes, and appurtenances thereto, which are owned or operated by Columbia and which flow to the Columbia Metro WWTP.

ww. "Wastewater Treatment Plant" or "WWTP" shall mean all facilities, devices, or systems which are owned, managed, operated, or maintained by Columbia for the storage, treatment, recycling, or reclamation of municipal wastewater, including the Columbia Metro WWTP located at 1200 Simon Tree Lane, Columbia, South Carolina, and all components of such wastewater treatment facility.

xx. "Work" shall mean all activities Columbia is required to perform under this Consent Decree.

#### **V. COMPLIANCE REQUIREMENTS**

9. Obligation to Perform Work. Upon the Date of Entry, Columbia shall implement the Work pursuant to this Consent Decree. Columbia is responsible for ensuring that any contractors hired to perform Work pursuant to this Consent Decree comply with all applicable laws and with this Consent Decree. All Work shall be performed using sound engineering practices, which may include, but are not limited to, appropriate provisions of South Carolina Regulation 61-67 (wastewater construction standards); South Carolina Regulation 61-9 (discharge standards); the *Handbook: Sewer System Infrastructure Analysis and Rehabilitation*, EPA/625/6-91/030, 1991; *Existing Sewer Evaluation and Rehabilitation*, WEF MOP FD-6,

**EXHIBIT C**

Deposition excerpts from Michael Sheu deposition

1 Q: --- some other purpose?

2 A: No. This was -- the main purpose of these is  
3 to -- to lengthen the life of the system and  
4 principally to prevent or greatly reduce  
5 infiltration and reduce the possibility of --  
6 of sewer spills from failed pipes.

7 Q: Okay. Was this work required by EPA or  
8 somebody else?

9 A: A program such as that is required as part of  
10 the consent decree we're in with the EPA.

11 Q: Okay.

12 A: And that's why we're doing it in stages around  
13 our entire system.

14 Q: Did you have any involvement in the original  
15 sewer line placement?

16 A: No.

17 Q: Okay.

18 A: I don't think I was even around here at that  
19 time. Or I guess I'd just gotten here, but,  
20 no.

21 Q: Okay. Now, when was it deemed necessary, say,  
22 to build a road along the Broad River?

23 A: We did ---

24 MS. WOOTEN: Object to the form.

25 A: --- not build a road.

1 Q: Mr. Sheu, I appreciate it. I think that's all  
2 the questions I have. Thanks.

3 MR. SHEU - EXAMINATION BY MR. BOINEAU:

4 Q: Mr. Sheu, I'm Trippett Boineau, I represent  
5 NAPM. And Mike, can I refer to you as Mike?  
6 We've met before. Why were -- why was this  
7 project necessary?

8 A: This particular portion of the project?

9 Q: Correct.

10 A: It was necessary because the CCTV filming  
11 inside the lines indicated deterioration of the  
12 line.

13 Q: And what would happen if those lines  
14 deteriorated to the point where they eventually  
15 burst?

16 A: It would leak into the Broad River.

17 Q: And what would happen if it leaked into the  
18 Broad River?

19 A: It would of course cause pollution in the Broad  
20 River. We would be -- we have to report that  
21 to DHEC. We would have to get in there very  
22 quickly and fix that quickly if we could. We  
23 would be fined probably by DHEC and definitely  
24 by the EPA ---

25 Q: And was the City -- I'm sorry. Go ahead.

1 A: --- under the consent decree we have with the  
2 EPA.

3 Q: And a consent decree is something that requires  
4 you to maintain certain lines and ---

5 A: Yes.

6 Q: --- correct?

7 A: Yes, sir.

8 Q: And so there is a consent decree in place  
9 relative to this particular sewer line,  
10 correct?

11 A: Into our whole system, yeah.

12 Q: Right. Which would include this line?

13 A: Including that line.

14 Q: And the maintenance of this line as well, would  
15 it not?

16 A: Yes.

17 Q: Okay. And the consent decree allows you to  
18 maintain the line, does it not? As a matter of  
19 fact, it requires you maintain the line?

20 A: Yes, it does.

21 Q: And if you don't maintain you can -- you don't  
22 get federal funding, correct?

23 A: Actually we get fined. We've agreed to reduce  
24 the amount of SSOs in the City system by  
25 certain amounts and to achieve those, so if we

1 have spills we get fined by the EPA as well as

2 DHEC.

3 Q: Perhaps what's -- what's more important is, is  
4 that these lines leak, we contaminate the Broad  
5 River, the sewer, correct?

6 A: Because of the proximity. That's right.

7 Q: Okay. And contamination of the Broad River  
8 with sewer could cause problems elsewhere in  
9 the City as well, could it not?

10 A: It could.

11 Q: So it's in the City's -- people of the City's  
12 best interest to have this line repaired,  
13 correct?

14 A: Absolutely.

15 Q: Okay. And that's why it was done?

16 A: Yes.

17 Q: It's not done now, is it?

18 A: It's not done, yeah.

19 Q: Okay. It's not done for what reason?

20 A: Because we stopped work on the project when the  
21 issues came up with the property owners.

22 Q: Okay. The property owners asked you to stop  
23 work, did they not?

24 A: Yes, they did.

25 Q: Okay. And you agreed at their request?

1 A: That project was left to Layne Inliner and I  
2 don't have any materials about dates when that  
3 was.

4 Q: Uh-huh.

5 A: It is a project for Layne and their subs to, in  
6 part TV the sewer lines -- certain designated  
7 sewer lines in that basin to determine their  
8 condition, inside ---

9 Q: Uh-huh.

10 A: --- condition. And two proceed based on those  
11 investigations to do necessary surface repairs,  
12 point repairs to that -- that line and to line  
13 the -- with a chemical cloth, the sewer lines  
14 ---

15 Q: Uh-huh.

16 A: --- in order to increase the longevity of the  
17 pipes that are, many of which, are deteriorated  
18 over time. Also, it has a -- a component for  
19 pipe bursting to replace some of those lines  
20 and by high pressure sleeve put in the line ---

21 Q: Uh-huh.

22 A: --- to and to also -- and in some cases have to  
23 take it up and replace it. All depending on  
24 current conditions within those sewer lines ---

25 Q: Uh-huh.

1 A: --- somewhat determined by the findings of the  
2 pre-construction videoing of those lines ---

3 Q: Uh-huh.

4 A: --- to see what they look like inside. And  
5 that was over a wide area of that particular  
6 drainage basin, what was called West Columbia  
7 Number Two.

8 Q: Was this just one project in a part of the City  
9 or is the City doing this all over town?

10 A: It's not all over town, but there were four  
11 projects up in that area between the Broad and  
12 Saluda Rivers, in that triangle.

13 Q: Okay. And what were the just generalized  
14 dimensions of this particular project?

15 A: I don't know off the top of my head. It was  
16 quite a few square miles of project in a  
17 developed area.

18 Q: And you say Broad River over the zoo, is that  
19 a fair -- along the river?

20 A: Off of 126 up to -- I got to look at a plan.

21 Q: Okay.

22 A: It was a fair sized area.

23 Q: Okay. Would you describe this as being  
24 preventive maintenance or was this ---

25 A: No. No.

1 that that easement allowed you to exceed 15  
2 feet to perform maintenance of the sewer line?

3 A: No. The easement is for 15 feet.

4 Q: Okay.

5 A: It's unfortunate it did -- that operation did  
6 exceed the 15 feet ---

7 Q: Okay.

8 A: --- and we had no opportunity to remediate that  
9 or repair it since then.

10 Q: Okay.

11 A: Nor did we line the pipe which is the object of  
12 this whole exercise.

13 Q: Okay. Now I'm going to show you another memo  
14 on October 16, 2014, which has been previously  
15 entered into evidence and -- off the record for  
16 a second.

17 (Off the Record)

18 Q: Okay. Mr. Sheu, we're back on the record. I'm  
19 showing you what's been marked as Exhibit 116.  
20 And can you describe what this document is?

21 (Plaintiff's Exhibit Number 116 was marked while off  
22 the record and introduced into the record.)

23 A: It's a meeting minutes from the progress  
24 meeting of October 16th, 2014.

25 Q: Okay. Were you present at this meeting?

1 Q: So are you telling me that you disagree with  
2 these memos that say that you were intending to  
3 build a road?

4 MS. WOOTEN: Object to the form.

5 A: It was intended to build. It's what was  
6 provided to us. We haven't had a chance to  
7 finish.

8 Q: Well, let's continue. This is a document which  
9 I think was previously identified as 117.  
10 Withdraw the question, you've already testified  
11 to that. Okay. Let's go to the next one which  
12 is identified as January 15th, 2015.

13 A: Okay.

14 (Off the record discussion)

15 (Plaintiff's Exhibit Number 118 was marked for  
16 identification purposes.)

17 Q: Mr. Sheu, what's this document, please?

18 A: This is the SS7218 construction progress  
19 meeting for January 15th, 2015.

20 Q: Did you attend this meeting?

21 A: It appears so. Yes.

22 Q: Do you recall anything about this meeting?

23 A: No. I mean, not -- not off the top of my head.  
24 It was two years ago -- two and a half years  
25 ago.

1 Hydroseeding remains to be completed.

2 Hydroseeding to be completed ASAP. Our  
3 contractor shall install cattle gate at access  
4 road per City's direction.

5 Q: Okay. And read the next paragraph.

6 A: "Once hydroseeding is complete, contractor  
7 shall not work in this area until further  
8 notice from the City due to unresolved issues  
9 with property owners."

10 Q: All right. So tell me what's going on here.

11 A: We had to clear the access to our easement and  
12 apparently at that time the complaint was first  
13 voiced, from your clients or some of your  
14 clients or whoever, that this was an issue as  
15 far as the clearing of that. We cannot leave,  
16 by DHEC regulations, any earth work uncovered  
17 for more than 21 days. So we -- we ordered the  
18 contractor to hydroseed that in order to  
19 stabilize the ground.

20 Q: Okay.

21 A: That's a requirement for erosion control. The  
22 property owners had also voiced complaints  
23 about the ability of people to access along  
24 there, where we'd cleared out to six or eight  
25 foot deep weeds along that line, so we

1 installed a gate to prevent at least vehicular  
2 access, ATVs or dirt bikes or whatever, from  
3 coming down there on the easement.

4 Q: Okay. So let's -- let's just talk about the --  
5 what -- what's happened here. So under the  
6 contract who was responsible for getting  
7 permits, do you know?

8 MS. WOOTEN: Object to the form.

9 A: The design engineer.

10 Q: And who was that?

11 A: Weston and Sampson.

12 Q: Okay. And was the City involved in any of the  
13 permitting requirements?

14 A: It's done on our beha- ---

15 Q: Was the City involved at all in any kind of  
16 permitting?

17 A: That's done by Weston and Sampson. ---

18 Q: Okay.

19 A: --- on our behalf.

20 Q: Okay. So Weston and Sampson was responsible to  
21 get all permits, is that correct?

22 A: Yes.

23 Q: Okay. What permits did they get, do you know?

24 A: I don't think there were any particularly  
25 necessary or thought to be necessary at that

1 A: I don't have an opinion on that. I'm their  
2 construction manager. You might speak to the  
3 City attorney.

4 Q: Uh-huh. Do you believe as a professional  
5 engineer that it's okay to go on somebody's  
6 land and move dirt without getting their  
7 permission?

8 MR. HEMLEPP: Object to the form.

9 MS. WOOTEN: Object.

10 A: Again, that's not my area. Why don't you to  
11 speak to the City attorney?

12 Q: Say again.

13 A: That's not my area of expertise. Why don't you  
14 talk to the City attorney? I think we've  
15 already stated many times that the clearing did  
16 occur some outside of the easement. That is  
17 regrettable. It happens. And when it happens  
18 we do the repair work both in and outside the  
19 easement, at the completion of our work, which  
20 we have not had the opportunity to do.

21 Q: When you were working as a private consultant  
22 -- consulting engineer did you have projects  
23 that intentionally went outside of an easement?

24 A: Not that I recall.

25 Q: Do you remember any specific projects where you

- 1 have spills we get fined by the EPA as well as  
2 DHEC.
- 3 Q: Perhaps what's -- what's more important is, is  
4 that these lines leak, we contaminate the Broad  
5 River, the sewer, correct?
- 6 A: Because of the proximity. That's right.
- 7 Q: Okay. And contamination of the Broad River  
8 with sewer could cause problems elsewhere in  
9 the City as well, could it not?
- 10 A: It could.
- 11 Q: So it's in the City's -- people of the City's  
12 best interest to have this line repaired,  
13 correct?
- 14 A: Absolutely.
- 15 Q: Okay. And that's why it was done?
- 16 A: Yes.
- 17 Q: It's not done now, is it?
- 18 A: It's not done, yeah.
- 19 Q: Okay. It's not done for what reason?
- 20 A: Because we stopped work on the project when the  
21 issues came up with the property owners.
- 22 Q: Okay. The property owners asked you to stop  
23 work, did they not?
- 24 A: Yes, they did.
- 25 Q: Okay. And you agreed at their request?

1 properties has impacted the ability of the City  
2 to get whatever was needed to be resolved with  
3 -- the Army Corps resolved, is that correct?

4 MR. HODGE: Objection

5 A: Again, I'll just go back, we can't finish our  
6 project.

7 Q: Right. And that is that at the request of the  
8 Plaintiff's in this case, correct?

9 A: That's my understanding.

10 Q: Okay. Mr. Sheu, are you aware of anything that  
11 Weston and Sampson has done that you would  
12 classify or opine as being wrong in this case?

13 A: No. I'd say, no.

14 Q: Okay. If the City intended for the access --  
15 if the City had intended for the access to be  
16 a paved, public road, is it your understanding  
17 that the City would have looked for and  
18 required compliance with its specifications for  
19 paved, public roads from the contractor?

20 A: Yeah. Well, we would -- we would -- we  
21 provided that to the contractor, but we didn't  
22 ever contemplate a paved, public road out  
23 there.

24 Q: Right. And if this -- if the City had actually  
25 intended for the access to be a paved, public

1           went outside of an easement?

2    A:    No.

3    Q:    Okay.  What exactly was the planned repair work  
4           that you testified to?

5    A:    We would -- the plan would generally have been  
6           to return the easement to -- and the ground to  
7           cover what was there before and to reestablish  
8           as much as possible the grade that was there  
9           before, or an acceptable staple grade and  
10          stabilize any areas that were disturbed.  And  
11          we would like to maintain what we probably had  
12          in 1983, which was at least a limited access  
13          along the sewer line.

14   Q:    So do you have an SCE&G easement on your  
15          property up at Blythewood?

16   A:    I don't believe so.

17   Q:    Where do you -- you live in Blythewood, right,  
18          you testified?

19   A:    Yeah.

20   Q:    Do you have SCE&G easement on your property up  
21          there?

22   A:    No.  Service connection is at the property  
23          line.

24   Q:    All right.  Well, suppose -- do you -- how wide  
25          of an easement do you have, do you know?

1 MR. GOTTSCHALL: Object to form.

2 MR. BOINEAU: Objection.

3 A: I don't understand the question.

4 Q: Okay. Do you have any published plans to  
5 repair the slope?

6 A: No. We don't repair ---

7 MR. HEMLEPP: Objection ...

8 MR. GOTTSCHALL: Object to form.

9 MR. BOINEAU: Same objection.

10 A: --- a slope repair like that.

11 Q: You referenced a planned remediation.

12 A: We require remediation of the -- and the repair  
13 of property where we go through within our  
14 easement and certainly ---

15 Q: How were you going to repair the slope and  
16 still have an access road for future use?

17 That's what I'm trying to find out.

18 MR. HEMLEPP: Object to form.

19 MR. GOTTSCHALL: Objection.

20 MR. BOINEAU: Objection.

21 MS. WOOTEN: Objection.

22 A: It would not be tremendously -- all of those  
23 manholes in that section along Castle Drive  
24 were visible at the start of the work. We  
25 didn't dig to get to the manhole covers. They

1 A: We would have the contractor fill that back in  
2 to some extent and to reseed it and stabilize  
3 it, but try to leave at least a path between  
4 the manholes so we could more easily access  
5 that at least with an ATV type vehicle.

6 Q: Can you point me to any written plans ---

7 A: No.

8 Q: --- that the City had to perform that  
9 remediation?

10 A: We don't have a plan to that kind of detail.

11 Q: So just like you didn't design the road, you  
12 didn't design the remediation, is that  
13 right?

14 MS. WOOTEN: Object to the form.

15 MR. GOTTSCHALL: Object to form.

16 A: It's not a road and ---

17 Q: Well, you certainly said it was a road. You  
18 trying to deny what you said now?

19 A: No.

20 MS. WOOTEN: Objection.

21 A: No. It was called a road.

22 Q: When did it stop being a road?

23 A: Okay. It's a road. It's an unapproved road  
24 and temporary.

25 Q: It was certainly a road -- you called it a road

1 that project. That was my understanding. And  
2 I don't deal with the Corps directly.

3 Q: Do you know whether the City has been fined by  
4 the Corps?

5 A: I don't know.

6 Q: Okay. Are you aware of anything that NAPM did  
7 in this case that was inappropriate?

8 A: No. Except that we know some of the clearing  
9 exceeded the 15 feet.

10 Q: Okay. But do you know what, if any, damage  
11 that caused?

12 A: I don't think any irreparable damage at all.

13 Q: Okay.

14 A: Because when we have the opportunity we will  
15 repair all that area.

16 Q: Do you know whether NAPM was provided with  
17 notice of the width of the easement?

18 A: I don't know that. I would assume they knew  
19 that but.

20 Q: You don't know whether they were though.

21 A: (Shakes head.)

22 Q: Okay. You're not a geotechnical engineer, are  
23 you?

24 A: No.

25 Q: Do you know whether the slope, as it sits

# **EXHIBIT D**

Deposition excerpts from Robert Collins deposition

1 Q. Okay. Have you ever seen -- well, strike  
2 that. You understand that Mr. Brinkman contends  
3 that he had an abutment on his property at one  
4 point in time; is that correct?

5 A. That's correct.

6 Q. Have you ever seen in person the abutment?

7 A. No.

8 Q. Okay. And that would be true before the  
9 work was done on the property that's at issue in  
10 this case and since the work was done; is that  
11 fair?

12 A. Yes.

13 Q. Okay. Is it your understanding that James  
14 Coleman may also have an abutment on his  
15 property?

16 A. I have no knowledge of that.

17 Q. Okay. I take it then you also haven't seen  
18 it to the extent it existed?

19 A. (Shakes head negatively.)

20 Q. I'm sorry. Can you give a verbal answer for  
21 the court reporter?

22 A. I have not seen it.

23 Q. Okay. Thank you very much. I appreciate  
24 that. Outside of the context of being Plaintiffs  
25 in this litigation, have you ever spent any time

1 A. I have only studied David Brinkman's work.

2 Q. Okay. Have you looked on the National  
3 Register in connection with Mr. Brinkman's  
4 property?

5 A. No.

6 Q. Okay. If you could look at response four,  
7 it is on the second page of Exhibit 64.

8 A. (Reading.)

9 Q. And it spills over to the third page.

10 A. Okay. I have no personal knowledge of  
11 number four.

12 Q. Okay. Mr. Collins, I've taken a look at the  
13 deed that's publicly available for your property  
14 on Castle Road.

15 A. Uh-huh (affirmative response).

16 Q. And it does not identify Ms. Collins as an  
17 owner of the property. And I understand that you  
18 all are married and that she has an ownership --  
19 it's her position she has an ownership interest  
20 in the property through that marital  
21 relationship.

22 A. (Nods head affirmatively.)

23 Q. Can you tell me why Ms. Collins was not  
24 included by name on the deed at the time of  
25 purchase in 2006?

1 A. Because it was my money that I received from  
2 one of my severances from being laid off at one  
3 of those insurance agencies that was acquired by  
4 someone else.

5 Q. Okay.

6 A. My wife also owns several rental houses  
7 where I am not named as owner, either.

8 Q. Okay. So there was a decision between the  
9 two of you as to how that property was going to  
10 be titled; is that fair?

11 A. No. I'm not sure there was a discussion  
12 about how it would be titled.

13 Q. Okay. Did y'all have a discussion about  
14 buying the property?

15 A. Yes.

16 Q. Okay. It was not a surprise to Ms. Collins  
17 that you were buying the property?

18 A. Absolutely not.

19 Q. Okay.

20 A. Right, right.

21 Q. All right. You can put Exhibit 64 away for  
22 now. Mr. Collins, I understand you're not  
23 personally on Facebook. Have you seen any  
24 Facebook posts by any of the other Plaintiffs  
25 involved in this case?

# **EXHIBIT E**

**Deposition excerpts from Carl Foster deposition**

1	STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
2	COUNTY OF RICHLAND	)	THE FIFTH JUDICIAL CIRCUIT
3			
4	MODESTA BRINKMAN, DAVID BRINKMAN,	)	C.A. NO.: 2015-CP-40-5598
5	JAMES COLEMAN, CARL FOSTER, KAREN	)	
6	FOSTER, ROBERT COLLINS, PAMELA	)	
7	COLLINS,	)	
8		)	Deposition of
9	v.	)	CARL FOSTER
10	WESTON & SAMPSON, INC., WEST &	)	
11	SAMPSON ENGINEERS, INC., WEST &	)	April 18, 2017
12	SAMPSON SERVICES, INC., WESTON &	)	
13	SAMPSON, CMR, INC., CITY OF	)	
14	COLUMBIA, SC, NORTH AMERICAN	)	
15	PIPELINE MANAGEMENT, LAYNE INLINER,	)	
16	ROBERT HOMER, P.E.,	)	
17		)	Defendants.
18		)	

19 Deposition on oral examination of CARL FOSTER, reported by  
20 Lisa F. Huffman, Verbatim Court Reporter and Notary Public in  
21 and for the State of South Carolina; said deposition taken  
22 pursuant to notice of deposition, by agreement and in  
23 accordance with South Carolina Rules of Civil Procedure, at  
24 McAngus, Goudelock & Courie, LLC, 1320 Main Street, Columbia,  
25 South Carolina, April 18, 2017, at 3:20 p.m.

1 history of the site didn't change your decision one  
2 way or the other, it was just something that you  
3 discovered afterwards, after you had already  
4 decided to purchase the site?

5 A. It helped solidify my decision.

6 Q. And have you done any archeology or exploring in  
7 your yard for historical and archeological sites or  
8 --

9 A. I love scratching in the dirt.

10 Q. Have you been able to find --

11 A. I have a metal detector. I have found a couple  
12 Indian pottery shards. I -- I walk along the  
13 river's edge and have found many pottery shards  
14 that have been tumbled.

15 Q. And tumbled, I guess, that just means that it has  
16 just been polished by the river?

17 A. Well, it -- yeah. It's a -- yes.

18 Q. Anything that you ever found, any historical or  
19 significant objects, artifacts that you found in  
20 the area where the road access has been put in  
21 place on your property?

22 A. Well, when -- when I first discovered the rocks at  
23 the precipice, they were all completely covered  
24 with either down trees or with ivy and I removed  
25 the ivy and cut up the trees looking for any kind

1 of markings. I don't know what I'm looking for and  
2 haven't seen anything that I would consider man-  
3 made, but I -- I'm not an archeologist. I'm -- I  
4 just like to play in the dirt.

5 Q. So nothing that you know of from that area?

6 A. That's correct.

7 Q. Has anybody been out to your property in addition  
8 to you and/or Mrs. Foster to examine the property  
9 for historical artifacts, whether that's Mr.  
10 Brinkman or Dr. Coleman, or any other individual?

11 A. Not with me, no.

12 Q. Anybody who's been out there without --

13 A. No.

14 Q. -- you?

15 A. Nobody to my knowledge.

16 Q. Do you know Dr. Leader? Does that name ring a  
17 bell?

18 A. I've heard the name. I'm -- I -- I'm unsure. I  
19 think he's a state archeologist, but I'm not  
20 positive on that.

21 Q. Where have you heard his name or in what context?

22 A. I think I heard his name from my lawyers.

23 Q. Have you ever had any personal contact with Dr.  
24 Leader?

25 A. No.

**EXHIBIT F**

Deposition excerpts from Andrew Tolleson deposition

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS  
2 COUNTY OF RICHLAND C/A. No. 2015-CP-40-5598

3 Modesta Brinkman, David Brinkman, )  
4 James Coleman, Carl Foster, )  
5 Karen Foster, Robert Collins, )  
6 Pamela Collins, )

Plaintiffs, )

7 vs. )

8 Weston & Sampson, Inc., Weston & Sampson )  
9 Engineers, Inc., Weston & Sampson )  
10 Services, Inc., Weston & Sampson CMR, )  
11 Inc., City of Columbia, SC, North )  
12 American Pipeline Management, Layne )  
13 Inliner, and Robert Horner, PE, )

Defendants. )

14 DEPOSITION OF

15 ANDREW R. TOLLESON, PE, D.GE

16 \*\*\*\*\*

17 Friday, September 1, 2017

18 10:10 a.m. - 1:36 p.m.

19 The deposition of ANDREW R. TOLLESON,  
20 PE, D.GE, was taken on behalf of the  
21 Defendants at the law offices of McAngus,  
22 Goudelock & Courie, LLC, 1320 Main Street,  
23 10th Floor, Columbia, South Carolina, on the  
24 1st day of September, 2017 before Cassandra  
25 E. Vance, Court Reporter and Notary Public  
in and for the State of South Carolina,  
pursuant to Notice of Deposition.

Andrew R. Tolleson, PE, D.GE

1 Q. Okay.

2 A. And I feel conflicted in this case with the  
3 City as a named Defendant, so I just don't think  
4 that I could be an expert witness.

5 Q. Okay. All right. And I think there --  
6 we'll go through these shortly, but I think there  
7 are a couple places in the e-mails that were  
8 produced as part of the response to the subpoena  
9 that note a -- they don't really say what the  
10 conflict is, but they note a possible conflict --

11 A. Right.

12 Q. -- so.

13 A. Well, even if -- I'll say this. Say there  
14 was no conflict whatsoever, none, that we've  
15 never done any work for the City, never even  
16 worked with the City of Columbia, it could be our  
17 own aversion to, you know, so.

18 Q. Sure.

19 A. So --

20 Q. You have the right to decide whether or not  
21 you want to be a --

22 A. Correct.

23 Q. -- testifying expert.

24 A. Correct.

25 Q. I understand that. Okay. All right.

Andrew R. Tolleson, PE, D.GE

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

MODESTA BRINKMAN, DAVID )  
BRINKMAN, JAMES COLEMAN, )  
CARL FOSTER, KAREN FOSTER, )  
ROBERT COLLINS AND PAMELA )  
COLLINS, )

Civil Action No.: 2015-CP-40-05598

Plaintiffs, )

Memorandum in Opposition to City of  
Columbia's Motion for Summary Judgment

v. )

WESTON AND SAMPSON, INC., )  
WESTON AND SAMPSON ENGINEERS, )  
INC., WESTON AND SAMPSON )  
SERVICES, INC., WESTON AND )  
SAMPSON CMR, INC., CITY OF )  
COLUMBIA, SC, NORTH AMERICAN )  
PIPELINE MANAGEMENT, LAYNE )  
INLINER AND ROBERT HORNER, P.E., )

Defendants )

Plaintiffs respectfully disagree with the assertions by the City that no genuine issue of material facts exists in this case. There are sufficient reasons why this Court should deny Summary Judgment to the City since there exists multiple material facts that are in dispute. For such reasons, it is appropriate to deny the City's Motion for Summary Judgment.

**Standard for Summary Judgment:**

Rule 56 (c) of the South Carolina Rules of Civil Procedure provide that summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Cunningham v. Anderson County*, 741 S.E.2d 545, 549 (S.C. App. 2013), citing *Jackson v. Bermuda Sands, Inc.* 667 S.E.2d 612, 614 n:2 (S.C. App. 2009). The party seeking summary

judgment has the burden of clearly establishing the absence of genuine issues of material fact. *McCall v. State Farm Mut. Auto. Ins. Co.*, 597 S.E.2d 181, 183 (S.C. App. 2004). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot rest on mere allegations or denials contained in the pleadings. *Regions Bank v. Schmauch*, 582 S.E.2d 432, 438 (S.C. App. 2003). The nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *Rife v. Hitachi Constr. Mach. Co., Ltd.* 609 S.E. 2d 565, 568 (S.C. App. 2005). The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003), quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E. 2d 868, 874 (2001).

**Sufficient Disputed Material Facts Exist to Deny Summary Judgment:**

The City incorrectly alleges many of facts as undisputed in the sections of its brief titled as Statement of the Case and Undisputed Facts when in reality, there are manifold disputed facts. The City's section of "Undisputed Facts" is an oxymoron as that section is replete with disputed material. The disputed material facts include:

1. The lining of sewer pipes on the access road built through the Plaintiffs properties was not considered absolutely necessary for any compliance with any Consent Decree resulting from the City of Columbia's non-compliance with EPA regulations. Exhibit A is an email between Megan Moody of Weston and Sampson and the other defendants clarifying the lining of the pipes could be eliminated in item 4.
2. Documentation from the City of Columbia and testimony indicates clearing and grading may have proceeded to a point of completion. See Exhibit B.
3. Although Plaintiff Carl Foster confronted Defendants just over his property line with a copy of the easement in hand and pointing out that the activity and width was not allowed, the City stopped work on the project, and later the Army Corps of Engineers issued a stop work directive to the City of Columbia and Layne from doing any further

work at the site for failure to obtain a Section 404 permit prior to filling wetlands on the Plaintiffs' properties. See Exhibit C.

4. The easements grant a temporary construction easement. The actual easement language states "do hereby grant unto the said City of Columbia, South Carolina, its successors or assigns, an easement and right of way 15 feet in width, with an additional width of 10 and 25 feet for construction purposes only..." This construction easement is clarified as follows:

Also, a temporary construction easement of 10 feet in width, shall extend along the entire length of, and adjacent to, the west boundary of the aforementioned permanent easement.

Also, a temporary construction easement of 25 feet in width, shall extend along the entire length of, and adjacent to, the east boundary of the aforementioned permanent easement.

The construction of this sewer line took place in 1986 or 1987. It is clear that the construction easement does not persist. The construction easements became null and void after construction of the sewer line was completed. Leaving a 15 foot permanent easement.

#### I. The Court Should Not Dismiss Pamela Collins.

The Motion for Summary Judgment does not mention the dismissal of Pamela Collins. Therefore, this should not be considered by the Court when raised in a memo provided to Plaintiff's counsel at the beginning of the hearing on the Motion to dismiss.

Mrs. Collins is married to Robert Collins, has contributed to paying for this property and has an interest by marriage in the property.

#### II. The Court should not dismiss Robert and Pamela Collins' claims for causes of action for damages to historical or archeological structures.

This issue was also not raised in the motion for summary judgment. It was raised in the memo supplied at the beginning of the hearing. For that reason, the dismissal is not properly raised and should not be considered by the Court. A colonial road was identified on the Collins property and there is evidence that it was buried by the City's actions, thus obscuring any artifacts and structures that may have existed.

There are no known archeological structures on Carl and Karen Foster's property. Any claims by Carl and Karen Foster for Archeological Damages do not exist against any of the Defendants.

As to the existence of archeological structures, the deposition of State Archaeologist, Dr. Jonathan Leader identifies a historic road bed. While Dr. Leader's deposition doesn't place the road on the Collins' property, it is placed there in the deposition of Robert Collins pp.92-93.

Q. Do you know anything about that?

A. All I know is that my lot is supposed to contain remnants of the historical roadbed.

Summary Judgment is not proper because a dispute of material fact exists as to whether there is a historical structure on the Collins' property.

### **III. The Plaintiffs have alleged facts sufficient to state a Cause of Action.**

#### **A. Gross Negligence:**

The City has a duty of care to the Plaintiffs through the easements and private property rights of the Plaintiffs. An example easement is attached as Exhibit D. The City's permanent easement limits their activities to 15 feet and that limitation was known by all parties, including the City's construction inspector and the City's engineer. It was known to the City and the City's construction inspector. See Exhibit E, meeting minutes in which all defendants are aware of the 15 foot easement prior to construction.

Weston and Sampson Engineer, Mr. Pierce, P.E. indicated that it was not his job to stop the contractor from exceeding the easement because it was the City of Columbia's easement and the City Inspector, Mr. Cockrell, was present on site. Deposition testimony of Gene Pierce, Page 75:

15 Q: And, so what I really want to understand, Gene,  
16 is, is to, to the best of your ability, explain  
17 to me in detail, why the easement's not Weston  
18 and Sampson's problem.

19 MS. WOOTEN: Object to the form. You can answer.

20 A: It's a City owned easement.

21 Q: Okay.

22 A: And the City inspector was on site during the  
23 work. Our role was to monitor construction.

The Plaintiffs' expert, Mr. Abatta further expounded on this duty to obtain permission or a temporary easement to exceed the permanent easement. Mr. Abatta's testimony placed the duty of obtaining property owner permission or the proper easement on both the City and Weston and Sampson.

From the deposition testimony of Allan Abatta, Page 136-139:

23 Q. At the beginning of your deposition, I  
24 asked you about your -- not necessarily the  
25 beginning; but at some point, I asked you about your  
Page 137

**ALLAN A. ABBATA, PE - EX. BY MR. BOINEAU**

1 opinions. One of them was construction issues  
2 damaging the residence. One of them was permit  
3 violations. I want to talk to you a little more  
4 about that. What is your opinions with respect to  
5 any permit violations?

6 A. I guess as an engineer, if I was a  
7 design engineer, which I was in the past. I'm not  
8 currently a design engineer, but I can still do  
9 design work. One of the big things I would look at  
10 would be if I needed any permits for any of the  
11 construction work that I was designing.

12 And according to the agreement between  
13 the City and Weston & Sampson, it clearly states  
14 that permits are their responsibility, both the City  
15 and Weston & Sampson. And in this case here, when  
16 you have that much disturbed soils outside of a  
17 property permanent easement, you're going to need  
18 some type of permits.

19 Q. You believe a permit should have been  
20 pulled in this case?

21 A. Absolutely, yes. And, you know, I hate  
22 to bad mouth any engineering company because I'm an  
23 engineer; but, you know, there's a standard, there's  
24 an ethics standard as well. I mean, if the engineer  
25 knows that he needs to do that and doesn't do it, that's an ethics violation.

2 Q. Why do you believe a permit should have  
3 been pulled?

4 A. Because there was work outside of the  
5 permanent easement.

6 Q. So it's your opinion that, if the work  
7 had stayed completely confined to the easement, a  
8 permit would not have been necessary?

9 A. Not necessarily; but from a  
10 constructability standpoint, yes.

11 Q. What type of permits should have been  
12 pulled?

13 A. Permit to, you know, to increase an  
14 easement to work on people's personal property.

15 Q. Where would they have gotten that  
16 permit?

17 A. From the City, I would think. I think  
18 the City conducts, you know, business to issue  
19 temporary easements.

20 Q. You think the City could have gotten a  
21 temporary easement to do the work on this sewer  
22 line?

23 A. The City or the engineer?

24 Q. Either one.

25 A. I believe so, yeah. I mean, I don't see why they  
I why they won't-- why they couldn't.

The contract between Weston & Sampson and the City of Columbia places the responsibility of obtaining the proper easement for the construction on the City of Columbia. Specifically:

The City shall be responsible for the following: obtain any required permissions to survey; prepare attendant legal descriptions for any required easements; acquire any easements necessary for construction of the Project; submit any applications and supporting documentation prepared by the Engineer to appropriate authorities to obtain any permits and/or approvals necessary for construction of the Project; and, prepare and provide the notice to contractors and any standard contract documents.

The City's Engineer, Michael Sheu, P.E. made it clear that it was the City's responsibility to stop this project from exceeding the easement parameters. Mr. Sheu specifically stated that it was the City Inspector's job. Deposition of Michael Sheu, Page 118-119:

6 Q: Okay. I'll ask it one more time. I want to  
7 make sure we're -- the record is clear. In  
8 your experience, having been a professional  
9 engineer since 1975, do you have any basis to  
10 justify working outside of an easement in this  
11 case?

12 MR. GOTTSCHALL: Object to form.

13 A: I'm not an attorney, but I know it does happen.  
14 We have to clear at least enough area to get a  
15 vehicle in to our easement. And we do the  
16 repair work on all of the easement when we're  
17 complete.

18 Q: And that gave you permission to exceed the size  
19 of the easement?

20 MS. WOOTEN: Object to the form.

21 MR. GOTTSCHALL: Object to the form.

22 A: It did. It's unfortunate that it did exceed  
23 the 15 feet. I wasn't out there.

24 Q: But you agree that the City did not obtain the

25 permission of the land owners to exceed the  
1 size of that easement?

2 MR. GOTTSCHALL: Object to the form.

3 MR. HEMLEPP: Object to the form.

4 A: No. We did not have any permission from the  
5 property owners to exceed that easement.

6 Q: Okay. Was there any contractor of the City or  
7 sub-contractor that would have been responsible  
8 to ensure that the work stayed within the  
9 easement?

10 MR. GOTTSCHALL: Object to the form.

11 A: It's the -- usual practice is to attempt to  
12 stay within the easement.

13 Q: In this case, who would that have been?

14 A: The inspector on the job was Alan Cockrell but  
15 -- and it was unfortunate that it exceeded the  
16 15 foot easement. But to accomplish clearing  
17 the easement out of the way to move a vehicle,  
18 in there it did go beyond 15 feet. I don't  
19 think anybody's disputed that since the start  
20 of this.

In summary, the easements establish that the project must remain within the bounds of the 15 foot permanent easement. Both the contract between Weston & Sampson and the City as well as the testimony of Mr. Sheu make it clear that it was the City's job to ensure that this project stayed within the limits of the easement and stop construction outside of the easement. The City had a duty to the Plaintiffs to stay within the limits of the permanent easement.

Gross negligence is the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do. Richardson v. Hambright, 296 S.C. 504, 374 S.E.2d 296 (1988).

From the deposition testimony of Gene Pierce PP 193-194:

4 Q: Did you notice any unforeseen site conditions?

5 A: No, not really.

6 Q: Did they -- when you went out to the site was  
7 their road building indicative of a  
8 misunderstanding of how wide they could build  
9 a road?

10 MS. WOOTEN: Object to the form.

11 MR. STEWART: Object to the form.

12 MR. GOTTSCHALL: Same objection.

13 A: No.

14 Q: So they were building a road knowing they were  
15 exceeding the easement?

16 MR. GOTTSCHALL: Object to the form.

17 MR. STEWART: Object to the form.

18 A: I can't answer that for sure.

19 Q: Okay. You don't think that was unforeseen?

20 A: Don't think what was unforeseen?

21 Q: The exceeding the easement.

22 MR. GOTTSCHALL: Object to the form.

23 MS. WOOTEN: Object to the form.

24 A: No.

25 Q: So you believe that everybody out there knew

Page 194

1 that that easement was being exceeded when it

2 --when that road was being built?

3 MS. WOOTEN: Object to the form.

4 MR. GOTTSCHALL: Object to the form.

5 A: I think we were aware that the easement was

6 being exceeded.

Per Mr. Sheu, the construction was not possible on that slope without exceeding the easement, therefore all parties knew the easement would be exceeded before work began. Deposition of Michael Sheu, PP 146:

13 Q: Okay. Is it permitted to dig outside of the

14 easement?

15 MR. HEMLEPP: Objection.

16 MR. GOTTSCHALL: Object to the form.

17 A: I'm not an attorney. I know in this case that  
18 some of the clearings did occur outside of the  
19 easement because they couldn't physically do  
20 the full width of the easement without getting  
21 outside because of the slope.

Before the construction even began, the City knew from the slope of the terrain that building a road there would require more space than their easement allows. The steepness of the slope and conditions in that area was not unforeseen as per Gene Pierce's testimony. It is incumbent on the City to stay within the easement and to actively build a road that exceeded the dimensions of the City's Easement, they were grossly negligent by intentionally exceeding the easement.

**Negligence Per Se:**

The City has alleged that there is no support for the Plaintiffs' claim of negligence per se; however, the City is incorrect. Although the City filed no written discovery with the Plaintiffs asking for the basis for the Plaintiff's negligence per se claim, the City has been on notice of such claims since June 16, 2016. On June 16, 2016 the Plaintiffs answered the following interrogatory in response to that very question and on information and belief served or otherwise provided by email a copy of the response below to all Defendants. Attached hereto is an email from Plaintiffs' counsel to include Ms. Lisowski and her co-counsel. Excerpted from the discovery responses is the following:

15. Identify all permits that you contend the Weston Defendants were obligated to procure in connection with the Project but did not. A responsive answer will identify the type of permit, the laws or regulation requiring the permit, the organization issuing the permit, and the date by which you contend the Weston Defendants were required to procure the permit.

**RESPONSE:** To the extent that discovery is ongoing and the relationship of the Weston & Sampson Defendants to the City of Columbia and other defendants is unknown, these interrogatories will be supplemented after the close of discovery. On information and belief, the Plaintiffs believe that Weston & Sampson had a duty to protect the public, including the Plaintiffs and to ensure that its recommendations were not carried out in a manner that would cause damage to the lands of others.

Such permits should have been obtained and fully effective prior to the commencement of work on the project. On information and belief, permits that should have been obtained for the project include, but may not be limited to the following:

- • Road and Bridge Permit(s) (City of Columbia, Richland County, DOT)
- • Stormwater permit (SCDHEC; Richland County)
- • Flood Plain/FEMA Permit/Approval (Richland County; FEMA)
- • Section 404 permit (USACE)
- • Section 401 certification (SCDHEC)
- • Zoning permit (Richland County; City of Columbia)
- • Land disturbance permit. (SCDHEC)

The aforementioned description provided the City with notice of the type of permit and the agency having jurisdiction over the permitting process. The City employs an Engineering Department and the names of the aforementioned permits should be common knowledge to persons in that Department. In addition, several of the permits refer to "Section 404" and "Section 401" which refer to the Clean Water Act. On information and belief, the City has retained consulting experts in this case that have familiarity with these permits and regulatory programs. In addition, it is undisputed that the City has outside environmental counsel who are intimately familiar with these programs. Lastly, a Google Search of these permits would provide sufficient information to the City. The City's failure to serve written discovery had it not known what permits, statutes, regulations, or other authority Plaintiffs' had alleged is fatal to their motion.

The Plaintiffs' expert, Allan Abbata, PE further testified on page 275 of his deposition that several permits should have been obtained including a Army Corps 404 Permit:

13 Q. Have you looked at the statute, the  
14 regulations that set forth when permits are  
15 required?

16 A. Yes.

17 Q. Okay. Which one was it? What --

18 A. 404 permit.

19 Q. 404 requires a permit for this?

There is a genuine issue of material fact regarding the City's claim that the purpose of these statutes would have protected the Plaintiffs from the kind of harm complained about. For example, under DHEC regulation 61-9, pursuant to the Federal Clean Water Act this work required a stormwater permit for construction activities. It is undisputed that the threshold a land disturbance greater than one acre occurred which required a permit. The City and its contractors failed to obtain such a permit. Had they obtained a permit the Defendants would have been required to prepare detailed plans and drawings depicting the work that was anticipated. Compliance with such a permit requires that one have proper property rights, conduct activities in within the limits of plans, and perform inspections periodically to ensure that sediment does not runoff from the site onto adjacent land or into nearby waterways. Had the City obtained a stormwater permit pursuant to South Carolina Regulation 61-9, the City and its contractors would have confine their work within the dimensions of the easement and follow the plans and conditions set for by SC Regulation 61.9.

Secondly, it is undisputed that the Army Corps of Engineers (USACE) has alleged that there were "404 violations" as a result of the City and its contractor's actions. The Corps has alleged that soil from the City's project was deposited in wetlands on the Plaintiffs' land in contravention to the Clean Water Act. Had the City and its contractors obtained a Section 404 permit, they would have been required to obtain the landowners' (Plaintiffs') permission for their activity. The United States Army Corps of Engineers administers the Section 404 Permit process. Based upon Corps' guidance and 40 CFR 320.4 (e), had the City and the Defendant contractors obtained a Section 404 Permit, they would have been required to perform a cultural resources review of the site. Corps' guidance states, "If sites listed as eligible or potentially eligible for listing in the National Register of Historic Places within the proposed project's geographical area for review...each alternative site must be reviewed for cultural resources."

Had the City and its contractors obtained a Section 404 permit, they would have presumably had notice of the two historic bridge abutments that were destroyed. In addition, both a Section 404 Permit and a 401 Certification (performed by DHEC) require that adjacent landowners receive written notification of the proposed activity.

If the Defendants had obtained the proper permits, notice would have occurred and much of the damage complained of by the Plaintiffs would have been prevented. Since these permits have notice requirements, the Plaintiffs are clearly in the class of persons who would have been protected by these permit. Plainly, destroying wetlands on our clients' property would have been prevented by obtaining such permits. These examples underscore how the City and its contractors were negligent as a result of their failure to obtain permits, and how such failure was related to the injury for which the Plaintiffs' complain.

**Evidence of Damages:**

There are numerous disputed facts related to the City of Columbia's claims that there are no damages shown. The memo suggests Mr. Abatta showed up for his deposition and refused to answer questions. Nothing could be farther from the truth. The refusal to answer questions was related to approximately 8 documents over which a privilege is claimed. Claiming a privilege over photographs was never intended and Mr. Abatta misunderstood that the photographs were in fact withheld under privilege. They were not.

Mr. Abatta actually answered the defendants questions for nearly nine hours. In that line of questioning he very clearly laid out damages caused by the defendant's work on the site.

Page 307 of Allan Abatta's Deposition discusses cracks in James Coleman's residence that have formed since the construction and links them to failure of the steep cliffs created below Mr. Coleman's home as the cause and proximate cause:

9 Q. All right. But clearly that footer  
10 would have to have sunk over time, correct, to cause  
11 this thing to crack?

12 A. Yes.

13 Q. And do you -- is it your opinion that  
14 that dropping of the footer is a result of the soil  
15 moving; is that right?

16 A. That's correct.

17 Q. And how far is it from that corner to  
18 the slope?

19 A. I'd say it's somewhere in the  
20 neighborhood of 20 to 30 feet.

21 Q. Okay. Now, do you see -- do you see  
22 actual evidence of slope failure when you go out  
23 there?

24 A. Yeah. Because I would -- I would  
25 characterize sloughing as a slope failure.

In addition, residents did specify damages that occurred as a cause and proximate cause of the excavation. These included loss of access to part of the property due to cliffs and loss of trees. From the Deposition of Robert Collins on Page 54:

Q. Have you noticed -- you personally, have you noticed a change in the topography of your property since the road or access was put in place?

A. Yes.

Q. Tell me or describe for me what changes you've noticed.

A. I have a sharp cliff there now, so I can no longer access the river. Old hardwood trees have been removed. There are more hardwood trees at the lip of the cliff that are eventually going to fall down.

The cliffs referred to in Mr. Collins testimony are shown in Exhibit F. Per the pink survey stakes showing the boundaries of the 15 foot easement, the cliffs are for the most part not within the bounds of the easement.

Dr. Leader, the State Archeologist, very eloquently stated that the Defendants caused harm to an archeological site and pointed out that the statute does not require the Defendants to know it was an archeological site. Deposition of Jonathan Leader, Page 106-107:

Q. Okay, So they -- your -- you believe that they -- that they uncovered an archaeological resource?

A. I believe that they did indeed damage an archaeological resource.

Q. Okay, What knowledge or information do you have that that person did it on purpose?

A. I think there are two things that go to that, which I have yet to receive information on. So one is information specific to an individual who was engaged in the act who said that they knowingly went beyond and did the damage.

Whether they knew that they were in the process of destroying the archeological site or not, to me, is immaterial. Once they willfully chose to violate other laws, strictures, regulations to go on the property, if indeed that was the case as alleged, then they – whether they knew specifically there was an archeological resource or not, they engaged in a negligent act which damaged an archeological resource.

In his Deposition David Brinkman marked the locations of the historic bridge abutments in yellow on page Plaintiffs --- 00262. The sewer line is the black line with dots indicating manhole locations. The 15 foot easement is the first dotted line on each side of that sewer line. In Exhibit G, it is clear that David Brinkman, the person who discovered these structures and owns one of the properties, places them outside of the easement.

Dr. Leaders' testimony in conjunction with the survey showing the easement did not include the archeological structures and the explanation of permit requirements in the negligence per se section of this memo indicate that there are damages of an archeological nature that are caused by the Defendants, including the City of Columbia.

There is sufficient evidence of damages that are both caused and proximately caused by the city of Columbia exceeding its easement.

#### **Sections 15-78-60(1) through 15-78-60(5) Do Not Afford the City of Columbia Immunity:**

For 15-78-60(1), 15-78-60(2), 15-78-60(3), 15-78-60(4) and 15-78-60(5) the determination of immunity from tort *liability* turns on the question of whether the acts in question were discretionary rather than ministerial. Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (S.C. App. 2004). A finding of immunity under the Act "is contingent on proof the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards." Wooten ex rel. Wooten v. South Carolina Dep't of Transp., 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999). "The governmental entity bears the burden of establishing discretionary immunity as an affirmative defense." Sabb v. South Carolina State Univ., 350 S.C. 416, 428, 567 S.E.2d 231, 237 (2002).

In the case at hand the city does not have discretion over whether to comply with easements, Federal environmental regulations and State environmental regulations. Without that discretion,

there is no immunity afforded under 15-78-60(1-5). There was no valid exercise of discretion. Respecting property rights, staying in the bounds of easements and obtaining legally required permits are non-discretionary duties.

#### **15-78-60(9) Does Not Apply**

Several statutes and ordinances permit specific municipal officials or utility workers to enter a property for lawful purposes. Exceeding an easement and destroying property is not a lawful purpose and does not qualify for immunity. Much of the work conducted by the City and its Contractors was beyond the boundaries of the easements held by the City. Allan Abatta testifies to this:

#### **15-78-60(17) Does not Apply because Malice or Intent to Harm Plaintiffs is not Necessary.**

S.C. Code Ann. § 15-78-60(17) states, "[a] governmental entity is not liable for a loss resulting from ... employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude."

Sewer maintenance is within the City Employee's official duties.

The City is unable to point to anything showing intent to harm the plaintiffs or malice towards the plaintiffs by any individual because such evidence does not exist. For both this reason and the fact that sewer repair is within

Likewise, the intents associated with the causes of action do not necessitate an intent to cause harm or an ill will towards the Plaintiffs. Neither an ill will towards the Plaintiffs or an intent to cause the Plaintiffs harm was uncovered in deposition testimony of City employees Michael Sheu and Allen Cockrell. Neither of these employees knew or had interactions with the Plaintiffs that would lead to an intent to cause harm or malice.

While the City may have intended to exceed its easement and destroy the bridge abutments, there are other motivations in exceeding that easement. The one stated over and over again by the City of Columbia was they felt compelled to get equipment into the property to maintain the sewer

line. Exceeding the easements and destruction of the historic bridge abutments was an act of convenience rather than an act of ill will. The City acted willfully and wantonly, but not with malice towards or intent to harm the Plaintiffs.

#### **15-78-60(20) Does not Apply Because the City Acted in Concert with Others**

This was not a solo act by a non-governmental employee. The City hosted progress meetings and was actively involved in planning the road. City of Columbia Construction Inspector Alan Cockrell generated the idea of building the road and was involved in planning the road. See Exhibit H.

The same City of Columbia employee was an inspector for the city and was present at the progress meeting where 15 foot easements were identified (see Exhibit E). Mr. Cockrell testified that he was present at the construction site when the road grossly exceeding the 15 foot easement was built. All of the Defendants were present and part of these road planning meetings leading up to the construction that violated the easements and failed to obtain permits.

#### **The Elements of Inverse Condemnation are Present in this Case.**

The elements of an inverse condemnation are (1) an affirmative, positive, aggressive act on the part of the governmental agency, (2) a taking, (3) the taking is for a public use, and (4) the taking has some degree of permanence. *Rolandi v. City of Spartanburg*, 294 S.C. 161, 363 S.E.2d 385 (Cl.App.1987).

The affirmative act was the building of an access road that exceeded the easement and created cliffs and topography that eliminates ability to access part of the property and the river on riverfront property. The taking was both elimination of ability to access part of the property and exceeding the scope and dimensions of an easement to build an access road. This is best shown by the steep cliffs depicted in Exhibit F. The survey stakes for the 15 foot easement are pink and show these cliffs to be outside of the permanent easement in Exhibit F. The public use is an access to the city sewer line that exceeds the easement dimensions and scope. Documents from the City of Columbia proposing the road indicate the public use as well as intent for this to be a long term access road. See Exhibits H and I.

There is further evidence in the testimony of City Inspector Alan Cockrell that this road was intended to be permanent. Deposition of Alan Cockrell on pages:

Deposition of Alan Cockrell Pages 60-61:

15 Q: How long was it intended that this access be  
16 used?

17 A: Long enough to do the work.

18 Q: Was there an intent for this access to be  
19 available for future work?

20 A: Yes, sir.

There is sufficient evidence to show dispute of material fact over whether there was permanency to this taking of property as well as sufficient evidence to show that the City did not in fact stay within its easement from the testimony of Mr. Sheu provided earlier in this memorandum. The cliffs preventing access to the lower portion of the property mentioned previously from Mr. Collin's deposition further show a taking by creating a barrier to accessing the portion of the property on the river.

**The Elements of a Private Right of Action under 16-11-780 are Established:**

The elements are established in 16-11-780(C) and 16-11-780(I). The elements are the Defendants (1) wilfully, knowingly, or maliciously entered upon the lands of another and (2) disturbed or excavated a prehistoric or historic site (3) for the purpose of discovering, uncovering, moving, removing, or attempting to remove an archaeological resource.

There is no doubt after Michael Sheu's deposition that the city knew they exceeded the easement. See Deposition of Michael Sheu, PP 146. The archeological resources were outside of the easement and on private property. See Exhibit G where the yellow marks are structure locations marked outside the 15 foot easement. The activities of the Defendants disturbed and excavated the two sites. The purpose was for moving the stones of the bridge abutments so that the city could have a wider roadway. Moving the stones was accomplished by the Defendants. Furthermore, from the deposition testimony of James Coleman and David Brinkman the

Defendants were told and knew the structures were archeological sites. Deposition Testimony of David Brinkman, p 76: 6-22:

Then on Wednesday, it was when they came back and just started going over this road, back and forth. You know, they were like compacting it and making it a little wider in some places. And that's when Mr. Coleman said he came out here on his deck and pointed to them. Pointed out this structure, told them it was a historic structure and they better not mess with it.

He left, came back two hours later. Some of the stones that were up here on part of it had been knocked off. (indicating/) This huge – the largest part of the structure had a huge scrape mark on the side of it, which we've got photographs of all that...

There is clearly dispute of material fact regarding each element of Archeology Act private right of action and Summary Judgment is not proper.

**Section 15-78-200 does not limit Causes of Action that are not Tort.**

Both the South Carolina Archeology Act, Section 16-11-780 and inverse condemnation are not tort. 16-11-780 is a statute that includes a private right of action for recovery of damages to private property. Inverse condemnation also relates to recovering damage or loss to property. Because these are not torts, they are not limited by the South Carolina Tort Claims Act. Limitations of the Tort Claims Act such as barring award of attorney's fees for tort causes of action will not apply to South Carolina Code Section 11-16-780 and inverse condemnation. Plaintiffs agree that any tort claims such as Gross Negligence and Negligence brought against Defendant City of Columbia are limited by the provisions of SC Code Section 15-78-120.

**SC Code Section 16-11-780K(3) Does Not Protect the City of Columbia.**

The key word in this protection for government utility workers is lawful acts. The historic bridge abutments were outside of the City's easement and by exceeding the easement, the utility workers were no longer engaged in lawful acts.

**Conclusion:**

For the above stated reasons, sufficient evidence exists to create numerous disputes of material fact. Summary Judgment is therefore not appropriate, thus the Court should deny the City of Columbia's Motion for Summary Judgment.

Respectfully Submitted

Geoffrey Chambers

Attorney for Plaintiffs

This 3rd Day of January, 2018

Columbia, SC

Exhibit A: Email from Weston & Sampson indicating lining of pipes was not necessary to comply with EPA requirements in item 4.

**From:** Moody, Meghan <moodym@wseinc.com>  
**Sent:** Wednesday, November 19, 2014 3:03 PM  
**To:** Sheu, Michael F <mfsheu@columbiasc.net>; floydem@cdmsmith.com; Cockrell, James A <jacockrell@columbiasc.net>; Jeffers, Jeff J <jjjeffers@columbiasc.net>; steve.coker@napminc.com; Don Robertson (Don.Robertson@Layne.com); Shannon Herford (Shannon.Herford@Layne.com)  
**Cc:** Horner, Robert <Hornerr@wseinc.com>; Pierce, Gene <PierceG@wseinc.com>  
**Subject:** RE: SS7218 WC Basin 02  
**Attach:** SS7218 Memo to M. Sheu.pdf; SS7218 RFI001 Nov 11 2014.pdf

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All,

Based on the below email and the phone calls I've fielded from Steve and Mike, prior to tomorrow's meeting I wanted to lay out all of the information regarding the current scope, recommended scope changes/additions, and the basis for an access road.

1. The proposed access road would extend from the power easement, parallel to Broad River north from SS-WC02-16592-MH to SS-WC02-16612-MH and south from SS-WC02-16615-MH to SS-WC02-14769-MH. These roads are approximately 1900 LF and 1800 LF respectively.
2. Of the pipes in between those points, 8 include CIPP and repairs within the scope of the project. Those pipes are all accessible for CIPP and the contractor has a plan to do the work on those pipes without need for clearing or constructing a road.
3. The proposed road would provide access to pipes that were, as per the project scope, only scheduled for CCTV. That CCTV has been completed and those pipes reviewed by the consulting engineer for rehabilitation needs. Approximately, half of those pipes are recommended for CIPP, mostly due to tuberculation and small joint offsets.
4. If an access road is not added to the project scope, the added CIPP can be eliminated (the tuberculation is not significant enough to be greatly impacting the wastewater system).
5. Currently, access to approximately half of the pipes along Broad River is limited if not impossible for maintenance vehicles and equipment.
6. The project budget is currently carrying approximately \$500,000+ of unallocated funding based upon cost savings from a reduced number of point repairs and less costly solution for lateral repairs.
7. The two pipes passing under I-126 still have exploratory CCTV needed—the east requires the flow passing through it to be cleared ahead of the camera in order to get a better look at the pipe and the bottom of the pipe where a couple of very large sags appear to exist. The west needs to be re CCTV'd and a decision made about the best way to repair the pipe, which is completely corroded through, and how best to fund the project—either through a new contract put out to bid by the City or on this contract with the remaining funds.
8. Moving forward, in order to use the money remaining in the budget, the contractor will most likely need to extend the contract completion date currently set for mid-February. Attached is an RFI from Layne & NAPM requesting an additional 90 days.

Look forward to seeing all of you tomorrow!

Thanks!

01-000945

Page 231 of 583

Sincerely,  
Meghan

Meghan E. Moody, EIT  
ENGINEER II

**Weston & Sampson**

672 Marina Drive, Suite 204  
Charleston, SC 29492  
[www.westonandsampson.com](http://www.westonandsampson.com)  
Office: 843-881-9804  
Cell: 843-277-5933  
Fax: 843-881-9807



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**From:** Sheu, Michael F [mailto:mfsheu@columbiasc.net]  
**Sent:** Wednesday, October 22, 2014 11:44 AM  
**To:** Moody, Meghan  
**Cc:** floydem@cdsmith.com; Cockrell, James A; Jeffers, Jeff J  
**Subject:** SS7218 WC Basin 02

Meghan,

Just a reminder regarding the Change Order Proposal that Layne-Inliner is working up: the only "change" that we will be considering in regard to constructing some kind of road along the riverside portion of the sewer line would be those efforts that may be necessary to access the line for work that is not included in the basic scope of services. In other words, as several segments of pipe are shown on the drawings as being rehabbed, and several segments are shown as being CCTV'd, we expect the Contractor to perform whatever efforts are necessary to access those lines and manholes, to the extent necessary to accomplish the work that was stipulated in the plans and specs, without further compensation.

I believe we have all made this clear in the previous meetings, but the amounts of money and effort being mentioned at our last meeting indicate that perhaps this is not universally understood, and I wanted to make sure we are "all on the same page in this regard."

Please let me know if you have any questions.

Thanks



**Michael F. Sheu, P.E.** Assistant City Engineer for Construction

Utilities and Engineering  
Construction Management

1136 Washington Street, Suite 510  
PO Box 147

Columbia, SC 29217

Phone: 803-545-3327

Fax: 803-545-4130

Cell: 803-240-9412

Email: [mfsheu@ColumbiaSC.net](mailto:mfsheu@ColumbiaSC.net)

Exhibit B: Meeting Minutes from February 19<sup>th</sup> showing access road was completed in item 5.

**SS7218 Construction Progress  
Meeting Minutes  
February 19, 2015 @ 10 AM**

1136 Washington St.  
7<sup>th</sup> Floor Conference Room

1. Progress Meeting was attended by Michael Shue, Steve Staley, Emilia Floyd, and Alan Cockrell of the City of Columbia; Steve Coker of NAPM; Shannon Herford of Layne Inliner and Gene Pierce of Weston & Sampson.
2. Manhole lining is complete.
3. CIPP is approximately 80% complete. NAPM to provide schedule of what is remaining.
4. Weston & Sampson will provide a write-up for the change order request for the scope of the access road.
5. Access road construction is complete. Hydroseeding remains to be completed. Hydroseeding to be completed ASAP. Contractor shall install cattle gate at access road per city's direction.
6. Once hydroseeding is complete, contractor shall not work in this area until further notice from the city due to unresolved issues with property owners.
7. Weston & Sampson will perform further research and evaluation into I-126 west line and provide recommendation to the city.

Exhibit C: Email from Army Corps of Engineers Requesting Work Stop

---

**From:** Andrade, Kristin B SAC <Kristin.B.Andrade@usace.army.mil>  
**Sent:** Thursday, March 19, 2015 9:57 AM  
**To:** Higgins, Dana R.  
**Cc:** McKoy, Peter (Brice) SAC; Parker, Les L SAC  
**Subject:** SAC-2015-00309 Castle Drive (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

Dana,

Les Parker and I investigated the Castle Drive sewer line project yesterday and there are several 404 violations out there. We would advise that you stop all work with the project. We will be sending a cease and desist letter to the City. Can you send me the name and contact information for the contractor? We will be sending them one also. If you have any questions or would like to meet to discuss this, let me know.

Thanks,

**Kristin Andrade**  
**1835 Assembly St. Room 865 B-1**  
**Columbia, SC 29201**  
**Office: 803-253-3903**  
**Fax: 803-253-3446**

**\*\*\*Please note my email address has changed to Kristin.B.Andrade@usace.army.mil.**

Classification: UNCLASSIFIED

Caveats: NONE

**Exhibit D: Example Easement**

STATE OF SOUTH CAROLINA )

EASEMENT

COUNTY OF RICHLAND )

FILED  
REGISTER OF DEEDS - COLUMBIA  
MARIA L. BRIDGEMAN  
1995 SEP 16 PM 1:42

In consideration of the sum of Three Hundred (\$300.00) Dollars, receipt of which is hereby acknowledged, I, Richard Rodney Croxton

do does hereby grant unto the said The City of Columbia, South Carolina, its successors or assigns, an easement and right-of-way 15 feet in width, with an additional width of 10 and 25 feet for construction purposes only, to construct, operate and maintain together with the right of ingress and egress at all times for the purpose of constructing, operating, and maintaining a sewer main and with the right to remove shrubbery, trees and other growth from the right-of-way and construction area provided that the property will be restored as nearly as practicable to its original condition upon completion of the construction and the damaged shrubbery and trees will be replaced with the same variety from nursery stock of a practicable size, said easement and right-of-way to run through the property which we/I/it own(s) or in which we/I/it has have an interest, situate, lying and being:

In the State of South Carolina, County of Richland, near the City of Columbia and being further identified as a portion of lot 3, block 3, sheet 09101, of tax maps prepared by the office of the Richland County Tax Assessor, IR 12-83.

A permanent easement, fifteen (15) feet in width, the centerline beginning at the southeastern property line of the aforementioned lot 3, at a point two hundred thirty-two and zero tenths (232.0) feet S45°-05'-22"W of the southeastern property corner of said lot 3, said property corner is located on the western bank of the Broad River, thence extending N27°-06'-22"W for a distance of thirty-four and sixteen one hundredths (34.16) feet, thence turning and extending N0°-46'-50"W for a distance of one hundred twenty-five and forty-three hundredths (125.43) feet, thence turning and extending N31°-39'-03"E for a distance of ninety-nine and thirteen hundredths (99.13) feet, thence turning N8°-20'-26"E for a distance of forty-five and thirty-three hundredths (45.33) feet to intersect the northern property line of said lot 3 at a point S60°-02'-00"W of the northeastern property corner of said lot 3, said property corner being located on the western bank of the Broad River, thence terminating.

Also, a temporary construction easement, ten (10) feet in width, shall extend along the entire length of, and adjacent to, the west boundary of the aforementioned permanent easement.

Also, a temporary construction easement, twenty-five (25) feet in width, shall extend along the entire length of, and adjacent to, the east boundary of the aforementioned permanent easement.

Exhibit E



## **SS7218 Construction Progress**

### **Meeting Minutes**

**September 18, 2014 @ 10 AM**

1136 Washington St.

7<sup>th</sup> Floor Conference Room.

1. Progress Meeting was attended by Michael Shue, Emilia Floyd, and Alan Cockrell of the City of Columbia; Steve Coker and Don Robertson of NAPM; Shannon Herford of Layne; and Meghan Moody of Weston & Sampson
2. Contractor reported on going work and anticipated schedule for CIPP manufacture and delivery. CIPP is expected to be installed by second week of October and will be complete by beginning of December. Weston & Sampson is reviewing the CIPP shop drawings.
3. Discussed the status of the 6" sewer line replacement along Rivermont Dr. The City is strongly considering self-performing and may use SS7218 funds to purchase materials. Final decision to be made within next week following further discussions with Robert Judy and Bill Davis.
4. Discussed the proposed access road—clear 15' easement and grade for a 12' access road. Layne to provide pricing by linear foot in order to give City flexibility with budget. Concern for large rock formations being along route—pricing will include cost for excavating rock. Additionally the construction contract is proposed to be extended if the access road is added to the scope. Current budget is estimated to be under contract amount by approximately \$550,000.
5. The western I-126 crossing that was proposed to be repaired during the SSES phase of project may not have been repaired as of yet. Emilia will check on status of any repairs to that pipe.
6. Contractor raised concerns about risk of CIPP installation under Boozer Shopping center. Should a problem occur during installation while crossing underneath the building it would be very difficult and costly to correct the problem and would significantly affect the business within the building. Weston & Sampson will review the CCTV and make a recommendation to the City on how best to proceed.

Exhibit F: Example of Cliffs referred to in Mr. Collins' deposition.

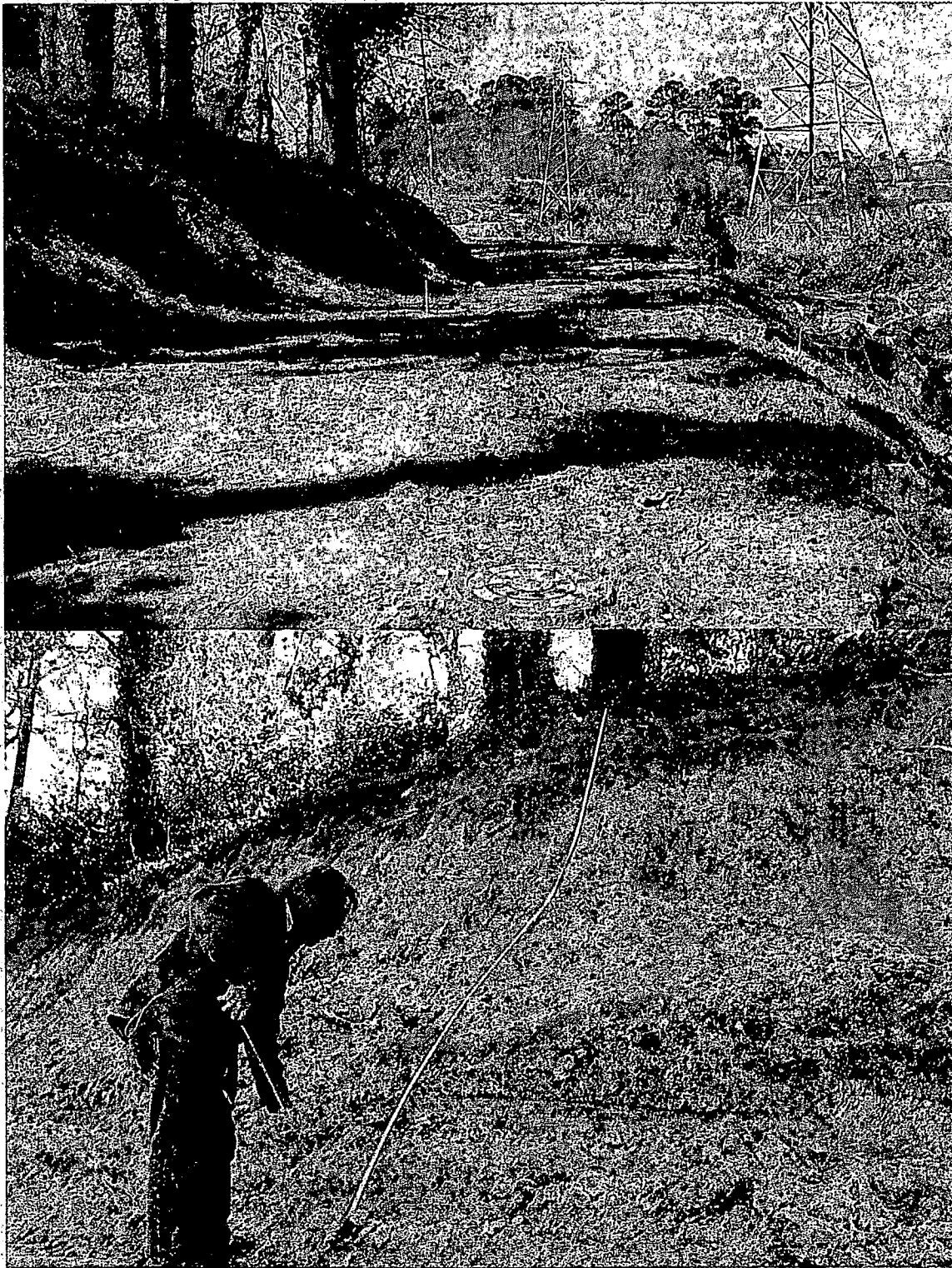




Exhibit G: Map showing Abutments are outside of the Easement

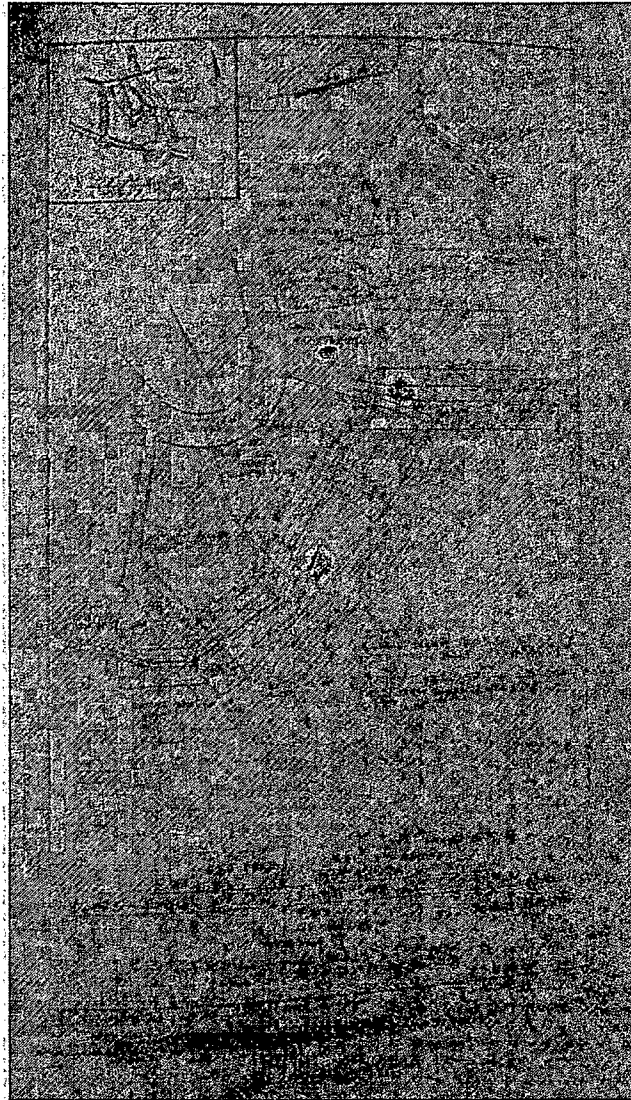


Exhibit H: Permanent Nature of Road Planned by City Inspector Alan Cockrell

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**Weston & Sampson**

**M E M O R A N D U M**

**TO:** Michael Sheu, PE  
**FROM:** Robert Homer  
Meghan Moody *RM*  
**DATE:** November 7, 2014  
**SUBJECT:** 887218 WC-02 Sub-Basin Rehabilitation; 4000 LF Access Road

During the pre-rehabilitation CCTV portion of this project, it was found that a significant length of sewer main along the Broad River would be inaccessible for required repairs. The contractor's protégé, NAPM, discussed the need to create access to those areas and proposed clearing the sewer easement and constructing a compacted dirt road. The road would also provide an added benefit of allowing for future service access to the City of Columbia staff.

The City of Columbia Inspector for the project, Alan Cockrell, in conjunction with the contractor identified a 4,000 LF section of the sewer main that would be best served by the construction of an access road. The contractor presented an estimate and proposed quantities for consideration. The consulting engineer, Weston & Sampson, concurred with the pricing and recommended quantities. Please, find attached a proposed cost for the work in the amount of \$409,250.00. This proposal also includes an allowance for off-site fill as well as the excavation of rock.

It is recommended that the access road be added to the 887218 contract. Funding is available through the excess funds that exist within the project and the client-controlled contingency.

State of South Carolina )

County of Richland )

Court of Common Pleas

2015-CP-40-05598

Modesta Brinkman, David )  
Brinkman, James Coleman, Carl )  
Foster, Karen Foster, Robert )  
Collins and Pamela Collins )

Plaintiffs )

vs. )

Transcript of Record

Weston and Sampson Engineers )  
Inc., City of Columbia, S.C., )  
North American Pipeline )  
Management, Layne Inliner, )

Defendants )

January 3, 2018  
Columbia, South Carolina

B E F O R E:

Honorable Jocelyn Newman, Judge

A P P E A R A N C E S:

John Adams Hodge, Esq.  
Geoffrey Chambers, Esq.  
Attorney for the Plaintiffs

Everett A. Kendall, III, Esq.  
Robert T. Boineau, III, Esq.  
Amy H. Wooten, Esq.  
Jeanne Lisowski, Esq.  
Monteith Todd, Esq.  
Thomas E. Dudley, III, Esq.  
James W. Flynn, Esq.  
Attorneys for the Defendants

Joy E. Holston  
Official Court Reporter

1 THE COURT: All right, the first I have got is FCCI  
2 Insurance, Modesta Brinkman, I am sorry.

3 MR. KENDALL: My name is Rhett Kendall. Good  
4 morning.

5 THE COURT: Good morning.

6 MR. KENDALL: There is a bunch of us here, maybe we  
7 can just mention to you what the agenda might be and  
8 actually stall a little bit because Plaintiff's counsel  
9 hasn't arrived.

10 THE COURT: That is why y'all are on the same side of  
11 the room then.

12 MR. KENDALL: I represent Layne Inliner.

13 THE COURT: Your name again?

14 MR. KENDALL: Rhett Kendall.

15 THE COURT: Yes, sir.

16 MR. KENDALL: Trip Boineau represents NAPM or North  
17 American Pipeline. Amy Wooten represents Weston and  
18 Sampson. And Jeanne Lisowski represents the City of  
19 Columbia. And I will let these other fellows introduce  
20 themselves when they get to their discovery motion. We  
21 are the trial litigators, the liability litigators. But,  
22 Your Honor, what I thought I would mention to you is there  
23 are two motions today on the docket that deal with  
24 substantive summary judgment issues. There is the issue  
25 that involves the coverage, motion to intervene. And then

1. there are two or three motions that relate to a discovery  
2. issue involving Mr. Abbata. What I was going to suggest  
3. to the Court is, we are up for trial on the 16th, number  
4. one. And there are some other discovery issues that also  
5. relate to Mr. Abbata. And we felt like perhaps it made  
6. sense to push those off and have them combined with the  
7. trial Judge or whomever deal with those all at one time  
8. rather than you take it up in bits and pieces. Some of  
9. the issues that we have raised are moot, some of them are  
10. renewed. So it would be a little bit of a split issue, if  
11. you understand what I am getting at. So if, so with that  
12. said you can certainly take, Mr. Chambers is here so in  
13. terms of agenda we can move all those Abbata motions, that  
14. will be great. And we will make sure your docket knows  
15. which ones, which is which when the times comes.

16. THE COURT: Okay, however y'all want to do it, tell  
17. me where to start.

18. MR. CHAMBERS: I think we should go first.

19. THE COURT: And this is Mr. Chambers?

20. MR. CHAMBERS: Yes, Your Honor.

21. THE COURT: Okay.

22. MR. CHAMBERS: I think this is the insurance  
23. intervention.

24. THE COURT: Got it.

25. MR. TODD: Your Honor, I am Monty Todd, I represent

1 Layne Inliner on the coverage issues, on intervention  
2 issue.

3 THE COURT: Okay.

4 MR. DUDLEY: And, Your Honor, I am Todd Dudley, I  
5 represent North American Pipeline Management on the  
6 coverage issue.

7 THE COURT: Okay.

8 MR. FLYNN: Your Honor, I am Jamie Flynn, I represent  
9 FCCI. I had filed a motion to intervene for FCCI  
10 Insurance Company. This is one of my motions.

11 THE COURT: Your name again?

12 MR. FLYNN: I am Jamie Flynn.

13 THE COURT: You are the only name I do not see on  
14 here.

15 MR. FLYNN: My full name is W. James, William James  
16 Flynn. I may not be on there because I have moved to  
17 intervene and I am not a party. My client is not a party.

18 THE COURT: Right. Well that makes sense. Okay.  
19 Y'all bear with me, I have been in General Sessions for  
20 six months. And my brain is a little scrambled. I  
21 haven't heard a civil case since June so just reorienting  
22 myself and really, being in Richland County, you see the  
23 same criminal attorneys over and over again. It is like  
24 new faces and new issues and all of that. But I am ready.  
25 Tell me, give me some background, somebody give me some

1 background on what this case is about.

2 MR. KENDALL: Your Honor, this arises out of a sewer  
3 remediation project that was undertaken by the City of  
4 Columbia involving sewer line that runs through an area  
5 that we refer to as the Broad River basin. And part of it  
6 runs along the Broad River. If you were on the River  
7 Walk, just about the time you get about a mile and a half  
8 down, and I know this because I run it almost every day,  
9 get about a mile and a half there is some power lines that  
10 cross. If you look across the River at that point you  
11 would see the property we are talking about. So that is  
12 the area we are talking about. The City engaged my  
13 client, Layne Inliner, to realign damaged pipes. Layne  
14 Inliner hired a subcontractor, North American Pipeline, to  
15 do a lot of work, above ground work to provide access to  
16 those sewer lines. We go in manholes and run our  
17 equipment in to do the work. So those, the City of  
18 Columbia is a Defendant and Weston and Sampson was the  
19 Engineer of record in the case who set up this project.  
20 The basic claim is that, that during the course of the  
21 work, under the direction of the City and the Engineers,  
22 North American Pipeline cleared and graded a section of  
23 this pipe, of this easement that crossed the Plaintiffs  
24 properties. So there are four Plaintiffs in this case and  
25 this clearing was to provide access, with the equipment,

1 to these manholes so that work could be performed. In the  
2 course of doing that, that work was stopped because Mr.  
3 Brinkman, the lead Plaintiff in the case, alleged that  
4 damage was being caused to both the property itself, the  
5 dirt was being moved and the, and it was creating, they  
6 were exceeding the easements. And he has alleged that  
7 there were historic structures on that property that were  
8 damaged as a result of the work being performed. We will  
9 refer to them as the Compty Bridge Abutments.

10 THE COURT: I am sorry, say that again.

11 MR. KENDALL: Compty, C-O-M-P-T-Y Bridge Abutments.  
12 The allegation is that there were historic bridges that  
13 had spanned the Broad River at this location and that  
14 there were some rocks there that were part of that  
15 abutment that were displaced and/or damaged as a result of  
16 this work. So, there are a number of legal theories  
17 including that, the trespass issues, nuisance issues and  
18 whatnot. So that is in a big picture of what is going on.  
19 And my client, again, FCCI has brought this motion to  
20 intervene.

21 THE COURT: Thank you. Yes, sir.

22 MR. FLYNN: And some additional background on top of  
23 that. FCCI issued Commercial General Insurance policies to  
24 North American Pipeline Management. And in conjunction  
25 with that, because North American Pipeline had contracted