

RESOLUTION NO.: R-2007-041

*Authorizing the City Manager to execute an Agreement with
Richland County School District Two for a water line easement on
Richland County TMS #26100-04-01 to serve Richland County School
District Two Elementary School 16; CF#297-14*

ORIGINAL
STAMPED IN RED

BE IT RESOLVED by the Mayor and City Council this 1st day of August, 2007, that the City Manager is authorized to execute the attached Agreement with Richland County School District Two for a water line easement on Richland County TMS #26100-04-01 to serve Richland County School District Two Elementary School 16; CF#297-14.


Requested by:

Utilities and Engineering



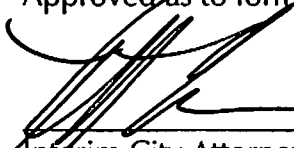
Mayor

Approved by:



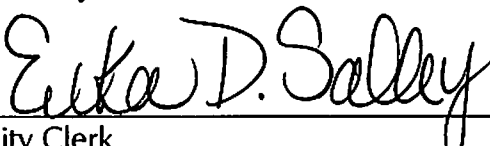
City Manager

Approved as to form:



Interim City Attorney

ATTEST:



City Clerk

Introduced: 8/1/2007
Final Reading: 8/1/2007

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AGREEMENT

THIS AGREEMENT made this ____ day of _____, 2007 by and between the **City of Columbia** (hereinafter referred to as "the City") and **Richland County School District Two** (hereinafter referred to as "RCSD2").

WITNESSETH:

FOR AND IN CONSIDERATION of the mutual promises made between the City and RCSD2, the parties agree as follows:

1. Condemnation. Pursuant to South Carolina Code § 5-31-460, the City agrees to condemn the necessary easement for a water line across property owned by Raymond C. Krolewicz and Benjamin Krolewicz (hereinafter referred to as "Landowner") being designated as Richland County TMS No. 26100-04-01, and being more particularly shown on a survey prepared for the City of Columbia Department of Engineering by B.P. Barber & Associates, Inc. dated November 9, 2006 and attached hereto as Exhibit "A", for the construction of a water line in order for the City to serve the property owned by RCSD2, hereinafter referred to as the condemnation action.

2. Reimbursement by RCSD2. RCSD2 shall fully reimburse the City for the easement acquisition costs. "Easement acquisition costs" are defined as the ultimate cost paid to the Landowners of the subject property for the easement, either through settlement or court adjudication, and/or monies or costs paid under a right to take challenge or injunctive relief sought by the Landowners, and shall include but not be limited to appraisal fees, expert witness

fees, attorney's fees, any award of fees to the landowner and other litigation expenses and any amounts as may be negotiated, determined or awarded as just compensation, money judgments and prejudgment or post judgment interest, all of which are listed by way of illustration and not limitation. Notwithstanding the foregoing, RCSD2 shall not be required to pay the City of Columbia's attorney's fees for the City Attorney Office's representation of the City of Columbia.

Prior to the commencement of the condemnation action, RCSD2 shall deposit Eleven Thousand Eight Hundred Fifty and No/100 (\$11,850.00) Dollars, (1.5 times the appraised value of the easement as determined by the City) with the City. The City may, from time to time with or without RCSD2's consent, draw against these funds to reimburse itself, pay easement acquisition costs or deposit sufficient funds with the Richland County Clerk of Court in order to take possession, all in the City's sole and exclusive discretion. The City may from time to time, in its sole and exclusive discretion, request RCSD2 deposit additional funds with the City as the funds previously deposited are depleted by the City as the easement acquisition proceeds. RCSD2 shall deliver such funds to the City within three days of the City's written request to RCSD2 or its attorney. Upon final acquisition of the easement, any remaining overage will be refunded to RCSD2. RCSD2 shall not be entitled to receive interest on these monies.

During the pendency of the easement acquisition, the City shall consult with an attorney to be retained by RCSD2 prior to any resolution of the condemnation action. RCSD2's attorney shall, if requested by the City: participate in settlement negotiations, if any; assist with discovery; attend mediation or arbitration; attend court proceedings or provide other assistance

or information as may be required by the City. Prior to any settlement with the Landowner, the City shall obtain RCSD2's written approval of any settlement amount. If settlement is not reached or approved, RCSD2 understands that it will be solely responsible for any jury or non-jury verdict. City shall have no obligation to appeal from a jury or non-jury verdict or Order of any Court. The decision to appeal is in the sole and exclusive discretion of the City. If the City elects to appeal, RCSD2 agrees to be responsible for all costs of the appeal, if any.

3. In addition to and without in any way limiting RCSD2's obligation of reimbursement as is provided for in Paragraph 2, RCSD2 agrees to fully indemnify and hold harmless the City from and against any and all claims, liens, actions, losses, expenses, witness fees, costs, attorney's fees, damages, judgments of any nature whatsoever, all of which are listed by way of illustration and not limitation, which the City may hereinafter suffer, incur, pay, become obligated to pay because of the City agreeing to acquire the easement or providing RCSD2 water service during the pendency of the easement acquisition. This hold harmless and indemnification agreement shall be given a broad and liberal interpretation and application to fully protect the City. RCSD2's obligations to indemnify and hold the City harmless shall survive the acquisition and shall remain in full force and effect until all applicable statutes of limitations have expired.

4. In the event RCSD2 is in breach of this Agreement for any reason, the City may dismiss or abandon actions associated with the easement acquisition brought pursuant to this Agreement, upon three days written notice to RCSD2 or its attorney. If any action associated with the easement acquisition is dismissed or abandoned for breach, RCSD2 shall not be

entitled to the refund of any monies spent for easement acquisition costs. Waiver of any breach shall not constitute a waiver of any subsequent breach.

5. This Agreement shall be binding upon RCSD2, its successors and assigns.

WITNESS the hands and seals of the parties to this Agreement this _____ day of _____, 2007.

Valerie R. Smith
[Signature]

CITY OF COLUMBIA

BY: [Signature]
Charles P. Austin, Sr.
ITS: City Manager

Kathy Tremblay
Cathy B. Vassar

RICHLAND COUNTY SCHOOL DISTRICT TWO

BY: [Signature]
ITS: