

RESOLUTION NO.: R-2007-063

Authorizing City Manager to execute a Memorandum of Understanding between the Hand Educational Foundation and City of Columbia for partial funding donated by Hand Educational Foundation for the City of Columbia to construct the Emily Douglas Amphitheater and subsequent use by Hand Middle School

BE IT RESOLVED by the Mayor and City Council this 7th day of November, 2007, that the City Manager is authorized to execute a Memorandum of Understanding between the Hand Educational Foundation and City of Columbia for partial funding donated by Hand Educational Foundation for the City of Columbia to the construct the Emily Douglas Amphitheater and subsequent use by Hand Middle School.

Requested by:

Councilmember Sinclair



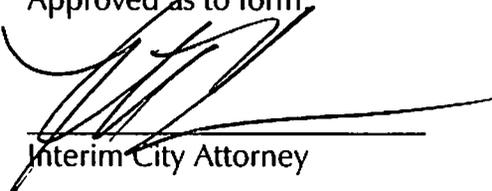
Mayor

Approved by:



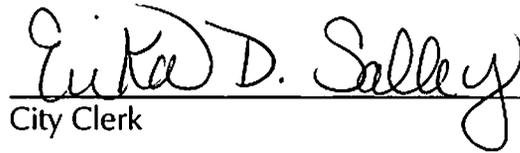
City Manager

Approved as to form:



Interim City Attorney

ATTEST:



City Clerk

Introduced: 11/7/2007

Final Reading: 11/7/2007

ORIGINAL
STAMPED IN RED

**Memorandum of Understanding
Between
The Hand Educational Foundation
And
The City of Columbia, South Carolina**

Background

Hand Middle School (HMS), 2600 Wheat St., Columbia, SC, has need of an outdoor amphitheater for the purpose of hosting school plays, school orchestra concerts and similar educational oriented activities. To that end, the Hand Educational Foundation (HEF) has entered into discussions with the City of Columbia, South Carolina (the City) concerning the possibility of the use of Emily Douglass Park (the Park), located at the corner of Wheat St. and King Street, adjacent from Hand Middle School. Specifically, HEF has proposed the construction of the amphitheater in the Park using private funds.

As the results of continued discussions between the City and HEF, a land plan was prepared by Ken Simmons and Associates which contemplated an entire renovation of the Park. The contemplated amphitheater was included in the land use plan. HEF now wishes to proceed with a memorandum of understanding with the City for construction of the amphitheater, as to responsibilities of the City during planning and construction and proposed rules governing usage by the school after completion.

Construction Responsibility

The City will handle construction of the project. The City and HEF shall jointly approve the final amphitheater design and any changes made during construction. Each party shall designate one person each to coordinate communication between the two organizations.

Construction Period

The City will commit to a start date ninety (90) days from the date HEF's contribution of Seventy-five Thousand and No/100 (\$75,000.00) Dollars is received by the City.

Funding

HEF will contribute Seventy-five Thousand and No/100 (\$75,000.00) Dollars toward the construction of the amphitheater, such funds to be raised through the best efforts of HEF. This memorandum of understanding is also contingent upon the HEF raising \$75,000.00 to contribute to the construction and the City committing the necessary funding to pay for its portion of the construction. Payment of the HEF's contribution shall be paid over to the City prior to the start date.

Upon prior approval by Columbia City Council, HEF will have the right to sell naming rights for the amphitheater, proceeds from the sale of which will be set aside in a designated fund and ultimately used to fulfill HEF's funding pledge. Naming rights will include a name for the amphitheater. Subject to prior approval by Columbia City Council, HEF may, as part of its fund raising efforts, sell markers such as personalized bricks, plaques or other permanent commemorative items that are tasteful and consistent with the design and construction of the amphitheater.

Usage Rules

The City will have the overall responsibility for scheduling events at the amphitheater. During school hours of the school year HMS will be allowed to make casual use of the amphitheater for student groups that do not exceed the equivalent of two student classes, not to exceed seventy (70) students, without scheduling or reserving through the City. For use by student groups that exceed the maximum number of students during school hours of the school year or for use after school hours or for use during a summer school session, HMS shall schedule and reserve use through the City. Use during the summer school session shall not conflict with the City's summer playground program, which shall have priority over HMS's use during the summer school session. Prior to scheduling and reserving for other groups during the school hours of the school year, the City will contact HMS to determine if the amphitheater is available for use by the other group and is not in conflict with HMS's scheduled use. HMS will be given scheduling priority of use of the amphitheater during the school hours of the school year. If HMS or the City determines that the above definition of a casual use student group does not allow HMS to maximize use of the amphitheater during the school hours of the school year or results in excessive noise, excessive trash or debris, overcrowding, unsafe conditions, physical damage to the amphitheater or park, violation of any ordinance or for any other legitimate reason, the parties agree to adjust the definition accordingly.

HMS will endeavor to keep the areas used free of trash and debris and will, when practicable, cause the same to be removed from the Emily Douglas Park and disposed of off-site.

HMS's right to priority and any Agreement providing for the same shall expire with the useful life of the amphitheater, which will be determined once the amphitheater is constructed. The City will provide a depreciation schedule of value of the amphitheater over its useful life. City reserves the right to terminate HMS's priority use. In that event, City will pay to HEF a percentage of the then current depreciated value of the amphitheater which will be calculated by HEF's total monetary contribution divided by the total cost of design and construction paid by the City plus HEF's total monetary contribution times the then current depreciated value. For purposes of illustration and clarification, the following is an example of the methodology to be used to calculate the payment to HEF, the numbers are fictitious:

| Example | |
|---|--------------|
| Year 2010 | |
| 2010 Depreciated value | \$50,000.00 |
| HEF's Contribution | \$75,000.00 |
| City's Contribution | \$50,000.00 |
| Total Cost of Design & Construction | \$125,000.00 |
| $(\$75,000.00 / \$125,000.00) \times \$50,000.00 = \$30,000.00$ | |

Maintenance

The City shall maintain the amphitheater as part of its normal park maintenance program. Any repairs to the amphitheater shall be the responsibility of the City.

Eligible Events

HMS will have the ability to utilize the amphitheater for School related events such as concerts, theater productions, class activities, lectures and other similar activities. Events held at the amphitheater shall be consistent with the noise level of the surrounding neighborhood and in compliance with the City's noise ordinance.

The parties agree that this memorandum of understanding memorializes the parties' intentions.

Agreed, this 19th day of November, 2007

WITNESSES:

W. D. Galley
N. Richmond

The City of Columbia

By: [Signature]
Charles P. Austin, Sr.
Its: City Manager

[Signature]
Courtesy E. Belmont

Hand Educational Foundation

By: [Signature]
Its: President