

RESOLUTION NO.: R-2009-057

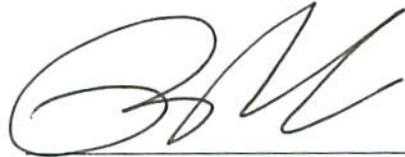
*Authorizing the City Manager to execute an Agreement
between the City of Columbia and London I, LLC for streetscaping
within the south side of the 1200 block of Washington Street
between Main Street and Sumter Street*

ORIGINAL
STAMPED IN RED

BE IT RESOLVED this by the Mayor and City Council this 22nd day of July, 2009, that the Interim City Manager is authorized to execute the attached Agreement between the City of Columbia and London I, LLC for streetscaping within the south side of the 1200 block of Washington Street between Main Street and Sumter Street.

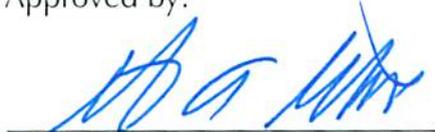
Requested by:

Utilities and Engineering



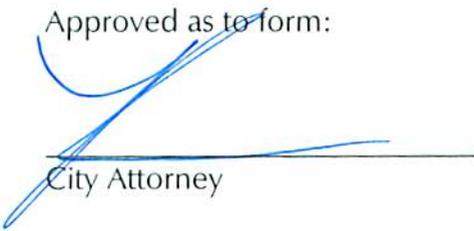
Mayor

Approved by:



Interim City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 7/22/2009

Final Reading: 7/22/2009

STATE OF SOUTH CAROLINA) **AGREEMENT FOR STREETSCAPING PROJECT**
COUNTY OF RICHLAND)

THIS AGREEMENT is made this _____ day of _____, 2009, by and between LONDON I, LLC, hereinafter referred to as "London", and the CITY OF COLUMBIA, SOUTH CAROLINA, hereinafter referred to as "the City".

WHEREAS, London desires to streetscape that portion of Washington Street lying between Main and Sumter Streets (hereinafter "the streetscaping project"); and,

WHEREAS, London has requested the City to contribute funds towards the construction costs of the streetscaping project.

NOW THEREFORE, the parties agree as follows:

A. DESIGN: London shall pay for the design of the streetscaping project. Any proposed design for the streetscaping project shall be subject to the approval of the City in its sole and exclusive discretion. Such approval shall not be unreasonably withheld. The design shall incorporate any standard specifications of the City as the City may identify. In no event shall the City be held responsible for the reimbursement to London, its contractors, employees, agents, or assigns, for any costs associated with the design of the streetscaping project.

B. CONSTRUCTION: Upon approval of a temporary encroachment permit by legislative enactment, which London acknowledges is discretionary, London shall commence with construction of the streetscaping project, according to such plans as have been previously approved by the City. The construction contract between London and the contractor(s) of its choosing shall comply with Columbia City Code § 11-71 and must be submitted to the City prior to request for reimbursement of funds.

C. THE CITY'S CONTRIBUTION: The City shall contribute for construction costs of the streetscaping project either the amount of the construction costs in the construction contract between London and London's construction contractor or up to \$197,901.01 Dollars, whichever is less. The amount contributed by the City constitutes the City's sole and entire contribution towards the streetscaping project. London shall be fully and solely responsible for any and all costs of construction of the streetscaping project exceeding \$197,901.01.

D. PAYMENT OF CITY'S CONTRIBUTION: London shall submit to the City on a monthly basis copies of pay applications submitted to London by the contractor performing the streetscaping project. Pay applications shall reflect actual installed quantities with reasonable unit prices that fall within industry standards. The City shall have the right to reject any pay application or any portion of a pay application that does not reflect actual installed quantities with reasonable unit prices that fall within industry standards, in the City's sole and exclusive discretion. Upon receipt of the monthly pay applications, the City's designated representative will inspect the work to determine installed quantities, price reasonableness and completion. Should the City determine, in its sole and exclusive

discretion, that the pay application properly reflects the work completed to date, the City will pay to London ninety percent (90%) of the amount requested in the pay application, less the aggregate of previous payments, within thirty days of submission of the pay application. The City shall continue to provide payments to London for the work completed as reflected in the submitted pay applications up to the City's contribution amount, to include 10% retainage. The retainage shall be payable to London upon the completion and approval of the streetscaping project by the City's designated representative, in the City's sole and exclusive discretion. The City shall not unreasonably withhold approval of the completion of the streetscaping project.

E. PERFORMANCE AND PAYMENT BOND: London shall furnish a performance and payment bond in an amount at least equal to one hundred percent of the contract price as security for the faithful performance of the streetscaping project, as security for the payment of all persons performing labor on the streetscaping project and furnishing materials in connection with the streetscaping project. Before final acceptance, each bond must be approved by the City.

F. OWNERSHIP OF IMPROVEMENTS: The City shall have ownership and title to all improvements made to the area of the streetscaping project and London shall execute any documentation requested by the City to convey the ownership and title to such improvements.

G. MECHANICS' LIEN WAIVERS: London shall provide the City with mechanics' lien waivers from all contractors/suppliers providing labor, materials, and/or equipment for the construction of the streetscaping project, releasing the City from any and all claims or demands for payment for materials and/or services provided by London's contractors/suppliers.

H. OPERATION AND MAINTENANCE OF IMPROVEMENTS: Notwithstanding any other provision of this Agreement, London shall continue to operate and maintain all of those improvements permitted under Ordinance No. 2007-105, which is incorporated herein by specific reference thereto. Upon completion and approval of the streetscaping project by the City's designated representative, the City will assume only the operation and maintenance of the streetscaping improvements. The improvements stated in Ordinance No. 2007-105 are not included in the City's obligations for operation and maintenance of the streetscaping improvements under this agreement.

I. SCHEDULE FOR COMPLETION OF CONSTRUCTION AND LIQUIDATED DAMAGES: Time is of the essence. London shall complete the construction of the streetscaping project within one year from the date of execution of this Agreement. In the event construction of the streetscaping project is not completed within one year from the date of execution of this agreement, the City will be entitled to reduce its contribution by Five Hundred and 00/100 Dollars (\$500.00) for each day the streetscaping project exceeds the one-year limit for completion of construction.

J. PERMITS AND LICENSES: London shall be responsible for obtaining any certifications, permits and/or licenses as may be required in designing and/or constructing the streetscaping project. London shall be responsible for any costs relating to same.

K. MISCELLANEOUS

A. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and London.

B. London shall be responsible for performance of all services required by this Agreement. London does not act as the City's agent or employee.

C. This Agreement shall be construed in accordance with the laws of the State of South Carolina. London agrees to subject itself to the jurisdiction and venue of the Circuit Courts of Richland County, South Carolina as to all matters and disputes arising or to arise under this Agreement and the performance thereof. No attorney's fees may be sought by or be paid to either London or the City.

D. This Agreement represents the entire agreement between the City and London and supersedes all prior communications, negotiations, representations or agreements, either written or oral. Only a written document signed by both the City and London may amend this Agreement.

E. This agreement is not binding upon the City of Columbia until such time as the agreement is approved by Columbia City Council and the City Manager is authorized by legislative enactment to execute the same on behalf of the City of Columbia.

F. This Agreement shall be binding upon London, its successors and assigns.

Witness the parties' respective hands and seals on the date first written above.

David Sherer
Witness

ROBERT CHAREST
Witness

Erika D. Salley
Witness

[Signature]
Witness

London I, LLC

By: [Signature] [Seal]

Name: Rick Pate

Title: owner

CITY OF COLUMBIA

By: [Signature] [Seal]

Name: Steven A. Gault

Title: Deputy City Manager