

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
)	
EMMA ELIZABETH MULLER,	)	C/A No: 2025-CP-40-02870
Individually and as Personal Representative of)	
the Estate of James Michael Muller,)	
)	
Plaintiff,)	
)	
-vs-)	
	)	SUMMONS FOR DEFENDANT CITY
CITY OF COLUMBIA and COUNTY OF	)	THIRD PARTY COMPLAINT
RICHLAND	)	AGAINST THE IRMO FIRE DISTRICT
)	
Defendants.	)	<i>(Jury Trial Demanded)</i>
)	
-and-)	
)	
CITY OF COLUMBIA,)	
)	
Third-Party Plaintiff,)	
)	
-vs-)	
)	
IRMO FIRE DISTRICT, a special purpose)	
district,)	
)	
Third-Party Defendant.)	

TO: IRMO FIRE DISTRICT:

YOU ARE HEREBY SUMMONED and required to answer the Third Party Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the Complaint upon the undersigned Counsel for the City of Columbia at the City Attorney's Office, 1136 Main Street, Seventh Floor, Columbia, South Carolina 29201, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the

Third Party Complaint.

PLEASE DEFEND IF SO MINDED.

Respectfully submitted,

THE CITY OF COLUMBIA

BY: s/W. Mike Hemlepp, Jr.
W. Mike Hemlepp, Jr., Esq. (Bar No. 64264)
Senior Assistant City Attorney- Litigation
J. Lucas Richardson, Esq. (Bar No. 103745)
Assistant City Attorney - Litigation
Office of the City Attorney, City of Columbia
Post Office Box 667
Columbia, South Carolina 29202
Tel. 803.737.4235 / Fax 803.737.4250
William.Hemlepp@ColumbiaSC.gov
Joseph.richardson@cColumbiasc.gov

ATTORNEYS FOR DEFENDANT AND
THIRD PARTY PLAINTIFF

June 13, 2025

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
)	
EMMA ELIZABETH MULLER,	)	C/A No: 2025-CP-40-02870
Individually and as Personal Representative of)	
the Estate of James Michael Muller,)	
)	
Plaintiff,)	
)	
-vs-)	
)	
CITY OF COLUMBIA and COUNTY OF	)	DEFENDANT CITY OF
RICHLAND	)	COLUMBIA'S ANSWER TO
	)	PLAINTIFFS' AMENDED
	)	COMPLAINT AND THIRD PARTY
Defendants.	)	COMPLAINT AGAINST THE IRMO
	)	FIRE DISTRICT
-and-)	
	)	(Jury Trial Demanded)
CITY OF COLUMBIA,)	
)	
Third-Party Plaintiff,)	
)	
-vs-)	
)	
IRMO FIRE DISTRICT, a special purpose)	
district,)	
)	
Third-Party Defendant.)	

The Defendant City of Columbia (hereinafter "City"), hereby answers the Plaintiffs' Complaint and alleges causes of action against the Third-Party Defendant as follows:

PARTIES AND JURISDICTION

1. **EMMA MULLER** is the Plaintiff in this action as an individual and in a representative capacity for the Estate of her deceased husband, James Michael Muller who was an employee of the Irmo Fire District until his untimely passing on May 26, 2023.
2. The **CITY OF COLUMBIA** is a municipality organized and existing under the laws of the

State of South Carolina and is a political subdivision of the State of South Carolina. A department of the City of Columbia is the Columbia-Richland Fire Department (CRFD) which operates in the Richland County area and services almost 500,000 citizens. It is the largest fire department in the State of South Carolina with 32 stations, 5 battalions, 31 engines, 5 trucks, 5 Heavy Rescue, 16 Brush Trucks, 2 Hazmat Units, 15 Tankers, a Trench Rescue Unit, a Collapse Rescue Unit and a Rehab Unit.

3. The **COUNTY OF RICHLAND** is a governmental entity which partners with the City of Columbia in owning the assets of the Columbia Richland Fire Department and contributes to the overall fiscal needs of the Department. Richland County is named as a co-Defendant in this action.
4. The **IRMO FIRE DISTRICT** is a special purpose district providing fire suppression and rescue services to approximately 46,000 citizens in Richland and Lexington Counties. The Chief Executive Officer of the Irmo Fire District is Fire Chief Mike Sonefeld. The Irmo Fire District is managed by the Irmo Board of Fire Control, whose Chairman is Anthony Pantsari. Chief Sonefeld may be found for service of process at 6017 St. Andrews Road, Columbia, South Carolina 29212.
5. This action concerns events which occurred in the County of Richland, State of South Carolina.
6. This actions brought by the Plaintiffs against the Defendants are based upon the South Carolina Tort Claims Act. The actions of the City of Columbia against the Irmo Fire District are brought pursuant to contract and the South Carolina Tort Claims Act.
7. This Honorable Court has subject matter and *in personam* jurisdiction over the parties and

subject matter of this action.

FOR A FIRST CAUSE OF ACTION AGAINST
THIRD PARTY DEFENDANT IRMO FIRE DISTRICT-
(Defamation)

8. Each and every allegation contained in the paragraphs above is hereby realleged herein as though fully set forth below.
9. That employees or agents of the Irmo Fire District have intentionally misrepresented the events of May 26, 2025 for their own purposes.
10. That, at the time of the alleged statements, they were acting as agents or servants for the Irmo Fire District and were speaking in their official capacity as Command Staff of the District.
11. That the said employees or agents of the Irmo Fire District have shared false and defamatory statements with the family of Firefighter James Michale Muller, members of the public, members of the media, investigators for the Occupational Health and Safety Administration, nvestigators for the National Institute for Occupational Safety and Health, and with other unnamed third parties, concerning the actions of the Columbia Richland Fire Department's actions on the Tropical Ridge Fire of May 26, 2023.
12. That the statements were unprivileged statements to third parties.
13. That the employees and agents of the Irmo Fire District knew or should have known of the falsity of the statements at the time they were dessiminated.
14. That the employees and agents of the Irmo Fire District acted with malice in reckless disregard for the truth or falsity of the statements.

15. That the statements were intended to, and have, caused harm to the reputation of the Columbia Richland Fire Department.

16. That the statements made by the employees or agents of the Irmo Fire District include, but are not limited to, the following, to wit:

- a. That the CRFD failed to adequately utilize their communications during the fire of May 26, 2025. *This is patently false and will be disproven with complete audio recordings of the radio traffic during the incident at Tropical Ridge Apartments;*
- b. That no safety officers were present. *The CRFD requires a significant number of its supervisors and command officers to be trained under the National Fire Academy's Safety Officer Course and during the Tropical Ridge Fire on May 26, 2025 all of the Command Staff on scene were certified safety officers.*
- c. That the CRFD did not know about Firefighter Muller's mayday and that delay contributed to his passing. *When the ceiling collapsed, there were four (4) firefighters trapped, two firefighters of CRFD who fell from the floor above, and two firefighters of IFD who were in the room below. There were two simultaneous "mayday" calls each involving two firefighters trapped in debris. The records clearly show there was no delay in the rescue attempts for Firefighter Muller or any of the trapped firefighters.*
- d. That the CRFD did not attempt a rescue of Firefighter Muller immediately. *This is abjectly false.*
- e. That the CRFD failed to exercise control over the scene of the Tropical Ridge Apartment Fire. *The Command and Control of the fire response worked exactly as*

required by Blue Card Fire Command System and is consistent with the standards and procedures of the National Incident Management System (NIMS). These systems for Command and Control represent a well-respected and widely utilized practice and was consistently reinforced to the firefighting professional of CRFD through its training and policies.

- f. That the CRFD breached the recognized standards of fire fighting by using Master Streams on the structural portions of the Tropical Ridge Apartments. All of the tactics used in fighting the Tropical Ridge Apartment fire were in line with recognized industry standards given the situation.*
- g. That there was a defective fire hydrant which caused a delay in fighting the Tropical Ridge Apartment. This is not true. One fire professional used two (2) 2.5" lines on either side of a fire hydrant instead of the 5" cap on the front of the hydrant. There was no appreciable delay resulting from this decision and the volume of water provided by two 2.5" lines is substantially the same as the volume of water provided by one 5" line.*
- h. That firefighters and commanders of the CFRD were not adequately trained. The CRFD is a highly trained fire department at the highest level in the State of South Carolina. As a much larger fire department, the CRFD provided much of the yearly training which the IFD provides to its employees, without charge. The CRFD keeps and maintains detailed records of the training of its firefighters and the firefighters of partner agencies such as the IFD.*

- i. Such other and further statements as will be shown to the trial court at the trial of this case.
17. Members and agents of the IFD continue, to date, to pursue a narrative that the CRFD “caused” the death of Firefighter Muller despite overwhelming evidence to the contrary.
18. The City of Columbia is informed and believes it is entitled to a judgment against the Irmo Fire District in an amount equal to the sum of its actual damages, plus such other and further damages as may be allowed by law

**FOR A SECOND CAUSE OF ACTION AGAINST
THIRD PARTY DEFENDANT IRMO FIRE DISTRICT**
(Indemnification)

19. Each and every allegation contained in the paragraphs above is hereby realleged herein as though fully set forth below.
20. That the Irmo Fire District participated in fighting the Tropical Ridge Apartments fire by the mechanism of an Automatic Aid Agreement between the parties.
21. That under the terms and conditions of the Automatic Aid Agreement, *“No term or provision of this Agreement is intended to, or shall, create any rights in any person, firm, corporation or other entity not a party hereto, and no such person or entity shall have any cause of action hereunder.”*
22. Further, the Automatic Aid Agreement provides that *“In the event a party shall sustain a loss or damage to its equipment, or injury to any of its personnel while responding to an incident in the jurisdiction of the other party, such loss shall be the sole responsibility of*

the parties responding to the incident and the other party shall not have any liability for such damage or injury.”

23. In addition to the above, the Automatic Aid Agreement provides that *“To the extent permitted by law, the parties hereto shall indemnify and hold harmless each other, its officers, trustees, agents, employees and assigns from and against loss, cost, damages, expense and liability caused by an accident or occurrence resulting in bodily injury, including death sickness, disease to any personal or damage or destruction to property, real or personal, arising directly or indirectly from operations or services rendered until this agreement.”*

24. That the Automatic Aid Agreement is a valid contract by which terms the parties intended to be bound.

25. By virtue of the clear terms of the Automatic Aid Agreement, if the City of Columbia is determined by a trier of fact to be liable for any amount to the Plaintiff, the Irmo Fire District is obligated, and should be so ordered, to reimburse the City of Columbia for any losses or damages incurred as a result of this lawsuit, including suit costs.

WHEREFORE, the City of Columbia, having asserted claims against the Irmo Fired District would pray for a judgment against the same in an amount equal to the sum of its actual damages, any award or costs associated with defending this action, and any measure of damages allowable by law.

Further, the City of Columbia, by way of answering the allegations made in the complaint of the Plaintiff, would hereby aver, allege, and state as follows:

FOR A FIRST DEFENSE TO THE PLAINTIFFS’ COMPLAINT –

General Denial

26. Each and every allegation contained in the Plaintiffs' Complaint is hereby DENIED unless specifically admitted herein.

27. The City hereby responds to the Plaintiffs' "SUMMARY OF EVENTS", to wit:

Firefighter James Michael Muller was a dedicated firefighter with the Irmo Fire District. It is apparent he was beloved by members of his department and his family and friends. Firefighters of the CFRD who interacted with him considered him a peer and "brother" upon whom they could rely. Unfortunately, Firefighter Muller died as a result of injuries he suffered in a tragic structure fire being fought by members of the CFRD, aided by the Irmo Fire District (hereinafter referred to as "IFD") at the Tropical Ridge Apartments on May 26, 2023. Prior to his demise, thanks to the heroic efforts of the CRFD personnel on scene, two female civilians were rescued from this structure fire under dangerous circumstances and it was unknown whether other civilians were trapped in the blaze. While CRFD personnel attempted to located any other civilians who may have been trapped in the fire, two IFD personnel, including Firefighter Muller, entered into a room which was in danger of the ceiling falling on them, despite being warned by CRFD personnel not to enter. The ceiling, which was the floor of the apartment above them, collapsed and four (4) fire fighters, to include Firefighter Muller, were trapped. Immediate efforts to rescue the trapped firefighters began and three were rescued. Unfortunately, Firefighter Muller succumbed to the injuries he received and tragically passed away.

Anything in the Plaintiffs' SUMMARY OF EVENTS which is not consistent with the above is not based upon the known facts of this matter and therefore is DENIED.

28. The City is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Plaintiffs' Complaint but believes them to be true. At this time, without evidence to the contrary, Paragraph 1 of the Plaintiffs' Complaint is hereby ADMITTED.
29. The City ADMITS the allegations contained in Paragraph 2 of the Plaintiffs' Complaint to the extent that the City of Columbia is a municipality, a governmental entity and a political subdivision of the State of South Carolina and is subject to suit under the terms and conditions of the South Carolina Tort Claims Act, §§15-78-10 *et seq.* of the *Code of Laws of South Carolina*, (1986, amended), hereinafter referred to as the "Act". These admissions are qualified in that no immunity or defenses recognized in law are waived upon this admission and all applicable immunities are hereby asserted.
30. The City ADMITS the allegations contained in Paragraph 3 and 4 of the Plaintiffs' Complaint.
31. The City is not required to admit or deny the allegations contained in Paragraph 5 of the Plaintiff's Complaint, but in an abundance of caution hereby DENIES any allegations contained therein or attributable thereto.
32. The City ADMITS to the allegations contained in Paragraph 6 of the Plaintiffs' Complaint.
33. The City DENIES the allegations contained in Paragraph 7 and 8 of the Plaintiffs' Complaint and prays for strict proof thereof. .
34. Upon information and belief, the IFD is located in and provides services in both Richland and Lexington Counties, but the City ADMITS the allegation in Paragraph 9 of the

Plaintiffs' Complaint which states it has an Automatic Aid Agreement with the IFD and had same at all times alleged in the Plaintiffs' Complaint.

35. The City would crave reference to the terms of the Automatic Aid Agreement for the terms and conditions of same, and therefore DENIES the allegations of Paragraph 10 of the Plaintiffs' Complaint and would pray that this Honorable Court inquire into the specific terms of the Automatic Aid Agreement between the CRFD and the IFD.
36. Each and every allegation contained in Paragraphs 11, 12 and 13 of the Plaintiffs' Complaint is hereby ADMITTED.
37. The allegations of Paragraph 14 of the Plaintiffs' Complaint are completely DENIED and strict proof demanded thereof.
38. The allegations of Paragraph 15 of the Plaintiffs' Complaint are hereby ADMITTED.
39. The City of Columbia operates approximately 22,000 fire hydrants throughout Richland and Lexington Counties and at any given time approximately 98-99% of which are fully operational. There is no evidence that any faults or defect of fire hydrants adversely contributed to the fire at Tropical Ridge Apartments, or the tragic death of Firefighter Muller. Any allegation to the contrary contained in Paragraphs 16 and 17 of the Plaintiffs' Complaint is hereby DENIED.
40. As to Paragraph 18 of the Plaintiffs' Complaint, prior to Firefighter Muller's arrival, two female civilians who were trapped in the blaze were rescued by the efforts of the CRFD. After that, it was unknown whether any other persons were trapped by the fire and CRFD personnel were actively engaged in clearing the building to ensure no other civilians were trapped. Therefore, while the allegation of Paragraph 18 of the Plaintiffs' Complaint is

true, the City ADMITS the allegation with the caveat that at the time of the ceiling collapse it was not known by the CRFD or the IFD personnel.

41. The allegations of Paragraph 19 of the Plaintiffs' Complaint are hereby vehemently DENIED. Firefighters of the CRFD who were leaving one of the apartment rooms due to a threat of ceiling collapse warned Firefighter Muller and another IFD firefighter NOT to enter into the room which they did regardless of the warning.
42. Based upon an exhaustive review by the Command Staff of the CRFD, together with recordings of all of the radio traffic during this fire, there is NO evidence that the CFRD failed to maintain command and control over all of the firefighters engaged in this structure fire and therefore the allegations of Paragraphs 20 of the Plaintiffs' Complaint are vehemently DENIED.
43. The CRFD conducts exhaustive training of its firefighters to the highest caliber of fire departments throughout the State of South Carolina and maintains complete and thorough records of its training, as well as all of the training which it provides free of charge to the members of the IFD. Therefore, each of the allegations contained in Paragraph 21 of the Plaintiffs' Complaint is also vehemently DENIED.
44. The allegations of Paragraph 22 of the Plaintiffs' Complaint are completely untrue and the City DENIES each and every one of them. The facts relayed in this Paragraph are, upon information and belief, part of false claims made by members of the IFD and relayed to various third parties as if they were true.
45. The City ADMITS that the CRFD utilized deck guns and master streams in fighting this particular fire. However, the allegations of Paragraphs 23, 24, and 25 of the Plaintiffs'

Complaint which contend that the use of these tactics or devices were improper or outside of the ordinary course of the firefighting industry are hereby DENIED and strict proof demanded thereof.

46. When the ceiling of the floor above Firefighter Muller collapsed upon him, he was trapped within the debris. Therefore, the allegations of Paragraph 26 of the Plaintiffs' Complaint are ADMITTED.
47. There is no evidence to support the allegations of Paragraph 27 of the Plaintiffs' Complaint and therefore it is DENIED in its entirety. In fact, if any delay existed in the rescue efforts of the four (4) firefighters trapped by the ceiling collapse, it was only for a period of moments. There was no delay in rescue which contributed to Firefighter Muller's unfortunate passing. That is another alleged "fact" which has been repeated by members of the IFD despite clear evidence to the contrary in the recordings of the radio traffic from this incident. The City DENIES each and every allegation contained in Paragraph 27 of the Plaintiffs' Complaint and demands that evidence to support this allegation be presented in open court.
48. Due to the weight of the debris which trapped Firefighter Muller, the tragic allegations contained in Paragraphs 28, 29, 30, and 31 of the Plaintiffs' Complaint are hereby ADMITTED.
49. The South Carolina Department Labor, Licensing and Regulation - Division of Occupational Safety and Health (hereinafter referred to as "OSHA") has based the majority of the allegations made against the CRFD on incorrect information provided to OSHA investigators by the IFD and such information is unsupported by the clear evidence found

in the records regarding the Tropical Ridge Apartment fire. None of the allegations contained in the OSHA Citation have been proven in the Administrative Law Court. Each and every allegation contained in Paragraph 32 of the Plaintiffs' Complaint is hereby DENIED.

50. There is no evidence to support that any acts or omissions of the CRFD contributed to the injuries and subsequent death of Firefighter Muller. The City DENIES Paragraph 33 of the Plaintiffs' Complaint and demands that proof be brought forward on these matters.
51. The City is not required to admit or deny the allegations of Paragraph 34, 43, or 50 of the Plaintiffs' Complaint, but to the extent necessary the City DENIES the same in an abundance of caution.
52. As to the allegations of Paragraph 35 and 44 of the Plaintiffs' Complaint, the question of any duties owed to a plaintiff for the purposes of negligence is a question of law for the court to determine and not a question of fact. The City hereby prays that this Honorable Court inquire into the facts and circumstances of this matter and determine, as a matter of law, whether the City of Columbia owed any duties to the Plaintiff. Therefore, the City DENIES the allegations contained in Paragraphs 35 and 44 of the Plaintiffs' Complaint.
53. The City ADMITS the allegations contained in Paragraphs 37, 38, 46, 47 and 51 of the Plaintiffs' Complaint.
54. The City hereby DENIES the allegations of Paragraphs 36, 39, 40, 41, 42, 45, 48, 49, 52, 53, and 54 of the Plaintiffs' Complaint.
55. The City would pray that this Honorable Court inquire into the facts and circumstances of this tragic event and dismiss all of the claims against it asserted by the Plaintiff.

FOR A SECOND DEFENSE TO THE PLAINTIFFS' COMPLAINT
Sovereign Immunity

56. Each and every admission, denial and allegation contained in the Paragraphs above is hereby realleged herein as though fully set forth below.
57. The City of Columbia is a municipality organized and existing under the laws of the State of South Carolina, is a political subdivision of the State of South Carolina and is a governmental entity as defined by §15-78-30(d) of the Act.
58. The City is immune from suit by its citizens pursuant to the 11th Amendment of the United States Constitution and cannot be sued except by express consent in the form of legislative authority.
59. The City pleads sovereign immunity as a complete defense and bar to the Complaint for any aspect of this case which falls outside of express consent to be sued by legislation.

FOR A THIRD DEFENSE TO THE PLAINTIFFS' COMPLAINT
All S.C. Tort Claims Act Protections

60. That each and every allegation and denial set forth above is hereby realleged herein as though fully set forth below.
61. The City, as a political subdivision of the State of South Carolina, is only liable for torts within the strict limitations of the "South Carolina Tort Claims Act", §§15-78-10 *et. seq.* of the *Code of Laws of South Carolina* (1986, as amended), (hereinafter referred to as the "Tort Claims Act" or "Act") as the legislative waiver of the doctrine of sovereign immunity. Further, resultant damages, if any, from any tort for which the City may be liable under the Act are subject to the statutory limitations set forth in the Act, including, but not limited to, a limit on the amount that may be recovered, and a prohibition against the

Plaintiff recovering any prejudgment interest, a prohibition against the Plaintiff recovering any amount of attorney's fees, a prohibition against the Plaintiff recovering any amount of suit costs, and a prohibition against the Plaintiff recovering any amount of punitive damages.

62. The City pleads the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 et seq., of the *Code of Laws of South Carolina*, (1986, as amended) which provides the exclusive remedy for torts committed by governmental employees as a complete defense to the allegations as to liability and/or resultant damages, if any, including but not limited to, the nature and amount that may be recovered from the City.

FOR A FOURTH DEFENSE TO THE PLAINTIFFS' COMPLAINT
Comparative Negligence

63. Each and every admission, denial and allegation contained in the Paragraphs above is hereby realleged herein as though fully set forth below.
64. That if the Defendant City was negligent or grossly negligent as alleged, which is DENIED, then the decedent, James Michael Muller was likewise negligent or grossly negligent. The Defendant further alleges that such negligence and/or gross negligence on the part of the decedent combined or concurred with and/or contributed to any negligence and/or gross negligence of the Defendant as a proximate cause of the Plaintiffs' injuries and damages, if any, which is denied, to such an extent that the action of the Plaintiff against the Defendant should be barred in its entirety or any award be reduced proportionately under the doctrine of comparative negligence. The Defendant pleads comparative negligence as a complete defense and bar to the Plaintiffs' Complaint.

FOR A FIFTH DEFENSE TO THE PLAINTIFFS' COMPLAINT

Lack of Duty/ Public Duty Rule

65. That each and every allegation and denial set forth in the Paragraphs above is hereby realleged herein as though fully set forth below.
66. The determination of a legal duty is a question of law for this Honorable Court to determine and not the trier of fact. The City prays that this Honorable Court inquire into the facts and circumstances of this action and determine that the City is not liable to the Plaintiff because the City owed no cognizable legal duty to the Plaintiff.
67. That if any statute or ordinance seems to create a duty in this matter, such statutes create no duty of care towards individual members of the general public. Therefore, the City pleads the Public Duty Rule as a complete defense and bar to any finding of a legal duty owed to the Plaintiff.

FOR A SIXTH DEFENSE TO THE PLAINTIFFS' COMPLAINT

S.C.R.C.P. 12(b)(6)

68. Each and every admission, denial and allegation contained in the Paragraphs above is hereby realleged herein as though fully set forth below.
69. The City alleges that the Complaint fails to state facts sufficient to constitute a cause of action against the City.
70. The City pleads failure to state facts sufficient to constitute a cause of action against the Defendant City as a complete defense and bar to the Plaintiffs' Complaint

FOR AN SEVENTH DEFENSE TO THE PLAINTIFFS' COMPLAINT

Method and Manner of Fire Protection §15-78-60(6)

71. Each and every admission, denial and allegation contained in the Paragraphs above is hereby realleged herein as though fully set forth below.

72. The Defendant City of Columbia would allege that it is not liable for any loss resulting from the method or manner of providing fire protection pursuant to the clear construction of §15-78-60(6) of the *Code of Laws of South Carolina*, (1976, as amended) as interpreted by the appellate courts of the State of South Carolina.

73. The City pleads §15-78-60(6) as a complete bar to the allegations in the Plaintiffs' Complaint.

FOR AN EIGHTH DEFENSE TO THE PLAINTIFFS' COMPLAINT
Discretionary Immunity §15-78-60(5)

74. Each and every admission, denial and allegation contained in the Paragraphs above is hereby realleged herein as though fully set forth below.

75. Under the Act, a governmental entity is not liable for the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee. The City pleads §15-78-60(5) as a complete bar to the allegations contained in the Plaintiffs' Complaint.

FOR AN NINTH DEFENSE TO THE PLAINTIFFS' COMPLAINT
Criminal Acts of Third Persons §15-78-60(20)

76. Each and every admission, denial and allegation contained in the Paragraphs above is hereby realleged herein as though fully set forth below.

77. Under the Act, a governmental entity is not liable for a loss resulting from an act or omission of a person other than an employee including but not limited to the criminal actions of third persons. The City pleads S.C. Code Ann. §15-78-60(20) as a complete defense and bar to the Complaint.

FOR A TENTH DEFENSE TO THE PLAINTIFFS' COMPLAINT

Third Party Negligence

78. Each and every admission, denial and allegation contained in the Paragraphs above is hereby realleged herein as though fully set forth below.

79. The incident alleged in the Complaint was a result of the negligence, gross negligence or intentional conduct of a third party or parties, not foreseeable by the City, or its employees, in the exercise of due care. The City pleads third-party negligence and intervening acts of third parties as complete defenses and bars to the Plaintiffs' Complaint.

FOR A ELEVENTH DEFENSE TO THE PLAINTIFFS' COMPLAINT

Apportionment of Damages

80. Each and every admission, denial and allegation contained in the Paragraphs above is hereby realleged herein as though fully set forth below.

81. The Defendant City alleges that any damages alleged to have been sustained by the Plaintiff, which are specifically denied, must be apportioned between the Defendant and all other tortfeasors, pursuant to S.C. Code Ann. §15-78-100(c).

FOR A TWELVTH DEFENSE TO THE PLAINTIFFS' COMPLAINT

Motion to Strike

82. Each and every admission, denial and allegation contained in the Paragraphs above is hereby realleged herein as though fully set forth below.

83. The City hereby moves to strike from the Plaintiffs' complaint any prayers for relief for punitive damages, prejudgment interest, costs of this action, attorney's fees or any other relief which is not allowable under the Act, or which is not defined as a "loss" by §15-78-30(f).

FOR A THIRTEENTH DEFENSE TO THE PLAINTIFFS' COMPLAINT
Assumption of Risk

84. Each and every allegation contained in the Paragraphs above are hereby realleged herein as though fully set forth below.

85. Further answering and as an alternative defense, the Defendant City alleges and asserts that the actions of Firefighter Muller were voluntary and intentional on his part and were made or taken by him with knowledge of the risk of injury or harm.

86. The City pleads assumption of risk and/or *volenti non fit injuria* as a complete bar to the causes of action contained in the Plaintiffs' Complaint.

WHEREFORE, the City having fully answered the Complaint of the Plaintiff, prays as follows:

- a. That the Complaint be dismissed and any cost incurred be assessed against the Plaintiff; or,
- b. For such other and further relief in favor of this Defendant as this Court may deem just and proper

Respectfully submitted,

THE CITY OF COLUMBIA

BY: s/W. Mike Hemlepp, Jr.

W. Mike Hemlepp, Jr., Esq. (Bar No. 64264)

Senior Assistant City Attorney- Litigation

J. Lucas Richardson, Esq. (Bar No. 103745)

Assistant City Attorney - Litigation

Office of the City Attorney, City of Columbia

Post Office Box 667

Columbia, South Carolina 29202

Tel. 803.737.4235 / Fax 803.737.4250

William.Hemlepp@ColumbiaSC.gov

Joseph.richardson@cColumbiasc.gov

ATTORNEYS FOR DEFENDANT AND
THIRD PARTY PLAINTIFF

June 13, 2025

Columbia, South Carolina