



We Are Columbia

**MEETING DATE:** October 18, 2016

**DEPARTMENT:** Legal

**FROM:** *Shari Ardis, Legal Administrator*

**SUBJECT:** **Resolution No.: R-2016-075 - Authorizing the City Manager to execute a Lease Agreement and Operation and Maintenance Agreement between the City of Columbia and South Carolina Electric and Gas Company (SCE&G) for the Saluda River Walk - Three Rivers Greenway Project**

**FINANCIAL IMPACT:**

**ATTACHMENTS:**

- R-2016-075 3 Rivers Lease and Maintenance Agreement (PDF)

**RESOLUTION NO.: R-2016-075**

*Authorizing the City Manager to execute a Lease Agreement and Operation and Maintenance Agreement between the City of Columbia and South Carolina Electric and Gas Company (SCE&G) for the Saluda River Walk - Three Rivers Greenway Project*

BE IT RESOLVED by the Mayor and City Council this \_\_\_ day of \_\_\_\_\_, 2016, that the City Manager is authorized to execute the attached Lease Agreement and Operation and Maintenance Agreement, or forms approved by the City Attorney, between the City of Columbia and South Carolina Electric and Gas Company (SCE&G) for the Saluda River Walk - Three Rivers Greenway Project.

Requested by:

Senior Assistant City Manager Baker

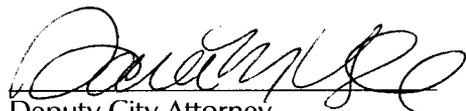
\_\_\_\_\_  
Mayor

Approved by:

\_\_\_\_\_  
City Manager

Approved as to form:

ATTEST:

  
Deputy City Attorney

\_\_\_\_\_  
City Clerk

Introduced:

Final Reading:

LEGAL DEPARTMENT DRAFT

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

**LEASE AGREEMENT**

THIS LEASE AGREEMENT ("Lease") is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 201\_\_ ("Effective Date"), between the SOUTH CAROLINA ELECTRIC & GAS COMPANY, a South Carolina corporation, with its headquarters at 100 SCANA Parkway, Cayce, South Carolina 29033, (the "Lessor"), and THE CITY OF COLUMBIA, SOUTH CAROLINA, a municipal corporation, with a principal place of business at 1737 Main Street, Columbia, SC (the "Lessee"). Lessor and Lessee may hereinafter also be referred to individually as "Party" or collectively as the "Parties".

**AGREEMENT**

FOR AND IN CONSIDERATION of the sum of One Dollar (\$1.00) per year and such other promises, covenants and conditions set forth herein from the Lessee to the Lessor, the Lessor hereby grants, leases and subleases unto the Lessee, subject to the terms and conditions herein and the reservations of any easements or licenses set forth and enumerated herein, a portion of the Lessor's real property, as described in the attached Exhibit A which is incorporated herein by reference (the "Property"), consisting generally of concrete pathways and/or boardwalks to be constructed by Lessee or its agents, approximately eight (8') feet in width, running along the Property parallel to the Saluda River as described on the preliminary plans set forth in the attached Exhibit B which are incorporated herein by reference (collectively, the "Demised Premises").

TO HAVE AND TO HOLD the said Demised Premises unto the Lessee subject to the following terms and conditions:

- 1. Purpose.** The purpose of this Lease is to provide the Lessee with a leasehold interest in the Demised Premises to permit the Lessee (a) to cooperate with The River Alliance, a South Carolina non-profit corporation, the County of Richland, and other interested parties in the creation, construction and long-term maintenance of the Saluda River walkway portion of the Three Rivers Greenway to be used for certain recreational purposes along the banks of the Saluda River located within the boundaries of the Property (the "Project"), and (b) to patrol, secure, and police the Project in order to curtail the unauthorized use of the Demised Premises and the Property by the general public.
- 2. Repairs and Maintenance.** Lessee shall keep the Demised Premises, and all improvements constructed thereon (including but not limited to such repair and maintenance obligations of Lessee relating to any bathroom facilities, bridges, parking areas, lights or storage/maintenance buildings, referred to in Exhibit B attached hereto, which may be constructed as a part of a later phase of Project), in good repair, ordinary wear and tear excepted, unless such repairs are made necessary by the willful misconduct or gross negligence of the Lessor. Except as stated in Paragraph 12 below, the Lessee shall not make or permit to be made any alterations or additions to the Demised Premises without the prior written consent of the Lessor. Any such consent shall apply solely to the particular transaction consented to and shall not constitute a waiver by the Lessor of the provisions of this Lease as to other transactions. At the expiration of the term of the Lease, Lessee shall peaceably yield up the Demised Premises and all improvements to the Lessor in as good condition as when delivered to Lessee, ordinary wear and tear, damage by fire, the elements, act of the public enemy, or casualty excepted; all notices to quit or vacate are expressly waived, any law, usage or custom to the contrary notwithstanding. Lessee shall notify Lessor and obtain the prior written consent of Lessor, including any required encroachment permits from Lessor, before conducting any repairs or maintenance within Lessor's transmission right-of-ways located on the Demised Premises.

**3. Lessor Right of Entry.** Lessee agrees that at any time during the term of the Lease the Lessor or its respective employees, agents, and invitees, may enter the Demised Premises for any reasonable purpose associated with their public purposes or their interests as landlords and/or owners of the Property.

**4. Lessor Reserved Use And Utility Right of Way.** The Lessor reserves unto itself, its successors and assigns, the right to use the Demised Premises for any purpose or use which does not unreasonably interfere with the rights and uses granted to the Lessee herein; specifically, the Lessor reserves the right to install over, under, across and through the Demised Premises such electric, communication, and/or gas lines, equipment, pipelines and other such facilities and structures as the Lessor may deem necessary, advisable or desirable in or for the conduct of its business.

**5. Assignment, Encumbrances and Subletting.** The Lessee shall not assign, mortgage, or pledge this Lease, nor assign or sublet the whole or any portion or part of the Demised Premises without the prior written consent of the Lessor. Any such consent shall apply solely to the particular transaction consented to and shall not constitute a waiver by the Lessor of the provisions of this Lease as to other transactions contemplated by the Parties.

**6. Insurance.**

A. At all times during the term of this Lease, Lessee, its contractors, successors and assigns, shall, at its sole expense, cause to be maintained the insurance described in this Lease and the Operation and Management Agreement, with the Lessor named as additional insureds on all policies obtained by the Lessee, its contractors, successors and assigns, covering the Demised Premises. Lessee, its contractors, successors and assigns, shall be solely responsible for paying any deductibles owed under such policies. Lessee's, its contractors, successors and assigns, insurance policies will have the following coverage requirements:

(i) Commercial property insurance on an "all risk" or "special" coverage form in an amount that is not less than the estimated replacement value of all improvements and fixtures located on the Demised Premises; the maximum deductible per occurrence shall be \$100,000.00.

(ii) General Liability Insurance against claims for bodily injury and injury to property covering the Premises in an amount of not less than \$1,000,000.00 for each occurrence and \$2,000,000.00 in the aggregate. No deductible shall exceed \$50,000.00.

(iii) Any other required insurance policies, including but not limited to flood insurance, as may be required by Applicable Laws (as defined herein).

B. Lessee's, its contractors', successors' and assigns', insurance policies covering the Demised Premises will be endorsed to require notification to the Lessor of any cancellations or non-renewal at least thirty (30) days before same; provided such notice requirement does not contravene its insurer's standard notification policy. If so, the notification period may be reduced to a notification period the insurer can offer, but in no event will such notification period be less than ten (10) days prior to such cancellation or non-renewal. Lessee shall provide the Lessor with a copy of a policy endorsement and certificate/evidence of insurance evidencing all insurance coverage required under this Paragraph 6.

C. Lessee, its contractors, successors and assigns, hereby waives all rights to recover against Lessor, or Lessor's officers, employees, agents, and representatives, for any damage arising from any cause or event covered by any insurance required to be carried by Lessee or self-insured by Lessee, or any insurance actually carried by Lessee. Lessee shall cause its insurer(s) to issue appropriate Waivers of Subrogation Rights endorsements to all policies of insurance carried in connection with the Demised Premises.

D. During the initial construction phase of the Project prior to the Lessee taking possession of the Demised Premises as well as any subsequent construction phase, Lessor and Lessee understand, acknowledge and agree that the general contractor for the Project shall at all times during construction maintain both (i) a builder's risk insurance policy, and (ii) a commercial general liability insurance policy, naming both the Lessor and the Richland-Lexington Riverbanks Parks District as additional insureds. Such policies shall provide coverage with a combined personal injury and property damage limit of not less than One Million Dollars (\$1,000,000.00) for each occurrence and not less than Two Million Dollars (\$2,000,000.00) in the aggregate (or in the maximum amounts allowed under state law).

7. **Signs.** The Lessee shall not install any signs on any part or portion of the Demised Premises without the Lessor's written consent, which consent shall not be unreasonably withheld. The Lessee shall obtain the Lessor's prior approval of the form, content and language set forth in such signs prior to the installation thereof and shall maintain such signs in accordance with the terms of the Operation and Management Agreement to be executed by the Parties as defined herein.

8. **Utilities.** The Lessee shall pay for the installation, service and supply of any and all utilities required by Lessee to operate and maintain the Demised Premises.

9. **Condition of the Demised Premises.** The Demised Premises is accepted by Lessee in an "as-is, where-is" condition. Lessor shall not be responsible for any defect or change in condition of the Demised Premises, nor for any damage thereto, nor for any damage or injury to any person, goods or things contained therein due to any cause whatsoever, except for the willful misconduct or gross negligence of the Lessor.

10. **Damage.** If all or a portion of the improvements constructed on the Demised Premises are damaged by fire, other casualty, or act of a public enemy substantially destroying the improvements located thereon and the repairs to which are financially burdensome or unreasonable as determined by the terms of the Operation and Management Agreement, then this Lease shall terminate and any unearned rent paid in advance by the Lessee shall be apportioned and refunded to it by Lessor. Lessee agrees to give the Lessor immediate notice of any such damage to the Demised Premises. Lessee shall be solely responsible for the cost and expense of making any repairs to the improvements located on the Demised Premises.

11. **Default and Remedies.** If the Lessee fails to perform or observe any of the covenants contained in this Lease or in the Operation and Management Agreement (as defined in Paragraph 16) on its part to be observed and performed and if such default or failure to perform is not cured by Lessee within thirty (30) days after receiving written notice of such default or failure to perform by Lessor, Lessor may either (a) terminate or cancel this Lease by notifying Lessee as hereinafter provided, and upon such termination or cancellation Lessee shall be liable to the Lessor for any and all actual damages Lessor sustains by reason of Lessee's breach of such covenants and of such termination or cancellation; or (b) re-enter the Demised Premises without notice and upon re-entry may let the Demised Premises or any part thereof as agent for Lessee and receive the rent therefor (if any), applying the same first to the payment of such expenses incurred by Lessor to re-enter, operate or re-let the Demised Premises and then to the payment of the rent and the fulfillment of the Lessee's covenants hereunder. A waiver by the Lessor of any breach or breaches by the Lessee of any one or more of the covenants or conditions hereof shall not bar forfeiture or any other rights or remedies of the Lessor for any subsequent breach of any such or other covenants and conditions by Lessee.

12. **Additional Improvements to the Demised Premises.** Lessee shall have the right to make improvements to the Demised Premises so as to upgrade its usage (i.e. for "recreational purposes" relating to the implementation of the Project) and in the performance of its public duties, subject to the prior

review, written consent and approval of Lessor, which consent shall not be unreasonably withheld. Any such additional improvements shall be at Lessee's sole cost and expense. Upon termination of this Lease, all permanent improvements made to the Demised Premises shall become the property of Lessor, unless removed by Lessee before the end of the final term of this Lease.

**13. Notices.** Any notices to be given hereunder by one Party to the other shall be in writing and given by personal delivery to the executive officer of the other Party or sent by registered or certified mail, postage prepaid, addressed as follows:

To Lessee: City Manager, City of Columbia  
Post Office Box 147  
Columbia, SC 29202

To Lessor: Land Department Manager  
SCE&G  
220 Operation Way, MC-D111  
Cayce, South Carolina 29033

FERC related: Bill Argentieri  
SCE&G  
(803) 217-9162

The address to which any notice, demand, or other writing may be given, made or sent to any party as above provided may be changed by written notice given by such party as above provided.

**14. Quiet Possession.** Lessor covenants that upon paying the rent as herein reserved and performing all the promises, covenants and conditions herein contained, Lessee may quietly enjoy the Demised Premises, subject, however, to the terms of the SCE&G Lease, the Operation and Management Agreement, and to the terms of any mortgages, agreements, or other encumbrances which may now or hereafter affect the Demised Premises.

**15. Operation and Management Agreement.** Simultaneously herewith, Lessor and Lessee agree to execute a separate operation and management agreement setting forth certain terms and conditions of Lessee's operation and management of the Project during the term of the Lease (the "Operation and Management Agreement"). Lessor and Lessee shall abide by the rules and regulations set forth in the Operation and Management Agreement during the term of the Lease so long as those rules do not impair or impede the Lessee's performance of its public duties. A copy of the Operation and Management Agreement is attached hereto as Exhibit C and is incorporated herein by reference.

**16. Control of the Demised Premises / No liability of the Lessor.**

A. Lessee hereby assumes full responsibility for the control, condition, repair, and maintenance of the Demised Premises throughout the term of the Lease pursuant to the terms set forth in this Lease and the Operation and Management Agreement. Lessee hereby waives all rights and claims against Lessor and its employees, representatives, and agents, for any and all property loss or damages occurring anywhere on the Demised Premises and any and all personal injuries or deaths occurring on or about the Demised Premises. Further, Lessee hereby waives all rights and claims against Lessor and its employees, representatives, and agents, arising out of or related to (i) theft, vandalism, criminal acts, or lack of security (Lessee acknowledges that it is solely responsible for providing security within the Demised Premises and neither Lessor nor its respective agents, employees, representatives, are providing any security equipment, devices, or services within the Demised Premises), (ii) damage resulting from any water, rain, snow, ice, freezing, or flooding of water within or onto the improvements constructed on

the Demised Premises by Lessee, (iii) any malfunctions or failure to function of any mechanical systems or utilities used by, in, on or around the Demised Premises by Lessee including but not limited to any leaking or bursting of water or sewer lines, or (iv) any failure to cause the Demised Premises to comply with Applicable Laws or otherwise to be in a condition suitable for Lessee's use, or the use of Lessee's successors, assigns, employees, licensees, or invitees.

B. Except to the extent caused by the gross negligence or willful misconduct of the Lessor or anyone acting by or under the authority of Lessor, Lessor shall not be liable for injuries or damages which may be sustained by any person, goods, wares, merchandise, or other property of the Lessee, or the Lessee's employees, licensees, invitees, officers, agents, contractors, visitors, or any other person in or about the Demised Premises caused by or resulting from any peril which may affect the Demised Premises, including, without limitation, fire, steam, electricity, gas, ice, water, or rain, which may leak or flow from or into any part of the Demised Premises, whether such damage or injury results from conditions arising upon the Demised Premises or from other sources. To the extent, permitted by Applicable Laws, the Lessee hereby assumes complete responsibility for any loss or damage resulting from bodily injuries (including death) or damages to any property or improvements located on the Demised Premises arising out of any act or failure to act on the Lessee's part or on the part of any employee, officer, agent, and contractor. Notwithstanding, nothing herein shall be construed to limit, waive, or otherwise modify the terms or limits of any insurance available to Lessee or Lessor as additional insured.

**17. Term and Rent Payments.** Commencing as of the later of either (i) the Effective Date (as defined herein), or (ii) the date on which construction of the Project is complete and the Lessee takes possession of the Demised Premises to operate the Project through March 3, 2068, the annual rental for the Demised Premises shall be One Dollar (\$1.00). Rental shall be payable in advance by the Lessee each and every year during the term of this Lease. The Parties acknowledge that the annual rent set forth herein is a nominal rent paid to Lessor due to the Lessee's public service responsibilities owed to the general public during its occupancy of the Demised Premises.

**18. Miscellaneous.**

A. Any addition, variation or modification to this Lease shall be void and ineffective unless made in writing and signed by the Parties hereto.

B. The captions of the various sections of this Lease have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Lease.

C. The validity, interpretation and effect of this Lease are governed by and will be construed in accordance with the laws of the State of South Carolina.

D. The Lessee shall insure that the construction and maintenance of all improvements undertaken in the provisions of this Lease meet all Applicable Laws relating to public health, safety and the environment.

E. If any paragraph, section, subsection, provision, sentence, clause or portion of this Lease is determined to be illegal, invalid or unenforceable, such determination shall in no way affect the legality, validity or enforceability of any other paragraph, section, subsection, provision, sentence, clause or portion of this Lease. Any such affected portion or provision of this Lease shall be modified, amended or deleted to the extent possible and permissible to give the fullest effect to the purposes of the Parties expressed in this Lease. The Parties hereby declare that they would have agreed to the remaining parts of

this Lease if they had known that such provisions or portions hereof would be determined to be illegal, invalid or unenforceable.

F. This Lease constitutes the entire understanding of the Parties and expressly supersedes and replaces in its entirety any prior oral or written agreements with respect to the subject matter hereof.

G. Upon execution of this Lease and the Operation and Management Agreement by Lessor and Lessee, the Parties agree to execute the Lease which will be recorded in the Office of the Register of Deeds for Richland County, SC.

H. The terms "Applicable Law" or "Applicable Laws" means any federal, state or local laws, ordinances (including but not limited to zoning laws), or regulations affecting the Demised Premises.

I. The terms, conditions, covenants and agreements contained in this Lease shall be binding upon the Lessor and Lessee, and their respective successors, legal representatives and assigns (if any assignment has been allowed pursuant to Paragraph 5 above).

**19. FERC Project 516.** This Lease is made subject to all standard Federal Energy Regulatory Commission ("FERC") restrictions as related to FERC Project 516 ("Lake Murray" or "Project").

A. Further, this Lease, to the extent the Demised Premises is within the Project Boundary Line of the hydroelectric project designated in the Files of the Federal Energy Regulatory Commission ("FERC") as Project 516 (the "Project"), is conveyed subject to any and all easements or servitudes which now exist, inchoate or perfected, or as may be revealed by a visual inspection of the Demised Premises, and reserving to Lessor, its successors and assigns, the right of ingress, egress and access in, to, over, across and out of such property for malaria control and for other corporate purposes; subject further to all damages that may be caused to said parcel or tract of land by reason of the erection, construction, presence, operation and maintenance by Lessor, its successors and assigns, of a dam or dams and reservoir of water of any height or size and necessary spillways on the Saluda River at or near Dreher Shoals, whether such damage is caused by the flooding of the property or injury to the drainage thereof, or by storage of water, or for any reason whatsoever, and Lessee, by acceptance of this instrument, for Lessee and for its heirs, successors and assigns, hereby expressly releases Lessor, its successors and assigns, from any and all liability for any and all damages that may be caused to said Demised Premises as aforesaid.

B. As further consideration for this Lease, the use of the Demised Premises conveyed herein which is within the Project Boundary Lines shall not endanger health, create a nuisance, or otherwise be incompatible with overall Project use as may from time to time be impacted by changes in governmental law, regulation and policy, and Lessee, its heirs, successor and assigns, shall take all reasonable precautions to ensure that the construction, operation and maintenance of any structures or facilities on the Demised Premises will occur in a manner that will protect the current and prospective scenic, recreational and environmental values of the Project and Lessee shall not unduly restrict public access to Project waters.

C. Title to the Demised Premises shall at all times be subject to the terms, conditions and restrictions set out in the FERC Project 516 Land Use and Shoreline Management Plan (the "Plan"), as the same may be amended or revised from time to time, and/or in accordance with the License issued by FERC, and to the FERC's "Order Approving Land Use and Shoreline Management Plan with Modifications and Amending Exhibit R" dated June 23, 2004, and "Order Clarifying and Modifying Order and Denying Rehearing" dated October 28, 2004, and successor FERC orders thereto. Lessee, its

heirs, successors and assigns agree to abide by and comply with such FERC orders and the Plan to the extent the same affect the Demised Premises, and to fully indemnify Lessor, its successors and assigns, for all costs (including attorney and court fees) reasonably incurred to enforce the provisions of these covenants.

D. If archaeological materials are encountered during construction, the Lessee or their contractor should stop work in the area, make all reasonable efforts to avoid or minimize damage to them and contact Lessor immediately. The procedures codified in the Code of Federal Regulations at 36 C.F.R. § 800.13(b) will apply and Lessor will notify the State Historic Preservation Office. Archaeological materials consist of any items, fifty years old or older, which were made or used by man. These items include, but are not limited to, stone projectile points (arrowheads), ceramic sherds, bricks, worked wood, bone and stone, metal and glass objects, and human skeletal materials. Work in the area will not resume until an appropriate resolution has been determined and implemented.

E. Should unmarked human remains be encountered during construction, all work within a fifty (50') foot radius of the area will cease and the Lessee or their contractor will immediately notify the Lessor of their findings. Lessee or their contractor will follow all requirements and procedures set forth in the Code of Laws of South Carolina Annotated §16-17-600 (Destruction of Desecration of Human Remains and Repositories) and § 27-43-10, et seq. (Removal of Abandoned Cemeteries). Lessor will immediately notify the County Coroner, the SHPO, the FERC, the CIN THPO, and any other federally recognized tribe identified during consultation. In the interim, the Lessee or their contractor in cooperation with Lessor will make every effort possible to protect the remains from any further disturbance. Lessor will consult the SHPO and the FERC for technical advice for the treatment of the unmarked burial. Work in the area will not resume until an appropriate resolution has been determined and implemented.

F. Should previously unrecorded archaeological remains be encountered during construction, the Lessee or their contractor will cease all activities in that area and make all reasonable efforts to avoid or minimize damage to them. The Lessee or their contractor will immediately notify Lessor of their findings. Lessor will immediately notify the SHPO and the FERC and advise them of the nature of the discovery. Lessor will consult with the SHPO and the FERC for technical advice for the evaluation of the resources. Work in the area will not resume until an appropriate resolution has been determined and implemented.

20. This Lease is made subject to and governed by that certain Scenic Easement, provided under the South Carolina Scenic Rivers Act of 1989, of which a portion of the Property is governed between Lessor and the State of South Carolina as represented by the State Budget and Control Board as provided under Sections 49-29-100 and 27-8-10 et seq., Code of Laws of South Carolina, 1976, as amended, its successors, heirs, executors, administrators and assigns, first recorded in the Lexington County RMC Office on April 11, 1997 in Deed Book 4120 at Page 43 and re-recorded on August 21, 2015 in Deed Book 17854 at Page 216 as well as first recorded in the Richland County RMC Office on April 11, 1997 in Deed Book 1375 at Page 914 and re-recorded on \_\_\_\_\_ in Deed Book \_\_\_\_\_ at Page \_\_\_\_\_.

**[The remaining portion of this page has been intentionally left blank with signature pages to follow.]**

IN WITNESS WHEREOF, the Lessor has signed and sealed this document as of the date first mentioned above.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

LESSOR:

SOUTH CAROLINA ELECTRIC  
& GAS COMPANY,  
a South Carolina corporation

\_\_\_\_\_  
First Witness

By: \_\_\_\_\_ (SEAL)

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
Second Witness

Executed on \_\_\_\_\_, 2016

STATE OF SOUTH CAROLINA )

ACKNOWLEDGMENT

COUNTY OF LEXINGTON )

I, the undersigned notary public for the State of South Carolina, do hereby certify that \_\_\_\_\_, the \_\_\_\_\_ of SOUTH CAROLINA ELECTRIC & GAS COMPANY personally appeared before me this day and acknowledged the due execution of the foregoing instrument. The person providing the acknowledgement is either known to me or has provided satisfactory evidence of identification to be the person whose name is subscribed to the foregoing instrument.

Witness my hand and official seal this the \_\_\_ day of \_\_\_\_\_, 20\_\_.

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Notary Public for South Carolina

Print notary name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_



**EXHIBIT A**

**Property**

This being a portion of the property conveyed to Lexington Water Power Company by Richland Power Company by deed dated May 12, 1931 and recorded in the Richland County RMC Office in Deed Book DO at Page 16. Lexington Water Power Company is corporate predecessor to South Carolina Electric & Gas Company.

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## **EXHIBIT B**

### **Demised Premises**

NOTE: The attached Layout Plan, identified as Sheets L-1 and L-2, for the 8' concrete pathways and 8' boardwalks are preliminary plans only as initially provided by the River Alliance to the Lessor. Upon the release of funds by the County of Richland to The River Alliance and the Lessee to begin construction of the Project, the Parties hereto agree that this Lease and Exhibit B will be amended to incorporate final plans and specifications showing the exact location of the improvements to be located on the Demised Premises.

The Parties acknowledge and agree that the attached preliminary plans show additional improvements located on the Property that may or may not be constructed and are subject to future changes made to the Project by the Parties.

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**EXHIBIT C**

Operation and Management Agreement - Unsigned copy

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**OPERATION AND MANAGEMENT AGREEMENT  
(Saluda River Walk - Three Rivers Greenway Project)**

THIS OPERATION AND MANAGEMENT AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between THE CITY OF COLUMBIA, SOUTH CAROLINA, a political subdivision of the State of South Carolina (hereinafter called the "City"), and SOUTH CAROLINA ELECTRIC & GAS COMPANY, a South Carolina corporation (hereinafter called "SCE&G"). The City and SCE&G may be hereinafter referred to individually as the "Party" or collectively as the "Parties". The "Effective Date" of this Agreement shall be the date the Agreement is signed by both Parties, and if both Parties do not sign on the same date, it is the date on which this Agreement is signed by the last Party.

**RECITALS**

WHEREAS, pursuant to that certain Lease executed and effective as of \_\_\_\_\_, 2016, between the City and SCE&G (the "Lease"), SCE&G has agreed to lease a portion of its real property (currently owned and/or leased by SCE&G) as more particularly described on EXHIBIT A attached hereto and incorporated herein by reference (the "Land") to the City in order for the City to create, construct, operate, manage and maintain the Saluda River Walk portion (the "Riverwalk") of the Three Rivers Greenway project (the "Project") for certain recreational purposes offered to the general public; and,

WHEREAS, pursuant to the terms of the Lease, the City and SCE&G have agreed to enter into this Agreement regarding the use, occupancy, operation, maintenance and management of the Land leased by the City from SCE&G.

**AGREEMENT**

NOW, THEREFORE, FOR AND IN CONSIDERATION of the Lease, the rents and of the mutual covenants and agreements of the Parties hereto, as are hereinafter set forth and made a part of this Agreement, the City and SCE&G do hereby agree as follows:

1. **Recitals.** The recitals set forth hereinabove are incorporated herein by reference.
2. **The Land.** Subject to the terms hereof and the terms of the Lease, SCE&G hereby grants to the City the right to construct, use, occupy, manage, maintain, and operate the Riverwalk (as more particularly described on the Layout Plan and specifications prepared by Kenneth B. Simmons Associates, LLC, dated August 1, 2006, and entitled "I-26 Saluda River Crossing & Saluda Riverwalk, A Component of the Three Rivers Greenway", as may be updated from time to time (the "Plans")) located on a portion of its Land located along the banks of the Saluda River, which Plans are more particularly described on EXHIBIT B attached hereto and incorporated herein by reference. The portion of the Land along the banks of the Saluda River on which all improvements will be made and constructed by the County of Richland and/or the City for the operation of a walking path or trails, together with all of the City's right, title and interest in the Lease, including any and all licenses, easements (if necessary) or other appurtenances thereto, are hereinafter collectively referred to as the "Riverwalk Property".
3. **Use of Riverwalk Property.** The City agrees to use, operate, and maintain the Riverwalk Property as a pathway allowing the general public to walk, run and hike along the banks of the Saluda River in order to connect the Riverwalk Property with other existing or to be constructed portions of the City's Project and for no other purposes without SCE&G's prior written consent and approval. The City agrees that the Riverwalk Property shall be open to the general public for such purposes in compliance

with the rules governing and regulating the City's existing public parks. The City agrees not to use the Riverwalk Property, or any part thereof, for any disorderly or unlawful purpose and agrees to comply with all governmental laws, ordinances, rules and regulations applicable to the use, possession and operation of the Riverwalk Property. The City agrees not to use the Riverwalk Property in such a way as to diminish its value, all reasonable wear and tear excepted, or to diminish the value of the land owned and leased by SCE&G.

**4. Initial Term.** The initial term of this Agreement will begin as of the Effective Date indicated above and will end on March 3, 2068. Provided, however, the initial term and any subsequent renewals of this Agreement shall be deemed to be extended to coincide with the term of the Lease.

**5. Usage Fees.** Except as may be provided for by this Agreement or in the Lease, the City shall not be required to pay a fee to SCE&G for its right to construct, use, occupy, manage, maintain, and operate the designated portions of the Riverwalk Property as a pathway for walking, running and hiking.

**6. Construction, Maintenance and Repairs by the City.** The City shall be solely responsible for the costs of the construction, maintenance and repair of the following components of the Riverwalk Property (reference is made to the Layout Plan for a more complete description of such components): (a) the sidewalks, fences, boardwalks, paths, walkways, roadways and/or driveways to be constructed and located within the boundaries of the Riverwalk Property (collectively, the "Pathways"), (b) any and all improvements located on the exterior grounds surrounding the Pathways located or to be located within the boundaries of the Riverwalk Property which may include park benches, picnic tables, maintenance buildings or sheds, and other related structures, (c) all exterior lighting, including underground utility lines and poles, located within the boundaries of the Riverwalk Property, and (d) the roof systems, exterior and interior façades, irrigation systems, electrical systems, plumbing systems, heating, ventilation and air conditioning systems for any buildings located or to be located within the Riverwalk Property and constructed either by the City, the County (as defined herein), or their respective agents, contractors or subcontractors (collectively, Items "a-d" are referred to as the "City Improvements"). The City's maintenance and repair obligations in the City Improvements and Pathways shall include daily and weekly performance of cleaning, irrigating, trash collecting, pruning of landscape materials, and replacing seasonal plants. All City Improvements shall be constructed at the City's sole cost and expense and shall be and remain the property of the City until the termination of this Agreement or the Lease, at which time the City Improvements shall become the property of SCE&G. Prior to the commencement of construction for the City Improvements, SCE&G, in its sole and absolute discretion, shall determine the exact location of the City Improvements so that the City Improvements will not interfere with SCE&G normal business operations on its Land. The City shall be solely responsible for any damages caused to the Land and any existing and future structures located on the Land, by the construction and maintenance of the City Improvements. The City shall repair any such damage at its sole cost and expense when requested by SCE&G.

The Parties understand and agree that the construction of the initial phase of the Project will be funded and constructed by the County of Richland, South Carolina (the "County") through its penny sales tax program with the Plans to be provided by The River Alliance, a South Carolina non-profit corporation. The City, the County and The River Alliance shall coordinate all construction activities affecting the Land and the Riverwalk Property with SCE&G before the construction of any of the City Improvements. The Parties agree to hold and schedule any meetings as may be necessary or requested by the Parties throughout the term of this Agreement to address the construction, operation, maintenance, and repair of the City Improvements.

If needed, during the initial construction phase of the Project as well as any future construction phases or required maintenance to repair or replace the City Improvements (collectively, the

“Construction Work”), SCE&G will grant the City, the County, The River Alliance, and their respective employees, agents, contractors and subcontractors, a temporary license over and across the Land to provide such services necessary to construct, repair and/or maintain the City Improvements located within the Riverwalk Property. The City, and its employees, agents (including the County and The River Alliance), contractors, and subcontractors, shall at all times conduct the Construction Work, and all activities related thereto, in a manner to protect not only the Land and the existing improvements located thereon, but also SCE&G’s employees, invitees, patrons, and guests. Prior to the commencement of any Construction Work during the term of this Agreement and the Lease, the City shall meet with SCE&G to establish and develop a written plan to address all matters relating to the Construction Work to be performed by the City’s employees, agents (including the County and The River Alliance), contractors, and subcontractors, including but not limited to establishing the location of staging areas for labor, materials and equipment to be used during the Construction Work, establishing the days and hours during which the Construction Work can be performed, establishing a safety plan for the Project, and establishing the access, ingress and egress points over and across the Land to be used by the City, and its employees, agents (including the County and The River Alliance), contractors, and subcontractors, to construct and maintain the City Improvements within the Riverwalk Property.

Prior to the commencement of any Construction Work during the term of this Agreement, the City shall also deliver to SCE&G (a) a list of all contractors and subcontractors performing any Construction Work on the Land, (b) copies of all permits required by all federal, state or local laws, rules or regulations of any governmental authority having jurisdiction over the Construction Work, (c) insurance certificates from each contractor and subcontractor showing fully paid general liability coverage with respect to the Construction Work to be performed, in amounts suitable to SCE&G and naming SCE&G as an additional insured, (d) copies of the latest Plans detailing the scope of the Construction Work to be performed, and (e) as necessary, a survey and staking plan showing the exact location of the City Improvements to be constructed as approved by SCE&G in its sole and absolute discretion.

**7. Construction, Maintenance and Repair by SCE&G.** SCE&G shall be solely responsible for the construction, maintenance and repair of any existing structures or buildings located within the Riverwalk Property constructed specifically by SCE&G for its business operations and purposes, except as caused by the negligence of the City.

**8. Utilities.** The City shall arrange for and pay all services and charges for any and all utilities required or used in the operation of the Pathways within the Riverwalk Property, including, but not limited to water, sewer, electricity, natural gas, waste disposal (to include any dumpster rental fees, expenses or charges), and telecommunications, which may be charged or assessed by a utility or other service company, a municipality or other political subdivision of the State of South Carolina. In no event shall SCE&G be liable for any interruption or failure in the supply of any utilities or services to the Riverwalk Property, unless caused by the willful misconduct or gross negligence of SCE&G.

**9. Real Estate Taxes.** During the term of this Agreement, or the extension thereof, the City shall promptly pay, when due and prior to delinquency, directly to the appropriate government or municipal agency or authority, all real estate taxes and assessments (“Real Estate Taxes”) levied upon or assessed against the Riverwalk Property (if any, as the Riverwalk Property is currently exempted from ad valorem taxes). SCE&G shall promptly forward any bills for Real Estate Taxes it may receive to the City for payment by the City, as such bills relate to the Riverwalk Property. The City shall promptly send to SCE&G copies of said paid receipts for Real Estate Taxes, if any.

**10. Security Services.** The City shall be solely responsible for and shall continuously provide security services for the Riverwalk Property at its sole cost and expense, pursuant to the City’s current guidelines for public parks owned, leased, maintained and operated by the City. The City shall ensure

that its police department or park rangers shall patrol the Pathways of the Riverwalk Property on a daily basis, and not less frequently than provided for other parks or properties owned or controlled by the City.

**11. Casualty Insurance.** The City shall, at all times, have and maintain adequate fire, hazard, flood (if required by applicable law) and extended casualty coverage insurance (collectively, the "Casualty Insurance") on the City Improvements constructed within the boundaries of the Riverwalk Property. It is understood and agreed that such insurance carried by the City shall at all times cover the full replacement value and costs of the Pathways and City Improvements constructed and located within the Riverwalk Property. The insurance coverage shall provide that coverage will not be canceled for any reason unless and until SCE&G is given thirty (30) days prior, written notice of the pending cancellation by the City's insurance company. Upon request and prior to the Effective Date, the City's insurance company or other provider shall provide SCE&G with a certificate of insurance indicating the terms and conditions of the policy. The City agrees that it shall not do or permit anything to be done on the Riverwalk Property which may prevent the obtaining of any such Casualty Insurance on the Riverwalk Property including, but without limitation, fire, flood, and extended coverage and public liability insurance. SCE&G and Richland-Lexington Riverbanks Parks District ("Riverbanks") shall be named as additional insureds on all such Casualty Insurance policies obtained by the City for the Riverwalk Property.

**12. Liability Insurance.** During the full term of this Agreement or any renewal or extension thereof, the City shall, at its sole expense, procure and maintain in full force Public Liability Insurance (Comprehensive General Liability or Commercial General Liability) including Contractual Liability Insurance, with a combined personal injury and property damage limit of not less than One Million Dollars (\$1,000,000.00) for each occurrence and not less than Two Million Dollars (\$2,000,000.00) in the aggregate (or in the maximum amounts allowed under state law), insuring against all liability of the City, and its representatives, agents, contractors, employees, invitees, or guests, arising out of and in connection with the City's use, maintenance or occupancy of the Riverwalk Property. Said insurance policy shall name SCE&G and Riverbanks as additional insureds, and the policy shall provide that it not be canceled for any reason unless and until SCE&G is given thirty (30) days prior, written notice of the pending cancellation by the insurance company. The City's insurance company shall provide SCE&G with a certificate of insurance indicating the terms and conditions of the policy.

All insurance required under this Agreement shall be issued by insurance companies licensed to do business in the jurisdiction where the Riverwalk Property is located. Such companies shall have a policyholder rating of at least "A" and be assigned a financial size category of at least "Class X" as rated in the most recent edition of "Best's Key Rating Guide" for insurance companies.

**13. SCE&G Licenses, Personal Property Taxes and Insurance.** SCE&G shall be responsible for the payment of any business license fees and costs, and any and all taxes and assessments on its personal property and improvements, which it may locate or construct within the Riverwalk Property, including, but not limited to furniture, fixtures, equipment, and merchandise. All of SCE&G's personal property on or within the Riverwalk Property shall be and remain at SCE&G's sole risk, and the City shall not be liable whatsoever for any damages, loss, or casualty of such personal property, unless caused by the willful actions or gross negligence of the City, or its employees, agents, and assigns.

**14. SCE&G Improvements.** SCE&G shall be allowed to construct or make structural alterations, additions, or improvements (the "SCE&G Improvements") to any portion of the Riverwalk Property that is not reserved for the City's use, provided same is consistent with the City's use of the Riverwalk Property described herein and with written notice to the City prior to making the SCE&G Improvements. In the event any of the SCE&G Improvements are to be installed on any City Improvements, SCE&G shall assume full responsibility for all maintenance and repair of such City Improvements which may be

attributed to such installation. All SCE&G Improvements shall be constructed at SCE&G's sole cost and expense and shall be and remain the property of SCE&G.

**15. Surrender Upon Termination.** Upon the sooner of either the expiration of the term of this Agreement and the Lease or the termination of the Agreement and the Lease, the City shall surrender the Riverwalk Property in as good of a condition and repair as the Riverwalk Property was as of the commencement date of the Lease, normal and ordinary wear and tear excepted. The City agrees that no waste of any kind, solid, liquid or hazardous, shall remain on the Riverwalk Property upon the termination of the Agreement or the Lease.

Any personal property of the City remaining on the Riverwalk Property after the termination of this Agreement or the Lease may, at the option of SCE&G, be deemed to have been abandoned by the City and may either be retained by SCE&G as its property or be disposed of without liability. The provisions of this section shall survive the termination of this Agreement.

**16. City's Default.** Any one of the following events shall be deemed a default by the City and a breach of this Agreement, namely:

(a) If the City fails to observe or perform any of the other terms, covenants or conditions of this Agreement or the Lease, including but not limited to providing security services for the Project, and such failure continues after the expiration of thirty (30) days from the date SCE&G gives written notice to the City calling attention to the existence of such failure, provided however, that if the City cannot reasonably correct the default within said thirty (30) day period, the City shall be given a reasonable period of time to correct such default; or

(b) If the City is declared bankrupt or insolvent by judicial decree; or

(c) If the City makes a general assignment for the benefit of its creditors; or

(d) If any materialman's, mechanic's or other lien is filed against the Riverwalk Property in connection with any improvements, alterations or additions made by the City, and the City permits the lien or liens to stand against the Riverwalk Property, not securing the discharge of the Riverwalk Property from such liens by filing an appropriate bond within thirty (30) days from date of lien filing, pursuant to applicable law. Should the City file a bond and elect to contest the lien or liens, no default shall be in effect pending final legal determination of the disputed lien.

**17. SCE&G's Rights in the Event of a Default.** In the event of any default by the City as herein provided, SCE&G, subject to any right to cure period set forth herein, shall have the following rights:

(a) The right to terminate this Agreement and the Lease by giving the City written notice of such termination, whereupon, this Agreement and the Lease shall be regarded as having been canceled as of the date of SCE&G's termination notice and the City shall then surrender the Riverwalk Property to SCE&G. However, the City shall remain liable to SCE&G for all payments and other obligations which have accrued prior to the time of such termination; and

(b) Upon such termination by SCE&G as described herein, SCE&G shall have the right to immediately re-enter and take possession of the Riverwalk Property; and upon re-entry, may remove all persons and personal property of the City from the Riverwalk Property; and

(c) The full right to recover from the City any and all damages resulting from such event of default.

The City shall be liable for all reasonable court costs, attorneys' fees and other reasonable expenses incurred by SCE&G in enforcing any of the obligations of this Agreement.

**18. Right of Entry.** SCE&G, and its officers, directors, agents, employees, guests and invitees, shall at all times during the term of this Agreement have the right to enter the Riverwalk Property at any reasonable time for the purpose of (i) using the City Improvements and SCE&G Improvements located within the Riverwalk Property, (ii) performing its obligations under this Agreement, (iii) performing any work which SCE&G elects to undertake for the safety, preservation, benefit or welfare of the Riverwalk Property or its occupants, or (iv) performing any work which SCE&G elects to undertake made necessary by reason of the City's default or failure to act.

Except for the gross negligence or willful misconduct on the part of SCE&G, SCE&G shall not be liable for any inconvenience, annoyance, disturbance, loss of business or other damage of the City by reason of making such inspections, visits, repairs or the performance of any such work, so long as such actions on SCE&G's part are not unreasonable.

**19. Fire or Other Casualty.**

(a) If at any time during term of this Agreement, all or a major portion (greater than 30%) of the City Improvements within the Riverwalk Property shall be damaged or destroyed by fire, flooding, or other casualty, then either Party may elect to terminate this Agreement by giving thirty (30) days prior written notice to the other; provided, however, that the City may elect, by giving written notice to SCE&G within thirty (30) days of such damage or desolation, to repair and reconstruct the City Improvements within the Riverwalk Property to the condition in which the City Improvements existed immediately prior to such damage or destruction, in which case any notice of termination already given by SCE&G shall be null and void, and, provided that if such repair and reconstruction proceeds as provided in subdivision (b) below, then SCE&G may not terminate this Agreement. Insurance proceeds payable with respect to such fire or other casualty, pursuant to the insurance provided by Section 11, shall be payable to the City, and, in the ordinary course of events, be used, in part for repairs and/or replacements to the City Improvements within the Riverwalk Property as required.

(b) If the City has elected to repair and restore the City Improvements within the Riverwalk Property with the insurance proceeds, this Agreement shall continue in full force and effect and such repairs will be made within a reasonable time thereafter but in no event to exceed six (6) months thereafter, subject to delays arising from shortages of labor or material, governmental laws or regulations, acts of God, war or other conditions beyond the City's reasonable control and rent, if any, shall not be increased after the date of the completion of such repairs.

(c) It is agreed that if the City Improvements within the Riverwalk Property are damaged only slightly due to fire, flooding, or other casualty (30% or less being damaged) and City's Project operations are not substantially or materially affected by the casualty, then the City or SCE&G, as their interests may appear, shall repair the damage with the insurance proceeds with due diligence and as soon as practicable and the Parties shall continue to uphold all other provisions of this Agreement.

(d) The Parties shall notify each other without delay in the event of any fire, flooding or other casualty damage caused to the Riverwalk Property and the City Improvements.

**20. Condemnation.** If all of the Riverwalk Property is taken by condemnation, this Agreement shall terminate on the date when the Riverwalk Property shall be so taken. If a portion or any part of the Riverwalk Property is taken by condemnation and the Riverwalk Property is thereby rendered not

reasonably suitable for the continued conduct of the City's business, taking into consideration the nature, size and scope of such business immediately prior to the taking, then either Party may elect by giving written notice to the other, to terminate this Agreement, and in the event of such termination, all charges shall be apportioned as of the date of taking. If the taking involves a part of the Riverwalk Property and if neither Party elects to terminate this Agreement, the City shall restore the Riverwalk Property in compliance with the scope of the Project. Both the City and SCE&G shall have the right to assert a separate claim in any condemnation proceeding, as their interests may appear. SCE&G shall have the right to assert a claim for, but not be limited to, the loss of the Riverwalk Property. The City shall have the right to assert a claim for, but not be limited to, the loss of use of the Riverwalk Property, moving expenses and any personal property erected on the Riverwalk Property by the City. SCE&G and the City shall each bear their own cost and expense in prosecuting their separate claims. Any award made to either SCE&G or the City shall belong entirely to SCE&G or the City, respectively.

**21. Assignment.** The City shall not assign its rights or obligations under this Agreement without the prior written consent of SCE&G.

**22. Environmental Hazards.** The City agrees that it shall not, nor shall it permit others, in violation of any environmental laws and regulations, to use, release, store, or dispose of any Hazardous Materials (as defined by federal and state environmental laws and regulations) on the Riverwalk Property or the Land nor shall the City contaminate the Riverwalk Property, the Land or the surrounding environment and properties. If the City, or its agents, contractors, or employees, have actual knowledge of any release of any Hazardous Materials on the Riverwalk Property or the Land, or of any inquiry or action by a government agency regarding such materials, the City shall immediately notify SCE&G. The City, its agents, representative, contractors, subcontractors, and employees agree to abide by all applicable environmental laws and regulations as they apply to the City's possession, construction, management, maintenance, operation and use of the Riverwalk Property.

In the event that the Riverwalk Property, the Land, or the environment becomes contaminated with Hazardous Materials as a result of the City's use, occupation, or possession of the Riverwalk Property, it shall be the City's sole responsibility and cost to remediate and take from the Riverwalk Property said contamination

**23. Notice.** A notice which may or shall be given under the terms of this Agreement shall be either delivered by hand or by Federal Express or another similar national, reputable, overnight courier or sent by United States Registered or Certified Mail, postage prepaid; if for the City or if for SCE&G, to the addresses set forth below. Such addresses may be changed from time to time by either Party by giving notice as provided herein. Notice shall be deemed given when delivered (if delivered by hand) or one (1) day after sending it via overnight courier or three (3) days after depositing in the mail, return receipt requested (if delivered by mail).

Notice to the City:                   City of Columbia  
  1737 Main Street  
  Post Office Box 147  
  Columbia, South Carolina 29201 (29202)  
  Attention: City Manager

Notice to SCE&G:                   South Carolina Electric & Gas Company  
  220 Operation Way, MC-D112  
  Cayce, South Carolina 29033  
  Attention: Land Department Manager

**24. Severability.** If any clause or provision of this Agreement is illegal, invalid or unenforceable, under present or future laws effective during the term hereof, then it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby and it is also the intention of both Parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added, as a part of this Agreement, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable; provided however, that both Parties must agree in writing to such substitute language and provisions before such will become binding on either Party.

**25. Compliance with Laws, Ordinances and Regulations.** The City shall, except as herein required by SCE&G, and at the City's sole expense, promptly comply with and carry out all orders, requirements, or conditions now or hereafter imposed upon the City by the ordinances, laws and/or regulations of any governmental authorities, as may apply to the Riverwalk Property, insofar as they are occasioned by or required in the conduct of the City's business or the City's use of the Riverwalk Property.

**26. Successors and Assigns.** The covenants, conditions and agreements contained in this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

**27. Whole Agreement.** This Agreement, together with all exhibits which are attached hereto and by reference made a part hereof, constitutes the sole and entire agreement between the Parties relative to the Operation and Management of the Riverwalk Property. No prior written or contemporaneous oral promises or representations shall be binding. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the City or SCE&G unless reduced to writing and signed by both Parties.

**28. Waiver.** The failure by SCE&G to complain of any action, non-action or default of the City shall not constitute a waiver of any of SCE&G's rights hereunder. A waiver by SCE&G of any right for any event of default by the City shall not constitute a waiver of any right for either a subsequent default of the same obligation or any other default. Neither a failure by SCE&G to exercise any of its options hereunder, nor failure to enforce its rights or to seek its remedies upon any default, shall effect or constitute a waiver of SCE&G's right to exercise such option, to enforce such right, or to seek such remedy with respect to that default or to any prior or subsequent default.

**29. Liens and Encumbrances.** The City shall not encumber or subject the interest of SCE&G in the Riverwalk Property to any mechanics', materialmen's or other liens of any nature whatsoever and shall bond off or cause to be released any such liens against the Riverwalk Property.

**30. Quiet Possession.** It is understood and agreed that subject to the terms of this Agreement and the Lease, and to all covenants, additions, easements, and liens of record, that the City, performing and observing the covenants hereof, may peacefully use and enjoy the Riverwalk Property throughout the duration of this Agreement and the Lease without any unreasonable interruptions by SCE&G, and its successors or assigns.

**31. No Joint Venture or Partnership.** It is expressly understood that the Parties shall not be construed or held to be partners, joint venturers or associates of one another in the conduct of their respective business operations.

**32. Miscellaneous Provisions.**

(a) The captions appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, or affect the scope or intent of such Paragraphs or Sections of this Agreement. Any gender used herein shall be deemed to refer to any other gender. The use of singular herein shall be deemed to include the plural and, conversely the plural shall be deemed to include the singular.

(b) This Agreement shall be construed and interpreted under the laws of the State of South Carolina.

(c) The City may, during the term of this Agreement, upon obtaining any and all necessary permits from governmental authorities and the prior written consent of SCE&G as to form, content and location, paint or erect and maintain, at its cost and expense, signs of such dimensions and materials as it may reasonably deem appropriate in or about the Riverwalk Property. Such signs shall be removed by the City upon the termination of its occupancy of the Riverwalk Property and the City shall repair any damage caused by such removal, all at the City's sole cost and expense.

(d) The Parties agree to fully cooperate with each other with respect to securing any necessary approvals, permits or licenses necessary for the construction, renovation and operation of the Riverwalk Property as contemplated hereby.

**34. Authorization.** Each individual executing this Agreement on behalf of the City or SCE&G represents and warrants that he or she has been authorized to do so by such entity.

**[SIGNATURE PAGES TO FOLLOW]**



IN WITNESS WHEREOF, undersigned has executed this Agreement as of the date first above-written.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

SOUTH CAROLINA ELECTRIC &  
GAS COMPANY,  
a South Carolina corporation

\_\_\_\_\_  
First Witness

By: \_\_\_\_\_ (SEAL)

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
Second Witness

Executed on \_\_\_\_\_, 2016

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

)  
)  
)  
ACKNOWLEDGMENT

I, the undersigned notary public for the State of South Carolina, do hereby certify that \_\_\_\_\_, the \_\_\_\_\_ of SOUTH CAROLINA ELECTRIC & GAS COMPANY personally appeared before me this day and acknowledged the due execution of the foregoing instrument. The person providing the acknowledgement is either known to me or has provided satisfactory evidence of identification to be the person whose name is subscribed to the foregoing instrument.

Witness my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(AFFIX NOTARY SEAL)

\_\_\_\_\_  
Notary Public for South Carolina

Print notary name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**DESCRIPTION OF THE LAND**

This being a portion of the property conveyed to Lexington Water Power Company by Richland Power Company by deed dated May 12, 1931 and recorded in the Richland County RMC Office in Deed Book DO at Page 16. Lexington Water Power Company is corporate predecessor to South Carolina Electric & Gas Company.

DRAFT

**EXHIBIT B**

**PLANS AND LOCATION OF THE SALUDA RIVERWALK  
ON THE RIVERWALK PROPERTY**

**DRAFT**

