RESOLUTION NO.: R-2010-056

Authorizing the City Manager to execute an Amendment to Agreement between South Carolina Electric & Gas Company and the City of Columbia

BE IT RESOLVED by the Mayor and City Council this 21st day of July, 2010, that the City Manager is authorized to execute the attached Amendment to Agreement between South Carolina Electric & Gas Company and the City of Columbia to establish the reserve account amount due South Carolina Electric & Gas Company under the Conveyance Agreement and arrange for the repayment thereof in annual installments.

Requested by:	
City Manager	Stron
Approved by:	Mayor
Ma fully	
City Manager	
	ATTEST:
Approved as to form:	
	Tuka D. Salley
City Attorney	City Clerk

Last revised: 6/28/2010 10061010

Introduced: 7/21/2010 Final Reading: 7/21/2010

STATE OF	SOUT	H CAROLINA)	AMENDMENT TO AGREEMENT BETWEEN
)	SOUTH CAROLINA ELECTRIC & GAS COMPANY
COUNTY	OF	RICHLAND)	AND THE CITY OF COLUMBIA, SOUTH CAROLINA

WHEREAS, the Parties hereto entered into a "Conveyance Agreement" dated February 20, 2002 (the "Conveyance Agreement"), which, *inter alia*, contained a Section denominated as 4.4 "Reserve Account", of which 4.4(a) and 4.4(e) provided for a "cash out" of the Reserve Account, seven calendar years from the date of the closing; and,

WHEREAS, the Parties hereto have decided to change those requirements by Amendment herein; and,

WHEREAS, the Parties hereto also entered into a "Franchise Agreement" dated February 20, 2002 (the "Franchise Agreement"), which requires SCE&G, inter alia, to pay annual franchise fees to the City; and,

WHEREAS, the Conveyance Agreement contained the following verbiage in Section 4.4(e), "If there is a negative balance, SCE&G will deduct that amount from any franchise fees next due and owing to the City and credit the Reserve Account until the result is a zero balance."; and,

WHEREAS, SCE&G has provided the Parties with a Matrix, styled as, "City of Columbia Monthly and Annual Credits Applied for Columbia Canal" which is attached hereto as Exhibit "A". That Matrix depicts, inter alia, a credit for the City for 2009 in the amount of \$1,030,885.57 and a reduction in the amount of \$619,667.26, with a remaining balance, claimed to be due and owing by the City to SCE&G in the amount of \$3,228,004.79 (Finally Agreed Upon Figure); and,

NOW, THEREFORE, in consideration of the foregoing recitals, the Amendment described herein, and for other good and valuable consideration, the Parties hereto, intending to be legally bound, do agree as follows:

- 1. Subject to the terms herein, the Parties agree that the "Finally Agreed Upon Figure" shall be paid in five equal annual payments/credits, interest free, as hereinafter defined, to the Reserve Account, from the City to SCE&G, beginning on June 1, 2010 continuing annually each year thereafter until the Finally Agreed Upon Figure of \$3,228,004.79 has been paid/credited in full to the City.
- 2. The payments/credits described hereinabove, shall be deducted from the annual Franchise Fee payment owed and paid by SCE&G to the City, with the remainder of the annual Franchise Fee payment due and owing to the City, being promptly tendered to the City, as required by and set forth in the Franchise Agreement.

- 3. <u>Continued Rights and Duties of the Parties</u>. The Parties hereto agree, without reservation, that all their rights and duties, pursuant to and under, the Conveyance Agreement referenced hereinabove, the Franchise Agreement referenced hereinabove and otherwise, continue, except as expressly changed by this document, and previous mutually approved Amendments, hereto.
- 4. <u>Mutual Release</u>. Each of the Parties hereby releases the other for any actions or inactions arising out of the operation or management of the Columbia Hydroelectric Project and the calculation of the Finally Agreed Upon Figure. This document is intended to constitute a settlement of these issues.
- 5. <u>Final Approval</u>. This Amendment shall not be binding upon the City until such time as voted on and approved by a majority of Columbia City Council by legislative enactment authorizing the City Manager to execute the same on behalf of the City.

WITNESSES:	SOUTH CAROLINA ELECTRIC & GAS COMPANY			
Paula C. Rowland	BY: Kevin B. Marsh			
	ITS: President and Chief Operating Officer			
Maria Q Adding	CITY OF COLUMBIA, SOUTH CAROLINA BY: Steven A. Gantt			
and francisco	ITS: City Manager			



City of Columbia Monthly and Annual Credits Applied for Columbia Canal

Monthly Credits	2002	2003	2004	2005	2006	2007	2008	2009	Total
January		\$ 116,222.60	\$ 105,553.49	\$ 153,320.26	\$ 207,322.09	\$ 149,891.01	\$ 69,856.71	\$ 86,212.23	\$ 888,378.39
February		125,537.44	112,145.94	140,125.32	165,086.66	130,349.46	99,818.35	45,769.77	818,832.94
March		125,605.80	142,331.84	159,078.09	162,102.40	117,096.51	156,900.59	138,210.24	1,001,325.47
April		114,922.93	128,226.99	150,624.72	134,161.20	93,477.91	107,848.47	177,377.50	906,639.72
May		148,100.21	110,928.01	138,871.78	98,504.52	51,237.62	32,056.92	121,751.95	701,451.01
June		121,559.68	115,525.64	134,612.94	79,704.78	8,151.29		121,691.52	581,245.85
July		147,184.38	109,794.78	148,832.38	60,326.61	-	1,=.	2,142.89	468,281.04
August		142,397.04	89,178.41	117,401.51	43,141.57	5	298.48	-	392,417.01
September		107,704.35	109,112.11	39,641.10	90,622.94	-	-	17,984.18	365,064.68
October	\$ 50,402.65	99,899.05	110,649.67	85,666.66	58,445.90	-	10,722.59	70,945.09	486,731.61
November	113,345.68	96,825.54	108,900.45	86,000.64	90,663.68		-	122,879.35	618,615.34
December	119,085.20	113,452.21	136,252.32	185,154.05	112,264.19	6,958.66	99,877.74	125,920.85	898,965.22
Total Monthly Credits Applied	\$ 282,833.53	\$ 1,459,411.23	\$ 1,378,599.65	\$ 1,539,329.45	\$ 1,302,346.54	\$ 557,162.46	\$ 577,379.85	\$ 1,030,885.57	\$ 8,127,948.28

\$ 111,884.02 \$

Annual	Credits

January - August 2006 September - October 2006 Annual Credits Applied \$ 409,345.19

98,438.05 \$ 409,345.19 \$1,210,850.97 \$2,017,153.82

NONE \$ 3,847,672.05

Total Credits to A/R

\$ 282,833.53 | \$ 1,459,411.23 | \$ 1,490,483.67 | \$ 1,637,767.50 | \$ 1,711,691.73 | \$ 1,768,013.43 | \$ 2,594,533.67 | \$ 1,030,885.57 | \$ 11,975,620.33

Per Item #3 of an Agreement period". The "interim period fish ladder, which occured on the control of the contr

Per Item #3 of an Agreement, SCE&G entered into with the City in July 2002, SCE&G agreed NOT TO charged the Reserve Account during the "interim period". The "interim period" is defined in the Agreement as the period from the issuance of new FERC license on May 30, 2003 to the installation of the fish ladder, which occurred on August 4, 2006. These items are excluded when determining "how much has gone against the Reserve".