

RESOLUTION NO.: R-2018-114

Authorizing the City Manager to execute the Boyd Island Naming Rights Agreement between the City of Columbia and the Darnall W. and Susan F. Boyd Foundation, Inc., Saluda River Walk- Three Rivers Greenway Project, Richland County TMS #09003-02-01

BE IT RESOLVED by the Mayor and City Council this 8th day of January, 2019, that the City Manager is authorized to execute the attached Boyd Island Naming Rights Agreement between the City of Columbia and the Darnall W. and Susan F. Boyd Foundation, Inc., or on a form approved by the City Attorney, for the Saluda River Walk - Three Rivers Greenway Project, Richland County TMS #09003-02-01.

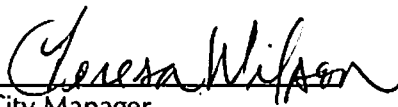
Requested by:

Assistant City Manager Gentry



Mayor

Approved by:



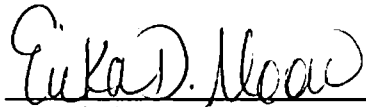
City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 1/8/2019

Final Reading: 1/8/2019

ORIGINAL
STAMPED IN RED

**BOYD ISLAND NAMING RIGHTS AGREEMENT
(Saluda River Walk - Three Rivers Greenway Project)
(TMS #R09003-02-01)**

THIS NAMING RIGHTS AGREEMENT (the "Agreement") is made and entered into by and between **THE CITY OF COLUMBIA, SOUTH CAROLINA**, a political subdivision of the State of South Carolina (hereinafter called the "City"), and the **DARNALL W. and SUSAN F. BOYD FOUNDATION, INC.**, (hereinafter called the "Foundation"). 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, the date on which this Agreement is signed by the last party.

RECITALS

WHEREAS, pursuant to that certain Temporary Construction License executed and effective as of _____, 2018, between the City and the River Alliance (the "License"), City has agreed to license a portion of its real property (as more particularly described on **EXHIBIT A** attached hereto and incorporated herein by reference) (the "Island") temporarily to the River Alliance in order for the River Alliance to alter, create, construct, and manage the construction of the Boyd Island Project ("Project") for the purpose of including the Project in the Three Rivers Greenway and Saluda River Walk for certain recreational purposes offered to the general public, and

WHEREAS, the Foundation has committed to partially fund the Project which upon completion will become an addition to the City's Three Rivers Greenway and Saluda River Walk, and

WHEREAS, in recognition of its generous donation for the benefit of the general public the Foundation desires to name the Project officially, "Boyd Island Sanctuary", the parties hereto agree as follows:

AGREEMENT

NOW, THEREFORE, FOR AND IN CONSIDERATION of the License, the mutual covenants and agreements of the parties hereto, as are hereinafter set forth and made a part of this Agreement, the City and Foundation do hereby agree as follows:

1. **Recitals.** The recitals set forth hereinabove are incorporated herein by reference.
2. **Term.** The initial term of this Agreement (the "Initial Term") will commence upon the completion of the construction of the Boyd Island Project and shall extend for a minimum of fifty (50) years. The Foundation shall have the right to extend the Agreement for additional fifty (50) year terms (the "Extended Term") upon the terms and conditions herein by providing a written notice to the City prior to the expiration of the Initial Term. The "Term" of this Agreement will be the Initial Term, as extended by any Extended Term.
3. **Naming Rights Fee.** In consideration of the Foundation's donation of the costs of constructing the Boyd Island Project, there shall be no additional fee due during the Term of this Agreement.
4. **Naming Rights Benefit.** In consideration of the Foundation's donation of the costs of constructing the Boyd Island Project, during the Term of this Agreement, the Foundation shall receive the following benefits:
 - (a) The real property known as TMS#R09003-02-01 shall be officially named and designated by the City as "Boyd Island Sanctuary" (or such other name as mutually agreed to by the Foundation and the City.) Any name change proposed by the Foundation is subject to the approval of the City, and the Foundation shall pay all costs and expenses associated with such name change, including without limitation, removal of existing signage, and production and installation of new signage.
 - (b) Signage Elements. All initial signage will be produced and installed by the City and may be subject to review and approval in accordance with any other laws or

agreements. The City will be responsible for maintaining all signage in good condition and repairing or replacing all signage as necessary (either due to damage or to ordinary wear and tear.)

(c) **Media and Marketing Elements.** All references made by the City in print or electronic media to these premises shall refer to same as "Boyd Island Sanctuary" with the City having the Foundation's express permission to refer to the premises as such without incurring liability.

5. **Force Majeure.** The parties agree that with respect to any action to be taken by any party during the Term, the party required to furnish or perform the same shall in no event be liable for failure to do so under the Agreement when prevented by any cause beyond the reasonable control of such party, such as accident, order or regulation of or by any governmental authority, or because of war or other emergency, each a "Force Majeure Event."
6. **Termination.** Either Party shall have the right to terminate this Agreement if the other party uses Boyd Island for any unlawful purpose or in any unlawful manner, which use is not corrected within thirty (30) days after written notice.
7. **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; 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: **THE CITY OF COLUMBIA, SOUTH CAROLINA**
1737 Main Street
Post Office Box 147
Columbia, South Carolina 29201 (29202)
Attention: City Manager

Notice to Foundation: **DARNALL W. and SUSAN F. BOYD FOUNDATION, INC.**

8. **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.
9. **Limitation of Liability.** The parties hereby agree that under no circumstances shall either party be liable to the other party for indirect, consequential, special or exemplary damages, whether in contract or tort.
10. **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.
11. **Whole Agreement.** This Agreement, together with all exhibits which may be attached hereto and by reference made a part hereof, constitutes the sole and entire agreement between the and 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 Foundation unless reduced to writing and signed by both parties.
12. **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.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date of the last signature hereinbelow.

WITNESSES:

Pamela R. Benjamin
First Witness
Erika D. Meach
Second Witness

THE CITY OF COLUMBIA, SOUTH CAROLINA
a political subdivision of the State of South Carolina

By: Teresa Wilson (SEAL)
Teresa Wilson
Its: City Manager
Date: 1/11/2019

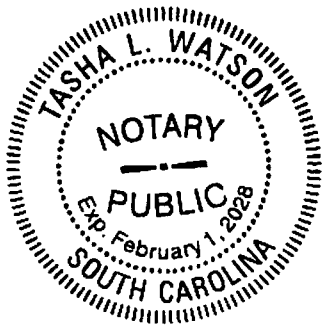
STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

ACKNOWLEDGMENT

On this 11th day of January, 2019, before me personally came the within-named THE CITY OF COLUMBIA, SOUTH CAROLINA, a political subdivision of the South Carolina, by Teresa Wilson, its City Manager, who acknowledged to me that she executed the foregoing Agreement on behalf of the City; and who is personally known to me, or who was proved to me on the basis of satisfactory evidence to be the person who executed the foregoing instrument.

Tasha L. Watson
(Signature of Notary Public)
Name: Tasha L. Watson
Notary Public for the State of South Carolina
My Commission Expires: 2-1-2028

[AFFIX NOTARY SEAL OR STAMP BELOW]



APPROVED AS TO FORM
[Signature]
Legal Department City of Columbia, SC

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date of the last signature hereinbelow.

WITNESSES:

[Signature]
First Witness
Natalyn Weir
Second Witness

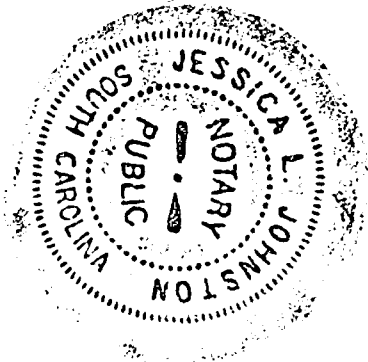
DARNALL W. and SUSAN F. BOYD FOUNDATION, INC.

By: [Signature] (SEAL)
Print Name: George S. Bailey
Its: President
Date: 12/14/18

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

ACKNOWLEDGMENT

On this 14th day of December, 2018, before me personally came the within-named DARNALL W. and SUSAN F. BOYD FOUNDATION, INC. by George S. Bailey, its President, who acknowledged to me that he executed the foregoing Agreement on behalf of Foundation; and who is personally known to me, or who was proved to me on the basis of satisfactory evidence to be the person who executed the foregoing instrument.



[Signature]
(Signature of Notary Public)
Name: Jessica L. Johnston
Notary Public for the State of South Carolina
My Commission Expires: 2/18/24

[AFFIX NOTARY SEAL OR STAMP BELOW]

JESSICA L. JOHNSTON
Notary Public
State of South Carolina
My Commission Expires Feb 18, 2024