

RESOLUTION NO.: R-2019-033

Authorizing the City Manager to execute an Amended and Restated Lease Agreement and Amended and Restated Operation and Maintenance Agreement for the Saluda Riverwalk

ORIGINAL
STAMPED IN RED

BE IT RESOLVED by the Mayor and City Council this 2nd day of April, 2019, that the City Manager is hereby authorized to execute the attached Amended and Restated Lease Agreement and Amended and Restated Operation and Maintenance Agreement for the Saluda Riverwalk, or on a form approved by the City Attorney, between the City of Columbia and Richland-Lexington Riverbanks Parks District for the Saluda River Walk - Three Rivers Greenway Project.

Requested by:

City Manager _____



Mayor

Approved by:



City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 4/2/2019

Final Reading: 4/2/2019

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND) **AMENDED AND RESTATED LEASE AGREEMENT**

THIS AMENDED AND RESTATED LEASE AGREEMENT (“Lease”) is made effective as of the last signature hereinbelow (“Effective Date”), between the **RICHLAND-LEXINGTON RIVERBANKS PARKS DISTRICT**, a political subdivision of the State of South Carolina, with its principal place of business at 500 Wildlife Parkway Road, Columbia, South Carolina 29202-1060 (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”).

RECITALS

WHEREAS, pursuant to that certain Lease Agreement between Lessor and Lessee executed and effective as of March 7, 2017, Lessor agreed to lease a portion of its real property to Lessee in order for Lessee to create, construct, operate, manage and maintain the Saluda River Walk portion of the Three Rivers Greenway project for certain recreational purposes offered to the general public; and

WHEREAS, Lessor and Lessee have agreed to amend, modify, and restate the terms of the Lease Agreement in order to revise the description of the Lessor’s real property to be leased to Lessee.

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 existing real property, as described in the attached **Exhibit A** which is incorporated herein by reference (the “Zoo Property”), defined as the following areas: (a) concrete pathways and/or boardwalks, approximately eight (8’) feet in width, to be constructed by Lessee, or its agents, in an area located between the Saluda River to a point no further than either the lesser of the Lessor’s existing security fence or two (2’) feet beyond the edge of the concrete pathways or boardwalks constructed, and running along the southernmost boundary of the Zoo Property parallel to the Saluda River from the easternmost portion of the Zoo Property in a westerly direction as described on the preliminary plans set forth in the attached **Exhibit B** and **Exhibit B2**, which are incorporated herein by reference (collectively, the “Pathway”), and (b) the approximate area shown on **Exhibit B1** and **Exhibit B4** incorporated herein by reference, in which Lessee, or its agents, shall construct and maintain (i) the concrete pathways or boardwalks shown on **Exhibit B2**, (ii) the portage trails and river access points shown on **Exhibit B2**, (iii) a parking lot, park ranger building, and comfort station shown on **Exhibit B3**, and (iv) a fire/rescue building shown on **Exhibit B4** (collectively, the “Additional Land” and together with the Pathway collectively referred to herein as the “Demised Premises”).

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

1. **Recitals.** The recitals set forth hereinabove are incorporated herein by reference.
2. **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 Zoo Property (the “Project”), and (b) to patrol, secure, maintain and police the Project in order to curtail the unauthorized use of the Demised Premises and the Zoo Property by the general public.

3. **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, signage, 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 11 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 and South Carolina Electric & Gas Company, or its successors and assigns ("SCE&G"), as the owners of their respective portions of the Zoo Property. 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 SCE&G and obtain the prior written consent of SCE&G, including any required encroachment permits from SCE&G, before conducting any repairs or maintenance within SCE&G's transmission rights-of-way located on the Demised Premises.

4. **Lessor Rights and Reservations.**
 - A. **Right of Entry.** Lessee agrees that at any time during the term of the Lease the Lessor, SCE&G, or their 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 Zoo Property.

 - B. **Reservation of Use.** The Lessor reserves unto itself, and its successors and assigns, the right to use all or portions of the Demised Premises for any purposes or uses which do not unreasonably interfere with the rights and uses granted to the Lessee herein. Specifically, the Lessor reserves the right to access, construct, maintain, and install over, under, across and through the Demised Premises (i) electric, water, sewer, communication, and/or gas lines; (ii) fencing; (iii) equipment; (iv) poles or pipelines; (v) temporary and/or permanent additional parking spaces or lots, and (vi) other facilities and structures as the Lessor may deem necessary, advisable or desirable for conducting its business operations.

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 and SCE&G, as the owners of their respective portions of the Zoo Property. 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 after Richland County completes construction of the Project (as described herein), Lessee shall, at its sole expense, cause to be maintained the insurance described in this Lease and the Operation and Management Agreement (as defined in Paragraph 16 herein), with the Lessor and SCE&G, as appropriate, named as additional insureds on all policies obtained by the Lessee covering the Demised Premises. Lessee shall be solely responsible for paying any deductibles owed under such policies. Lessee's 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 insurance policies, along with any insurance policies of Lessee's contractors, successors or assigns, 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 and SCE&G with a copy of a policy endorsement and certificate/evidence of insurance evidencing all insurance coverage required under this Paragraph 6.

C. Lessee 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 a (i) a builder's risk insurance policy, and (ii) a commercial general liability insurance policy, naming both the Lessor and SCE&G 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). The parties further acknowledge that Richland County will be funding and constructing the Project on the Demised Premises using proceeds from its penny-tax program. Lessor shall grant a temporary license to Richland County, and its contractors, subcontractors, and assigns, to enter upon the Demised Premises to construct the Project, the terms of which will be set forth in a separate license agreement between the Lessor and Richland County.

7. **Signs.** Except as set forth in the Operation and Management Agreement, 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 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 and SCE&G, 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: Executive Director
Riverbanks Parks Commission
P.O. Box 1060
Columbia, SC 29202-1060

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. **Sublease.** Lessee understands and acknowledges that a portion of the Zoo Property herein described is being subleased by the Lessor to the Lessee with the express permission of the main landlord under an underlying lease from SCE&G to the Lessor, dated February 24, 1971, and recorded March 1, 1971, in the Office of the Register of Deeds for Richland County, SC, in Deed Book D-200 at page 684, as modified by Lease Modification Agreement, dated October 5, 2009, and recorded October 7, 2009 in the Office of the Register of Deeds for Richland County, SC, in Record Book 1560 at page 3682 ("SCE&G Lease"). The sublet portions of the Demised Premises are expressly made subject to all terms and conditions of the SCE&G Lease; and the Lessee shall use the Premise in strict accordance with the terms of the SCE&G Lease (i.e. for "recreational purposes" through the implementation of the Three Rivers Greenway Trail Project). Lessee agrees not to do or omit to do anything which will breach any of the terms thereof. This Lease is entered into with the knowledge and permission of SCE&G as evidenced by the signatures below. If the SCE&G Lease is terminated during the term of this Lease, the sublease for such portion of the Demised Premises shall terminate simultaneously. If applicable, any unearned rent paid in advance to the Lessor shall be refunded to the Lessee, provided that such termination is not the result of a breach of the Lease by the Lessee.
15. **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.
16. **Operation and Management Agreement.** Simultaneously herewith, Lessor and Lessee agree to execute a separate Amended and Restated 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 (collectively, 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.
17. **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, SCE&G, and their respective 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, SCE&G, and their respective 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 SCE&G, nor their 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, and up to the limits, 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, or contractor of Lessee. Notwithstanding the foregoing, nothing herein will be construed to limit, waive or otherwise modify the terms or limits of any insurance available to Lessee or Lessor as additional insured.

18. **Term and Rent Payments.** Commencing as of the later of either (i) the Effective Date (as defined hereinabove), 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). No term of the SCE&G Lease referred to in Section 13 herein shall be effective under any circumstances to increase or escalate this annual rental during the term of this Lease. 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.

19. **Parking.** Except for the parking lot as shown on **Exhibit B3** to be constructed by Lessee, or its agents, on the southside of Candi Lane west of the existing SCE&G transmission line right-of-way, the Lessee understands, acknowledges and agrees that the Lessor shall not be providing any parking spaces or parking areas on the Zoo Property for use by the Lessee, the general public, or the Lessee's invitees, patrons, employees, contractors, or agents during the term of this Lease. Lessee shall be solely responsible for securing any additional parking spaces and/or parking areas required for use by the Lessee, the general public and the Lessee's invitees, guests, patrons, employees, contractors, and agents, in order to access the Demised Premises. However, Lessor will provide adequate parking for any park ranger, police, fire and/or emergency vehicles serving the Project.

20. **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 record either the Lease or a Memorandum of Lease to evidence the term of the Lease 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 term, 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 4 above).

21. **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 516") that may affect the Demised Premises.

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 516"), is made 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 and SCE&G and their 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 SCE&G, 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 and SCE&G, and their respective 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 516 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, and its agents, successors 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 Project 516 and Lessee shall not unduly restrict public access to Project 516 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 and SCE&G, and their respective 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 its contractors shall immediately stop work in the area, make all reasonable efforts to avoid or minimize damage to such archaeological materials and contact Lessor and SCE&G 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 its contractors shall immediately notify the Lessor and SCE&G of their findings. Lessee or its contractors shall 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 or SCE&G, as applicable, shall immediately notify the Richland County Coroner, the SHPO, the FERC, the CIN THPO, and any other federally recognized tribe identified during consultation. In the interim, the Lessee or its contractors in cooperation with Lessor and SCE&G shall make every effort possible to protect the remains from any further disturbance. Lessor or its contractors shall 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 its contractors shall immediately cease all activities in that area and make all reasonable efforts to avoid or minimize damage to such unrecorded archaeological remains. Lessee or its contractors shall immediately notify Lessor and SCE&G of their findings. Lessor or SC&EG, as applicable, shall immediately notify the SHPO and the FERC and advise them of the nature of the discovery. Lessor shall 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.

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

THIS AMENDED AND RESTATED OPERATION AND MANAGEMENT AGREEMENT (the "Agreement") is made effective as of the date of the last signature hereinbelow by and between **THE CITY OF COLUMBIA, SOUTH CAROLINA**, a political subdivision of the State of South Carolina (hereinafter called the "City"), and **RICHLAND-LEXINGTON RIVERBANKS PARKS DISTRICT**, a political subdivision of the State of South Carolina (hereinafter called "Riverbanks"). 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 Lease executed and effective as of March 7, 2017, between the City and Riverbanks, as thereafter amended by Amended and Restated Lease Agreement, (collectively, the "Lease"), Riverbanks agreed to lease a portion of its real property (currently owned and/or leased by Riverbanks as more particularly described on **EXHIBIT A**, **EXHIBIT B**, and **EXHIBIT F** 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 of the Three Rivers Greenway project (the "Riverwalk") for certain recreational purposes offered to the general public (the "Project"), and

WHEREAS, pursuant to the terms of the Lease, the City and Riverbanks executed an Operation and Management Agreement, dated March 7, 2017, regarding the use, occupancy, operation, maintenance and management of the Land leased by the City from Riverbanks (the "Operations Agreement"); and

WHEREAS, the City and Riverbanks have agreed to amend and modify the terms of the Operations Agreement in order to clarify certain terms and conditions of each agreement relating to the use, occupancy, operation, maintenance and management of the Land leased by the City from Riverbanks and revising the description of the Land.

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 Riverbanks do hereby agree as follows:

1. **Recitals.** The recitals set forth hereinabove are incorporated herein by reference.
2. **The Riverbanks Property.** Subject to the terms hereof and the terms of the Lease, Riverbanks 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 2, 2006, and entitled Saluda Riverwalk, Columbia, SC, 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 C**, **EXHIBIT D**, and **EXHIBIT E** 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 walking paths or trails, portage trails for river access, a park ranger building, a comfort station, restrooms, fire/rescue building, and a parking lot, 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 allowing the general public (a) 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, (b) to

access the Saluda River along the Pathways (as defined herein) for canoeing, kayaking and other recreational purposes within the area shown on **EXHIBIT B** and **EXHIBIT D**, (c) to allow the Pathways (as defined herein) to be used as portage trails running above and below the Mill Race Rapids within the areas of the Riverwalk Property, as shown on **EXHIBIT D**, to replace the existing portage trail located on the southern side of the Saluda River on other real property owned by Riverbanks, (d) to park vehicles in a parking lot or lots to be constructed at the northwestern most corner of a portion of Riverbanks' property (TMS No. 07215-02-11) as more particularly shown on the Plans (collectively, the "Mill Race Parking Lot") and on **EXHIBIT E**, and (e) for other recreational purposes subject to Riverbank's prior written consent and approval (collectively, the "Recreational Uses"). The City agrees that the Riverwalk Property shall be open to the general public for such Recreational Uses 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 Riverbanks.

4. **Initial Term.** The initial term of this Agreement will begin as of the later of either (i) the Effective Date indicated above, or (ii) the date on which construction of the Project is complete and the City takes possession of the Riverwalk Property to operate the Project. The term of this Agreement 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 that certain lease, dated February 24, 1971, between South Carolina Electric & Gas Company and Riverbanks, as thereafter amended (the "SCE&G 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 Riverbanks for its right to construct, use, and maintain the designated portions of the Riverwalk Property for the Recreational Uses.
6. **Construction, Maintenance and Repairs by the City.** The City shall be responsible for the following:
 - (a) **General Matters.** 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 Project Plans for a more complete description of such components): (a) the sidewalks, fences, boardwalks, paths, trails, dedicated river access points (if any), walkways, Mill Race Parking Lot, 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, restrooms, a ranger station, a comfort station, maintenance buildings or sheds, a fire/rescue building, and other related structures, (c) all exterior lighting, including underground utility lines and poles, and signage 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 collection, pruning of landscape materials, trees and shrubs (including but not limited to branches and root systems that pose a hazard to the general public when using the Pathways), and replacement of seasonal plants. All City Improvements shall be constructed at the City's sole cost and expense, shall be constructed and maintained in compliance with all federal, state and local laws including but not limited to the Americans with Disabilities Act, 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 Riverbanks. Prior to the commencement of construction for the City Improvements, Riverbanks, in its sole and absolute discretion, shall determine the exact location of the City Improvements so that the City Improvements will not interfere with Riverbanks 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 or constructed on the Land, such as Riverbank's existing fences, parking lots and other structures, 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 Riverbanks.

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 Riverbanks 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"), Riverbanks 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 Riverbanks' 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 Riverbanks 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 Riverbanks (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 Riverbanks and naming Riverbanks 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 Riverbanks in its sole and absolute discretion.

(b) **Signage.** Throughout the term of this Agreement, the City and Riverbanks agree to work together to establish the appropriate signage required for the general public to use the Project. The City shall at a minimum provide signage for the Mill Race Parking Lot and for the Pathways designating or setting forth (i) the hours in which the Mill Race Parking Lot and Pathways will be open to the general public, (ii) any specific areas, as may be constructed from time to time, along the Pathways for the general public to have access, ingress, and egress to the Saluda River for swimming, canoeing, kayaking and other recreational uses, (iii) the locations along the Saluda River above and below the Mill Race Rapids for kayakers, canoers, and other persons traveling on the Saluda River to have portage access along the Pathways, (iv) contact numbers or instructions for communicating with the City's law enforcement division and park ranger division, and (v) safety notices and/or warnings required for the general public when using the Mill Race Parking Lot and Pathways, including any notices or warnings for the general public to exit the Saluda River onto the Pathways above the Mill Race Rapids. All signage to be installed by the City must be approved by Riverbanks prior to the placement of such signage within the Riverwalk Property. The City understands, acknowledges and agrees that Riverbanks, at its sole cost and expense, may install additional signage within the Riverwalk Property in order to maintain adequate safety and security for its normal business operations on the Land.

7. **Construction, Maintenance and Repair by Riverbanks.** Riverbanks shall be solely responsible for the construction, maintenance and repair of any existing structures or buildings located within the Riverwalk Property constructed specifically by Riverbanks for its business operations and purposes, except for any construction, maintenance and repairs required for such existing structures or buildings 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 Riverbanks 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 Riverbanks.
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). Riverbanks 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 Riverbanks 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 and Mill Race Parking Lot 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. If the City Improvements should include a building serving as a guard shack, ranger station, fire/rescue building or office for use by the police or park rangers, the City shall be responsible for adequately staffing and maintaining such building located on the Riverwalk Property at all times. Riverbanks shall provide all police officers, park rangers, and other emergency service providers with access to and from the Pathways, Mill Race Parking Lot, and the Riverwalk Property from pre-determined access points located on the Land as agreed upon by the parties.
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, the Mill Race Parking Lot, 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 Riverbanks 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 Riverbanks 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. Riverbanks and South Carolina Electric & Gas Company ("SCE&G") 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 Riverbanks and SCE&G as additional insureds, and the policy shall provide that it not be canceled for any reason unless and until Riverbanks is given thirty (30) days prior, written notice of the pending cancellation by the insurance company. The City's insurance company shall provide Riverbanks 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. **Riverbanks' Licenses, Personal Property Taxes and Insurance.** Riverbanks 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. Riverbanks shall carry, at its own expense, insurance to cover all of its personal property, including, but not limited to, any buildings, fixtures and equipment located on or within the Riverwalk Property. All of Riverbanks' personal property on or within the Riverwalk Property shall be and remain at Riverbanks' 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. **Riverbanks' Improvements.** Riverbanks shall be allowed to construct or make structural alterations, additions, or improvements (the "Riverbanks Improvements") to any portion of the Riverwalk Property that is not reserved for the City's use, upon first obtaining the written consent of the City, which consent shall not be unreasonably withheld, provided same is consistent with the City's use of the Riverwalk Property described herein. In the event any of the Riverbanks Improvements are to be installed on any City Improvements, Riverbanks shall assume full responsibility for all maintenance and repair of such City Improvements which may be attributed to such installation. All Riverbanks Improvements shall be constructed at Riverbanks' sole cost and expense and shall be and remain the property of Riverbanks.
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 Riverbanks, be deemed to have been abandoned by the City and may either be retained by Riverbanks 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 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 Riverbanks 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. **Riverbanks' Rights in the Event of a Default.** In the event of any default by the City as herein provided, Riverbanks, 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 Riverbanks' termination notice and the City shall then surrender the Riverwalk Property to Riverbanks. However, the City shall remain liable to Riverbanks for all payments and other obligations which have accrued prior to the time of such termination; and
- (b) Upon such termination by Riverbanks as described herein, Riverbanks 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 Riverbanks in enforcing any of the obligations of this Agreement.

18. **Right of Entry.** Riverbanks, 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 Riverbanks Improvements located within the Riverwalk Property, (ii) performing its obligations under this Agreement, (iii) performing any work which Riverbanks elects to undertake for the safety, preservation, benefit or welfare of the Riverwalk Property or its occupants, or (iv) performing any work which Riverbanks 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 Riverbanks, Riverbanks 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 Riverbanks' 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 Riverbanks 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 Riverbanks shall be null and void, and, provided that if such repair and reconstruction proceeds as provided in subdivision (b) below, then Riverbanks 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 Riverbanks, 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 Riverbanks shall have the right to assert a separate claim in any condemnation proceedings, as their interests may appear. Riverbanks 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. Riverbanks and the City shall each bear their own cost and expense in prosecuting their separate claims. Any award made to either Riverbanks or the City shall belong entirely to Riverbanks or the City, respectively.
21. **Assignment.** The City shall not assign its rights or obligations under this Agreement without the prior written consent of Riverbanks.
22. **[INTENTIONALLY OMITTED].**
23. **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 Riverbanks. The City agrees to abide by all applicable environmental laws and regulations as they apply to the City's possession, 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 Riverbanks' use, occupation, or possession of the Riverwalk Property, it shall be Riverbanks' sole responsibility and cost to remediate and take from the Riverwalk Property said contamination. Further, Riverbanks shall indemnify and hold the City harmless from all reasonable claims, costs and damages as a result of any environmental problems which are the result of Riverbanks' use, occupation, or possession of the Riverwalk Property.

24. **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 Riverbanks, 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 (29217)
Attention: City Manager

Notice to Riverbanks: **RICHLAND-LEXINGTON RIVERBANKS PARKS DISTRICT**
Post Office Box 1060
Columbia, South Carolina 29202
Attention: Thomas K. Stringfellow

25. **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.
26. **Compliance with Laws, Ordinances and Regulations.** The City shall, except as herein required by Riverbanks, 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.
27. **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.
28. **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 Riverbanks unless reduced to writing and signed by both parties.
29. **Waiver.** The failure by Riverbanks to complain of any action, non-action or default of the City shall not constitute a waiver of any of Riverbanks' rights hereunder. A waiver by Riverbanks 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 Riverbanks to exercise any of its options hereunder, nor failure to enforce its rights or to seek its remedies upon any default, shall affect or constitute a waiver of Riverbanks' 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.
30. **Liens and Encumbrances.** The City shall not encumber or subject the interest of Riverbanks 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.
31. **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 Riverbanks, and its successors or assigns.
32. **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.

33. **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) Time is of the essence in the execution of this Agreement.
- (c) This Agreement shall be construed and interpreted under the laws of the State of South Carolina.
- (d) 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 Riverbanks as to form and content, 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.
- (e) 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 Riverbanks represents and warrants that he or she has been authorized to do so by such entity.

[SIGNATURE PAGES TO FOLLOW]

EXHIBIT A

Description of the Land

TRACT 1:

All that certain piece, parcel or tract of land, with any improvements located thereon, situate, lying and being in the City of Columbia, in the County of Richland, in the State of South Carolina, containing 16.31 ACRES, more or less, as shown and designated on a plat prepared for South Carolina Electric & Gas Co. entitled "Property Conveyed to Greater Columbia Zoological Society" dated May __, 1967 and recorded in the Office of the Register of Deeds for Richland County, SC, in Plat Book "X" at page 943; and having the boundaries and measurements as shown on said plat; reference being craved thereto as often as is necessary for a more complete and accurate legal description.

This being the same property conveyed to Richland-Lexington Riverbanks Parks District also known as Riverbanks Park Commission, by deed of South Carolina Electric & Gas Company, dated September 24, 1969, and recorded September 30, 1969 in the Office of the Register of Deeds for Richland County, SC, in Deed Book D-155 at page 117.

Richland County TMS No. 07215-02-09

AND, ALSO

TRACT 2:

All that certain piece, parcel or tract of land, with any improvements located thereon, situate, lying and being on the north side of the Saluda River, in the City of Columbia, in the County of Richland, in the State of South Carolina, designated as PARCEL A, containing 55.0 ACRES, more or less, as shown and designated on a drawing prepared for South Carolina Electric & Gas Co. entitled "Riverbanks Park Property" dated February 24, 1969; and having the boundaries and measurements as shown on said plat; reference being craved thereto as often as is necessary for a more complete and accurate legal description.

This being the same property leased to Richland-Lexington Riverbanks Parks District also known as Riverbanks Park Commission, by South Carolina Electric & Gas Company, as set forth in a Lease, dated February 24, 1971, and recorded March 1, 1971, in the Office of the Register of Deeds for Richland County, SC, in Deed Book D-200 at page 684.

Richland County TMS No. 07215-02-11

AND, ALSO

EXHIBIT A (continued)

DESCRIPTION OF THE LAND

TRACT 3:

All that certain piece, parcel or tract of land, with any improvements located thereon, situate, lying and being in the City of Columbia, in the County of Richland, in the State of South Carolina, containing **10.91 ACRES**, as shown and designated on a Boundary Survey prepared for South Carolina Electric & Gas Co., by Whitworth & Associates, Inc., dated February 27, 2007, and having the following metes and bounds, to wit:

Beginning at an iron pin located at the northeastern corner of land owned by South Carolina Electric & Gas Co. (Richland County TMS No. 07215-02-09) (the "Point of Beginning"); thence turning and running along the CSX Railroad 50' R/W S89°55'12"E for a distance of 1128.24 feet to an iron pin along a curve concave to the south having a radius of 2,252.88 feet; thence southeasterly 742.05 feet along the arc of said curve with a chord bearing of S80°40'22"E, through a central angle of 18°29'40" to an iron pin; thence turning and running S71°38'03"E for a distance of 395.79 feet to an iron pin; thence turning and running N87°33'17"W along the banks of the Saluda River for a distance of 101.35 feet to an iron pin; thence turning and running N81°29'15"W for a distance of 224.49 feet to an iron pin; thence turning and running S84°02'02"W for a distance of 46.39 feet to an iron pin; thence turning and running S88°47'35"W for a distance of 54.22 feet to an iron pin; thence turning and running S60°06'43"W for a distance of 89.45 feet to an iron pin; thence turning and running S80°54'48"W for a distance of 288.05 feet to an iron pin; thence turning and running from the banks of the Saluda River along property of Richland-Lexington Riverbanks Parks District N86°59'58"W for a distance of 608.59 feet to an iron pin; thence continuing N86°59'58"W for a distance of 838.00 feet to an iron pin; thence turning and running N03°00'02"E for a distance of 25.00 feet to an iron pin; thence continuing N03°00'02"E for a distance of 201.70 feet to the Point of Beginning.

This being the same property leased to Richland-Lexington Riverbanks Parks District also known as Riverbanks Park Commission, as set forth in a Lease Modification Agreement, dated October 5, 2009, and recorded October 7, 2014 in the Office of the Register of Deeds for Richland County, SC, in Record Book 1560 at page 3682.

Richland County TMS No. 07215-02-10

EXHIBIT B

Additional Land leased to the City for the Mill Race Parking Lot, Ranger Station, and Portage Trails

NOTE:

Upon completion of the Project, the parties shall replace the attached exhibit with an as-built survey showing the exact location of all improvements and the boundaries of the Additional Land leased.

EXHIBIT C

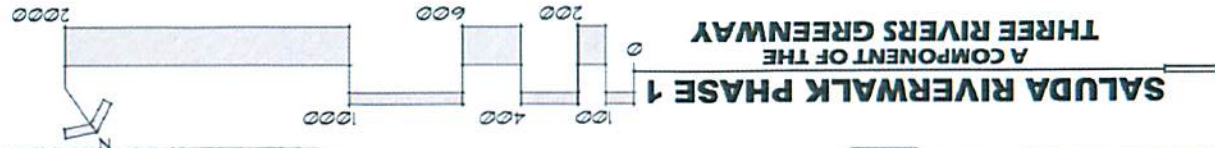
Plans and Location of the Saluda Riverwalk on the Riverwalk Property

DATE	1/17/20
PROJECT	Saluda Riverwalk Phase 1
SCALE	AS SHOWN
DRAWN BY	...
CHECKED BY	...
APPROVED BY	...

SALUDA RIVERWALK PHASE 1 A COMPONENT OF THE THREE RIVERS GREENWAY



- LEGEND**
- LIGHTED CONCRETE PATH AND BOARDWALK
 - BOARDWALK WITH OVERLOOK
 - BOARDWALK
 - FLOODWAY LINE
 - HISTORIC SALUDA CANAL
 - PROPERTY LINE
 - (J) JURISDICTIONAL STORMWATER FLOW
 - (N) NON JURISDICTIONAL STORMWATER FLOW



LAYOUT PLAN

MATCHLINE L-3

MATCHLINE L-3

MATCHLINE L-1

MATCHLINE L-1

MATCHLINE L-2

MATCHLINE L-2



THE RIVER ALLIANCE



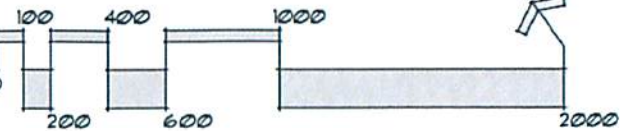
LEGEND

- LIGHTED CONCRETE PATH AND BOARDWALK
- BOARDWALK WITH OVERLOOK
- BOARDWALK
- FLOODWAY LINE
- CONSTRUCTION ACCESS
- HISTORIC SALUDA CANAL PROPERTY LINE
- (N) NON JURISDICTIONAL STORM WATER FLOW
- (J) JURISDICTIONAL WATER OF THE US

LAYOUT PLAN

DATE	9/11/19
PROJECT	LR-28 LA
DRAWN	AKC
CHECKED	ESG
APPROVED	

SALUDA RIVERWALK PHASE I
A COMPONENT OF THE
THREE RIVERS GREENWAY



Sheet
L-3
of 7

EXHIBIT D

Approximate location of Portage Trails for River Access



**Riverbanks Zoo & Garden Parcels
Showing Saluda Riverwalk Layout**

Legend

- ▲ River Access
- Portage Trail
- Saluda Riverwalk Trail
- Boardwalk
- Parcel



Date: 1/5/2018

User Name: kakustatik



EXHIBIT E

Location of Parking Lot, Ranger Station Building and Comfort Station

SEE SHEET:
 G-1 FOR AREA "B" GRADING PLAN
 EC-3 FOR AREA "B" EROSION CONTROL PLAN

ALL PAVEMENT MARKINGS WITHIN SCOOT SECTION SHALL BE PERMANENTLY PLACED ACCORDING TO CURRENT SCOOT STANDARD SPECIFICATIONS AND SPECIFICATIONS TO FEDERAL AASHTO STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION.

CONTRACTOR SHALL CLEAR ANY EXISTING VEGETATION NECESSARY TO PROVIDE A CLEAR VIEW TRIANGLE.

ALL ACCESS DRIVEWAYS SHALL BE CONSTRUCTED TO MEET ALL REQUIREMENTS OF THE FOLLOWING SECTION:

1. TYPE B INTERMEDIATE BINDER COURSE

2. TYPE A BASE COURSE

3. SUBGRADE

CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND LOCATIONS OF ALL EXISTING UTILITIES AND MARKERS BEFORE ANY CONSTRUCTION.

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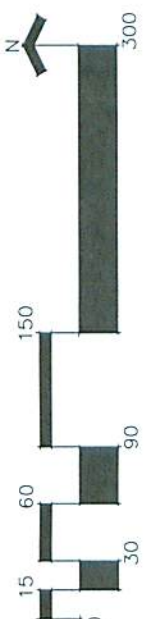
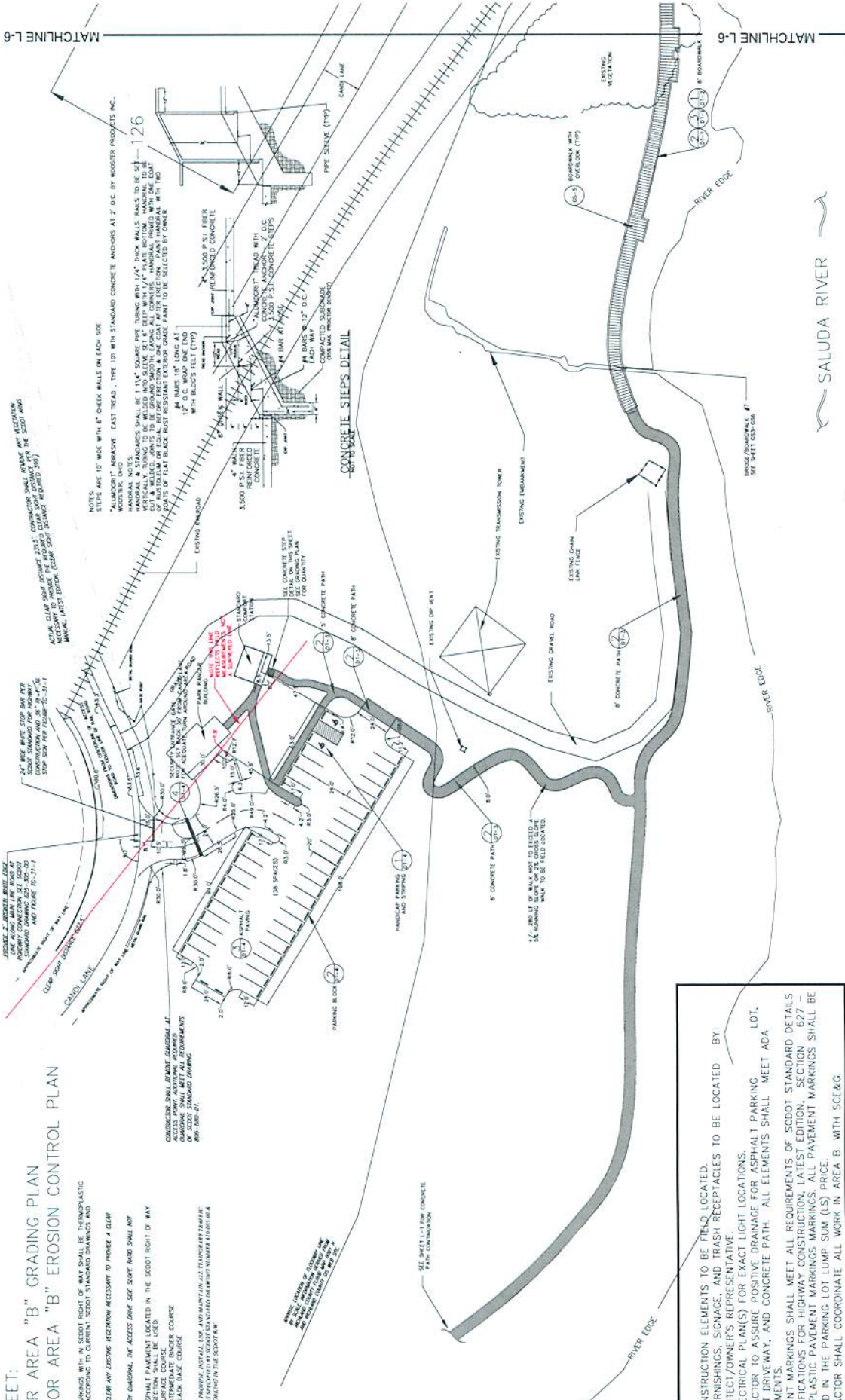
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EXHIBIT E - Parking Lot, Park Ranger Building, and Comfort Station



SALUDA RIVERWALK PH I
A COMPONENT OF THE
THREE RIVERS GREENWAY

PHASE I
 PARKING LOT, PARK RANGER BUILDING, AND COMFORT STATION

DATE: 8/26/2014
 PROJECT NO.: 12324
 DRAWING NO.: 12324-01
 REVISIONS: SEE REVISIONS SHEET
 CONTRACTOR: ABC COMPANY
 ARCHITECT: DEF ARCHITECTS

Sheet **L-5** of 7

KS
 Kenneth S. Simons Associates, LLC
 Landscape Architecture & Planning
 1000 South Carolina Avenue
 Columbia, South Carolina 29204
 (803) 244-1200 FAX (803) 244-1206

Professional Engineer Seal
 Professional Land Surveyor Seal
 Professional Architect Seal

LAYOUT PLAN (AREA B)

MATCHLINE L-6

MATCHLINE L-6

SALUDA RIVER

RIVER EDGE

RIVER EDGE

RIVER EDGE

SEE SHEET L-1 FOR CONCRETE PATH CONTINUATION

PROVIDE APPROXIMATE SEE SHEET 031-06

EXHIBIT E

Additional Land leased to the City for a Fire/Rescue Building

NOTE:

Upon completion of the Project, the parties shall replace the attached exhibit with an as-built survey showing the exact location of all improvements and the boundaries of the Additional Land leased and the location of the Fire/Rescue Building.

EXHIBIT F - Additional Demised Premises

Approximate Location of Fire/Rescue Building

