

ORDINANCE NO.: 2010-140

*Authorizing execution of a Right of Entry and Access Agreement
between the City of Columbia and South Carolina Electric & Gas Company*

ORIGINAL
STAMPED IN RED

BE IT ORDAINED by the Mayor and Council of the City of Columbia, South Carolina,
this 15th day of September, 2010, that the City Manager is hereby authorized to execute a Right
of Entry and Access Agreement between the City of Columbia and South Carolina Electric & Gas
Company ("SCE&G") to allow SCE&G access to 2.02 acres along the Congaree River for the uses
and purposes set out in the agreement.

Requested by:

City Manager _____



MAYOR

Approved by:



City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 9/8/2010
Final Reading: 9/15/2010

**RIGHT OF ENTRY AND
ACCESS AGREEMENT**

THIS RIGHT OF ENTRY AND ACCESS AGREEMENT (herein called "Agreement" or "Right of Entry" or both) is dated this 28th day of September, 2010 ("Effective Date").

1. In consideration of the sum of Ten and no/100 Dollars (\$10.00), receipt of which is hereby acknowledged by the undersigned, **City of Columbia**, a body politic and corporate and a political subdivision of the State of South Carolina (herein called "City"), City, for itself, its successors and assigns, hereby gives and grants unto **South Carolina Electric & Gas Company**, a South Carolina corporation (herein called "SCE&G"), with its headquarters at 220 Operation Way, Cayce, South Carolina 29033, its successors and assigns, the non-exclusive right to access the below described real property (herein called "Property"). City and SCE&G may be individually referred to herein as "Party" or jointly as the "Parties."

2. The Property being situated in Richland County, State of South Carolina, described as follows:

All that parcel, piece or tract of land, situate, lying and being along the Congaree River, containing 2.02 acres, more or less and more specifically depicted on Exhibit A attached hereto and incorporated herein by reference.

TMS# R08911-01-01

3. City hereby grants to SCE&G the right for SCE&G, its agents, employees, contractors, subcontractors and invitees, at SCE&G's sole expense, during the term of this Agreement a right of entry for ingress and egress access onto the Property for the purpose of conducting subsurface soil sampling and remedial activities as necessary to remove or remediate coal tar impacts to the soil or groundwater, including, but not limited to accessing the shoreline and installing soil boring to core, auger, drill, trench and otherwise test and sample stone, sand, gravel, soil and earth in, on, and under the Property in order to determine if coal tar is present on the site and to bring thereon and remove tools, machinery and equipment and to take and remove such samples ("Permitted Activities"). The results of SCE&G's testing, sampling and other operations shall be and remain SCE&G's confidential information and sole and exclusive property; however, SCE&G shall provide a copy of the results to City within ten (10) days of completion of the Permitted Activities upon the property. The Parties agree to maintain the confidentiality of the results and shall not share those results with any person or entity unless required to do so by law, judicial process or order, or government regulation. Certain environmental tests will require reporting results to the South Carolina Department of Health and Environmental Control, a copy of such report SCE&G will concurrently provide to City. Notwithstanding anything in this Agreement, SCE&G shall have no liability to City as a result of the discovery of any toxic or hazardous substance existing on or near the Property at the time SCE&G conducts its inspections.

4. City hereby releases SCE&G from claims for damage or injury to the Property caused by the reasonable conduct of the Permitted Activities authorized by this grant of permission, except that upon the completion of the

Permitted Activities, SCE&G shall restore, repair, reconstruct and replace, at SCE&G's sole cost and expense, any portion thereof affected by SCE&G's Permitted Activities, to reasonably the same condition as before such work was performed by SCE&G.

5. SCE&G, on behalf of its agents, employees, contractors, subcontractors and invitees hereby agrees to indemnify and save City harmless from any and all liability, injury, damage, expense, claims, liens, judgments, including reasonable attorneys' fees, demands and fines of any nature and by any entity or individual as a result of injury to person or damage to property resulting from or in any fashion arising out of activities of SCE&G's, agents, employees, contractors, subcontractors and invitees on the Property.

6. SCE&G shall be responsible for any and all costs related to the Permitted Activities including installation, operation and removal of equipment on the Property. Except as otherwise specifically provided herein, the scope, sequence, and timing of the Permitted Activities shall be at the sole discretion of SCE&G.

7. SCE&G, its agents, employees, contractors, subcontractors and invitees shall be responsible for the security of its supplies and equipment and any other personal property stored on the Property. City retains the right to enter the Property at any time without notice to SCE&G and to use the Property in any way not inconsistent with this Right of Entry.

8. At all times during the term of this Right of Entry and Agreement, SCE&G, and its general contractor as a contract requirement in retaining such general contractor, at their sole expense, shall obtain and keep in force:

- a. Comprehensive General Liability coverage for bodily injury and property damage in an amount not less than \$1,000,000;
- b. Automobile Liability Coverage in an amount not less than \$500,000 covering all owned, hired, and non-owned automotive equipment used in connection with the Permitted Activities; and
- c. Workers' Compensation in the Statutory amount.

9. This Agreement shall have a term that begins on Tuesday, September 28th, 2010 and continues for a three (3) year period ending on September 28th, 2013.

10. The privileges and responsibilities granted and conferred by this Agreement shall not be transferred or assigned in whole or in part by SCE&G, except to the general contractor of SCE&G as to which SCE&G shall remain primarily responsible and liable in accordance with all of the terms and provisions of this Agreement.

11. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by an authorized representative of each party in two (2) identical copies in accordance with *Section 12*, below.

12. CITY and SCE&G agree that two (2) identical copies of this Right of Entry and Agreement shall be signed and that each fully executed copy shall be considered an original.

13. All notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be effective upon: personal delivery to the Party to whom they are addressed; or, upon receipt/confirmation, if sent via e-mail or facsimile to the email addresses or facsimile numbers indicated below; or, if mailed, five (5) days

following deposit in the United States mail first class postage prepaid, registered or certified; or, if sent by nationally recognized overnight courier, the date when signed for at addressee's residence or place of business and addressed to each Party at the following address:

SCE&G:

Robert M. "Bob" Apple
South Carolina Electric & Gas Co.
4077 Haywood Road, Mail Code: N91
Mills River, North Carolina 28759
Email: rapple@scana.com
Telephone: (828) 890-7551
Facsimile: () _____

Copy to:

Thomas N. "Tom" Effinger
South Carolina Electric & Gas Co.
220 Operation Way, Mail Code: C221
Cayce, South Carolina 29033
Email: teffinger@scana.com
Telephone: (803) 217-9367
Facsimile: (803) 933-8004

City of Columbia:

Attn: City Manager
City of Columbia
Post Office Box 147
Columbia, South Carolina 29217

Telephone: (803) 545-3026
Facsimile: (803) 255-8922

Copy to:

Columbia, South Carolina _____

Telephone:
Facsimile:

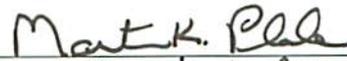
14. Beyond the rights and duties set forth herein, neither party is obligated in any manner.

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

WITNESS:



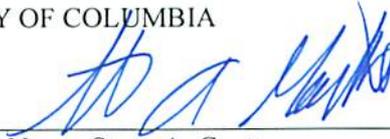
SOUTH CAROLINA ELECTRIC
& GAS COMPANY

By: 
Print Name: MARTIN K. PHALLEN
Its: VICE PRESIDENT - GAS OPERATIONS

WITNESS:



CITY OF COLUMBIA

By: 
Print Name: Steve A. Gantt
Its: City Manager