

**Mayor**  
ISAIAH SCIPIO  
**City Council**  
CAMERON RIVERS, Mayor Pro-Tem  
FLOYD ROGERS  
ALLIE WINTER



**Administrator**  
TIM O'BRIANT  
**City Clerk**  
DONNA F. OWEN

**City of Pickens**  
[www.cityofpickens.com](http://www.cityofpickens.com)

**AGENDA**

**OATH OF OFFICE FOR COUNCIL ELECT JOHN MCMANUS  
OATH OF OFFICE FOR COUNCIL ELECT RAY WILSON  
CITY COUNCIL REGULAR CALLED MEETING**

**December 9, 2024  
6:00 P.M.  
CITY HALL  
219 PENDLETON STREET  
PICKENS, SOUTH CAROLINA**

**OATH OF OFFICE AND SEATING OF COUNCIL ELECT**

INVOCATION AND PLEDGE OF ALLEGIANCE: MAYOR ISAIAH SCIPIO  
OATH OF OFFICE FOR COUNCIL ELECT JOHN MCMANUS: HONORABLE PERRY GRAVELY  
OATH OF OFFICE FOR COUNCIL ELECT RAY WILSON: HONORABLE PERRY GRAVELY

**REGULAR COUNCIL MEETING AGENDA**

1. WELCOME AND CALL TO ORDER:
2. COMMENTS FROM THE MAYOR:
3. COMMENTS FROM THE CITIZENS:
4. ADMINISTRATOR'S REPORT:
5. APPROVAL OF MINUTES:
  - a) Minutes of October 14, 2024, Work Session and Regular Meeting.
  - b) Minutes of October 21, 2024, Special Called Meeting
  - c) Minutes of October 28, 2024, Work Session

6. FIRST READING OF ORDINANCE NO. 2024-11, TO AMEND DIVISION 3 (MEETINGS) OF ARTICLE II (MAYOR AND COUNCIL) OF CHAPTER 2 (ADMINISTRATION) OF THE CITY OF PICKENS CODE OF ORDINANCES:
7. APPROVAL OF SCIIP GRANT CHANGE ORDERS:
8. DISCUSSION ONLY OF THE GREENVILLE WATER CAPACITY BUY IN AND SUPPLY AGREEMENT (No vote will be considered at this meeting):
9. COMMENTS FROM COUNCIL:
10. ADJOURNMENT:



TO: Mayor and Council  
FROM: Tim O'Briant, City Administrator  
DATE: Dec. 9, 2024  
RE: Administrator's report

A handwritten signature in blue ink, appearing to read "Tim O'Briant", is written over the "FROM:" line of the header.

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### **Helene debris update**

Pickens County and the South Carolina Department of Transportation have substantially completed the pickup of roadside debris within city limits left by tropical storm Helene in late September. Public works has resumed normal yard waste and bulk waste pickup following removal of the material covered by FEMA. We are asking the public to please report any debris piles that may have been missed so we can make arrangements to have them removed. Many thanks to the county call mom SCDOT and FEMA for their efforts in this disaster recovery.

### **Salary study calendar**

The consultants selected by City Council, Evergreen Solutions, have completed the market analysis comparing our pay rates for employees to those of the selected peer cities and proposed recommended changes to salaries that would bring our workers into line. From here it is up to council to digest the market results and the salary recommendations and determine a path forward. To facilitate that deliberation and education, the Mayor Has asked to schedule an executive session review of the findings on January 6th at 6:00 PM. City Council may also have an opportunity to discuss the results if needed during the regular City Council meeting of January 13th. A public meeting devoted to the salary study results with the consultants present to explain their findings is scheduled for January 14th at 6:00 PM.

### **SC Local Government Investment Pool**

As directed by council, the City of Pickens has invested \$750,000 of reserves in the LGIP in November. For the first full month, the account has accrued \$3,397.34 in interest income. Staff will keep Council updated on the performance of this investment on a monthly basis as we evaluate its performance.

**Doodle Park**

Restoration of the locomotive and boxcar at the Doodle Park has been completed and made its debut just in time for the Christmas tree lighting event at the Market Pavilion. If you have not had time to stop by and review the excellent work done by our contractor Southern Painting, please stop by when you have an opportunity. The paint and clear coat applied to the cars will serve to protect this key Pickens historic asset for many years to come.

**Pickens Police Department staffing**

The Police Department has had two officers give notice and work is underway to replace. Chief Randall Beach has submitted a report detailing the present staffing situation and it is attached for Council's information.

**Water meter replacement project**

Among the major capital improvements included in this year's budget as we work towards across-the-board improvements to our water utility was the updating and replacement of our water meters as they reach the end of life. This project was originally what you do \$3,000,000 divided over three years. Public Works Director Trey Adams has been successful in reducing that cost substantially. Many thanks for his hard work on this and innovative plan to address the problem while saving a large sum of money. His report detailing the revised plans is attached.



# Pickens Police Department

Chief Randal Beach

P.O. Box 217 / 304 Johnson Street, Pickens, SC 29671

(864)878-6366 Phone (864) 878-8234 Fax

[www.cityofpickens.com](http://www.cityofpickens.com)

SC ORI 390500



**MEMORANDUM TO: T. O'Briant  
City Administrator**

**December 4, 2024**

**FROM: R. Beach  
Police Department**

**Re: Staffing**

**This memorandum is submitted to provide you with information in regard to staffing issues and needs within the Pickens Police Department.**

**Cpl. Caleb Cassell tendered his resignation to begin with the Sheriff's Office on December 9<sup>th</sup>. Officer William Oggenfuss has not submitted his resignation, however, has accepted a position with SC Highway Patrol to begin in January. This will leave us two positions short as well as the loss of several years of experience between these two officers.**

**The Sheriff's Office and the Easley Police Department have recently undergone pay studies that resulted in significant raises for their personnel. The Highway Patrol is currently offering a \$10,000 dollar sign bonus for certified officers along with a pay scale far above the Pickens PD.**

**One of our Reserve Officers is being deployed overseas with the US Army Reserves for a year, which will also have an impact on staffing. Another Officer, who had issues associated with a pregnancy was forced to move to part time status and we have had several other officers, and their spouses have pregnancies that have impacted staffing, inability to take vacation and increased overtime due to lengthy family medical leave situations.**

**We are challenged right now; however, I submit that our officers are motivated and dedicated to their jobs. Our call volume continues to increase, and we have continued to be proactive with drug enforcement. We are proud of our work and the effort we put in toward our community engagement. We will continue to work hard in this community and with staffing challenges. I anticipate that in a similar fashion to last year, I would request that additional positions be established within the department.**

**V/R Randal J. Beach 850-232-3812**

## Public Works Report December 9, 2024

**Water & Wastewater** - We are in the process of starting a much-needed meter change-out. We had \$667,000 budgeted for a meter change-out over the next three years. Our meter bases we currently have still have 10 years of the 20-year warranty remaining; after talking with MasterMeter was able to secure a customer loyalty price per register. We will be changing half our meters this year for approximately \$489,000 tax included which in turn would save us \$178,000 of what was budgeted for this year and approximately the same amount next year and the change-out would be completed without ever using the money budgeted for the third year which would save approximately \$1,000,000 for us to use to upgrade our infrastructure.

We have also started quite a few different inspections to help our water and wastewater system perform better. Those being fire hydrant inspections, lift station inspections, manhole inspections, and FOG inspections. We have begun to clear our sewer line right of ways (approx. 7 miles) and have installed a couple wet well mixers at our lift station to help them better perform.

**Storm Water**- We have completed two significant storm water projects over the last four months, one being at Bruce Field and the other being at Hooper Field

Bruce Field - We installed a catch basin and 40 ft. of 18" pipe to keep the water from washing sediment into the parking lot and surrounding yards. It now comes down the ditch to the box and into the ditch across the parking lot. We completed this job about a week before hurricane Helene hit Pickens and it performed without a flaw through the storm

Hooper Field - The existing pipe was 5' storm drain that had rusted through the bottom causing a number of sink holes along the pipe. We replaced it with 5' double wall plastic pipe. While dumping our last load of gravel our truck partially fell into a sink hole on the SCDOT maintained section of this storm drain. I called and reported to them and have been given the completion date of December 20, 2024

**Streets & Sanitation**- We have resumed our normal brush pick-up. We pick up brush the same route we pick up trash. There is still an excessive amount of brush that will take us some time to collect, and we are working on that as quickly as possible. We are running our leaf-vac truck on the same route and will get all the leaves up as quickly as we can

**City of Pickens**  
**Work Session and Regular Meeting**  
**October 14, 2024**  
**3:00 P.M. Work Session**  
**6:00 P.M. Regular Meeting**

The Mayor and City Council met at 3:00 p.m. for a work session and held the regular meeting at 6:00 p.m. at City Hall 219 Pendleton Street, Pickens S.C. Agendas were posted and sent to media on October 11, 2024.

**Council Members in attendance:**

Mayor, Isaiah Scipio  
Mayor Pro-Tem Cameron Rivers  
Council Member, Floyd Rogers  
Council Member, Allie Winter

**Staff:**

Administrator Tim O'Briant  
Randal Beach, Police Chief  
Chris Elrod, Fire Chief  
Mandy Hess, Finance Director  
Jonathan Morris, Recreation Director

***(The minutes are a synopsis of the meeting, and they are not a verbatim discussion. a full viewing and recording of the meeting is available on the City of Pickens Web-page and Facebook. Also, the full agenda packet with all departmental reports are available in the City Clerk's office).***

**CALL TO ORDER AND INVOCATION:**

Mayor Scipio called the meeting to order. Administrator Tim O'Briant gave the invocation followed by the Pledge of Allegiance.

**Work Session:**

**DISCUSSION OF AMENDMENT OF FY 2024/2025 BUDGET AMENDMENT, ORDINANCE NO. 2024-10:**

- Administrator Tim O'Briant explained the budget amendment will not take the contingency out of department budgets to pay for the health insurance increases on the employer side. Mr. O'Briant stated that increase would come out of reserves.
- There is a sum of money in the budget amendment for discussion regarding the purchase of a piece of property. Mr. O'Briant stated this is included for Council discussion.
- Mr. O'Briant informed Council that the cover sheet in the budget amendments show the increases and decreases. The \$43,000 and \$189,000 are for the contingency left in the departments, and the \$189K is for the possibility of a property purchase.

>>During discussion, Mr. Rogers asked about the status of the Salary Study. Mr. O'Briant stated he should have reports to share by the end of the month. Mr. Rogers also inquired about attorney cost, audit cost, and FEMA reimbursement. These items can be seen in the monthly

expenditures. Much of the debris clean up from the storm will be directed through the County. Mr. Rogers inquired about contract with Greenville Water. Mr. O'Briant stated that contract is in negotiations.

**DISCUSSION OF ANNEXATION REQUEST, REGARDING WOLF CREEK SCHOOL ROAD PROJECT:**

- Mr. O'Briant advised Council to see the memorandum in the agenda packet as it relates to this project and it's timeline.
- No action will be taken in this work session. This is a discussion regarding a renewed request for annexation of 215 acres located at the north side of Wolf Creek School Road and Mauldin Lake Road.
- In 2023 the request for annexation was tabled by Council. In 2024 City Council passed an additional zoning classification, R-20, which imposes limitations on the uses allowed in a low-density residential development.
- Council Members, Robert Nealy and Allie Winter met with property owner and developers and focused on finding the best path to protect the private property rights of the parcel's owner while respecting the concerns of neighboring property owners about retaining the character of the area.
- Developers and property owners have agreed to enter into a development agreement with the City of Pickens to adhere to the R-20 zoning. Also establish a voluntary impact fee of \$4,200 per lot sold.
- Developers also are proposing a 142 unit instead of the original 212. The remainder of the proposed agreement requires the development to be of the highest quality construction available and limits the building material allowed.

(full memorandum and development agreement is online in the full agenda packet)

>>During open discussion, Mayor Scipio thanked Council Members Winter and Nealy for taking the time to work with developers. Also, Mayor Scipio thanked Mr. Holder for his patience. Mayor Scipio stated he understood both sides of this issue. There are some that seek development, and there are those that would like the property to remain undeveloped. Mayor Scipio opened the floor for council discussion with developers.

>>Council Member Allie Winter asked if the water issues has been decided. The developer, Brian Gullette explained they have different choices regarding where the water source would come from, and he will know more after scheduled meetings. Mr. Gullette also pointed out that S.C. D.O.T. has no problem with the traffic counts, and the school capacity is of no concern. The developer stated there would be open and public space as it relates to access to the lake.

>>Mayor Scipio stated he has received a text message from Ms. Becky Lesley, who requested that he mention her concern about traffic from this sub-division exiting on Heraldry drive, she stated this is a retirement community of people who frequently walk, and this traffic would not be desirable.

>>Ms. Winter stated turning lanes were also discussed. Mr. Gullette stated S.C.D.O.T. saw no issues, but if the City wants turning lanes, that can be discussed. Mr. Gullette also stated that S.C. D.O.T. typically decides roads needed for entering and exiting.

>>Mr. O'Briant stated major points that will have to be resolved will be:

- Water issue and development agreements
- Revised rendering



- Public hearings/planning and zoning meetings
- More meetings will be forthcoming before official action.

**DISCUSSION OF PURCHASE OF PROPERTY AT THE CORNER OF LIBERTY AND PENDLETON:**

- Mr. O'Briant informed Council about a piece of property located at the corner of Liberty and Pendleton. This is a piece of property owned by Charles Dalton, and the property has city sewer lines outside of the easement. This issue has been difficult for the seller to sell this property. Discussions have been continuing regarding fixing the easement (\$143,000) Some Council members thought it may be prudent to discuss purchasing the property. Mr. O'Briant stated the Owner is asking (\$186,000)-Mayor Scipio stated this would be a good area for green space/park. Council advised Mr. O'Briant to stay in negotiations with Mr. Dalton to purchase the property.

**ADJOURNMENT:**

Hearing no further business, Mayor Scipio called for the motion to adjourn. Motion was made by Council Member Allie Winter, seconded by Council Member Floyd Rogers, and unanimously approved to adjourn the work session. Pickens City Council stood adjourned at 4:28p.m. Mayor Scipio stated Council will be back at 6:00 p.m. for the Regular Business Meeting.

Respectfully Submitted:

Approved:

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Donna F. Owen, City Clerk

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Isaiah Scipio, Mayor

**REGULAR COUNCIL MEETING at 6:00 p.m. following the Work Session**

**Council Members in attendance:**

Mayor, Isaiah Scipio  
Mayor Pro-Tem Cameron Rivers  
Council Member, Floyd Rogers  
Council Member, Allie Winter

**Staff:**

Administrator Tim O'Briant  
Randal Beach, Police Chief  
Chris Elrod, Fire Chief  
Mandy Hess, Finance Director  
Trey Adams, Public Works Director  
Jonathan Morris, Recreation Director

***(The minutes are a synopsis of the meeting, and they are not a verbatim discussion. a full viewing and recording of the meeting is available on the City of Pickens Web-page and Facebook. Also, the full agenda packet with all departmental reports are available in the City Clerk's office).***

**WELCOME AND CALL TO ORDER:**

Mayor Scipio called the regular 6:00 p.m. meeting to order and welcomed those in attendance. Mayor Scipio gave the invocation followed by the Pledge of Allegiance.

**COMMENTS FROM MAYOR:**

Mayor Scipio thanked everyone for participating.

**PUBLIC HEARING ORDINANCE NO. 2024-10 Mayor Scipio opened the Public Hearing for the FY 2024/2025 BUDGET AMENDMENT:**

- Pam Winters – Ms. Winters stated she has looked over the budget and she finds the formatting difficult. Ms. Winters asked who prepared the amendment and who verifies that it is correct. Ms. Winters inquired about several items, the Greenville Water fee, (is it a onetime fee or recurring) the 96K for water tanks are not on the summary sheets, and 670K for water meters and boxes that are also not on the summary sheet. Ms. Winters stated these items are line items in the budget, but she would like to know why these are not on summary sheets. In closing, Ms. Winters stated the overall utility budget has increased.

**PUBLIC HEARING CLOSED:**

Hearing no further comments about the FY 2024/2025 budget amendment, Mayor Scipio closed the public hearing at 6:08 p.m.

**COMMENTS FROM CITIZENS:**

Larry Martin, Ben Mann, Matthew Kutilek:

All citizens came before Council to express concerns about development on Wolf Creek School Road. There were concerns about aesthetics, the development agreements, annexation laws, and traffic flows. Citizens also asked Council to consider less homes being built with larger land tracks. Citizens requested that Council not vote on any issues regarding this project until the (2) new Council Members were elected. Citizens asked the Council to be cautious before annexing this property.

Jeff Derrick- Mr. Derrick came before Council to state that he appreciated Council Member Floyd Rogers for asking the Administrator questions that were informative to the public. Mr. Derrick expressed concern about overspending and gave the example that Pickens had too many parks and recreational venues to maintain. Mr. Derrick stated that Council should not be involved in the Wolf Creek project until the City has resolved the water issue.

Pat Mulky – Mr. Mulky thanked the City of Pickens for doing a good job during the recent Hurricane Helene storm. Mr. Mulky stated that he was thankful for the agreements with Greenville water and grateful that the city’s wastewater/water facilities held up during this devastating storm. Mr. Mulky stated he had been in Western North Carolina over the last several weeks, and they were not as fortunate.

Alex Saitta – Mr. Saitta, County Council for the Pickens district came before Council to update the City on projects County Council has going on inside the City of Pickens.

- 911 call center, EMS, Rescue and dispatch
- Jaycee Park funds to the City in the amount of \$50K
- Hagood Maulding House funds for painting
- Senior Center – obtaining estimates for funds requested to update kitchen and dining areas.
- Mr. Saitta did comment to Council regarding the Joint Reginal Water Board. Mr. Saitta stated the County is not in the water business however, the County Council does appoint the Water Authority Board of Directors therefore, he does get asked questions. Mr. Saitta advised Council to obtain unbiased legal advice, and openly discuss with the Reginal Board the costs associated with leaving this partnership.
- Mr. Saitta asked Council to be careful with growth and infrastructure as it relates to new development.

Cheryl Smith- Ms. Smith thanked Council for the agreement with Greenville Water. Ms. Smith stated she can drink her water without any allergic reactions.

Jonathan Baker – Mr. Baker stated he would like Council to address the issue of there not being enough room in City Hall for Council meetings. He stated he was in the lobby and unable to hear or participate. Mr. Baker commented on the Wolf Creek Project and stated homes that are priced at \$300K – 500K are not affordable housing. As Council works on budgets, consider there are police officers on food stamps and are not making a livable wage. Mr. Baker stated he thought the City was not transparent and he hopes the future

candidates running for office will do a better job. Mr. Baker informed Council there was a protest at City Hall about the City’s decision to contract with Greenville Water. In conclusion, Mr. Baker asked the Council to do an audit on all the City Property.

**ADMINISTRATOR’S REPORT:**

Mr. O’Briant stated his report was included in the agenda packet. He would answer any questions. The report highlighted FEMA plans for removal of Hurricane Helen debris and damage to City Properties.

Mr. O’Briant did reassure citizens that Council/Staff will not be making decisions regarding the Wolf Creek Project until water and infrastructure are resolved as well as a completed development agreement.

Mr. O’Briant thanked the City Staff, EMS, Public Works, Fire and Police for all the work that was performed before, during and after the hurricane.

**APPROVAL OF MINUTES:** Motion was made by Council Member Allie Winter, seconded by Council Member Floyd Rogers, and unanimously passed to approve the minutes of 9/23/24 and 10/01/2024.

**SEPTEMBER 23, 2024, REGULAR MEETING  
OCTOBER 01, 2024, SPECIAL CALLED**

**FIRST READING OF ORDINANCE NO. 2024-10 TO AMEND FY 2024/2025 BUDGET  
ORDINANCE NO. 2024-07:**

>>Motion was made by Council Member Allie Winter, seconded by Council Member Floyd Rogers that this constitutes first reading of Ordinance No. 2024-10. Motion carried with a unanimous vote.

- Mayor Scipio noted that questions were asked during the public hearing, and Finance Director, Mandy Hess will address those issues. Mayor Scipio also thanked the Finance Director and Administrator for their diligent work preparing these amendments.

**COUNCIL COMMENTS:**

All Council Members reiterated their gratitude for the safety of the citizens and community during the hurricane.

**ADJOURNMENT:**

Hearing no further business, Mayor Scipio called for the motion to adjourn. Motion was made by Council Member Cameron Rivers, seconded by Council Member Allie Winter, and unanimously approved to adjourn. Pickens City Council stood adjourned at 6:58 p.m.

Respectfully Submitted:

Approved:

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Donna F. Owen, City Clerk

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Isaiah Scipio, Mayor

**City of Pickens**  
**Special called meeting.**  
**Monday, October 21, 2024**  
**3:00 P.M.**

The Mayor and City Council met in special session at City Hall 219 Pendleton Street, Pickens S.C. Agendas were posted and sent to media on October 16, 2024.

Council Members in attendance:

Mayor, Isaiah Scipio  
Council Member, Cameron Rivers  
Council Member, Floyd Rogers  
Council Member, Allie Winter

Staff:

Administrator Tim O'Briant  
Mandy Hess, Finance Director

**CALL TO ORDER AND INVOCATION:**

Mayor Scipio called the meeting to order. Mayor Scipio gave the invocation followed by the Pledge of Allegiance.

**COMMENTS FROM THE MAYOR:**

Mayor Scipio thanked all those for participating in the City of Pickens.

**SECOND READING OF ORDINANCE NO. 2024-10 TO AMEND FY 2024/2025 BUDGET  
ORDINANCE NO. 2024-07:**

>>Motion was made by Council Member Allie Winter and seconded by Council Member Floyd Rogers that this constitutes a second and final reading of Ordinance No. 2024-10.

>>During Council discussion, Council Member Allie Winter wanted to clarify that the contract for wastewater with Clear Water Solutions is in the amendment. The amendment does include the contract.

>>Council Member Floyd Rogers moved to amend the ordinance to remove the \$189K for the purchase of property and consider this purchase at a later date. Council Member Cameron Rivers seconded the motion.

>>Council Member Allie Winter inquired about how much of the \$189K was from the C.D. It was confirmed that \$150K of these funds came from the C.D.

>>Administrator O'Briant informed Council that the owner of the property is not interested in a lower price point currently.

>>Motion of the amendment carried with a unanimous vote.

>>Motion that this constitute a second and final reading of Ordinance No. 2024-10 as amended carried with a unanimous vote.

**COMMENTS FROM COUNCIL MEMBERS:**

Council Member Floyd Rogers stated to the public, that Council Members have worked many hours on this budget amendment, and have met with both the Administrator and Finance Director to resolve questions.

**ADJOURNMENT:**

Hearing no further business, Mayor Scipio called for the motion to adjourn. Motion was made by Council Member Floyd Rogers, seconded by Council Member Allie Winter, and unanimously passed to adjourn. Pickens City Council stood adjourned at 3:14 p.m.

Respectfully Submitted:

Approved:

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Donna F. Owen, City Clerk

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Isaiah Scipio, Mayor

**City of Pickens  
Council Work Session  
October 28, 2024  
6:00 p.m.**

The Mayor and City Council met in a Work Session at 6:00 p.m. at City Hall 219 Pendleton Street, Pickens S.C. Agendas were posted and sent to media on October 24, 2024.

**Council Members in attendance:**

Mayor, Isaiah Scipio  
Mayor Pro-Tem Cameron Rivers  
Council Member, Floyd Rogers  
Council Member, Allie Winter

**Staff:**

Administrator Tim O'Briant  
Randal Beach, Chief of Police  
Mandy Hess, Finance Director  
Jonathan Morris, Recreation Director  
Trey Adams, Public works Director

**CALL TO ORDER AND INVOCATION:**

Mayor Scipio called the meeting to order. Chief Beach gave the invocation followed by the Pledge of Allegiance.

**COMMENTS FROM THE MAYOR:**

Mayor Scipio thanked everyone for participating. Mayor Scipio also thanked Council for the complex decisions that are being made. Mayor Scipio did state the water complaints have diminished since the water is coming from the Greenville treatment plant.

**ADMINISTRATOR'S REPORT/FINANCE REPORT:**

Administrator O'Briant gave the following updates:

- Staff is working to correct the immediate problem with overflow crowds in the council chambers by placing speakers in the lobby area.
- Mr. O'Briant reminded Council and Citizens that financial reports are in the agenda packet and online. These reports are detailed and includes a check register for all checks outgoing for the City. Questions can be directed to the Finance Director, Mandy Hess.
- Painting the train at Doodle Park is ongoing.

Public Works Director, Trey Adams addressed Council and advised the following:

- The hurricane debris is actively being picked up in the City limits. Larger debris is first on main roads. Smaller brush piles on secondary roads will be next in line. Currently FEMA and Pickens county are overseeing this process.
- Public Works is working on storm water issues, and will monitor the FEMA/County progress.

- **DISCUSSION OF SCIIP GRANT CHANGE ORDERS:**

Mr. O'Briant stated that in the agenda packet are copies of \$113,309.00 of additional charges to the SCIIP grant project contract. These costs are associated with change orders.

Mr. O'Briant stated he has said these change orders should have been provided to staff/council in a timelier manner. However, the invoices are legitimate, and the change orders were completed. Mr. O'Briant stated he needs Council direction on how to move forward with this request.

>>During Council discussion, Council Member Allie Winter asked for clarification that this work was done on June 28<sup>th</sup>, 2024, and staff received invoices on September 19<sup>th</sup>, 2024. Mr. O'Briant stated staff did not receive actual change orders until late September or early October. Mr. O'Briant stated he would prefer the engineering firm to communicate with staff while the project is going on so the city would be prepared.

>>Council Member Allie Winter asked if the contract stipulates a timelier billing. Mr. O'Briant stated that was correct, the invoicing did not comply with the contract. Mr. O'Briant did inform Council that it is best to resolve these issues as future grants are ongoing.

>>Council Member Floyd Rogers pointed out that the City has complied, and the problem would be with Rossier Engineering as it relates to future grants on this project.

>>Mayor Scipio inquired about the budget and paying these change orders. Mr. O'Briant stated there is money in the budget for new infrastructure.

>>Council Member Allie Winter and Council Member Cameron Rivers stated moving forward, a new engineering firm could be considered. Also, Ms. Winter stated she would like advice from the City Attorney, as this is a contractual matter.

- It was the consensus of Council to have this item on the agenda at the next meeting with advice from the City Attorney.

**DISCUSSION OF COUNCIL RULES OF ORDER:**

Mayor Scipio stated he asked the City Attorney to review the City's current code and compare it with other municipalities regarding Council Rules. Mayor Scipio stated the City of Pickens has never placed rules of order and conduct into the code. These rules will be a guideline for keeping order as the Council moves forward as a governing body. This will also be in place for future Council's.

>>During Council discussion, Council Member Floyd Rogers stated his idea of a council meeting is to have transparency and open public discussion. Discussion and decisions should be made publicly. Mr. Rogers stated he thinks sections of this ordinance limits speech. Council Member Rogers stated he had many issues as they relate to Council having disciplinary hearings as they relate to the conduct of another Council Member. Floyd Rogers stated he strongly believed a member of council should never be censured



about how they feel about a subject that is up for debate. If the debate becomes physical, that is different and is a law enforcement situation.

>> Mayor Scipio stated this was a work session and this ordinance is up for discussion, and revision. It is up to Council to declare rules of order.

>> Council Member Allie Winter stated she disagreed with Council Member Rogers in the fact that a select group of Council Members working together would call for public disciplinary hearings. Ms. Winter stated the council is generally a Council of (7) members, and it takes a 2/3 majority. Ms. Winter stated she did not think the rules limits speech, but that they protect the Council. Mr. Rogers stated it limits speech if the majority does not like what is being said.

>> Council Member Cameron Rivers stated he did not think the ordinance is limiting, he thinks the ordinance helps protect the facts instead of individual opinions. Mr. Rivers also stated the City Attorney took this from other municipalities that are using these rules of order.

- It was the consensus of Council to have the City Attorney at the next meeting to address concerns of the Rules of Order.

**CONVENE INTO EXECUTIVE SESSION TO DISCUSS PERSONNEL AS IT RELATES TO COMPENSATION MARKET ANALYSIS: (Section 30-4-70 (a) (1))**

Motion was made by Council Member Cameron Rivers, seconded by Council Member Allie Winter to convene into executive session for the stated purpose. Motion carried with a unanimous vote.

**RECONVENE INTO PUBLIC SESSION:**

Motion was made by Council Member Floyd Rogers, seconded by Council Member Allie Winter, and unanimously approved to reconvene into Public Session.

**ACTION AS A RESULT OF EXECUTIVE SESSION:**

Mayor Scipio stated Council has been in executive session for a virtual meeting with Evergreen, LLC. Evergreen performed the City of Pickens pay and classification study. Council is committed to the implementation of the study as a main focus as an investment in the employees. Evergreen will be present at a public meeting and will also be working with the Finance Director and Administrator on implementation strategies.

**ADJOURNMENT:**

Hearing no further business, Mayor Scipio called for the motion to adjourn. Motion was made by Council Member Floyd Rogers, seconded by Council Member Cameron Rivers, and unanimously approved to adjourn. Pickens City Council stood adjourned at 8:05 p.m.

Respectfully Submitted:

Approved:

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Donna F. Owen, City Clerk

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Isaiah Scipio, Mayor

**ORDINANCE NUMBER 2024-11**

**AN ORDINANCE TO AMEND DIVISION 3 (MEETINGS) OF ARTICLE II (MAYOR AND COUNCIL) OF CHAPTER 2 (ADMINISTRATION) OF THE CITY OF PICKENS CODE OF ORDINANCES**

**WHEREAS**, City Council reviews its ordinances from time to time to make any necessary amendments and/or improvements; and,

**WHEREAS**, City Council desires to amend its Ordinances to adopt additional rules and regulations governing its meetings; and,

**WHEREAS**, City Council has determined that this ordinance is in the best interests of the citizens and residents of the City of Pickens.

**NOW, THEREFORE**, be it ordained by the Mayor and Council of the City of Pickens, South Carolina, that Division 3 (Meetings) of Article II (Mayor and Council) of Chapter 2 (Administration) of the City of Pickens Code of Ordinances shall be amended as follows:

**Section 1.** Division 3 (Meetings) of Article II (Mayor and Council) of Chapter 2 shall be amended to add Sec. 2-66 (Conduct of Meetings) and Sec. 2-67 (Public Comment) as follows:

**Sec. 2-66. Conduct of Meetings.**

- (a) The Mayor is the presiding officer for regular and special meetings. In the absence of the Mayor, the Mayor Pro-Tern shall preside. In the absence of both the Mayor and Mayor Pro-Tern, the Council shall select a member to preside over the meeting.
- (b) The presiding officer shall not abuse his or her position by controlling or directing debate to favor his or her views. The presiding officer shall ensure that all Council members have an opportunity to express their views on matters properly presented for discussion. The presiding officer may temporarily relinquish the chair in order to engage in active debate or discussion.
- (c) The presiding officer has the same rights/responsibilities as other council members with regard to making motions and voting.
- (d) During a meeting Council members shall request permission of the Mayor or presiding officer before speaking. One council member shall speak at a time.
- (e) Council members have the right to disagree, but shall not engage in shouting, arguments, name-calling, questioning the ethics or morality of a fellow councilmember, or personally disrespectful behavior towards each other during meetings.

- (f) Specific rules of procedures may be temporarily suspended during a meeting by a majority vote of Council present at the meeting.
- (g) Unless specifically covered elsewhere within this Section, the proceedings of the City council shall be governed by Robert's Rules of Order, Newly Revised.

**Sec. 2-67. Public Comment.**

- (a) All citizens have a right to participate in, but not to interrupt, City Council meetings. Therefore, a period of time (public comment) shall be set aside at every meeting to afford citizens an opportunity to speak on any matters pertaining to items on that meeting's agenda or on any matter concerning the City. Citizens wishing to speak shall add their name and address to a roster maintained by the Clerk.
- (b) Citizens may also request to be added to the regular agenda at the next scheduled meeting. If a number of citizens wish to speak at a meeting, the Mayor or presiding officer may reasonably limit the length of time allotted to each citizen and shall state the time limitations before the public comments begin.
- (c) No person from the audience may interrupt the Council meeting or address the Council unless recognized by the Mayor or presiding officer. Persons who are disorderly or who act in a threatening manner may be asked to leave the Council chamber.
- (d) For meetings at which public comment is permitted, all persons wishing to be heard during the public comment period shall sign in with the Clerk prior to the start of the meeting in-person and not on behalf of others. No names will be added to the sign-up list once the meeting has begun.
- (e) During public comment, each speaker is limited to a total of five (5) minutes per meeting, regardless of whether the person is speaking on their own behalf or as an agent for others. The presiding officer or the municipal clerk shall be the timekeeper. Recognized speakers may not donate, transfer, yield, or give all or any portion of their speaking time to another person.
- (f) Thirty (30) minutes shall be allotted for the entire public comment period. If the public comment period expires before all persons who have signed up get to speak, those names will be carried over to the next public comment period at the next meeting of the City Council; provided, however, the Presiding Officer may decide to extend the public comment period in his/her discretion.
- (g) All public comments are to be directed to the City Council as a whole and not to any member thereof. The purpose of addressing council is to allow councilmembers to hear the opinions of the public and is not intended to afford the opportunity to engage in a debate or dialogue. All speakers shall be mindful and respectful of those participating in or present at the meeting. Speakers shall be expected to be civil in their language and

shall refrain from comments or behavior that involves disorderly speech or action, name-calling, personal attacks, threats, obscene or indecent remarks, and/or disruptive actions.

- (h) All speakers shall confine their comments to issues under the jurisdiction of the City Council. Speakers shall not use the public comment period to promote or advertise awards, businesses, services, goods, or candidates for public office.
- (i) All speakers are required to address City Council from the lectern with the microphone. All speakers shall begin their remarks by providing their name, whether or not they are a city resident, and subject of their comments.
- (j) Any speaker that violates these *Rules and Protocols for Public Comment* may be ruled “Out of Order” by the Presiding Officer. Any person whose comments have been ruled “Out of Order” shall immediately cease and desist from further improper comments. The refusal of an individual to desist from further improper comments may subject the individual to removal from the meeting.
- (k) The Presiding Officer has discretion in enforcing these guidelines to best ensure the orderly and civil conduct of City Council meetings. These *Rules and Protocols for Public Comment* shall apply to any designated “Public Comment” period as set forth on any agenda of a meeting of the City Council. These *Rules and Protocols for Public Comment* shall also apply to public participation on any individual item on a City Council meeting agenda for which public comment is permitted by Council or required by law, including statutorily mandated public hearings. These *Rules and Protocols for Public Comment* shall not apply to invited speakers or City personnel in the performance of their duties.

**Section 2: Severability:** Severability is intended throughout and within the provisions of this Ordinance. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Ordinance.

**Section 3:** This Ordinance shall be effective after second and final reading.

**CITY OF PICKENS, SOUTH CAROLINA**

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Isaiah Scipio, Mayor

**ATTEST:**

\_\_\_\_\_  
Donna Owen, Municipal Clerk

First Reading: \_\_\_\_\_, 2024

Second and  
Final Reading: \_\_\_\_\_, 2024

**Approved as to Form:**

\_\_\_\_\_  
Daniel Hughes, City Attorney



TO: Mayor and Council  
FROM: Tim O'Briant, City Administrator  
DATE: October 24, 2024  
RE: SCIIP Grant change orders

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Please see the attached documentation explaining the Rosier Group's request for an additional SCIIP Grant project local match amount of \$113,309.00 to cover the increases of the contract amount due to change orders as described. The changes orders total more than \$140,000 but the total to be paid is less because of prior credit for local match paid by the city.

Date of Issuance: September 19, 2024	Effective Date: 9/19/2024
Owner: City of Pickens	Owner's Contract No.: SCIP # A-23-C161
Contractor: J & M Construction, Inc.	Contractor's Project No.:
Engineer: Rosier Group	Engineer's Project No.: W-21-64
Project: 2021 Capital Improvement Project Division I SCIP Contract Name: A-23-C161 Water System Improvements	

The Contract is modified as follows upon execution of this Change Order:

Description: Additional water main installation due to corrections made in the field to utilize the best routes due to unseen issues when originally designed. Additional service reconnections not seen in the field on the original design.

Attachments: *Justification letters.*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ <u>3,106,235.00</u>	Original Contract Times: 240 / 270 Substantial Completion: <u>June 28, 2024</u> Ready for Final Payment: <u>July 28, 2024</u> days or dates
[Increase] [Decrease] from previously approved Change Orders No. <u>1</u> to No. <u>1</u> : + 60 DAYS \$ <u>0</u>	[Increase] [Decrease] from previously approved Change Orders No. <u>1</u> to No. <u>1</u> : Substantial Completion: <u>60 days</u> Ready for Final Payment: <u>60 days</u>
Contract Price prior to this Change Order: \$ <u>3,106,235.00</u>	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____
[Increase] [Decrease] of this Change Order: \$ <u>99,600.00</u>	[Increase] [Decrease] of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
Contract Price incorporating this Change Order: \$ <u>3,205,835.00</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>August 27, 2024</u> Ready for Final Payment: <u>September 26, 2024</u> days or dates

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: <u>[Signature]</u> Engineer (if required)	By: _____ Owner (Authorized Signature)	By: <u>Jared Weldon</u> Contractor (Authorized Signature)
Title: <u>PE</u>	Title: _____	Title: <u>Vice-President</u>
Date: <u>9/23/24</u>	Date: _____	Date: <u>10/7/2024</u>

Approved by Funding Agency (if applicable)

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

110 WEST FIRST AVE., SUITE D  
EASLEY, SC 29640



**ROSIER GROUP**  
*Engineers & Surveyors*

PHONE: (864) 859-6900  
FAX: (864) 859-6980  
email: team@rosier.group

September 23, 2024

Rural Infrastructure Authority  
Nate Foutch - Program Manager  
1201 Main Street – Suite 1600  
Columbia, SC 29201

**RE: City of Pickens**  
**SCIIP A-23-C161 2021 Capital Improvements Project Division 1**  
**SCIIP A-23-C161 Water System Improvements**  
**Change Order 2**

This letter is for the justification of change order number two. The referenced change order is broken down into three main items as seen on the Change Order Request form by J&M Construction dated September 10, 2024. The justification for each item is as follows:

Items number one and two were due to the same reason. The water system design at these locations was redesigned during construction due to the existing system not being located where originally thought. The revised design was the best option to ensure optimal future operation, while keeping the project economically efficient.

Item number three was due to additional existing services being connected to the old lines. This exact number was unknown during design and had to be determined during abandonment of the old lines.

The cost for these changes was determined using the originally bid unit prices.

Please let me know if you have any questions regarding the justifications of this change order.

Sincerely,

Troy D. Rosier, P.E.





# Change Order Request

J & M Construction Inc.  
6930 HWY 76  
Pendleton, SC 29670  
Phone: (864) 646-9912

Customer: City of Pickens  
Address:  
Date: 9/10/2024  
2021 Capital Improvements Project  
Job: Division I

Item #	Description	Qty.	Unit	Unit Price In Place	Amount
1	Ponderosa and Jones Circle				
	8" DIP (CL350) Fittings / Mmtape / Wire	160	LF	\$95.00	\$15,200.00
	Bore / Jack 12" Steel Casing (6" DI Carrier)	40	LF	\$375.00	\$15,000.00
	4" M.J. Gate Vave / Box / Ring	1	EA	\$1,650.00	\$1,650.00
2	Wolf Creek School Rd				
	Bore / Jack 16" Steel Casing (8" DI Carrier)	40	LF	\$425.00	\$17,000.00
3	Service Reconnections	29	EA	\$1,750.00	\$50,750.00

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**Total** **\$99,600.00**

Date of Issuance: September 19, 2024	Effective Date: 9/19/2024
Owner: <b>City of Pickens</b>	Owner's Contract No.: SCIIP # A-23-C161
Contractor: <b>J &amp; M Construction, Inc.</b>	Contractor's Project No.:
Engineer: <b>Rosier Group</b>	Engineer's Project No.: W-21-64
Project: <b>2021 Capital Improvement Project Division II SCIIP A-23-C161 Water System Improvements</b>	Contract Name:

The Contract is modified as follows upon execution of this Change Order:

Description: ADDITIONAL LF DUE TO CHANGE OF LOCATION OF FIRE HYDRANT AND ADDITIONAL SERVICE RECONNECTIONS THAT WERE NOT INDICATED ON ORIGINAL DESIGN.

Attachments: *Justification Letters.*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ <u>2,469,025.00</u>	Original Contract Times: 240 / 270 Substantial Completion: <u>June 28, 2024</u> Ready for Final Payment: <u>July 28, 2024</u> days or dates
[Increase] [Decrease] from previously approved Change Orders No. <u>1</u> to No. <u>1</u> : + 60 DAYS \$ <u>0</u>	[Increase] [Decrease] from previously approved Change Orders No. <u>1</u> to No. <u>1</u> : Substantial Completion: <u>+ 60 DAYS</u> Ready for Final Payment: <u>+ 60 DAYS</u>
Contract Price prior to this Change Order: \$ <u>2,469,025.00</u>	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] of this Change Order: \$ <u>42,750.00</u>	[Increase] [Decrease] of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
Contract Price incorporating this Change Order: \$ <u>2,511,775.00</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>August 27, 2024</u> Ready for Final Payment: <u>September 26, 2024</u> days or dates

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: <u>[Signature]</u> Engineer (if required)	By: _____ Owner (Authorized Signature)	By: <u>Jared Weldon</u> Contractor (Authorized Signature)
Title: <u>PE</u>	Title: _____	Title: <u>Vice-President</u>
Date: <u>9/23/24</u>	Date: _____	Date: <u>10/7/2024</u>

Approved by Funding Agency (if applicable)

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_



September 23, 2024

Rural Infrastructure Authority  
Nate Foutch - Program Manager  
1201 Main Street – Suite 1600  
Columbia, SC 29201

**RE:                   City of Pickens**  
**SCIIP A-23-C161    2021 Capital Improvements Project Division 2**  
**SCIIP A-23-C161 Water System Improvements**  
**Change Order 2**

This letter is for the justification of change order number two. The referenced change order is broken down into two main items as seen on the Change Order Request form by J&M Construction dated September 10, 2024. The justification for each item is as follows:

Item number one was due to field conditions during construction. It was determined that with the addition of 150 LF of pipe along Mountain Estates Road, the City could eliminate a private service line along the county road. In addition to replacing this service line, the fire hydrant was placed in a better location and positioned ideally for system expansion in the future.

Item number two was due to additional existing services being connected to the old lines. This exact number was unknown during design and had to be determined during abandonment of the old lines.

The cost for these changes was determined using the originally bid unit prices.

Please let me know if you have any questions regarding the justifications of this change order.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Rosier', written in a cursive style.

Troy D. Rosier, P.E.



# Change Order Request

J & M Construction Inc.  
6930 HWY 76  
Pendleton, SC 29670  
Phone: (864) 646-9912

Customer: City of Pickens  
Address:  
Date: 9/10/2024  
2021 Capital Improvements Project  
Job: Division II

Item #	Description	Qty.	Unit	Unit Price In Place	Amount
1	Mountain Estates Rd 6" DIP (CL350) Fittings / Mmtape / Wire	150	LF	\$60.00	\$9,000.00
2	Service Reconnections	25	EA	\$1,350.00	\$33,750.00
				<b>Total</b>	<b>\$42,750.00</b>

Mayor  
ISAIAH SCIPIO  
City Council  
CAMERON RIVERS, Mayor Pro-Tem  
FLOYD ROGERS  
ALLIE WINTER



City of Pickens

[www.cityofpickens.com](http://www.cityofpickens.com)

Administrator  
Tim O'Briant  
City Clerk  
DONNA F. OWEN

TO: Mayor and Council  
FROM: Tim O'Briant, City Administrator  
DATE: November 11, 2024  
RE: Greenville Water capacity buy-in and supply agreement

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## Overview

This Water Capacity and Supply Agreement, effective upon approval, is between Greenville Water (Seller) and the City of Pickens, South Carolina (Purchaser). The agreement outlines the terms for Greenville Water to supply potable water to Pickens, including the construction, operation, and maintenance of necessary facilities. The agreement ensures a reliable water supply for Pickens while outlining financial responsibilities and operational protocols for both parties.

Key points include:

1. **Termination:** Pickens can terminate the agreement with one year's notice if legal actions prevent continuation or if the Pickens Joint Regional Water System becomes operational by January 2026. Pickens would then purchase water produced by PJRWS
2. **Initial Capacity and Payment:** Pickens is allocated an initial capacity of 1.3 million gallons per day (MGD) from Greenville Water's facilities, with an initial payment of \$3,848,000. Payments are structured over 480 months with a 3% carrying charge.
3. **Charges and Rates:** Pickens will pay a Monthly Base Charge and an Operation and Maintenance Charge, initially set at \$11,684.58 and \$0.66 per thousand gallons, respectively. These charges are subject to annual adjustments based on Greenville Water's audited financial statements.
4. **Regulatory Capital Improvements:** If regulatory improvements are needed, Pickens will pay its share of the costs, which can be spread over ten or twenty years depending on the amount.
5. **Sale and Resale of Water:** Pickens can resell water and may sell or lease its allocated capacity, but Greenville Water has the right of first refusal. Any sale of capacity to a third party must meet specific conditions.

6. **Term and Renewal:** The agreement lasts for 40 years, with automatic extensions for two additional 30-year periods unless either party gives notice of non-renewal at least two years before the end of a term.
7. **Force Majeure and Arbitration:** The agreement includes provisions for force majeure events and mandates binding arbitration for disputes, except for payment issues and term-related matters.
8. **Facilities and Maintenance:** Greenville Water is responsible for constructing and maintaining the facilities, including a new 12-inch gravity-fed main. Pickens will cover the cost of connecting meters and their installation.

**WATER CAPACITY AND SUPPLY AGREEMENT**

**BETWEEN**

**GREENVILLE WATER**

**AND**

**CITY OF PICKENS, SOUTH CAROLINA**

**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT  
TO THE FEDERAL ARBITRATION ACT, 9 U.S.C. § 1 ET SEQ., OR  
IN THE ABSENCE OF A FINDING OF INTERSTATE COMMERCE,  
TO S.C. CODE ANNOTATED §15-48-10 ET SEQ.**

**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT, 9 U.S.C. § 1 ET SEQ., OR IN THE ABSENCE OF A FINDING OF INTERSTATE COMMERCE, TO S.C. CODE ANNOTATED §15-48-10 ET SEQ.**

This **WATER CAPACITY AND SUPPLY AGREEMENT** (this “Agreement”) made as of this \_\_\_ day of \_\_\_\_\_, 2024, by and among the **BOARD OF COMMISSIONERS OF PUBLIC WORKS OF THE CITY OF GREENVILLE**, doing business as **GREENVILLE WATER** (“Seller”), and the **CITY OF PICKENS, SOUTH CAROLINA** (“Purchaser”) (Purchaser and Seller may be individually referred to as a “Party” and collectively as the “Parties”).

**BACKGROUND**

(A) Seller is a Board of Commissioners of Public Works established August 1, 1918, pursuant to a referendum conducted by the City of Greenville, a municipal corporation of the State of South Carolina, chartered on December 18, 1831, located in Greenville County, South Carolina and, as such, possesses all powers granted by the Constitution and statutes of the State of South Carolina to boards of commissioners of public works. Pursuant to the applicable provisions of law, Seller operates a water system which provides water service both within and without the incorporated limits of the City of Greenville to a population in excess of 450,000 people.

(B) The Purchaser is a political subdivision and municipal corporation existing under S.C. Const. art. XIII and Title 5 of the Code of Laws of South Carolina. Pursuant to the applicable provisions of law, the Purchaser owns and operates a water system without the incorporated limits of Seller.

(C) Seller has constructed water intake, treatment, production, storage, transmission, and distribution facilities (the “Facilities”) which are capable of producing potable water in quantities sufficient to meet the needs of not only its retail customers, but also wholesale customers.

(D) The Parties agree that, subject to the terms of this Agreement, it is in their mutual interest for the Purchaser to provide its support, to the fullest extent possible, for the Seller’s reasonable efforts to secure Surface Water Withdrawal Permits from the State of South Carolina, provided, however, that Purchaser shall not be required to expend any monies in connection with providing such support. This support, when appropriate, will be provided whether the Seller is seeking to maintain the amounts authorized under the Permits in force as of the date of the Agreement, or to expand the amount authorized as the Seller determines is necessary to ensure the availability of potable water supply for both the Seller’s and Purchaser’s future needs.

(E) This Agreement has been duly authorized by the respective governing bodies of Seller and Purchaser, each of which has authorized the undersigned officers to execute this document on its behalf. Seller and Purchaser acknowledge that this Agreement supersedes



and replaces the Current Contract and any and all other prior agreements, understandings or undertakings between the Parties with respect to the supply of water by Seller to Purchaser.

**NOW, THEREFORE,** in consideration of the premises hereinabove set forth and the covenants and agreements of the Parties hereunder, Seller and Purchaser agree as follows:

**ARTICLE I**  
**DEFINITIONS**

**Section 1.01 Definitions.** In addition to any words and terms elsewhere defined in this Agreement, the following words and terms as used in this Agreement shall have the following meanings unless some other meaning is plainly intended:

**“Allocated Capacity”** means the portion of the Capacity of Facilities Benefiting Purchaser allocated to Purchaser pursuant to rights acquired or to be acquired hereunder, expressed in MGD. The initial Allocated Capacity is 1.3 MGD.

**“Average Daily Non-Revenue Water”** means the difference between the amount of water produced by the Seller and the amount of water sold to all customers. Average Daily Non-Revenue Water includes system flushing and backwashing, hydrant testing, line loss etc.

**“Average Daily Non-Revenue Water Factor”** means the 15% factor that represents the portion of treated water produced that is not sold to customers. This factor is used to adjust the Total Daily Capacity operated by the Seller to remove that portion of capacity that is not available to the customers of the system. This Average Daily Non-Revenue Water Factor is applied by multiplying the Total Daily Capacity by the 1/1.15.

**“Buy-In Charge”** means, with respect to the Initial Capacity Payment, the amount specified in Section 3.01(A) hereof. Thereafter, “Buy-In Charge” means a charge per gallon per day to purchase Allocated Capacity in the Facilities Benefiting Purchaser, calculated on an annual basis, as follows:

$$\frac{\text{(net plant investment of Facilities Benefiting Purchaser)} \times \text{(Allocated Capacity to be purchased)}}{\text{Capacity of Facilities Benefiting Purchaser}}$$

**“Capacity of Facilities Benefiting Purchaser”** means the current Total Daily Capacity of the Adkins water treatment plants operated by Seller, expressed in MGD and as adjusted by the Reliable Capacity Planning Threshold (based on SCDES Regulations 61-58.7.C11 and 12 in effect at the time of the Agreement or as may be amended in the future related to capacity planning for surface water treatment plants) and to reflect average daily percentage water loss for the Facilities. The average daily percentage water loss for the Facilities will be updated annually. As of the date hereof, the Total Daily Capacity of the Adkins water treatment plant is 60.0 MGD. The SCDES Reliable Capacity Planning Factor is 90% of Total Daily Capacity and the average daily percentage of water loss for the Facilities is 15%. Thus, as of the date hereof, the Capacity of Facilities Benefiting Purchaser, as calculated on the basis of daily capacity, is as follows:

<b>Facility</b>	<b>Daily Capacity (MGD)</b>
Adkins water treatment plant	60.0
Reliable Capacity Planning Factor	90%
Reliable Capacity Planning Threshold	54.0
Average Daily Non-Revenue Water	15%

$54.0 \text{ MGD} \div 1.15 = 49.96 \text{ MGD}$

**“Capital Costs”** means all reasonable charges, fees, and or other expenses (including without limitation, material, labor, and supply expenses, administrative, design, engineering, legal, accounting, and other professional fees, and costs of financing) required for Normal Capital Improvements (other than Regulatory Capital Improvements) to the Facilities Benefiting Purchaser.

**“Common to All Customers Allocation”** means an allocation of Operation and Maintenance Costs, Fixed Depreciation, and/or Net Plant Investment to Seller’s three customer categories (Retail Customers, Pickens County Wholesale Customers, and Non-Pickens County Wholesale Customers) that is based on a portion of either Total Flows, Total Max Day Demands, annual customer bills, or annual residential equivalent units (REU). Some Facilities benefit or are common to all of the customer categories and are recovered proportionately from each customer category.

**“Connecting Meter”** means the meter or meters owned by Seller and used to measure the flow of the potable water at the respective points of interconnection between the Facilities Benefiting Purchaser and Purchaser’s System.

**“Current Contract”** is the Interim Agreement Between Greenville Water and the City of Pickens dated as of August 12, 2024.

**“SCDES”** means the State of South Carolina Department of Environmental Services. SCDES is the successor to the South Carolina Department of Health and Environmental Control (“SCDHEC”), and any reference to SCDEC regulations and policies shall refer to those of SCDHEC as appropriate.

**“Depreciation Charge”** shall be established annually as described in Section 3.04 (B) and means the amount paid by the Purchaser as part of the Monthly Base Charge, reconciled on an annual basis, as follows:

$$\text{Fixed Depreciation Allocated to Purchaser} \div 12 \text{ Months}$$

The Depreciation Charge represents the Purchaser’s ongoing contributions for its share of the required Capital Costs of Normal Capital Improvements to the Facilities Benefiting the Purchaser. The Purchaser will not be required to make any additional payments or contributions (other than by way of the Depreciation Charge) for Capital Costs of Normal Capital Improvements.

**“Direct Allocation”** means an allocation of Operation and Maintenance Costs, Fixed Depreciation, and/or Net Plant Investment to a specific customer category that is not based on a portion of Total Flows or Total Max Day Demands. Certain Facilities do not benefit all three of the customer categories (Retail Customers, Pickens County Wholesale Customers, and Non-Pickens County Wholesale Customers) served by the Seller. The costs associated with these Facilities require Direct Allocation to those customer categories that benefit from the Facilities to ensure the costs of the Facilities are recovered only from those customer categories. For example, Purchaser’s customers do not benefit from the Stovall water treatment plant, so the Operation and Maintenance Costs, Fixed Depreciation, and/or Net Plant Investment associated with this facility are allocated to the other customer categories based on a Direct Allocation. Furthermore, only the Retail Customers benefit from Local Distribution System, so the Operation and Maintenance Costs, Fixed Depreciation, and/or Net Plant Investment for these facilities are allocated to this customer category based on a Direct Allocation.

**“Drought”** means (i) a period of time with less-than-normal rainfall which results in a declaration by the South Carolina Department of Natural Resources Drought Response Committee, pursuant to the provisions of Title 49, Article 23 of the Code of Laws of South Carolina, that either a “severe” or “extreme” drought exists in Greenville, Pickens or Oconee counties, or (ii) circumstances under which Seller is obligated, either by statute, rule, regulation, permit or license terms, order of a court or administrative agency, or contract to invoke mandatory water conservation or withdrawal restrictions.

**“Effective Date”** means the date the Parties execute the Agreement as stated on the first page of this Agreement.

**“Excess Usage Surcharge”** means the charge that will be assessed per 1,000 gallons of Metered Flow in excess of one hundred percent (100%) of Allocated Capacity during any 24-hour period. As of the Effective Date of this Agreement, the Excess Usage Surcharge is \$1.16 per 1,000 gallons in excess of one hundred percent (100%) of Allocated Capacity. The Excess Usage Surcharge shall be established annually as described in Section 3.04 (B). The Excess Usage Surcharge will be calculated for each subsequent Seller Fiscal Year based on the ROI Charge. When needed for Good Utility Practices, such as flushing, etc., Purchaser increases its usage for a finite period of time, after due notice and approval from the Seller, and that such temporary increases would cause Purchaser to exceed its Allocated Capacity for the stated period, such increases would not be considered excess usage or be subject to the Excess Usage Surcharge hereunder.

**“Facilities”** means all of Seller’s water intake, treatment, production, storage, transmission, and distribution facilities.

**“Facilities Benefiting Purchaser”** means (i) the Adkins water treatment plant operated by Seller, (ii) transmission main / distribution lines leading from said water treatment plant to the Connecting Meters (excluding any components of the Local Distribution System), (iii) 72-inch Adkins Water Transmission Line, (iv) 12-inch gravity-fed main to be constructed to serve Purchaser’s distribution system from Seller’s Cedar Rock storage Facility (v) Pumping Stations, (vi) the Connecting Meters, (vii) Administrative

Buildings, Equipment, and Tools, and (viii) any Normal Capital Improvements made to the said water treatment plants, transmission main / distribution lines, pumping stations, or Connecting Meter(s) from time to time as provided herein, and used by Seller to the benefit of Purchaser to produce potable water and transport same to Purchaser.

**“Fixed Depreciation”** means Seller’s total annual depreciation expense associated with the Facilities Benefiting Purchaser for the most recent Seller Fiscal Year for which audited financial statements are available.

**“Fixed Depreciation Allocated to Purchaser”** means the portion of total annual Fixed Depreciation allocated to Purchaser based on allocations of depreciation associated with specific Facilities Benefiting Purchaser based on either a Direct Allocation or a Common to All Customers Allocation. The Fixed Depreciation is allocated to the wholesale customer categories based on Allocated Capacity.

**“Force Majeure”** means, to the extent beyond the control of the Party claiming an event of Force Majeure under Section 6.01 hereof, any of the following: acts of God or nature, strikes, lockouts, or other industrial disturbances; acts of a terrorist or public enemy, orders of any kind of the government of the United States or the State of South Carolina or the courts thereof, or any civil or military authority; insurrections, riots, epidemics, pandemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, Droughts, arrests, restraint of government and people, civil disturbances and explosions; malfunctions of machinery and water mains and transmission and pipe lines; partial or entire failure of water supply due to the exhaustion of raw water sources or water withdrawal restrictions imposed by competent authority, or inability of Seller to provide potable water hereunder, or the Purchaser to receive potable water hereunder, on account of any other causes not reasonably within the control of the Party claiming such inability.

**“Future Capacity Purchase”** means any future payment from Purchaser to Seller to acquire rights to additional Allocated Capacity, whether the capacity is available in the Facilities Benefiting Purchaser or whether the Seller must make expansions to Facilities Benefiting Purchaser to make additional Allocated Capacity available to the Purchaser.

**“Good Utility Practices”** means any of the practices, methods, and acts engaged in or approved by a significant portion of the water treatment and supply industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could have been expected to accomplish the desired results at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practices does not require use of the optimum practice, method, or act, but only requires use of practices, methods, or acts generally accepted in the water supply and treatment industry.

**“Increased Allocated Capacity Capital Improvements”** means all structures, equipment, replacements of equipment, or repairs to structures or equipment to, at, or upon the Facilities Benefiting Purchaser necessary to increase Allocated Capacity.

**“Independent Certified Public Accountant”** means such certified public accountant or firm of certified public accountants retained by Seller for the purpose of auditing Seller’s books and records.

**“Initial Capacity Payment”** means the payment of a Buy-In Charge from Purchaser to Seller to acquire rights to its initial Allocated Capacity.

**“Local Distribution System”** means any water lines less than 16 inches in diameter, related pump stations, standpipes and tanks, and valves and equipment.

**“Max Day Demand”** means the maximum amount of water used during any 24-hour period during a given fiscal year for the Purchaser. The Max Day Demand is used to allocate certain costs based on the Pro Rata Share of the Max Day Demand in proportion to the Total Max Day Demands.

**“Meter Charge”** means the amount to be paid by Purchaser as part of the Monthly Base Charge per Connecting Meter(s), which will be based on the Seller’s actual published retail rates for customer and billing services and meter costs for reading, testing, and maintaining meters based on meter size.

**“Metered Flows”** means the measurement of potable water supplied to Purchaser by Seller at the Connecting Meter(s), expressed in 1,000 gallons.

**“MGD”** means a million gallons per day.

**“Minimum Future Capacity Purchases”** means the minimum increment of Future Capacity Purchases in Facilities Benefiting Purchaser that the Purchaser may acquire from the Seller, shall not be less than 250,000 gallons per day.

**“Monthly Base Charge”** shall be established annually as described in Section 3.04 (B) and means the amount to be paid by Purchaser to Seller on a monthly basis consisting of the Meter Charge and the Depreciation Charge. The Monthly Base Charge will be established by reference to the most recent Seller Fiscal Year.

**“Monthly Billing Cycle”** means the typical thirty-day billing cycle for which Seller conducts measurement of potable water supplied to Purchaser by Seller at the Connecting Meter(s).

**“Net Plant Investment”** means Seller’s original investment in all water system assets less the accumulated depreciation on those assets as reflected on an annual basis in Seller’s audited financial statements for the most recent Seller Fiscal Year.

**“Net Plant Investment of Facilities Benefiting Purchaser”** means the portion of Sellers’s Net Plant Investment allocated to and associated with the Facilities Benefiting Purchaser.

**“Non-Pickens County Wholesale Customers”** means those wholesale customers of Seller not located in Pickens County that connect to the Seller’s water distribution system. These customers benefit from both the Adkins water treatment plant and the Stovall water treatment plant and from the Seller’s trunk water distribution system. Operation and Maintenance Costs, Fixed Depreciation, and Net Plant Investment are allocated collectively to this customer category.

**“Normal Capital Improvements”** means all structures, equipment, replacements of equipment, or repairs to structures or equipment to, at, or upon the Facilities Benefiting Purchaser (other than Regulatory Capital Improvements or Increased Capacity Capital Improvements).

**“Operation and Maintenance Charge”** shall be established annually as described in Section 3.04 (B) and means the charge per 1,000 gallons of Metered Flow during each Monthly Billing Cycle to be paid by Purchaser, calculated as follows:

$$\frac{\text{Seller's Operation and Maintenance Costs} \div \text{total annual Metered Flows}}{\text{(expressed in thousands of gallons) of the Facilities Benefiting Purchaser}}$$

In the formula above, “Seller’s Operation and Maintenance Costs” means the Seller’s total Operation and Maintenance Costs associated with the Facilities Benefiting Purchaser for the most recent Seller Fiscal Year.

**“Operation and Maintenance Costs”** means, for each period in question, direct expenses required of Seller (i) to operate the Facilities Benefiting Purchaser, (ii) to maintain the Facilities Benefiting Purchaser so that they will have a reasonable useful life, and (iii) to defray the costs of current repairs to the Facilities Benefiting Purchaser, all as necessary for the delivery of potable water in accordance with this Agreement and shall include, without limiting the generality of the foregoing, salaries, wages, employee benefits, cost of materials and supplies, cost of routine repairs, renewals, replacements, and alterations occurring in the usual course of business, cost of insurance, cost of legal and professional fees including audits, taxes, if any, and applicable Seller’s administrative, non-departmental, overhead and other expenses not subject to amortization or depreciation. Operation and Maintenance Costs will be determined based on Seller’s audited books and records for the previous Seller Fiscal Year and do not include the costs of billing or metering that are reflected in the Meter Charge.

**“Overage Day”** means each separate 24-hour period during which Purchaser withdraws water from Seller in an amount in excess of its Allocated Capacity.

**“Pickens County Wholesale Customers”** means those wholesale customers of Seller located in Pickens County that connect to the Seller’s water system at the 72-inch transmission line that conveys water from the Adkins water treatment plant to the Seller’s water distribution system. These customers do not benefit from the Stovall water treatment plant or the Seller’s water distribution system. Operation and Maintenance Costs, Fixed Depreciation, and Net Plant Investment are allocated collectively to this customer category.

**“Pro Rata Share”** means the percentage derived by dividing Allocated Capacity by the Capacity of Facilities Benefiting Purchaser, Max Day Demands by Total Max Day Demands, Metered Flows by Total Flows, or by dividing additional Allocated Capacity by additional Capacity, as the circumstances may dictate.

**“Purchaser”** means the City of Pickens, South Carolina.

**“Purchaser’s System”** means the Purchaser’s entire system for the production, receipt, storage, transmission, pumping, distribution, and delivery of potable water.

**“Regulatory Capital Costs”** means all reasonable charges, fees, and or other expenses (including without limitation, material, labor, and supply expenses, administrative, design, engineering, legal, accounting, and other professional fees, and costs of financing) required for necessary Regulatory Capital Improvements to the Facilities Benefiting Purchaser.

**“Regulatory Capital Improvements”** means all structures, equipment, replacements of equipment, or repairs to structures or equipment to, at, or upon the Facilities Benefiting Purchaser necessary to address regulatory requirements mandated by any Federal, State, and/or local agencies.

**“Regulatory Capital Payment”** means an amount to be paid to Seller by Purchaser for the purpose of recovering Purchaser’s Pro Rata Share of Regulatory Capital Costs as the circumstances may dictate.

**“Reliable Capacity Planning Factor”** means the 90 percent factor applied to the Total Daily Capacity to determine the average daily demand threshold for all customers at which the Seller shall submit to SCDES plans and specifications along with an application for a permit to construct an expansion to Total Daily Capacity within one hundred eighty (180) days. This factor is based on current SCDES Regulations 61-58.7.C11 and 12 in effect at the time of the Agreement or as may be amended in the future related to capacity planning for surface water treatment plants.

**“Reliable Capacity Planning Threshold”** means the reliable capacity limit allowed before the Seller shall submit to SCDES plans and specifications along with an application for a permit to construct an expansion to its Total Daily Capacity. This Reliable Capacity Planning Threshold is determined by multiplying the Total Daily Capacity by the 90% Reliable Capacity Planning Factor. This threshold is based on current SCDES Regulations 61-58.7.C11 and 12 in effect at the time of the Agreement or as may be amended in the future related to capacity planning for surface water treatment plants.

**“Retail Customers”** means the residential, commercial, and industrial customers of the Seller. Operation and Maintenance Costs, Fixed Deprecation, and Net Plant Investment are allocated collectively to this customer category.

**“ROI Charge”** shall be established annually as described in Section 3.04 (B) and means the Seller’s total annual return on investment in the Facilities Benefiting Purchaser, as

determined by the Seller, based on its annual financial statements, the Net Plant Investment of Facilities Benefiting Purchaser from the preceding year, and its determination of a reasonable rate of return, as adjusted on an annual basis. The ROI Charge is not assessed to Purchaser on Metered Flows not in excess of Allocated Capacity, but is used to determine the Excess Usage Surcharge.

“**Seller**” means the Board of Commissioners of Public Works for the City of Greenville, South Carolina, doing business as Greenville Water, its successors and assigns.

“**Seller Fiscal Year**” means, initially, each period beginning on January 1 of a calendar year and ending December 31 of the same calendar year, and hereafter shall mean the then-current period of Seller’s fiscal year. Seller shall deliver prompt written notice to Purchaser of any change to its fiscal year, and the Parties shall negotiate in good faith any changes to this Agreement required by such change in Seller’s Fiscal Year.

“**Total Daily Capacity**” means the capacity expressed in MGD that the Adkins water treatment facilities operated by the Seller are capable of producing on a daily basis. This Total Daily Capacity is based on the capabilities of the treatment and transmission facilities. As of the date hereof, the daily capacity of the Adkins water treatment plant is 60.0 MGD, thus the initial Total Daily Capacity is 60.0 MGD.

“**Total Flows**” means the measurement of potable water supplied by Seller to all of its retail and wholesale customers during the most recent Seller Fiscal Year.

“**Total Max Day Demands**” means the sum of Max Day Demands for all customers within all the customer categories.

**ARTICLE II**  
**GENERAL REPRESENTATIONS AND COVENANTS; TERM**

**Section 2.01 Representations of Seller.** Seller hereby represents that it is a validly created governmental entity and a public body of the State of South Carolina and that it has the power, authority, and legal right to own and operate the Facilities and is capable of providing potable water as contemplated by this Agreement; that it has all necessary powers and authority to undertake and perform its obligations under this Agreement; that the execution and delivery of, and its performance under, this Agreement will not violate any judgment, decree, order, law, rule, permit, contract, or regulation; that no consent, permission, or approval that has not already been given is required for the valid execution and delivery of this Agreement by Seller; that this Agreement has been duly authorized, executed, and delivered by Seller, and constitutes a legal, valid, and binding obligation of Seller, enforceable in accordance with its terms; that, as of the Effective Date, there is no litigation or proceeding pending or threatened against or affecting Seller that (i) seeks to enjoin the performance of its obligations under this Agreement or (ii) if adversely determined, would materially adversely affect its ability to perform such obligations; and that it has taken all necessary action to authorize the execution and delivery of this Agreement and to perform its obligations under this Agreement.



**Section 2.02 Ownership and Sale of Capacity in Facilities.** The Facilities, and all related real and personal property, remain and shall at all times be the sole and absolute property of Seller; provided, however, Seller acknowledges that Purchaser has acquired the initial Allocated Capacity in the Facilities Benefiting Purchaser, and has the potential to acquire additional amounts of Allocated Capacity, in accordance with the provisions of this Agreement.

**Section 2.03 Facilities Operation and Construction of Improvements.**

(A) Seller represents that it has all rights, powers, authority, experience, and skills necessary to operate the Facilities and will have sufficient rights, powers, authority, experience and skills necessary to construct and operate any improvements to the Facilities as contemplated herein, including such permits, licenses or authorizations required from pertinent Federal, State or local authorities.

(B) Seller agrees that it will be solely responsible for the construction of any Normal Capital Improvements to the Facilities Benefiting Purchaser as contemplated herein subject, however, to Purchaser's compliance with all terms and conditions of the Agreement, including those pertaining to payment of the Initial Capacity Payment, any future Buy-In Charges, any required Regulatory Capital Payments, the Monthly Base Charge, and the Operation and Maintenance Charge. Purchaser will not be required to make any additional payments or contributions (other than by way of the Depreciation Charge) for Normal Capital Improvements.

(C) Prior to undertaking any Regulatory Capital Improvements to the Facilities Benefiting Purchaser that do not increase Allocated Capacity, Seller shall comply with the provisions of Section 3.01(B) hereof.

(D) After complying with the provisions of Section 3.01(B) hereof, Seller may make such modifications to any plans and specifications or construction contracts relating to Regulatory Capital Improvements to the Facilities Benefiting Purchaser without notifying Purchaser, provided that such modifications are not inconsistent with the intent of this Agreement and will not increase the projected costs of such Regulatory Capital Improvements by more than ten percent (10%) in the aggregate.

(E) Purchaser and its representatives and engineers shall have access to the Seller's premises upon which Facilities Benefiting Purchaser are, or are to be, located during business hours to inspect the construction of the improvements to the Facilities Benefiting Purchaser, but shall be subject at all times during their presence on the site to reasonable safety and security rules of Seller and will not interfere with the construction work. The rights of Purchaser and its representatives and engineers to review, monitor, and inspect the construction of improvements to the Facilities do not create the right to stop or otherwise impede construction.

(F) Seller shall obtain all approvals, licenses, and permits as and when required for the construction and operation of improvements to the Facilities Benefiting Purchaser.

**Section 2.04 Representations of Purchaser.** Purchaser represents that it is a political subdivision and municipal corporation existing under S.C. Const. art. XIII and Title 5 of the Code of Laws of South Carolina and that it has all necessary power and authority to own and operate Purchaser's System and to perform its obligations under this Agreement; that, upon information and belief, the execution and delivery of, and its performance under, this Agreement will not violate any judgment, decree, order, law, rule, permit, contract, or regulation; that no consent, permission, or approval that has not already been given is required for the valid execution and delivery of this Agreement; that the Agreement has been duly authorized, executed, and delivered by Purchaser, and constitutes a legal, valid, and binding obligation of Purchaser, enforceable in accordance with its terms; that, as of the Effective Date, there is no litigation or proceeding pending or affecting Purchaser that (i) seeks to enjoin the performance of its obligations under this Agreement or (ii) if adversely determined, would materially adversely affect its ability to perform such obligations; and that Purchaser has taken all necessary action to authorize the execution and delivery of this Agreement.

**Section 2.05 Purchaser's Rate Covenant.** Purchaser covenants that at all times during the term of this Agreement it will impose such rates, fees, or charges upon its customers for services provided by Purchaser's System which will be sufficient at all times to enable the Purchaser to meet its obligations hereunder.

**Section 2.06 Term of Agreement; Supersedes Prior Agreements; Entitlement to Benefits of Allocated Capacity.**

(A) This Agreement shall be effective upon its execution and shall extend for an initial period commencing on such date and extending for forty (40) years from the Effective Date. Absent receipt of notice from a Party of its intent not to renew, this Agreement shall be automatically extended for two (2) periods of thirty (30) years, each. In the event any Party intends not to renew at the end of the initial or an extended term, such Party shall notify the other Party of its intent, in writing, not less than two (2) years prior to the end of such term.

(B) If Purchaser, through no fault of its own, is prevented from continuing under the terms of this Agreement through legal action, is otherwise subject to a court order enforcing the Purchaser's prior agreement with the Pickens Joint Regional Water System (the "PJRWS"), or if the PJRWS is successful in meeting its objective of opening, permitting, and operating a water treatment facility which has the capacity to supply the Purchaser's requirements by the PJRWS's projected date of January 2026, the Purchaser shall have the right upon one (1) year's notice to the Seller to terminate this Agreement. In the event of a termination under this Section 2.06(B), the Purchaser is relieved of its obligation to make any future installment payments of the initial Buy-In Charge for the Allocated Capacity in the Facilities Benefiting Purchaser, but Purchaser will not receive a refund for any payments made under this Agreement prior the effective date of any such termination. Further, in the event of a termination by Purchaser pursuant to this paragraph, Purchaser will agree to reimburse Seller for the cost of the installation of the 12-inch gravity-fed transmission line serving Purchaser from the Seller's Cedar Rock storage facility.

(C) The Parties acknowledge and agree that the intention of this Agreement is that, by paying the initial Buy-In Charge and by funding monthly Depreciation Charges, Purchaser, and any Secondary Purchaser, will remain entitled to its Allocated Capacity in the Facilities Benefiting Purchaser for the term of this Agreement, and such further period of time during which the Parties shall operate under the terms and conditions of this Agreement, as long as Purchaser or a Secondary Purchaser is complying with all other terms and conditions of this Agreement. Further, should this Agreement expire as a result of Seller giving notice of its intent to not renew same in accordance with Section 2.06(A) above, this shall not deprive Purchaser of the benefit of a refund of the initial Buy-In Charge for the Allocated Capacity in the Facilities Benefiting Purchaser, as adjusted, and Seller shall become obligated to make the payment to Purchaser of such refund as described in Section 2.06(D) below. Should Purchaser give notice of its intent not to renew this Agreement in accordance with Section 2.06(A) above, Seller shall have no obligation to make any payment to Purchaser of a refund of the initial Buy-In Charge for the Allocated Capacity in the Facilities Benefiting Purchaser. Purchaser will not be required to make any additional payments or contributions (other than by way of the Depreciation Charge) for Normal Capital Improvements to the Facilities Benefiting Purchaser during the term of this Agreement. Provided, that should this Agreement be in a terminated status for a period of time in excess of sixty (60) days during any term (initial or renewal) of this Agreement, Seller shall have the right to sell water from the Allocated Capacity to third parties notwithstanding anything in this Agreement to the contrary, the intent of the Parties being that Seller shall not be precluded from selling water in circumstances where Purchaser is not utilizing its Allocated Capacity.

(D) Should Seller determine not to renew this Agreement in accordance with Section 2.06(A) above after the expiration of the initial forty (40) year term or either thirty (30) year renewal term, Seller shall be obligated to pay Purchaser, or any Secondary Purchaser, a sum equal to a Buy-In Charge which reflects the factors which determine the Capacity of Facilities Benefiting Purchaser, as adjusted for then prevailing capacities, Reliable Capacity Planning Threshold and average daily percentage water loss for the Facilities. Should Purchaser, or any Secondary Purchaser, determine not to renew this agreement in accordance with Section 2.06(A) above after the expiration of the initial forty (40) year term, or any thirty (30) year renewal term, or to cease operating under the terms of this Agreement subsequent to the term hereof, Seller shall have no obligation to make any payment to Purchaser.

### **ARTICLE III**

#### **SALE AND PURCHASE OF ALLOCATED CAPACITY AND WATER**

##### **Section 3.01 Allocated Capacity; Regulatory Capital Improvements.**

(A) Seller and Purchaser have agreed that the Purchaser's Allocated Capacity in the Facilities Benefiting Purchaser on the Effective Date is 1.3 MGD. Prior to or upon the execution of this Agreement by Seller, Purchaser shall have paid or begun paying to Seller the Initial Capacity Payment in the amount of \$3,848,000.00 for the Allocated Capacity. The Initial Capacity Payment is determined based on the Allocated Capacity multiplied by the Buy-In Charge. The Buy-In Charge is based on the Capacity of Facilities Benefiting Purchaser which represents the Total Daily Capacity adjusted by the Reliable Capacity Planning Factor and the Average Daily Non-Revenue Water Factor. Purchaser shall pay the

Initial Capacity Payment installments in accordance with the schedule set forth in Schedule A attached to this Agreement.

For the purposes of determining the Capacity of Facilities Benefiting Purchaser, the Total Daily Capacity is adjusted to reflect the Reliability Capacity Planning Factor. The Seller is obligated to submit certain plans, specifications, and application for permits to SCDES in order to construct any expansion to the Total Daily Capacity of its water treatment facilities within one hundred eighty (180) days of determining that the average daily demand of any of its water treatment facilities has reached 90% of its Total Daily Demand. Since the Reliability Capacity Planning Factor effectively requires the Seller to expand its Total Daily Capacity prior to incurring average daily demands equal to the Total Daily Capacity, the Total Daily Capacity does not represent the Capacity of Facilities Benefiting Purchaser.

Furthermore, all of the treated water produced at the water treatment facilities is not delivered to the Seller's customers due to Average Daily Non-Revenue Water (system flushing and backwashing, hydrant testing, line loss, etc.). For the purposes of this Agreement, the Total Daily Capacity is also adjusted to reflect an Average Daily Non-Revenue Water Factor of 15% when determining the Capacity of Facilities Benefiting Purchaser. An Average Daily Non-Revenue Water Factor of 15%, means that for every 1.00 gallon of water delivered to the customer the water treatment facilities must produce 1.15 gallons of treated water. This Average Daily Non-Revenue Water Factor is applied by multiplying the Total Daily Capacity by 1/1.15.

(B) Seller and Purchaser recognize that Regulatory Capital Payments for Regulatory Capital Improvements to the Facilities Benefiting Purchaser that do not increase Allocated Capacity may become necessary or desirable from time to time in order to comply with applicable Federal, State and local laws with respect to the Allocated Capacity. Should Seller desire, or be required, to make any such Regulatory Capital Improvements, it shall consult with Purchaser and describe the required Regulatory Capital Improvements in detail, including the need therefore and the expected costs thereof. Seller shall further estimate and inform Purchaser whether such Regulatory Capital Improvements to the Facilities Benefiting Purchaser will cause an increase in the Monthly Base Charge or the Operation and Maintenance Charge to Purchaser. Upon the completion of any required Regulatory Capital Improvements to the Facilities Benefiting Purchaser, Purchaser shall pay a Regulatory Capital Payment in an amount sufficient to fully reimburse Seller for Purchaser's Pro Rata Share of the Regulatory Capital Costs incurred by Seller in making such Regulatory Capital Improvements. Purchaser shall pay such Regulatory Capital Payment and may at its option do so in installments, with payments for Regulatory Capital Improvements not exceeding \$3,000,000.00 being made over a ten (10) year term and payments for Regulatory Capital Improvements exceeding \$3,000,000.00 being made over a twenty (20) year term, pursuant to commercially reasonable terms and conditions, including all costs incurred by Seller directly related to the Seller's financing of the Purchaser's portion of such costs. Such increases will go into effect on July 1 of the year following the Seller's notice to the Purchaser of the calculation of these increased costs.

**Section 3.02 Sale of Water or Allocated Capacity by Purchaser; Limitations and Right of First Refusal; No Requirement on Seller for Normal Capital Improvements**

(A) The Parties hereto agree that this Agreement shall in no way limit or prohibit the resale by Purchaser of any water received from the Seller, and that Purchaser shall be solely entitled to the proceeds of such sale. In addition, subject to the terms and conditions of this Section 3.02, Purchaser may sell, lease, or otherwise dispose of all or any portion of its Allocated Capacity, subject to the provisions of Section 3.02 (B) below.

(B) Unless otherwise agreed by Seller, Purchaser may sell, lease, or otherwise dispose of all or part of its Allocated Capacity to a third party (the "Secondary Purchaser") only upon satisfaction of the following conditions:

(i) the Allocated Capacity shall first be offered to Seller on the same terms as have been offered by Purchaser to the Secondary Purchaser, except that Seller shall not pay more per gallon to reacquire the Allocated Capacity than Purchaser paid to acquire it under Section 3.01(A) or 4.01(B), and such offer shall remain open for a period of at least ninety (90) days unless extended by Purchaser;

(ii) if Seller elects not to purchase, lease, or otherwise acquire any portion of the Allocated Capacity proposed to be sold, leased, or otherwise disposed of to the Secondary Purchaser, then such portion may then be sold, leased, or otherwise disposed of by Purchaser to the Secondary Purchaser;

(iii) as a condition of any such sale, lease, or other disposition of the Allocated Capacity, the Secondary Purchaser shall have all the rights of the Purchaser and become obligated to discharge all obligations of the Purchaser under this Agreement with respect to the Allocated Capacity purchased, and Purchaser and Secondary Purchaser shall execute, acknowledge, and deliver to the Seller such instruments of transfer, assignment, and assumption and such other certificates, representations, governmental licenses, permits or approvals, and documents as Seller may deem reasonably necessary or desirable; and

(iv) no such sale, lease, or other disposition of Allocated Capacity shall relieve Purchaser of primary responsibility for the performance of any of its obligations with respect to the portion of the Allocated Capacity so sold, leased, or otherwise disposed of that accrued under this Agreement prior to the date of the sale, lease, or other disposition.

(C) Notwithstanding anything to the contrary in this Agreement, Seller shall have no obligation to make Normal Capital Improvements, Increased Capacity Capital Improvements, or other modifications, installations, or additions to the Facilities (or any other property, structure, equipment or feature of Seller's water system) to accommodate the sale of Allocated Capacity by Purchaser to the Secondary Purchaser. It is further expressly agreed and understood that the cost of any such Normal Capital Improvements, Increased Capacity Capital Improvements, or other modifications, installations, or additions to which Seller may agree shall be the sole responsibility of the Secondary Purchaser.

**Section 3.03 Sale of Water; Delivery Sites of Water to Seller; Rates and Charges; Annual Budget; Flow Exceeding Allocated Capacity; Water Characteristics; Flow Restrictions and Limitations.**

(A) During the term of this Agreement, and during any extended term, Seller shall be eligible to provide and make available for sale to Purchaser an amount of potable water equal to the Allocated Capacity.

(B) Water sold to Purchaser shall be measured by Seller, and delivered to Purchaser, at the Connecting Meter(s).

(C) Purchaser shall pay for water on a monthly basis at a rate consisting of the Monthly Base Charge plus the Operation and Maintenance Charge. Purchaser and Seller have agreed that, upon the Effective Date, and during the duration of the year in which this Agreement is executed and delivered, the initial Monthly Base Charge based on current conditions shall be \$1,684.58 Seller agrees to install a 12-inch gravity-fed main which will provide water to Purchaser from the Seller's Cedar Rock storage facility. The initial Operation and Maintenance Charge shall be \$0.66 per thousand gallons of Metered Flow. For each succeeding year, the Monthly Base Charge and the Operation and Maintenance Charge for such year shall be established annually as set forth in Section 3.04 (B) below.

(D) Purchaser agrees to pay any applicable Excess Usage Surcharge for a Monthly Billing Cycle. In addition, if there are sixty (60) or more Overage Days during any consecutive 365-day period, then Seller may require that Purchaser purchase additional Allocated Capacity in an amount that (i) is equal to or greater than the Minimum Future Capacity Purchase, and (ii) causes Purchaser's Allocated Capacity to equal or exceed Purchaser's average consumption during all of such Overage Days.

(E) Seller shall provide to Purchaser potable water of sufficient quality to allow Purchaser to meet all applicable standards for drinking water required by the Federal Environmental Protection Agency and the South Carolina Department of Health and Environmental Control at the point of final delivery by Seller to Purchaser at the Connecting Meter. Seller and Purchaser agree, however, that isolated instances of violations of such standards shall not constitute a violation of this Agreement, it being understood that the presence of constituents in water supplies may occasionally exceed such standards without compromising the safety or health of consumers.

(F) In the event of Drought, Purchaser shall be subject to mandatory water conservation requirements and as Seller shall reasonably impose.

**Section 3.04 Payment for Water Services; Computation of Rates and Charges; Payment Obligation.**

(A) For the term or any extended term of this Agreement, Purchaser shall pay to Seller the amounts due as billed in accordance with the terms and conditions of this Agreement. Beginning the month after the Effective Date, Seller shall invoice Purchaser for

each Monthly Billing Cycle and Purchaser shall remit payment within thirty (30) days thereafter. All monies due Seller shall be paid in immediately available United States currency.

(B) Each year, the Monthly Base Charge, Operation and Maintenance Charge, and Excess Usage Surcharge are subject to adjustment as determined by Seller based on its evaluation of its audited financial statements for the preceding Seller Fiscal Year. The average daily percentage water loss for the Facilities will also be subject to annual adjustment as determined by the Seller based on its annual evaluation of water loss. Seller will notify the Purchaser of the adjusted Monthly Base Charge, Operation and Maintenance Charge and Excess Usage Surcharge at least 60 days prior to going into effect. The adjusted Monthly Base Charge, Operation and Maintenance Charge, and Excess Usage Surcharge will go into effect on July 1 of the year following the end of the applicable Seller Fiscal Year and shall be applicable for the succeeding twelve (12) month period. Seller shall provide such information to Purchaser as is reasonably necessary to review and separately calculate the adjusted Monthly Base Charge, Operation and Maintenance Charge, and Excess Usage Surcharge.

(C) At the request of Purchaser, Seller agrees to make senior finance and/or engineering personnel available to meet with representatives of Purchaser, prior to the adoption of the adjusted rates and charges in order to discuss in detail their effect upon Purchaser. In the event that Purchaser disagrees with the adjusted Monthly Base Charge, Operation and Maintenance Charge, and/or Excess Usage Surcharge, Seller agrees to meet and further discuss the adjusted Monthly Base Charge, Operation and Maintenance Charge, and/or Excess Usage Surcharge. Notwithstanding any such objections, Seller has the exclusive and absolute right to set rates and charges for the provision of its water supply service. Regulatory Capital Payments that do not increase Allocated Capacity shall not be subject to the provisions of this Section 3.04(B), it being understood and agreed that such Regulatory Capital Payments will be incurred by Seller as necessary in accordance with Section 3.01 (B) above, with such increases going into effect on July 1 of the year after which Seller gives notice to Purchaser.

(D) Purchaser obligates and binds itself to punctually make the payments of the rates and charges required hereunder, free of any deduction, and without abatement, diminution, or set-off of any sort, subject only to any adjustment for annual rate adjustments provided for in Section 3.04 (B), above.

(E) No payment required to be made by Purchaser hereunder shall constitute a debt or pecuniary obligation of Purchaser. Neither the faith nor the credit of the Purchaser is pledged for the payment of such amounts. Instead such payments will be payable solely from the revenues of Purchaser's System as operating expenses. Notwithstanding the foregoing, Purchaser acknowledges that it is obligated to make all payments set forth herein, including the installments for the Initial Capacity Payments set out in Schedule A, and its failure to do so will constitute an event of default triggering the remedies available to Seller under Section 5.01 below.

(F) On October 1 of each year, beginning with the calendar year following the Effective Date, Seller's senior management, finance and engineering personnel shall hold a

meeting at Seller's offices with the senior management, finance, and engineering personnel of the Seller's wholesale customers that purchase Allocated Capacity (which includes Purchaser), to review Seller's rates and charges and their impact on such customers. Seller's personnel conducting this meeting shall review with such customers any significant changes in Seller's operating budget and Capital Improvement Program that may have an impact on rates and charges. This meeting shall commence at 10:00 a.m. on that day.

**Section 3.05 Transmission Line and Connecting Meter Installation, Ownership, and Inspection.**

(A) Seller shall be responsible for the installation, operation, and maintenance of its transmission line(s) before and up to the point where a Connecting Meter is located, including a new 12-inch gravity-fed line to be constructed. Purchaser shall be responsible for the installation, operation and maintenance of its transmission line(s) from and after the point where a Connecting Meter is located.

(B) Purchaser shall be responsible for the cost of acquisition and installation of all Connecting Meters, which shall be transferred to Seller by bills of sale upon acceptance by Seller after installation and inspection. All Connecting Meters shall meet the specification and service capability criteria as are from time to time established by Seller for its other wholesale metered customers and shall be installed at such locations as mutually agreed upon by Seller and Purchaser based upon criteria to obtain the necessary readings.

(C) Seller agrees to conduct, or to permit Purchaser to conduct, such periodic inspection of the Connecting Meters as may be reasonably requested by Purchaser. Seller further agrees to provide to Purchaser copies of all data regarding the Connecting Meters as may be reasonably requested by Purchasers. In the event a Connecting Meter is determined to have malfunctioned, Metered Flows for such Connecting Meter will be deemed to be equal to the historical Metered Flows for such Connecting Meter for the same calendar period during the prior year. In the event that it shall be determined pursuant to any interim reading made at Purchaser's request that a Connecting Meter is functioning and reading properly, the cost of such interim reading or readings shall be paid by the Purchaser. Otherwise, the cost of such interim reading shall be considered as part of the Operation and Maintenance Costs.

**Section 3.06 Operation and Maintenance of Facilities.**

(A) Seller has the exclusive right to operate and maintain its Facilities and agrees to do so in a good and proper manner in accordance with all requirements of state and federal regulatory agencies consistent with Good Utility Practices.

(B) Seller shall designate a 24-hour contact person with authority to make day-to-day decisions relating to this Agreement and provide Purchaser with information sufficient to contact such person in an emergency.

(C) Seller shall obtain and maintain, or cause to be obtained and maintained, with responsible insurers all such insurance on the Facilities and Connecting Meters (to the extent applicable insurance is available) which is customarily maintained with respect to properties



of like character against accident to, loss of, or damage to such properties. Purchaser shall obtain and maintain with responsible insurers all such insurance against accident, loss, or damage which is customarily maintained with respect to Purchaser's transmission lines or property of like character connected to the Facilities.

**Section 3.07 Books and Records.** Seller shall maintain accounting records with a level of detail sufficient for the calculation of the rates and charges associated the Facilities Benefiting Purchaser. Accounting records will be maintained in accordance with generally accepted accounting principles and auditing standards related to governmental entities and audited annually by the Independent Certified Public Accountant. All books and records of Seller pertaining to the Facilities shall be available to Purchaser for inspection at all reasonable times upon reasonable notice, with Purchaser to pay Seller's reasonable costs for providing Purchaser with such books and records.

#### **ARTICLE IV** **ADDITIONAL CAPACITY**

**Section 4.01 Purchase of Additional Allocated Capacity; Expansion of the Facilities to Provide Additional Capacity.**

(A) If Purchaser determines that it desires to purchase additional Allocated Capacity in the Facilities Benefiting Purchaser, it may apply to do so, but only in amounts equal to or greater than the Minimum Future Capacity Purchases. At such time as Purchaser ascertains that it desires additional Allocated Capacity, it shall so notify Seller in writing, setting forth its estimate of desired additional Allocated Capacity and its estimate of when it desires to have such additional Allocated Capacity. Within a reasonable period after receipt of such notice, Seller will advise Purchaser with respect to Seller's willingness and ability to provide additional Allocated Capacity to Purchaser. Should Seller be so willing, representatives of Seller and Purchaser shall meet and exchange information in order to determine (i) the precise amount of additional capacity required to comply with Purchaser's request for additional Allocated Capacity and to accommodate such other expansions of capacity as Seller may determine to be necessary or desirable in connection therewith, (ii) the time-frame within which such additional Allocated Capacity is needed and can reasonably be made available, (iii) the manner of providing such additional Allocated Capacity, and (iv) such other matters relating to the provision of such additional Allocated Capacity as Seller or Purchaser may deem necessary.

(B) If Seller is willing and has the ability to provide such additional Allocated Capacity as part of the existing Facilities Benefiting Purchaser, Seller shall grant Purchaser's request to make a Future Capacity Purchase. Purchaser shall pay Seller an amount to be determined based on the prevailing Buy-In Charge at the time of the Future Capacity Purchase and the amount of additional Allocated Capacity to be acquired. However, should Seller determine, in its sole discretion and for its own purposes unrelated to the provision of additional capacity, to incur Increased Allocated Capacity Capital Improvements beyond that which is required to provide Purchaser with additional Allocated Capacity, then and in that event Purchaser shall be required to reimburse Seller only to the extent necessary to address Purchaser's request for additional Allocated Capacity.

(C) If such additional Allocated Capacity is not reasonably available as part of the existing Facilities Benefiting Purchaser, then Seller may agree to expand the Facilities to provide such desired additional Allocated Capacity, but shall be under no obligation to do so. Should Seller agree to do so, all costs of providing such Increased Allocated Capacity Capital Improvements shall be assumed by Purchaser except to the extent Seller increases capacity at the same time beyond that which Purchaser desires, in which case Purchaser shall be obligated only to the extent of its Pro Rata Share. If there is inadequate capacity in the Facilities Benefiting Purchaser to accommodate Purchaser's request for additional Allocated Capacity, but Seller agrees to provide such additional Allocated Capacity, then Seller shall undertake the design and construction of the improvements to the Facilities necessary to provide the additional Allocated Capacity requested by Purchaser in a timely manner and diligently pursue the completion thereof such that said additional Allocated Capacity will be available on or before the date agreed upon by the Parties, however, that prior to Seller's undertaking of such obligations the following conditions are met, all to Seller's sole satisfaction:

(1) the requested availability date of additional Allocated Capacity shall be not less than six (6) months following the date of the notice delivered by Purchaser pursuant to Section 4.01(A) above;

(2) Seller shall not be required to add capacity to the Facilities in increments of less than ten (10) MGD;

(3) Purchaser shall advance such funds as Seller may reasonably require to cover the design and engineering expenses of the improvements needed to the Facilities Benefiting Purchaser necessary to provide the additional Allocated Capacity requested by Purchaser; and

(4) Purchaser shall have made provision for the payment of the Future Capacity Purchase associated with the additional Allocated Capacity and documented same to Seller's satisfaction.

(D) The Parties hereto agree to modify and amend this Agreement to the extent necessary to provide for the adjustment of the Allocated Capacity as a result of any increase in the Capacity of Facilities Benefiting Purchaser requested by the Purchaser.

## **ARTICLE V** **EVENTS OF DEFAULT; REMEDIES**

### **Section 5.01 Events of Default; Remedies.**

(A) To the extent permitted by law,

(1) In the event that Purchaser fails to make any monetary payment required by this Agreement within ten (10) days from the delivery of written notice to Purchaser of such failure, Seller may institute such action as may be necessary to enforce payment of such amounts, including interest on past due amounts, from the date such amount

becomes due until paid in full, at a default interest rate of ten percent (10%) per annum, plus all bank charges and attorney and other professional fees incurred by Seller as a result thereof.

(2) In the event that Purchaser fails to perform any non-monetary covenant or agreement herein made within thirty (30) days from the date of written notice to Purchaser of such failure, Seller may bring action against Purchaser for the specific performance by Purchaser of such other covenant or agreement.

(3) In the event that a failure by Purchaser to perform any covenant or agreement herein made is the proximate cause of any physical damage to Seller's Facilities, then Purchaser shall be responsible for the cost of repairing such damages, and Seller may bring an action therefor.

(4) If Seller shall become indebted to Purchaser by reason hereof, Purchaser shall have the right to offset such indebtedness against its obligations to make payments under this Agreement.

(5) In the event that Seller fails to perform any material covenant or agreement herein made within thirty (30) days from the date of written notice to Seller of such failure, Purchaser may bring action against Seller for the specific performance by Seller of such covenant or agreement.

(B) In addition to any remedies provided under law or herein, should Purchaser fail to perform its obligation to pay the installment(s) of the Initial Capacity Payments under Section 3.01 and Schedule A, then upon the event of such default Seller shall be entitled to increase the water rate Purchaser pays under Section 3.03(c) to the rate which Seller charges to its wholesale customers which have not acquired capacity in Seller's facilities by having paid a Buy-In Charge. This increased water rate shall apply until such time as Purchaser shall have remitted any unpaid installment(s) to Seller plus interest at a rate of ten percent (10%) per annum..

## **ARTICLE VI** **FORCE MAJEURE**

**Section 6.01 Effects of Force Majeure.** If by reason of Force Majeure either Party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then if such Party shall give notice and full particulars of such Force Majeure in writing to the other Party within a reasonable time after occurrence of the event or cause relied on, the obligation of such Party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such Party shall endeavor to remove or overcome such inability with all reasonable dispatch.

**ARTICLE VII**  
**MISCELLANEOUS**

**Section 7.01 Binding Arbitration; Waiver of Jury Trial; Jurisdiction and Venue.**

(A) In the event of any dispute arising out of or relating to this Agreement, **except as to any payment due from Purchaser to Seller under this Agreement and any matter pertaining to the term or any extended term of this Agreement**, Seller and Purchaser agree that, at the request of any Party hereto, a senior representative of each Party to the dispute will review the matter in dispute and, at the request of either Party, meet in person to discuss the matter at the place of business of the Party who is requesting the meeting (or at such other location as agreed to by the Parties) within ten (10) days of the request. If the dispute cannot be resolved through settlement within twenty (20) days after the date of such request, either Party shall be free to pursue such rights or remedies that may be available under this Agreement, at law, or in equity. Nothing in this Section shall preclude any Party from exercising any right to seek injunctive relief or any right of termination created herein, at law, or in equity prior to the expiration of the period for discussion set forth in this Section except to the extent provided in Section 2.03(D), above.

(B) **UPON DEMAND OF EITHER PARTY, WHETHER MADE BEFORE OR AFTER INSTITUTION OF ANY JUDICIAL PROCEEDING, ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF, CONNECTED WITH OR RELATING TO THIS AGREEMENT OR ANY RELATED DOCUMENT (A "DISPUTE") BETWEEN OR AMONG THE PARTIES HERETO AND TO THE RELATED DOCUMENTS EXCEPT AS TO RELIEF SOUGHT BY SELLER FOR PAYMENT FOR WATER SERVICE AS SET FORTH IN THIS AGREEMENT OR RELIEF SOUGHT BY SELLER AS TO THE TERM OR EXTENDED TERM OF THIS AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION AS PROVIDED HEREIN. INSTITUTION OF A JUDICIAL PROCEEDING BY A PARTY DOES NOT WAIVE THE RIGHT OF THAT PARTY TO DEMAND ARBITRATION HEREUNDER. DISPUTES MAY INCLUDE, WITHOUT LIMITATION, TORT CLAIMS, COUNTERCLAIMS, CLAIMS BROUGHT AS CLASS ACTIONS, CLAIMS ARISING FROM DOCUMENTS EXECUTED IN THE FUTURE, DISPUTES AS TO WHETHER A MATTER IS SUBJECT TO ARBITRATION, OR CLAIMS CONCERNING ANY ASPECT OF THE PAST, PRESENT OR FUTURE RELATIONSHIPS ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT OR THE RELATED DOCUMENTS. ARBITRATION SHALL BE INITIATED, CONDUCTED UNDER AND GOVERNED BY THE COMMERCIAL FINANCIAL DISPUTES ARBITRATION RULES (THE "ARBITRATION RULES") OF THE AMERICAN ARBITRATION ASSOCIATION (THE "AAA") AND THE FEDERAL ARBITRATION ACT. ALL ARBITRATION HEARINGS SHALL BE CONDUCTED IN PICKENS COUNTY, SOUTH CAROLINA. THE EXPEDITED PROCEDURES SET FORTH IN RULE 53, ET. SEQ. OF THE ARBITRATION RULES SHALL BE APPLICABLE TO CLAIMS OF LESS THAN \$50,000. ALL APPLICABLE STATUTES OF LIMITATIONS SHALL APPLY TO ANY DISPUTE. A JUDGMENT UPON AN AWARD IN ARBITRATION MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. NOTWITHSTANDING**

ANYTHING FOREGOING TO THE CONTRARY, A HEARING SHALL BEGIN WITHIN NINETY (90) DAYS AFTER A DEMAND FOR ARBITRATION AND SHALL BE CONCLUDED WITHIN ONE HUNDRED TWENTY (120) DAYS AFTER SUCH DEMAND. THESE TIME LIMITATIONS MAY NOT BE EXTENDED UNLESS THE PARTIES MUTUALLY AGREE TO SUCH EXTENSION OR A PARTY SHOWS CAUSE FOR EXTENSION AND THEN FOR NO MORE THAN A TOTAL OF SIXTY (60) DAYS UNLESS THE PARTIES MUTUALLY AGREE TO A LONGER EXTENSION. ARBITRATORS SHALL BE SELECTED FROM THE COMMERCIAL FINANCIAL DISPUTE ARBITRATION PANEL OF THE AAA IF NOT MUTUALLY AGREED UPON BY THE PARTIES. THE PARTIES HERETO DO NOT WAIVE APPLICABLE FEDERAL OR STATE SUBSTANTIVE LAW EXCEPT AS PROVIDED HEREIN.

(C) THE PARTIES HERETO ACKNOWLEDGE THAT BY AGREEING TO BINDING ARBITRATION THEY HAVE EACH, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IRREVOCABLY WAIVED ANY RIGHT THEY MAY HAVE TO A JURY TRIAL WITH REGARD TO A DISPUTE. ALL PARTIES HEREBY CONSENT TO VENUE IN THE STATE AND FEDERAL COURTS IN PICKENS COUNTY, SOUTH CAROLINA AREA.

**Section 7.02 Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given as follows: (i) on the date of delivery when hand-delivered to the Parties named below; or (ii) three (3) days following the date when mailed by certified or registered mail, postage prepaid, and addressed as follows:

If to the Seller:

Chief Executive Officer  
Greenville Water  
P. O. Box 687  
Greenville, South Carolina 29602

If to the Purchaser:

Mayor  
City of Pickens, SC  
219 Pendleton St  
Pickens, South Carolina 29671

Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice was given shall be deemed to be receipt of the notice, request, or other communication. Any Party may, by written notice given to the other Party, designate any further or different addresses to which subsequent notice, certificates, or other communications shall be sent.

**Section 7.03 Authority/Beneficiaries.** Each Party hereto hereby represents and warrants that all appropriate action has been taken by their respective governing bodies to authorize

the execution of and the performance of the obligations set forth in this Agreement and that the person executing the Agreement on its behalf has been duly authorized to do so. This Agreement shall inure to the benefit of and shall be binding upon Seller and Purchaser and their respective successors or assigns.

**Section 7.04 Severability.** In the event any provision of this Agreement, other than the term or extended term provided for herein, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 7.05 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 7.06 Governing Law.** This Agreement is prepared and entered into with the intention that the law of the State of South Carolina shall govern its construction, without regard for its conflict of law principles.

**Section 7.07 Amendments.** This Agreement may not be amended, changed, modified, or terminated without in each instance the prior written consent of the Parties hereto.

**Section 7.08 No Adverse Presumption.** Seller and Purchaser hereby acknowledge that this Agreement arose as the result of arm's length negotiations between the Parties and that this Agreement, although manually prepared by representatives of Seller, was prepared with the advice, consent, recommendation and review of Purchaser and/or Purchaser's counsel, and is the product of input by both Parties hereto. As a result, any ambiguity or uncertainty is not to be construed against the Party whose counsel prepared this Agreement on the grounds that such Party's representatives drafted this Agreement.

**Section 7.09 Third Parties.** This Agreement does not and is not intended to confer in favor of any parties other than Seller and Purchaser any rights or remedies whatsoever, the Parties hereto intending by the provisions hereof to confer no such benefits or status.

**Section 7.10 Captions.** The Section headings of this Agreement are inserted for convenience only and shall not constitute a part of this Agreement in construing or interpreting any provisions hereof.

**Section 7.11 Amendment to Payments.** The Parties acknowledge that the Seller is undertaking a review of methodology for calculating the payments due under this Agreement. Once that process is complete, if the Parties agree, they may amend this Agreement to reflect those new charges. If the Parties are unable to agree to terms of an amended agreement at that time, this Agreement shall terminate. In the event of a termination under this Section 7.11, the Purchaser is relieved of its obligation to make any future installment payments of the initial Buy-In Charge for the Allocated Capacity in the Facilities Benefiting Purchaser, but Purchaser will not receive a refund for any payments made under this Agreement prior the effective date of any such termination.

**Section 7.12 Further Assurances.** The Parties agree to give such further assurances, and to execute, acknowledge and deliver such other instruments as shall be reasonably necessary or appropriate in the judgment of the other Party to carry out the intent of this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be signed in their names by their duly authorized officers as of the date first written above.

GREENVILLE WATER

WITNESS/ATTEST:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
By: Jeff Boss  
Its: Chief Executive Officer

CITY OF PICKENS

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