

**RESOLUTION NO. 2019-01**

**AUTHORIZING THE CREATION OF A JOINT AUTHORITY WATER SYSTEM; AUTHORIZING THE CITY OF PICKENS, SOUTH CAROLINA TO JOIN WITH OTHER AUTHORITIES IN THE JOINT SYSTEM; AND OTHER MATTERS RELATED THERETO.**

**ARTICLE I**

**FINDINGS OF FACT**

**Section 1.01 Findings of Fact**

Incident to the adoption of this resolution (this “**Resolution**”), the City Council of the City of Pickens (the “**Council**”), the governing body of the City of Pickens, South Carolina (the “**City**”), finds that the facts set forth in this Article exist, and the statements made with respect thereto are in all respects true and correct.

1. The City is a political subdivision of the State of South Carolina, and is authorized to provide water service pursuant to Article VIII, § 16 of the Constitution of the State of South Carolina, a referendum authorizing such service, and Title 5, Chapter 31 of the Code of Laws of South Carolina 1976, as amended.

2. Pursuant to the provisions of Title 6, Chapter 25 of the Code of Laws of South Carolina 1976, as amended (the “**Act**”), any two or more governing bodies of Authorities (as such term is defined in the Act) may create a Joint Authority Water and Sewer System (a “**Joint System**”) for the purpose of planning, financing, developing, constructing, acquiring, improving, enlarging, selling, leasing, maintaining, and operating a Project (as such term is defined in the Act) for the present and future needs of their service areas.

3. The City has negotiated a non-binding Memorandum of Understanding (the “**MOU**”) with the Pickens County Water Authority, Easley Central Water District, and Six Mile Rural Community Water District (the “**Parties**”), the form of which is attached hereto as Exhibit A, setting forth certain understandings of the Parties with respect to the creation of a Joint System, and is considering the adoption of this Resolution and the entry into such Joint System based upon the mutual understandings of the parties as set forth therein.

4. After due investigation and consideration, the Council has determined that it is in the best interests of the City, its citizens, and its customers to create a Joint System, and to that end, has further determined that the City should join with the Parties to create a Joint System pursuant to the provisions of the Act. This finding is made pursuant to Section 6-25-50(B)(2)(a) of the Act.

## ARTICLE II

### AUTHORIZATION

#### Section 2.01 Authorization to Establish System

(a) The City is hereby authorized to join with the Parties to create a Joint System in accordance with the provisions of the Act. Additional Authorities (as such term is defined in the Act) may be permitted to join the Joint System with the approval of all members of the Joint System (collectively, the “*Members*”) as exist at such time.

(b) The Joint System shall be known as the Pickens Regional Joint Water System.

(c) In accordance with Section 6-25-40 of the Act, the Council shall cause notice of the adoption of this Resolution to be published once a week for two consecutive weeks in a newspaper of general circulation within Pickens County, South Carolina (the “*County*”). The notice shall be substantially similar to the form attached as Exhibit B hereto.

(d) Pursuant to the MOU and in accordance with the provisions and requirements of Section 6-25-50 of the Act, the Parties have agreed that the Joint System shall be governed by a commission (the “*Commission*”) initially composed of eight commissioners (each a “*Commissioner*”) appointed by resolution of the governing body of the appointing Party. The Parties shall be entitled to appoint Commissioners in the manner and in accordance with Section II.A. of the MOU.

(e) Each Commissioner shall be entitled to one vote on any proposed action of the Commission. Unless otherwise required by the Act or by agreement of the Parties, approval of any action of the Commission shall require the affirmative vote of a majority of the Commissioners present and voting, with at least a majority of the Commissioners present. The City acknowledges that the bylaws of the Joint System will likely reflect that certain actions of the Commission, particularly those relating to charges to Members for the purchase of water, may be subject to a weighted voting arrangement with the number of total votes proportionally allocated among the Member’s based upon their respective obligation to purchase water from the Joint System.

(f) The Council shall, by separate resolution duly adopted, appoint its Commissioners to the Commission, in accordance with the provisions of Section 6-25-60 of the Act.

(g) The Commissioners appointed by the City are empowered and directed to execute and deliver an application to the Secretary of State of South Carolina for the creation of the Joint System, in accordance with Section 6-25-50 of the Act, and such other documents as are necessary to carry out the purposes of this Resolution and not inconsistent herewith.

#### Section 2.02 Authorization of MOU

The Council hereby authorizes the Mayor or the City Administrator to execute the MOU, in substantially similar form to that attached hereto at Exhibit A, with such revisions and alterations as he shall deem appropriate to carry out the spirit of this Resolution, as a non-binding expression of present intent setting forth the understandings and intentions of the City with respect to the establishment and creation of the Joint System. Such revisions may include revisions to voting rights subject to the requirement that the City enjoy and maintain parity voting representation with all other Parties, and Authorities who may become Parties.

Section 2.03 Effective Date

This Resolution shall become effective immediately upon its adoption.

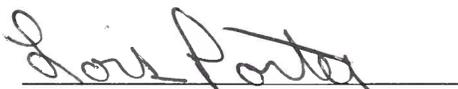
NOW THEREFORE BE IT RESOLVED IN MEETING DULY ASSEMBLED by the City Council of the City of Pickens, South Carolina, this 3rd day of June 2019.

CITY OF PICKENS, SOUTH CAROLINA

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Council Member

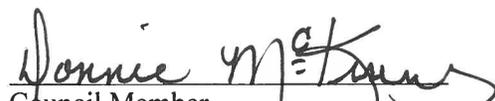
  
\_\_\_\_\_  
Council Member

  
\_\_\_\_\_  
Council Member

  
\_\_\_\_\_  
Brittany Chapman, Clerk to Council

ATTEST:

  
\_\_\_\_\_  
Council Member

  
\_\_\_\_\_  
Council Member

\_\_\_\_\_  
Council Member

## EXHIBIT A

### FORM OF MEMORANDUM OF UNDERSTANDING

#### MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this “*MOU*”) is made and entered into by and among:

- A. Pickens County Water Authority (the “*Water Authority*”),
- B. the City of Pickens, South Carolina (“*Pickens*”),
- C. Easley Central Water District (“*Easley Central*”), and
- D. Six Mile Rural Community Water District (“*Six Mile*” and together with the Water Authority, Pickens, and Easley Central, the “*Parties*” and each individually, a “*Party*”),

and sets forth certain understandings among the Parties. This MOU is intended to serve as an aid to further negotiations and to the eventual completion of definitive documents related to the creation of a “*Joint System*,” as defined in, and pursuant to the Joint Authority Water and Sewer Systems Act, codified at Chapter 25 of Title 6 of the Code of Laws of South Carolina 1976, as amended (the “*Act*”). This MOU sets forth in written form the intentions and understandings of the Parties that are to guide these negotiations, but in no way creates binding or enforceable obligations of any Party. All Parties acknowledge and agree that no binding obligations will be created with respect to the creation of a Joint System until definitive documents are negotiated and appropriate action is taken by the Parties’ respective governing bodies.

#### RECITALS

The Parties are each an “Authority” (as defined in the Act) and, as such, are authorized, pursuant to the Act, to create and serve as a member of a Joint System (a “*Member*”) in order for such Joint System to undertake any Project (as defined in the Act) and engage in any of the other project purposes set forth in Sections 6-25-25 of the Act.

The Parties contemplate the joint undertaking of a significant investment in utility infrastructure within Pickens County, South Carolina (the “*County*”) through the application for and acquisition of a source of water on Lake Keowee and construction of a water treatment plant to allow the Parties to obtain security in and control their access to an abundant source of water in order to provide and enhance water service within the County. The Parties believe that the most efficient and expeditious structure by which they may meet these goals is the creation of a Joint System, through which the Parties will be able to work in concert to achieve purposes that would be difficult for any to achieve without the cooperation of the others.

In order for the Parties to take the first step in the creation of the Joint System, it has become necessary and desirable to set forth the current understandings and intentions of the Parties in this non-binding MOU.

### **SUMMARY OF TERMS**

#### **I. Scope and Creation of Joint System**

##### **A. General Statement Regarding Scope**

The Joint System shall be created to initially provide for the application for and acquisition of a source of water on Lake Keowee and construction of a water treatment plant to allow the Parties to obtain security in and control their access to an abundant source of water in order to provide and enhance water service within the County. The Parties recognize that, at some point in the future, it may become mutually beneficial to permit the Joint System to additionally construct, install, own, operate, or maintain other facilities for the distribution of water or to provide water service on a retail or wholesale basis in the County.

##### **B. Name of Joint System**

The tentative name of the Joint System shall be the “Pickens Regional Joint Water System, South Carolina.”

##### **C. Members of the Joint System**

###### **1. Initial Members**

The Parties anticipate that they will be the initial Members of the Joint System. The Parties, as the stakeholders who are most able to use or contribute assets, funding, statutory authority and service rights, real property, and capacity to benefit the Joint System, intend to set forth their understandings with regard to the basic structure, foundational principles, and initial scope of the Joint System in this MOU, and include other potential Members in discussions at such time as they deem appropriate.

###### **2. Additional Members**

As provided for in the Act, other Authorities may be permitted to join as Members of the Joint System with the approval, by resolution, of the governing body of each of the Members of the Joint System and upon such proposed additional Member taking appropriate action. Prospective additional Members will be evaluated based upon whether the proposed Member is capable of making a substantial contribution to the Joint System, by way of funding, existing or potential assets, existing or potential service areas, or access to beneficial resources including legal powers and authority, or any combination of the foregoing.

### 3. Contractual Relationships

Where beneficial, the Joint System may enter into contractual relationships with other non-member political subdivisions and other water and sewer utilities in lieu of offering membership into the Joint System.

#### D. Action Required

##### 1. Approving Action; Public Notice

The Parties acknowledge that, subsequent to the approval of this MOU, in order to create the Joint System, the governing bodies of each must initially ascertain, at minimum by resolution but by ordinance if they so desire, that the creation of the Joint System best serves the respective interests of each, their respective citizens, and where applicable, their customers (the “**Approving Action**”). Notice of the adoption of such Approving Actions are to be published in a newspaper of general circulation in the County for two successive weeks, and any person affected by the creation of the Joint System may institute litigation challenging such action for a period of twenty days following such publication.

##### 2. Appointment Resolution

Either in the Approving Action or by separate resolution following the Approving Action, each Party shall appoint the number of Commissioners contemplated hereby, and authorize an appropriate official to enter into an agreement regarding the number of Commissioners each Member may appoint as required by Section 6-25-50(A) of the Act.

##### 3. Filing of Application with Secretary of State

Upon appointment, two or more Commissioners-elect (from different Parties) shall file an application with the South Carolina Secretary of State meeting the requirements of Section 6-25-50 of the Act. Upon the filing of such application, each Party contemplates becoming a member of the Joint System (a “**Member**”).

## II. Governance

### A. Composition of the Joint System’s Governing Body

The Joint System shall be governed by a commission (the “**Commission**”) composed of not less than five commissioners (each a “**Commissioner**”) appointed by resolution of the Members of the Joint System. Each of the initial Members of the Joint System shall be entitled to appoint two Commissioners until such time as there are five Members; upon the admission of the fifth Member, each Member shall be entitled to appoint one Commissioner. Pursuant to the Act, the Commission shall never have more than eleven Commissioners.

## B. Voting

Each Commissioner shall be entitled to one vote on any proposed action of the Commission. Unless otherwise provided herein, and ultimately set forth in the formation documents of the Joint System, approval of any action of the Commission shall require the affirmative vote of a majority of the Commissioners present and voting, with at least a majority of the Commissioners present. The Parties acknowledge that the bylaws of the Joint System will likely reflect that certain actions of the Commission, particularly those relating to charges to Members for the purchase of water, may be subject to a voting arrangement whereby each Member is entitled to additional votes reflecting such Member's proportionate obligation to purchase water from the Joint System.

## C. Operations

The Joint System may contract for the operation of any or all utility assets of the Joint System, or any utility assets of any of the Parties at the request of such Party.

## III. Initial Projects of Focus

As an initial matter, the Parties intend to focus their efforts and study on the acquisition of a source of water at Lake Keowee to serve the Members and other water purveyors in the County.

## IV. Expenses and Financing

### A. Expenses

The expenses of the Joint System shall be apportioned as follows:

1. The initial legal, advisory, and other start-up expenses related to the creation of the Joint System shall be apportioned equally among its various Members unless some alternative arrangement is provided for by written agreement.

2. All general expenses of the Joint System after its creation shall be apportioned equally among its various Members unless some alternative arrangement is provided for by written agreement.

3. Where the Joint System has engaged in any project, the costs and expenses related to the operation and maintenance of such project shall be apportioned among its various Members in proportions equal to the percentage of such project's capacity that is reserved to each such Member, unless the Members agree to some other arrangement.

### B. Financing of Projects

The Joint System is permitted, pursuant to the Act, to incur debt for any permitted purpose and to pledge to the repayment of such debt certain revenues to be derived from the operation of such project, advances from any Member, or the payment by any Member for reserved capacity in such project. To the extent that any such debt is to be repaid exclusively

from revenues to be derived from the operation of a project, the issuance of such debt may be approved by the Commission by an affirmative vote of the majority of the Commissioners. As required by the Act, in order to incur debt that is payable from advances or contractual payments from the Members of the Joint System, such debt must be approved by a favorable vote of the councils of each Member that is to be obligated to make such payment, and an affirmative vote of 2/3 of all Commissioners.

V. Good Faith

The Parties commit themselves to work together for the success of the Joint System and to deal with each other with fairness, respect, cooperation and good faith.

VI. Term; Termination

This MOU shall continue in effect as a guide to the creation of the Joint System until the earlier of: (1) the termination of this MOU by delivery of written notice of termination by either of the Parties; or (2) the completion of the creation of the Joint System. At such time as the Parties have taken appropriate action to create the Joint System and bylaws have been adopted by the Commission, this MOU shall be deemed superseded in entirety by such bylaws, and they shall thereafter control all future action of the Joint System without reference to this MOU.

VII. Authorization

This MOU has been reviewed and has been authorized through appropriate action of the governing bodies of the Parties, respectively.

VIII. Notice

Any and all notices required under the terms of this MOU shall be in writing and shall be delivered in person or by U.S. Mail, by certified mail, return receipt requested, postage prepaid to the principal addresses of the Parties as follows:

As to the City of Pickens:

City Administrator  
City of Pickens  
P.O. Box 117  
Pickens, South Carolina 29671

As to Pickens County Water Authority:

Executive Director  
Pickens County Water Authority  
222 McDaniel Ave. B-1  
Pickens, South Carolina 29671

As to Easley Central Water District:

Water District Administrator  
Easley-Central Water District  
P.O. Box Drawer C  
Norris, SC 29667

As to Six Mile Rural Community Water District:

Manager  
Six Mile Rural Community Water District  
P.O. Box 350  
Six Mile, South Carolina 29682

All notices should provide a copy to:

Pope Flynn, LLC  
350 E. St. John St.  
Spartanburg, SC 29302  
Attn: Gary T. Pope, Jr., Esq.

IX. Amendment

This MOU may be amended only by a written agreement authorized by appropriate action and executed by the Parties.

X. Counterparts

This MOU may be executed by the Parties in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

The undersigned representatives of the Parties, DO HEREBY AGREE to the provisions of the foregoing MOU and shall adhere to its provisions to the extent practicable.

CITY OF PICKENS, SOUTH CAROLINA

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

EASLEY CENTRAL WATER DISTRICT

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

PICKENS COUNTY WATER AUTHORITY

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

SIX MILE RURAL COMMUNITY WATER DISTRICT

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

EXHIBIT B

FORM OF NOTICE OF ADOPTION

**NOTICE OF ADOPTION OF RESOLUTION**

Notice is hereby given that by the adoption of a resolution dated \_\_\_\_\_, 2019, adopted by the City Council of the City of Pickens, South Carolina, the City of Pickens has authorized the formation of the Pickens Regional Joint Water System, a joint authority water and sewer system to be formed by the City of Pickens, South Carolina, Easley Central Water District, Pickens County Water Authority, and Six Mile Rural Community Water District. The Pickens Regional Joint Water System is to be created pursuant to Title 6, Chapter 25 of the Code of Laws of South Carolina 1976, as amended (the "Act"). This notice is required by Section 6-25-40 of the Act, and precedes the filing of an application with the South Carolina Secretary of State for a corporate certificate designating the system as a public body and as a body corporate and politic under the provisions of the Act.