

RESOLUTION NO. 2024-R8

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

Section 1 Findings. The Council makes the following findings of fact in connection with the enactment of the Resolution:

(a) 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.

(b) On October 7, 2019, the City, the Easley-Central Water District, the Pickens County Water Authority, and the Six Mile Rural Community Water District (each an "**Initial Member**" and collectively the "**Initial Members**"), incorporated the Pickens Regional Joint Water System (the "**Joint System**") pursuant to Title 6, Chapter 25 of the Code of Laws of South Carolina 1976, as amended (the "**Act**") for the purpose of planning, financing, developing, constructing, acquiring, improving, enlarging, selling, leasing, maintaining and operating water facilities within the service areas of such entities. On December 29, 2021, the City of Liberty, South Carolina ("**Liberty**") joined the Initial Members (together Liberty and the Initial Members are the "**Members**" collectively and singularly the "**Member**") and became a Member of the Joint System.

(c) Pursuant to Title 6, Chapter 25, Section 128 of the Act, the Joint System and the Members were authorized to enter into limited contracts concerning the sale or purchase of capacity and output from a project based on certain conditions.

(d) On November 1, 2021, the Council enacted Ordinance No. 2021-17 approving the execution of a project participation agreement pursuant to Section 6-25-128 of the Act and made the required statutory findings (the "**Approving Ordinance**"). The Approving Ordinance approved the project participation agreement and authorized the Chairman of the Council to execute the agreement on behalf of the City.

(e) On January 11, 2022, the Members and the Joint System entered into that certain Project Participation Agreement (the "**Project Participation Agreement**") and the Council found that such Project Participation Agreement ratified the Project Participation Agreement as executed.

(f) On August 15, 2022, the Council approved and ratified an ordinance to accept amendments to the Project Participation Agreement. Terms with initial capitals used herein and not otherwise defined have the meaning given such term in the amended Project Participation

Agreement, as amended and ratified, unless context clearly requires otherwise.

(g) Through the Project Participation Agreement, the Members sought to (i) develop and construct a water treatment plant on Lake Keowee; and, (ii) construct water transmission and storage facilities in Pickens County, South Carolina to connect with existing Members' systems (the "**Project**"). To accomplish the Project, the Project Participation Agreement required the Joint System to obtain certain financing and obtain initial Project permits. Such "**Initial Permits**" includes the following items:

- (1) Preliminary engineering report in compliance with Duke and USDA (if applicable) requirements as certified by the Engineer;
- (2) Environmental report in compliance with Duke and USDA (if applicable) requirements as certified by the Engineer;
- (3) All Duke agreements, permits, permissions, and licenses necessary for the Project;
- (4) All Federal Energy Regulatory Commission agreements, permits, permissions, and licenses necessary for the Project;
- (5) Surface water withdrawal permit issued by [South Carolina Department of Environmental Services]; and
- (6) Jar testing and pilot study.

(h) Despite having authorization since on or about January 11, 2022, the Council has determined that the Joint System has not obtained the Initial Permits items listed in Section 1(g)(3-5) as of the date of this Resolution.

(i) The Project Participation Agreement requires that the "Joint System . . . will obtain sufficient rights to withdraw water from Lake Keowee before commencing the Construction Phase of the Plant Project." As indicated by the Project Participation Agreement, pursuant to Title 49, Article 4, Section 1 *et seq.* of the South Carolina Code of Laws (the "**Surface Water Withdrawal, Permitting, Use, and Reporting Act**"), the Joint System is required to obtain the right, through permits, to withdraw water from Lake Keowee.

(j) The Council has determined that the Joint System has not yet obtained the rights required in Project Participation Agreement Article II, Section 1.01 (3) through (5) and/or Section 2.02. Nor have permits been obtained from the South Carolina Department of Environmental Services as required under Surface Water Withdrawal, Permitting, Use, and Reporting Act.

(k) Without obtaining the requisite permits from Duke, Federal Energy Regulatory Commission, and/or the South Carolina Department of Environmental Services, Construction Phase activities are stymied, preventing the Project from progressing, considering the express requirements in the Project Participation Agreement referenced *supra* as well as Article III, Section 3.01(d) of the same, which states in relevant part that "[t]he obligations of the Joint System hereunder are conditioned upon its securing and retaining all necessary rights-of-way, franchise, and permits for the delivery of such Potable Water."

(l) The Council has further determined that: (i) Bonds in furtherance of the

Construction Phase of the Project may only be issued, pursuant to the Project Participation Agreement in Article III, Section 3.09(c)(ii), after such time as a Fixed-Price Contract for the Project has been entered into; and (ii) that the Joint System has not obtained such Fixed-Price Contract as of the date of this Resolution.

(m) After due investigation and consideration, the Council has determined that it is no longer in the best interests of the City, its citizens, and its customers to remain a Member of the Joint System.

(n) Pursuant to Title 6, Chapter 25, Section 70(B) of the Act, the Council provides authorized notice to the Joint System of the City's intent to withdraw its status as a Member of the Joint System, effective immediately upon notice of the Joint System and its Members.

Section 2 Specific Findings and Approvals.

(a) The Council hereby finds that it is no longer in the best interests of the City, its citizens, and/or its customers and residents located within its service area to participate in the Project by participating as a Member of the Joint System and continuing under terms of the Project Participation Agreement, as so amended and adopted.

(b) Pursuant to Title 6, Chapter 25, Section 70(B) of the Act, the Council provides authorized notice to the Joint System of the City's intent to withdraw its status as a member of the Joint System.

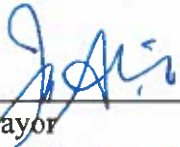
Section 3 Authorization of the Mayor. The Mayor of the City is herein authorized to provide notice of the City's immediate withdrawal from the Joint System and to conduct such acts as he shall deem reasonably necessary to conclude, windup, and/or otherwise finalize such withdrawal under the Act, including without limitation, causing notice to be provided to the Secretary of State of the City's withdrawal as a Member and causing to be satisfied any outstanding payment obligations to the Joint System under the terms of the Project Participation Agreement as may be determined to be due and owing.

Section 4 General Repealer, Severability. To the extent any provision of a prior ordinance or resolution conflicts with any provision hereof of the Resolution, such provision is repealed and the provision or provisions of this Resolution shall control and be of force and effect. To the extent any portion of this Resolution shall be made inoperable in case any one or more of the provisions of this Resolution shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Resolution, but this Resolution shall be construed and enforced as if such illegal or invalid provisions had not been contained therein.

Section 5 Effective Date. The provisions of this Resolution shall be 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 22 day of July 2024.

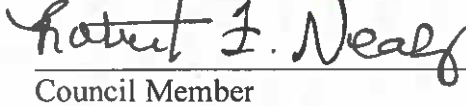
CITY OF PICKENS, SOUTH CAROLINA




Mayor



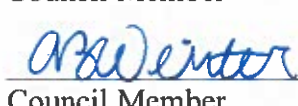
Council Member



Council Member



Council Member



Council Member



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ATTEST


Clerk to Council