
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LIBERTY
AUTHORIZING A PROJECT PARTICIPATION AGREEMENT RELATED TO THE
FINANCING AND DEVELOPMENT OF A PROJECT AS DEFINED UNDER TITLE 6,
CHAPER 25 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED;
AND MATTERS RELATED THERETO

Ordinance 2021-10 Approving Project Participation
Agreement

Enacted November 8, 2021

NOW THEREFORE BE IT ORDAINED by the City Council of the City of Liberty (the “**City Council**”), the governing body of the City of Liberty, South Carolina (the “**City**”) in meeting duly assembled:

Section 1 Findings. The City Council makes the following findings of fact in connection with the enactment of this ordinance (this “**Ordinance**”):

(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 of Pickens, 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 “**Enabling 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.

(c) Pursuant to Section 6-25-128 of the Enabling Act, the Joint System and the members thereof are authorized to enter into contracts concerning the sale or purchase of capacity and output from a project.

(d) In furtherance of such purposes, the Joint System has determined to undertake the Project (as defined in the herein defined Project Participation Agreement). This undertaking will provide the primary source of water for the Participants (as such term is defined in the Project Participation Agreement).

(e) The purpose of the Project is to ensure that the provision of water to the Joint System’s service area will be under local control; that the water rates will be reasonable to local users; that an adequate water supply will be available for future growth in Pickens County; and that the Participants may have an opportunity to make recommendations for future policies and operations.

(f) The Joint System, in order to undertake the Project, must obtain financing for three discrete stages for the Project. First, the Joint System requires a bridge loan for the planning, engineering, initial permitting, and design stage of the Project (the “**Planning Phase**”). Second, the Joint System will require interim financing for the Project during the construction thereof (the “**Construction Phase**”). Third, and finally, the Joint System will require long-term financing for the Project in order to amortize the costs thereof over the useful life thereof (the “**Operational Phase**”).

(g) At present, the Joint System contemplates three separate financings corresponding to the foregoing phases: (i) a borrowing for the Planning Phase (the “**Bridge Financing**”), (ii) a borrowing for the Construction Phase (the “**Construction Financing**”), and (iii) a long term

borrowing for the Operational Phase to amortize the costs of the Project over its life (the “**Permanent Financing**” and together with the Bridge Financing and the Construction Financing, the “**Financings**”). The Financings will allow the Joint System to raise funds (i) to defray the Costs (as defined in the Enabling Act) of the Project, and (ii) to pay the issuance, professional, and other costs related thereto.

(h) The PPA provides for (1) the recommended size and capacity of the water facilities and (2) allocated capacities of water for the Participants. The City finds it to be in the best interests of the citizens and residents of the City of Pickens that a portion of the Bridge Financing be used by the Joint System during the Planning Phase to retain an independent engineer to conduct a peer review of the engineering studies relied upon by the Joint System to determine the size and capacity of the water facilities and the allocated capacity for the Participants.

(i) In order to provide for the financing and development of the Project and the purchasing and selling of water generated therefrom, the Joint System and the Participants have determined to set forth their respective rights and obligations in a Project Participation Agreement among the Joint System and the Participants, a substantially final form of which is attached hereto as Exhibit A (the “**Project Participation Agreement**”). Terms with initial capitals used herein and not otherwise defined have the meanings given such terms in the Project Participation Agreement unless context clearly requires otherwise.

(j) As set forth in the Project Participation Agreement, each of the Participants shall have determined that it is in the best interests of its customers and residents located within its respective service area to participate in the Project by becoming a member of the Joint System and agreeing to the terms of the Project Participation Agreement. By joining together, economies of scale may be achieved and each Participant will be able to acquire a safe and secure source of water.

(k) In connection with the negotiations attendant to the Project Participation Agreement, the City of Liberty, South Carolina (“**Liberty**”) has determined to seek membership in the Joint System and, upon joining, to become a party to the Project Participation Agreement and a Participant in the Project.

(l) Pursuant to a resolution adopted by the City Council of Liberty on September 13, 2021, entitled “A RESOLUTION AUTHORIZING THE CITY OF LIBERTY, SOUTH CAROLINA TO JOIN AND BECOME A MEMBER OF THE PICKENS REGIONAL JOINT WATER SYSTEM; AND OTHER MATTERS RELATED THERETO” Liberty has formally petitioned the Joint System for membership.

(m) Pursuant to a resolution adopted by the Commission of the Joint System on September 14, 2021, entitled “A RESOLUTION OF THE PICKENS REGIONAL JOINT WATER SYSTEM COMMISSION RECEIVING THE APPLICATION OF THE CITY OF LIBERTY, SOUTH CAROLINA TO BECOME A MEMBER OF THE PICKENS REGIONAL JOINT WATER SYSTEM AND SOLICITING THE APPROVAL OF THE EXISTING MEMBERS IN CONNECTION WITH THE SAME IN ACCORDANCE WITH TITLE 6, CHAPER 25 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED; AND

MATTERS RELATED THERETO” the Joint System has received the application of Liberty and requested the consideration of each Initial Member as to the approval of such application.

(n) The governing board of each Participant either has approved the application of Liberty to join the Joint System and become a Participant, or is currently in the process.

(o) The governing board of each Participant, recognizing the benefits to be gained by such joint action, seeks to undertake the Project pursuant to the provisions of the Project Participation Agreement to purchase water from the Joint System and to pay for such amount of water by assuming the responsibility for a pro-rata amount of the operations and maintenance costs, costs of depreciation and contingencies, and the debt service on Bonds issued by the Joint System to defray the cost of the Project.

(p) As a means of obtaining favorable financing terms in exchange for providing security to the holders of Bonds to be issued by the Joint System, all Participants have agreed to share on a pro-rata basis certain of the obligations of each Participant under the provisions of the Project Participation Agreement on a “step-up” basis. The City, as also found by the Joint System, finds that such arrangement will ensure that the financing of the Project will be achieved at the lowest possible cost and that the Project once completed will remain under the control and operation of the Participants executing the Project Participation Agreement.

Section 2 Specific Findings and Approvals. (a) The City Council hereby finds that it is in the best interests of the City’s customers and residents located within its service area to participate in the Project by participating as a member of the Joint System and agreeing to the terms of the Project Participation Agreement, which the City Council finds is a contract entered into pursuant to Section 6-25-128 of the Enabling Act.

(b) The Project is hereby approved pursuant to Section 6-25-110 of the Enabling Act, which approval, when granted by each Participant, will allow for the financing, construction, development, and maintenance of the same without further approval or authorization by any Participant.

Section 3 Approval of Participation Agreement and Execution Thereof. The Project Participation Agreement is hereby approved with such changes as the Mayor shall determine necessary and appropriate, his execution thereof on behalf of the City constituting conclusive evidence of the approval of all such changes, provided that the following terms shall not be subject to material change or revision:

- (1) The scope of the Project shall provide that the Plant shall have a capacity of not less than 12 MGD and shall include an expansion to 16 MGD;
- (2) Participants may be added upon the consent of each Participant upon the same terms (except as to Allocated Percentage) as all other Participants;
- (3) Participants may be added or removed only if (any removal prior to execution of the Project Participation Agreement at the sole discretion of the individual

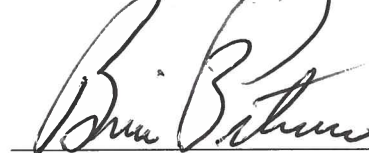
Participant) the sum of the final Allocated Percentages shown in Exhibit A of the Project Participation Agreement equals 100% at execution thereof;

- (4) The initial term shall not extend beyond June 30, 2071;
- (5) The requirement that a Participant purchase all of its water requirements may be qualified to allow a Participant to purchase all of its water requirements (i) within a specific geographic area, (ii) with regard to a specific customer base, or (iii) with respect to a specific sum of water if such qualification is described in the Project Participation Agreement;
- (6) The absolute payment obligation of each Participant shall be sufficient to meet all debt service on Bonds and all Operation and Maintenance Expenses;
- (7) Any failure of a Participant to pay amounts due shall result in the loss of the Service Right for such Participant and the other Participants shall step up to pay all amounts due by the defaulting Participant; and
- (8) The maximum aggregate principal amount of the Construction Financing set forth at Section 3.09(c)(ii) of the Project Participation Agreement shall not exceed \$65 million.

Section 4 Effective Date. The provisions of this Ordinance shall be effective immediately upon the second reading hereof.

ENACTED AS AN ORDINANCE and approved at a meeting duly assembled by the City Council this 8th day of November 2021.

CITY OF LIBERTY, SOUTH CAROLINA



Mayor

(SEAL)

ATTEST:


City Clerk

First Reading: October 11, 2021
Second Reading: November 8, 2021

Exhibit A

Project Participation Agreement