

ORDINANCE NO. 2022-13

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

Ordinance 2022-13 Approving Amendments to Project
Participation Agreement

Enacted August _15, 2022

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, South Carolina, the Easley-Central Water District, the Liberty 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. On December 29, 2021, the City joined the Initial Members (the City and the Initial Members, the “*Members*”) and became a member of the Joint System.

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

(d) On November 8, 2021, the City Council enacted an ordinance approving the execution of a project participation agreement pursuant to Section 6-25-128 of the Enabling Act and made the required statutory findings (the “*Approving Ordinance*”).

(e) The Approving Ordinance approved the project participation agreement and authorized the Chairman of the City Council to execute the agreement on behalf of the City, provided that the final form of the agreement contain no material changes to the following terms:

- (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.

(f) On January 11, 2022, the Members and the Joint System entered into that certain Project Participation Agreement (the “**Project Participation Agreement**”) and the City Council finds that such Project Participation Agreement contained all material terms required in the Approving Ordinance, ratifies the Project Participation Agreement as executed, and affirms and renews its finding that the Project and the Project Participation Agreement are in its best interests. Terms with initial capitals used herein and not otherwise defined have the meaning given such term in the Project Participation Agreement unless context clearly requires otherwise.

(g) Pursuant to the Project Participation Agreement, the Joint System, as part of the Planning Phase, was required to commission a report of an independent engineer (which cannot be the Engineer) to conduct a peer review of the engineering studies used by the Joint System to determine the size and capacity of the water facilities and the allocated capacity for the Participants.

(h) The City is in receipt of GMC Technical Memorandum No. 1 by Michael A. Knapp, PE of Goodwin Mills Cahill to the Liberty Regional Joint Water System dated July 2022 (the “**Report**”). The City Council finds that the Report satisfies the requirement listed at item (7) under the definition of Initial Permits in the Project Participation Agreement.

(i) The Report recommends “that the FERC permit for withdrawal be requested for a minimum of 20 MGD to account for 15 MGD of raw water treatment and an additional 5 MGD for conservation water loss due to sedimentation basin cleaning and filter backwashing.” The Report further recommends that “Initial treatment capacity should be constructed to treat 10 MGD,” and that “a 5 MGD expansion could be realized by 2035.”

(j) The Approving Ordinance specifies and the Project Participation Agreement provides that the Plant shall be 12 MGD, expandable to 16 MGD, and that such expansion shall be within the scope of the Project.

(k) Based on the Report, the City Council finds that it is appropriate to authorize an amendment to the Project Participation Agreement to provide for a Project with a Plant that is 10 MGD and that the definition of Project include expansions up to 20 MGD to conform to the anticipated FERC license, to conform the definition of Initial Permits to reflect that the Report satisfies that requirement and has been received by striking item (7) of that definition, and to make certain other revisions reflecting current facts, expectations, and plans of the Members (the "*Amendments*").

Section 2 Specific Findings and Approvals. (a) The City Council hereby renews its finding that it is in the best interests of the City and its 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, as amended and restated as authorized below, which the City Council finds is a contract entered into pursuant to Section 6-25-128 of the Enabling Act.

(b) The Project, as amended as provided herein, 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 Amendment to Project Participation Agreement; Restatement of Such Agreement and Execution Thereof. The Amendments to the Project Participation Agreement are hereby approved and consent to such changes is evidenced hereby. Such Amendments are shown in Exhibit A hereto. The Mayor of the City is authorized to execute an amended and restated Project Participation Agreement in the form attached hereto as Exhibit B upon approval of the Amendments by all Members.

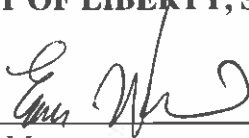
Section 4 General Repealer, Severability. To the extent any provision of a prior ordinance, including the Approving Ordinance, conflicts with any provision hereof, such provision is repealed and the provision or provisions of this Ordinance shall control and be of force and effect. To the extent any portion of this Ordinance shall be made inoperable in case any one or more of the provisions of this Ordinance shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Ordinance, but this Ordinance 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 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 15th day of August 2022.

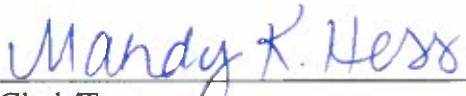
CITY OF LIBERTY, SOUTH CAROLINA

(SEAL)



Mayor

Attest:



Clerk/Treasurer

First Reading: August 8, 2022
Second Reading: August 15, 2022

Exhibit A

The Amendments

Exhibit B

Amended and Restated Project Participation Agreement

