
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LIBERTY AUTHORIZING THE SECOND AMENDMENT 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 THERETO

Ordinance No. 2023-10 Approving Second
Amendment to the Project Participation Agreement

Enacted August 14, 2023

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 No. 2021-10 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) On January 11, 2022, the Members and the Joint System entered into that certain Project Participation Agreement (the “**Project Participation Agreement**,” as amended from time to time) 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.

(f) On August 15, 2022, the Members and the Joint System entered into the first amendment to the Project Participation Agreement (the “**First Amended Project Participation Agreement**”), following approval of such First Amended Project Participation Agreement by the governing body of each Member, in order 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 GMC Technical Memorandum No. 1 by Michael

A. Knapp, PE of Goodwin Mills Cahill to the Pickens Regional Joint Water System dated July 2022 satisfies that requirement to strike item (7) of that definition, and to make certain other revisions reflecting current facts, expectations, and plans of the Members.

(g) By letter dated April 27, 2023, the South Carolina Rural Infrastructure Authority (“*RIA*”) advised the Joint System of the award of a \$10,000,000 grant (SCIIP Grant A-23-C160 - Pickens Regional Joint Water System - Water Transmission and Storage) administered by the South Carolina Rural Infrastructure Authority (RIA) using State and Local Fiscal Recovery Funds received through the American Rescue Plan Act (the “*SCIIP Grant*”). The special conditions of the SCIIP Grant provide, *inter alia*, that:

- (1) SCIIP funded project will be limited to Division - Transmission Main Storage (TMS), Contracts 2 – 4, as detailed in the project narrative and project map. Grantee must submit a revised grant application that is consistent with the approved scope of work and grant award. Contact RIA for more information.
- (2) Grantee must submit a funding commitment letter that details the source(s) and amounts of additional funds needed for remaining Division-TMS project costs and assurance that identified funds will be available within 90 days of RIA’s grant award (July 23, 2023).
- (3) Since the entire project is contingent on approval of USDA-RD funds, Grantee must submit USDA-RD’s written commitment within 90 days of RIA’s grant award (July 23, 2023). Additionally, please confirm in writing from USDA-RD that SCIIP/ARPA funds may be used in conjunction with USDA-RD funds for this project.
- (4) Grantee must submit a revised project schedule for the SCIIP funded project, based on the timing and availability of all funds necessary for the entire project as described in the application.

(h) On July 11, 2023, members of the Joint System Commission met with the Executive Director and staff of RIA to discuss the SCIIP Grant and the special conditions thereof. Responsive to the discussions and guidance provided by RIA in such meeting, the Joint System Commission will submit a rescope grant application to RIA for a water source agnostic transmission project, and provide assurances as to the availability of local match monies; RIA will not require that the Joint System provide assurances from USDA-RD as to financing or the compatibility of USDA-RD and ARPA monies as set forth at item (3) above.

(i) By resolution dated July 11, 2023, the Joint System Commission authorized an amendment to the First Amended Project Participation Agreement to provide clear and complete authorization for the portion of the Project to be funded from the SCIIP Grant (the “*Transmission and Storage Project*”) and to allow phasing of components of the Project, to revise the total authorized borrowing amount to ensure availability of funds for the entire Project consistent with current cost projections, to revise certain conditions to the issuance of debt for

specified phases of the Project, and to make certain other revisions reflecting current facts, expectations, and plans of the Members (the “*Second Amendment*”).

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 herein, 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 Second Amendment to Project Participation Agreement; Restatement of Such Agreement and Execution Thereof. (a) The Second Amendment to the Project Participation Agreement is hereby approved and consent to such changes is evidenced hereby. Such revisions comprising the Second Amendment are shown in Exhibit A hereto. The Mayor of the City is authorized to execute an amended and restated Project Participation Agreement (the “*Second Amended Project Participation Agreement*”) in the form attached hereto as Exhibit B upon approval of the Second Amended Project Participation Agreement by all Members. The Mayor of the City is hereby authorized to take all actions and execute all documents necessary to effect the provisions of this Ordinance.

(b) An amendment to the definition of “Planning Phase” in the Second Amended Project Participation Agreement, with the following change (underlined and bold), is also hereby approved as shown below :

“*Planning Phase*” has the meaning given in the Background and Findings hereof, and, for the avoidance of doubt, may include (i) the acquisition of rights of way and existing infrastructure necessary or convenient for the Project, including the U.S. Highway 178 Water Main **and (ii) the acquisition of the site for the Plant.**

The Mayor of the City is authorized to execute an amendment to the Second Amended Project Participation Agreement upon approval of the amended definition of “Planning Phase” by all Members. The Mayor of the City is hereby authorized to take all actions and execute all documents necessary to effect the provisions of this Ordinance included an amendment, supplement, or restatement of the Project Participation Agreement, as amended, to reflect the amended definition of Planning Phase.

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

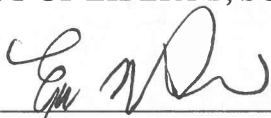
one or more of the provisions of this Ordinance shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Ordinance, but this Ordinance shall be construed and enforced as if such illegal or invalid provisions had not been contained 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 14th day of August 2023.

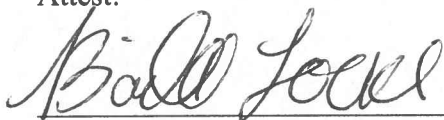
CITY OF LIBERTY, SOUTH CAROLINA

(SEAL)



Erica, R. Woods, Mayor

Attest:



Bailee Locke, Clerk of Council

First Reading: August 1, 2023
Second Reading: August 14, 2023

Exhibit A

Second Amendment to Project Participation Agreement