

Mayor
ISAIAH SCIPIO
City Council
CAMERON RIVERS, Mayor Pro-Tem
JOHN MCMANUS
FLOYD ROGERS
RAY WILSON
ALLIE WINTER



Administrator
TIM O'BRIANT
City Clerk
DONNA F. OWEN

City of Pickens

www.cityofpickens.com

AGENDA
CITY COUNCIL SPECIAL CALLED MEETING
Monday January 6, 2025
6:00 p.m.

CITY HALL
219 PENDLETON STREET
PICKENS, SOUTH CAROLINA

1. WELCOME AND CALL TO ORDER:
2. INVOCATION AND PLEDGE OF ALLEGIANCE:
3. CONVENE INTO EXECUTIVE SESSION TO RECEIVE LEGAL ADVICE AS IT RELATES TO CONTRACTUAL MATTERS REGARDING GREENVILLE WATER AS ALLOWED BY SC CODE SECTION 30-4-70 (A) (2) AND TO DISCUSS PERSONNEL AS IT RELATES TO COMPENSATION MARKET ANALYSIS AS ALLOWED BY SC CODE SECTION 30-4-70 (A) (1):
4. RECONVENE INTO PUBLIC SESSION:
5. ACTION AS A RESULT OF EXECUTIVE SESSION:
6. ADJOURNMENT:

WATER CAPACITY AND SUPPLY AGREEMENT

BETWEEN

GREENVILLE WATER

AND

CITY OF PICKENS, SOUTH CAROLINA

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT, 9 U.S.C. § 1 ET SEQ., OR IN THE ABSENCE OF A FINDING OF INTERSTATE COMMERCE, TO S.C. CODE ANNOTATED §15-48-10 ET SEQ.

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This **WATER CAPACITY AND SUPPLY AGREEMENT** (this “Agreement”) made as of this ___ day of _____, 2024, by and among the **BOARD OF COMMISSIONERS OF PUBLIC WORKS OF THE CITY OF GREENVILLE**, doing business as **GREENVILLE WATER** (“Seller”), and the **CITY OF PICKENS, SOUTH CAROLINA** (“Purchaser”) (Purchaser and Seller may be individually referred to as a “Party” and collectively as the “Parties”).

BACKGROUND

(A) Seller is a Board of Commissioners of Public Works established August 1, 1918, pursuant to a referendum conducted by the City of Greenville, a municipal corporation of the State of South Carolina, chartered on December 18, 1831, located in Greenville County, South Carolina and, as such, possesses all powers granted by the Constitution and statutes of the State of South Carolina to boards of commissioners of public works. Pursuant to the applicable provisions of law, Seller operates a water system which provides water service both within and without the incorporated limits of the City of Greenville to a population in excess of 450,000 people.

(B) The Purchaser is a political subdivision and municipal corporation existing under S.C. Const. art. XIII and Title 5 of the Code of Laws of South Carolina. Pursuant to the applicable provisions of law, the Purchaser owns and operates a water system without the incorporated limits of Seller.

(C) Seller has constructed water intake, treatment, production, storage, transmission, and distribution facilities (the “Facilities”) which are capable of producing potable water in quantities sufficient to meet the needs of not only its retail customers, but also wholesale customers.

(D) The Parties agree that, subject to the terms of this Agreement, it is in their mutual interest for the Purchaser to provide its support, to the fullest extent possible, for the Seller’s reasonable efforts to secure Surface Water Withdrawal Permits from the State of South Carolina, provided, however, that Purchaser shall not be required to expend any monies in connection with providing such support. This support, when appropriate, will be provided whether the Seller is seeking to maintain the amounts authorized under the Permits in force as of the date of the Agreement, or to expand the amount authorized as the Seller determines is necessary to ensure the availability of potable water supply for both the Seller’s and Purchaser’s future needs.

(E) This Agreement has been duly authorized by the respective governing bodies of Seller and Purchaser, each of which has authorized the undersigned officers to execute this document on its behalf. Seller and Purchaser acknowledge that this Agreement supersedes and replaces the Current Contract and any and all other prior agreements, understandings or

undertakings between the Parties with respect to the supply of water by Seller to Purchaser.

NOW, THEREFORE, in consideration of the premises hereinabove set forth and the covenants and agreements of the Parties hereunder, Seller and Purchaser agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01 Definitions. In addition to any words and terms elsewhere defined in this Agreement, the following words and terms as used in this Agreement shall have the following meanings unless some other meaning is plainly intended:

“Allocated Capacity” means the portion of the Capacity of Facilities Benefiting Purchaser allocated to Purchaser pursuant to rights acquired or to be acquired hereunder, expressed in MGD. The initial Allocated Capacity is 1.3 MGD.

“Average Daily Non-Revenue Water” means the difference between the amount of water produced by the Seller and the amount of water sold to all customers. Average Daily Non-Revenue Water includes system flushing and backwashing, hydrant testing, line loss etc.

“Average Daily Non-Revenue Water Factor” means the 15% factor that represents the portion of treated water produced that is not sold to customers. This factor is used to adjust the Total Daily Capacity operated by the Seller to remove that portion of capacity that is not available to the customers of the system. This Average Daily Non-Revenue Water Factor is applied by multiplying the Total Daily Capacity by the 1/1.15.

“Buy-In Charge” means, with respect to the Initial Capacity Payment, the amount specified in Section 3.01(A) hereof. Thereafter, “Buy-In Charge” means a charge per gallon per day to purchase Allocated Capacity in the Facilities Benefiting Purchaser, calculated on an annual basis, as follows:

$$\frac{\text{(net plant investment of Facilities Benefiting Purchaser)} \times \text{(Allocated Capacity to be purchased)}}{\text{Capacity of Facilities Benefiting Purchaser}}$$

“Capacity of Facilities Benefiting Purchaser” means the current Total Daily Capacity of the Adkins water treatment plants operated by Seller, expressed in MGD and as adjusted by the Reliable Capacity Planning Threshold (based on SCDES Regulations 61-58.7.C11 and 12 in effect at the time of the Agreement or as may be amended in the future related to capacity planning for surface water treatment plants) and to reflect average daily percentage water loss for the Facilities. The average daily percentage water loss for the Facilities will be updated annually. As of the date hereof, the Total Daily Capacity of the Adkins water treatment plant is 60.0 MGD. The SCDES Reliable Capacity Planning Factor is 90% of Total Daily Capacity and the average daily percentage of water loss for the Facilities is 15%. Thus, as of the date hereof, the Capacity of Facilities Benefiting Purchaser, as calculated on the basis of daily capacity, is as follows:

Facility	Daily Capacity (MGD)
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Adkins water treatment plant	60.0
Reliable Capacity Planning Factor	90%
Reliable Capacity Planning Threshold	54.0
Average Daily Non-Revenue Water	15%

$54.0 \text{ MGD} \div 1.15 = 46.96 \text{ MGD}$

“Capital Costs” means all reasonable charges, fees, and or other expenses (including without limitation, material, labor, and supply expenses, administrative, design, engineering, legal, accounting, and other professional fees, and costs of financing) required for Normal Capital Improvements (other than Regulatory Capital Improvements) to the Facilities Benefiting Purchaser.

“Common to All Customers Allocation” means an allocation of Operation and Maintenance Costs, Fixed Depreciation, and/or Net Plant Investment to Seller’s three customer categories (Retail Customers, Pickens County Wholesale Customers, and Non-Pickens County Wholesale Customers) that is based on a portion of either Total Flows, Total Max Day Demands, annual customer bills, or annual residential equivalent units (REU). Some Facilities benefit or are common to all of the customer categories and are recovered proportionately from each customer category.

“Connecting Meter” means the meter or meters owned by Seller and used to measure the flow of the potable water at the respective points of interconnection between the Facilities Benefiting Purchaser and Purchaser’s System.

“Current Contract” is the Interim Agreement Between Greenville Water and the City of Pickens dated as of August __, 2024.

“SCDES” means the State of South Carolina Department of Environmental Services. SCDES is the successor to the South Carolina Department of Health and Environmental Control (“SCDHEC”), and any reference to SCDEC regulations and policies shall refer to those of SCDHEC as appropriate.

“Depreciation Charge” shall be established annually as described in Section 3.04 (B) and means the amount paid by the Purchaser as part of the Monthly Base Charge, reconciled on an annual basis, as follows:

$$\text{Fixed Depreciation Allocated to Purchaser} \div 12 \text{ Months}$$

The Depreciation Charge represents the Purchaser’s ongoing contributions for its share of the required Capital Costs of Normal Capital Improvements to the Facilities Benefiting the Purchaser. The Purchaser will not be required to make any additional payments or contributions (other than by way of the Depreciation Charge) for Capital Costs of Normal Capital Improvements.

“Direct Allocation” means an allocation of Operation and Maintenance Costs, Fixed Depreciation, and/or Net Plant Investment to a specific customer category that is not based

on a portion of Total Flows or Total Max Day Demands. Certain Facilities do not benefit all three of the customer categories (Retail Customers, Pickens County Wholesale Customers, and Non-Pickens County Wholesale Customers) served by the Seller. The costs associated with these Facilities require Direct Allocation to those customer categories that benefit from the Facilities to ensure the costs of the Facilities are recovered only from those customer categories. For example, Purchaser's customers do not benefit from the Stovall water treatment plant, so the Operation and Maintenance Costs, Fixed Depreciation, and/or Net Plant Investment associated with this facility are allocated to the other customer categories based on a Direct Allocation. Furthermore, only the Retail Customers benefit from Local Distribution System, so the Operation and Maintenance Costs, Fixed Depreciation, and/or Net Plant Investment for these facilities are allocated to this customer category based on a Direct Allocation.

“Drought” means (i) a period of time with less-than-normal rainfall which results in a declaration by the South Carolina Department of Natural Resources Drought Response Committee, pursuant to the provisions of Title 49, Article 23 of the Code of Laws of South Carolina, that either a “severe” or “extreme” drought exists in Greenville, Pickens or Oconee counties, or (ii) circumstances under which Seller is obligated, either by statute, rule, regulation, permit or license terms, order of a court or administrative agency, or contract to invoke mandatory water conservation or withdrawal restrictions.

“Effective Date” means the date the Parties execute the Agreement as stated on the first page of this Agreement.

“Excess Usage Surcharge” means the charge that will be assessed per 1,000 gallons of Metered Flow in excess of one hundred percent (100%) of Allocated Capacity during any 24-hour period. As of the Effective Date of this Agreement, the Excess Usage Surcharge is \$1.16 per 1,000 gallons in excess of one hundred percent (100%) of Allocated Capacity. The Excess Usage Surcharge shall be established annually as described in Section 3.04 (B). The Excess Usage Surcharge will be calculated for each subsequent Seller Fiscal Year based on the ROI Charge. When needed for Good Utility Practices, such as flushing, etc., Purchaser increases its usage for a finite period of time, after due notice and approval from the Seller, and that such temporary increases would cause Purchaser to exceed its Allocated Capacity for the stated period, such increases would not be considered excess usage or be subject to the Excess Usage Surcharge hereunder.

“Facilities” means all of Seller's water intake, treatment, production, storage, transmission, and distribution facilities.

“Facilities Benefiting Purchaser” means (i) the Adkins water treatment plant operated by Seller, (ii) transmission main / distribution lines leading from said water treatment plant to the Connecting Meters (excluding any components of the Local Distribution System), (iii) 72-inch Adkins Water Transmission Line, (iv) 12-inch gravity-fed main to be constructed to serve Purchaser's distribution system from Seller's Cedar Rock storage Facility (v) Pumping Stations, (vi) the Connecting Meters, (vii) Administrative Buildings, Equipment, and Tools, and (viii) any Normal Capital Improvements made to the said water treatment plants, transmission main / distribution lines, pumping stations, or

Connecting Meter(s) from time to time as provided herein, and used by Seller to the benefit of Purchaser to produce potable water and transport same to Purchaser.

“Fixed Depreciation” means Seller’s total annual depreciation expense associated with the Facilities Benefiting Purchaser for the most recent Seller Fiscal Year for which audited financial statements are available.

“Fixed Depreciation Allocated to Purchaser” means the portion of total annual Fixed Depreciation allocated to Purchaser based on allocations of depreciation associated with specific Facilities Benefiting Purchaser based on either a Direct Allocation or a Common to All Customers Allocation. The Fixed Depreciation is allocated to the wholesale customer categories based on Allocated Capacity.

“Force Majeure” means, to the extent beyond the control of the Party claiming an event of Force Majeure under Section 6.01 hereof, any of the following: acts of God or nature, strikes, lockouts, or other industrial disturbances; acts of a terrorist or public enemy, orders of any kind of the government of the United States or the State of South Carolina or the courts thereof, or any civil or military authority; insurrections, riots, epidemics, pandemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, Droughts, arrests, restraint of government and people, civil disturbances and explosions; malfunctions of machinery and water mains and transmission and pipe lines; partial or entire failure of water supply due to the exhaustion of raw water sources or water withdrawal restrictions imposed by competent authority, or inability of Seller to provide potable water hereunder, or the Purchaser to receive potable water hereunder, on account of any other causes not reasonably within the control of the Party claiming such inability.

“Future Capacity Purchase” means any future payment from Purchaser to Seller to acquire rights to additional Allocated Capacity, whether the capacity is available in the Facilities Benefiting Purchaser or whether the Seller must make expansions to Facilities Benefiting Purchaser to make additional Allocated Capacity available to the Purchaser.

“Good Utility Practices” means any of the practices, methods, and acts engaged in or approved by a significant portion of the water treatment and supply industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could have been expected to accomplish the desired results at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practices does not require use of the optimum practice, method, or act, but only requires use of practices, methods, or acts generally accepted in the water supply and treatment industry.

“Increased Allocated Capacity Capital Improvements” means all structures, equipment, replacements of equipment, or repairs to structures or equipment to, at, or upon the Facilities Benefiting Purchaser necessary to increase Allocated Capacity.

“Independent Certified Public Accountant” means such certified public accountant or firm of certified public accountants retained by Seller for the purpose of auditing Seller’s books and records.

“Initial Capacity Payment” means the payment of a Buy-In Charge from Purchaser to Seller to acquire rights to its initial Allocated Capacity.

“Local Distribution System” means any water lines less than 16 inches in diameter, related pump stations, standpipes and tanks, and valves and equipment.

“Max Day Demand” means the maximum amount of water used during any 24-hour period during a given fiscal year for the Purchaser. The Max Day Demand is used to allocate certain costs based on the Pro Rata Share of the Max Day Demand in proportion to the Total Max Day Demands.

“Meter Charge” means the amount to be paid by Purchaser as part of the Monthly Base Charge per Connecting Meter(s), which will be based on the Seller’s actual published retail rates for customer and billing services and meter costs for reading, testing, and maintaining meters based on meter size.

“Metered Flows” means the measurement of potable water supplied to Purchaser by Seller at the Connecting Meter(s), expressed in 1,000 gallons.

“MGD” means a million gallons per day.

“Minimum Future Capacity Purchases” means the minimum increment of Future Capacity Purchases in Facilities Benefiting Purchaser that the Purchaser may acquire from the Seller, shall not be less than 250,000 gallons per day.

“Monthly Base Charge” shall be established annually as described in Section 3.04 (B) and means the amount to be paid by Purchaser to Seller on a monthly basis consisting of the Meter Charge and the Depreciation Charge. The Monthly Base Charge will be established by reference to the most recent Seller Fiscal Year.

“Monthly Billing Cycle” means the typical thirty-day billing cycle for which Seller conducts measurement of potable water supplied to Purchaser by Seller at the Connecting Meter(s).

“Net Plant Investment” means Seller’s original investment in all water system assets less the accumulated depreciation on those assets as reflected on an annual basis in Seller’s audited financial statements for the most recent Seller Fiscal Year.

“Net Plant Investment of Facilities Benefiting Purchaser” means the portion of Sellers’s Net Plant Investment allocated to and associated with the Facilities Benefiting Purchaser.

“Non-Pickens County Wholesale Customers” means those wholesale customers of Seller not located in Pickens County that connect to the Seller’s water distribution system. These customers benefit from both the Adkins water treatment plant and the Stovall water treatment plant and from the Seller’s trunk water distribution system. Operation and

Maintenance Costs, Fixed Depreciation, and Net Plant Investment are allocated collectively to this customer category.

“Normal Capital Improvements” means all structures, equipment, replacements of equipment, or repairs to structures or equipment to, at, or upon the Facilities Benefiting Purchaser (other than Regulatory Capital Improvements or Increased Capacity Capital Improvements).

“Operation and Maintenance Charge” shall be established annually as described in Section 3.04 (B) and means the charge per 1,000 gallons of Metered Flow during each Monthly Billing Cycle to be paid by Purchaser, calculated as follows:

$$\text{Seller's Operation and Maintenance Costs} \div \text{total annual Metered Flows} \\ \text{(expressed in thousands of gallons) of the Facilities Benefiting Purchaser}$$

In the formula above, “Seller’s Operation and Maintenance Costs” means the Seller’s total Operation and Maintenance Costs associated with the Facilities Benefiting Purchaser for the most recent Seller Fiscal Year.

“Operation and Maintenance Costs” means, for each period in question, direct expenses required of Seller (i) to operate the Facilities Benefiting Purchaser, (ii) to maintain the Facilities Benefiting Purchaser so that they will have a reasonable useful life, and (iii) to defray the costs of current repairs to the Facilities Benefiting Purchaser, all as necessary for the delivery of potable water in accordance with this Agreement and shall include, without limiting the generality of the foregoing, salaries, wages, employee benefits, cost of materials and supplies, cost of routine repairs, renewals, replacements, and alterations occurring in the usual course of business, cost of insurance, cost of legal and professional fees including audits, taxes, if any, and applicable Seller’s administrative, non-departmental, overhead and other expenses not subject to amortization or depreciation. Operation and Maintenance Costs will be determined based on Seller’s audited books and records for the previous Seller Fiscal Year and do not include the costs of billing or metering that are reflected in the Meter Charge.

“Overage Day” means each separate 24-hour period during which Purchaser withdraws water from Seller in an amount in excess of its Allocated Capacity.

“Pickens County Wholesale Customers” means those wholesale customers of Seller located in Pickens County that connect to the Seller’s water system at the 72-inch transmission line that conveys water from the Adkins water treatment plant to the Seller’s water distribution system. These customers do not benefit from the Stovall water treatment plant or the Seller’s water distribution system. Operation and Maintenance Costs, Fixed Depreciation, and Net Plant Investment are allocated collectively to this customer category.

“Pro Rata Share” means the percentage derived by dividing Allocated Capacity by the Capacity of Facilities Benefiting Purchaser, Max Day Demands by Total Max Day Demands, Metered Flows by Total Flows, or by dividing additional Allocated Capacity by additional Capacity, as the circumstances may dictate.

“Purchaser” means the City of Pickens, South Carolina.

“Purchaser’s System” means the Purchaser’s entire system for the production, receipt, storage, transmission, pumping, distribution, and delivery of potable water.

“Regulatory Capital Costs” means all reasonable charges, fees, and or other expenses (including without limitation, material, labor, and supply expenses, administrative, design, engineering, legal, accounting, and other professional fees, and costs of financing) required for necessary Regulatory Capital Improvements to the Facilities Benefiting Purchaser.

“Regulatory Capital Improvements” means all structures, equipment, replacements of equipment, or repairs to structures or equipment to, at, or upon the Facilities Benefiting Purchaser necessary to address regulatory requirements mandated by any Federal, State, and/or local agencies.

“Regulatory Capital Payment” means an amount to be paid to Seller by Purchaser for the purpose of recovering Purchaser’s Pro Rata Share of Regulatory Capital Costs as the circumstances may dictate.

“Reliable Capacity Planning Factor” means the 90 percent factor applied to the Total Daily Capacity to determine the average daily demand threshold for all customers at which the Seller shall submit to SCDES plans and specifications along with an application for a permit to construct an expansion to Total Daily Capacity within one hundred eighty (180) days. This factor is based on current SCDES Regulations 61-58.7.C11 and 12 in effect at the time of the Agreement or as may be amended in the future related to capacity planning for surface water treatment plants.

“Reliable Capacity Planning Threshold” means the reliable capacity limit allowed before the Seller shall submit to SCDES plans and specifications along with an application for a permit to construct an expansion to its Total Daily Capacity. This Reliable Capacity Planning Threshold is determined by multiplying the Total Daily Capacity by the 90% Reliable Capacity Planning Factor. This threshold is based on current SCDES Regulations 61-58.7.C11 and 12 in effect at the time of the Agreement or as may be amended in the future related to capacity planning for surface water treatment plants.

“Retail Customers” means the residential, commercial, and industrial customers of the Seller. Operation and Maintenance Costs, Fixed Deprecation, and Net Plant Investment are allocated collectively to this customer category.

“ROI Charge” shall be established annually as described in Section 3.04 (B) and means the Seller’s total annual return on investment in the Facilities Benefiting Purchaser, as determined by the Seller, based on its annual financial statements, the Net Plant Investment of Facilities Benefiting Purchaser from the preceding year, and its determination of a reasonable rate of return, as adjusted on an annual basis. The ROI Charge is not assessed to Purchaser on Metered Flows not in excess of Allocated Capacity, but is used to determine the Excess Usage Surcharge.

“**Seller**” means the Board of Commissioners of Public Works for the City of Greenville, South Carolina, doing business as Greenville Water, its successors and assigns.

“**Seller Fiscal Year**” means, initially, each period beginning on January 1 of a calendar year and ending December 31 of the same calendar year, and hereafter shall mean the then-current period of Seller’s fiscal year. Seller shall deliver prompt written notice to Purchaser of any change to its fiscal year, and the Parties shall negotiate in good faith any changes to this Agreement required by such change in Seller’s Fiscal Year.

“**Total Daily Capacity**” means the capacity expressed in MGD that the Adkins water treatment facilities operated by the Seller are capable of producing on a daily basis. This Total Daily Capacity is based on the capabilities of the treatment and transmission facilities. As of the date hereof, the daily capacity of the Adkins water treatment plant is 60.0 MGD, thus the initial Total Daily Capacity is 60.0 MGD.

“**Total Flows**” means the measurement of potable water supplied by Seller to all of its retail and wholesale customers during the most recent Seller Fiscal Year.

“**Total Max Day Demands**” means the sum of Max Day Demands for all customers within all the customer categories.

ARTICLE II **GENERAL REPRESENTATIONS AND COVENANTS; TERM**

Section 2.01 Representations of Seller. Seller hereby represents that it is a validly created governmental entity and a public body of the State of South Carolina and that it has the power, authority, and legal right to own and operate the Facilities and is capable of providing potable water as contemplated by this Agreement; that it has all necessary powers and authority to undertake and perform its obligations under this Agreement; that the execution and delivery of, and its performance under, this Agreement will not violate any judgment, decree, order, law, rule, permit, contract, or regulation; that no consent, permission, or approval that has not already been given is required for the valid execution and delivery of this Agreement by Seller; that this Agreement has been duly authorized, executed, and delivered by Seller, and constitutes a legal, valid, and binding obligation of Seller, enforceable in accordance with its terms; that, as of the Effective Date, there is no litigation or proceeding pending or threatened against or affecting Seller that (i) seeks to enjoin the performance of its obligations under this Agreement or (ii) if adversely determined, would materially adversely affect its ability to perform such obligations; and that it has taken all necessary action to authorize the execution and delivery of this Agreement and to perform its obligations under this Agreement.

Section 2.02 Ownership and Sale of Capacity in Facilities. The Facilities, and all related real and personal property, remain and shall at all times be the sole and absolute property of Seller; provided, however, Seller acknowledges that Purchaser has acquired the initial Allocated Capacity in the Facilities Benefiting Purchaser, and has the potential to acquire additional amounts of Allocated Capacity, in accordance with the provisions of this Agreement.

Section 2.03 Facilities Operation and Construction of Improvements.

(A) Seller represents that it has all rights, powers, authority, experience, and skills necessary to operate the Facilities and will have sufficient rights, powers, authority, experience and skills necessary to construct and operate any improvements to the Facilities as contemplated herein, including such permits, licenses or authorizations required from pertinent Federal, State or local authorities.

(B) Seller agrees that it will be solely responsible for the construction of any Normal Capital Improvements to the Facilities Benefiting Purchaser as contemplated herein subject, however, to Purchaser's compliance with all terms and conditions of the Agreement, including those pertaining to payment of the Initial Capacity Payment, any future Buy-In Charges, any required Regulatory Capital Payments, the Monthly Base Charge, and the Operation and Maintenance Charge. Purchaser will not be required to make any additional payments or contributions (other than by way of the Depreciation Charge) for Normal Capital Improvements.

(C) Prior to undertaking any Regulatory Capital Improvements to the Facilities Benefiting Purchaser that do not increase Allocated Capacity, Seller shall comply with the provisions of Section 3.01(B) hereof.

(D) After complying with the provisions of Section 3.01(B) hereof, Seller may make such modifications to any plans and specifications or construction contracts relating to Regulatory Capital Improvements to the Facilities Benefiting Purchaser without notifying Purchaser, provided that such modifications are not inconsistent with the intent of this Agreement and will not increase the projected costs of such Regulatory Capital Improvements by more than ten percent (10%) in the aggregate.

(E) Purchaser and its representatives and engineers shall have access to the Seller's premises upon which Facilities Benefiting Purchaser are, or are to be, located during business hours to inspect the construction of the improvements to the Facilities Benefiting Purchaser, but shall be subject at all times during their presence on the site to reasonable safety and security rules of Seller and will not interfere with the construction work. The rights of Purchaser and its representatives and engineers to review, monitor, and inspect the construction of improvements to the Facilities do not create the right to stop or otherwise impede construction.

(F) Seller shall obtain all approvals, licenses, and permits as and when required for the construction and operation of improvements to the Facilities Benefiting Purchaser.

Section 2.04 Representations of Purchaser. Purchaser represents that it is a political subdivision and municipal corporation existing under S.C. Const. art. XIII and Title 5 of the Code of Laws of South Carolina and that it has all necessary power and authority to own and operate Purchaser's System and to perform its obligations under this Agreement; that, upon information and belief, the execution and delivery of, and its performance under, this Agreement will not violate any judgment, decree, order, law, rule, permit, contract, or

regulation; that no consent, permission, or approval that has not already been given is required for the valid execution and delivery of this Agreement; that the Agreement has been duly authorized, executed, and delivered by Purchaser, and constitutes a legal, valid, and binding obligation of Purchaser, enforceable in accordance with its terms; that, as of the Effective Date, there is no litigation or proceeding pending or affecting Purchaser that (i) seeks to enjoin the performance of its obligations under this Agreement or (ii) if adversely determined, would materially adversely affect its ability to perform such obligations; and that Purchaser has taken all necessary action to authorize the execution and delivery of this Agreement.

Section 2.05 Purchaser's Rate Covenant. Purchaser covenants that at all times during the term of this Agreement it will impose such rates, fees, or charges upon its customers for services provided by Purchaser's System which will be sufficient at all times to enable the Purchaser to meet its obligations hereunder.

Section 2.06 Term of Agreement; Supersedes Prior Agreements; Entitlement to Benefits of Allocated Capacity.

(A) This Agreement shall be effective upon its execution and shall extend for an initial period commencing on such date and extending for forty (40) years from the Effective Date. Absent receipt of notice from a Party of its intent not to renew, this Agreement shall be automatically extended for two (2) periods of thirty (30) years, each. In the event any Party intends not to renew at the end of the initial or an extended term, such Party shall notify the other Party of its intent, in writing, not less than two (2) years prior to the end of such term.

(B) If Purchaser, through no fault of its own, is prevented from continuing under the terms of this Agreement through legal action, is otherwise subject to a court order enforcing the Purchaser's prior agreement with the Pickens Joint Regional Water System (the "PRJWS"), or if the PRJWS is successful in meeting its objective of opening, permitting, and operating a water treatment facility which has the capacity to supply the Purchaser's requirements by the PRJWS's projected date of January 1, 2027, the Purchaser shall have the right upon one (1) year's notice to the Seller to terminate this Agreement. In the event of a termination under this Section 2.06(B), the Purchaser is relieved of its obligation to make any future installment payments of the initial Buy-In Charge for the Allocated Capacity in the Facilities Benefiting Purchaser, but Purchaser will not receive a refund for any payments made under this Agreement prior the effective date of any such termination. Further, in the event of a termination by Purchaser pursuant to this paragraph, Purchaser will agree to reimburse Seller for the cost of the installation of the 12-inch gravity-fed transmission line serving Purchaser from the Seller's Cedar Rock storage facility.

(C) The Parties acknowledge and agree that the intention of this Agreement is that, by paying the initial Buy-In Charge and by funding monthly Depreciation Charges, Purchaser, and any Secondary Purchaser, will remain entitled to its Allocated Capacity in the Facilities Benefiting Purchaser for the term of this Agreement, and such further period of time during which the Parties shall operate under the terms and conditions of this Agreement, as long as Purchaser or a Secondary Purchaser is complying with all other terms and conditions of this Agreement. Further, should this Agreement expire as a result of Seller giving notice of its

intent to not renew same in accordance with Section 2.06(A) above, this shall not deprive Purchaser of the benefit of a refund of the initial Buy-In Charge for the Allocated Capacity in the Facilities Benefiting Purchaser, as adjusted, and Seller shall become obligated to make the payment to Purchaser of such refund as described in Section 2.06(D) below. Should Purchaser give notice of its intent not to renew this Agreement in accordance with Section 2.06(A) above, Seller shall have no obligation to make any payment to Purchaser of a refund of the initial Buy-In Charge for the Allocated Capacity in the Facilities Benefiting Purchaser. Purchaser will not be required to make any additional payments or contributions (other than by way of the Depreciation Charge) for Normal Capital Improvements to the Facilities Benefiting Purchaser during the term of this Agreement. Provided, that should this Agreement be in a terminated status for a period of time in excess of sixty (60) days during any term (initial or renewal) of this Agreement, Seller shall have the right to sell water from the Allocated Capacity to third parties notwithstanding anything in this Agreement to the contrary, the intent of the Parties being that Seller shall not be precluded from selling water in circumstances where Purchaser is not utilizing its Allocated Capacity.

(D) Should Seller determine not to renew this Agreement in accordance with Section 2.06(A) above after the expiration of the initial forty (40) year term or either thirty (30) year renewal term, Seller shall be obligated to pay Purchaser, or any Secondary Purchaser, a sum equal to a Buy-In Charge which reflects the factors which determine the Capacity of Facilities Benefiting Purchaser, as adjusted for then prevailing capacities, Reliable Capacity Planning Threshold and average daily percentage water loss for the Facilities. Should Purchaser, or any Secondary Purchaser, determine not to renew this agreement in accordance with Section 2.06(A) above after the expiration of the initial forty (40) year term, or any thirty (30) year renewal term, or to cease operating under the terms of this Agreement subsequent to the term hereof, Seller shall have no obligation to make any payment to Purchaser.

ARTICLE III **SALE AND PURCHASE OF ALLOCATED CAPACITY AND WATER**

Section 3.01 Allocated Capacity; Regulatory Capital Improvements.

(A) Seller and Purchaser have agreed that the Purchaser's Allocated Capacity in the Facilities Benefiting Purchaser on the Effective Date is 1.3 MGD. Prior to or upon the execution of this Agreement by Seller, Purchaser shall have paid or begun paying to Seller the Initial Capacity Payment in the amount of \$3,848,000.00 for the Allocated Capacity. The Initial Capacity Payment is determined based on the Allocated Capacity multiplied by the Buy-In Charge. The Buy-In Charge is based on the Capacity of Facilities Benefiting Purchaser which represents the Total Daily Capacity adjusted by the Reliable Capacity Planning Factor and the Average Daily Non-Revenue Water Factor.

Purchaser shall pay the Initial Capacity Payment installments in accordance with the schedule set forth in Schedule A attached to this Agreement. Purchaser may also pre-pay Initial Capacity Payment as provided in Schedule A.

For the purposes of determining the Capacity of Facilities Benefiting Purchaser, the Total Daily Capacity is adjusted to reflect the Reliability Capacity Planning Factor. The

Seller is obligated to submit certain plans, specifications, and application for permits to SCDES in order to construct any expansion to the Total Daily Capacity of its water treatment facilities within one hundred eighty (180) days of determining that the average daily demand of any of its water treatment facilities has reached 90% of its Total Daily Demand. Since the Reliability Capacity Planning Factor effectively requires the Seller to expand its Total Daily Capacity prior to incurring average daily demands equal to the Total Daily Capacity, the Total Daily Capacity does not represent the Capacity of Facilities Benefiting Purchaser.

Furthermore, all of the treated water produced at the water treatment facilities is not delivered to the Seller's customers due to Average Daily Non-Revenue Water (system flushing and backwashing, hydrant testing, line loss, etc.). For the purposes of this Agreement, the Total Daily Capacity is also adjusted to reflect an Average Daily Non-Revenue Water Factor of 15% when determining the Capacity of Facilities Benefiting Purchaser. An Average Daily Non-Revenue Water Factor of 15%, means that for every 1.00 gallon of water delivered to the customer the water treatment facilities must produce 1.15 gallons of treated water. This Average Daily Non-Revenue Water Factor is applied by multiplying the Total Daily Capacity by 1/1.15.

(B) Seller and Purchaser recognize that Regulatory Capital Payments for Regulatory Capital Improvements to the Facilities Benefiting Purchaser that do not increase Allocated Capacity may become necessary or desirable from time to time in order to comply with applicable Federal, State and local laws with respect to the Allocated Capacity. Should Seller desire, or be required, to make any such Regulatory Capital Improvements, it shall consult with Purchaser and describe the required Regulatory Capital Improvements in detail, including the need therefore and the expected costs thereof. Seller shall further estimate and inform Purchaser whether such Regulatory Capital Improvements to the Facilities Benefiting Purchaser will cause an increase in the Monthly Base Charge or the Operation and Maintenance Charge to Purchaser. Upon the completion of any required Regulatory Capital Improvements to the Facilities Benefiting Purchaser, Purchaser shall pay a Regulatory Capital Payment in an amount sufficient to fully reimburse Seller for Purchaser's Pro Rata Share of the Regulatory Capital Costs incurred by Seller in making such Regulatory Capital Improvements. Purchaser shall pay such Regulatory Capital Payment and may at its option do so in installments, with payments for Regulatory Capital Improvements not exceeding \$3,000,000.00 being made over a ten (10) year term and payments for Regulatory Capital Improvements exceeding \$3,000,000.00 being made over a twenty (20) year term, pursuant to commercially reasonable terms and conditions, including all costs incurred by Seller directly related to the Seller's financing of the Purchaser's portion of such costs. Such increases will go into effect on July 1 of the year following the Seller's notice to the Purchaser of the calculation of these increased costs.

Section 3.02 Sale of Water or Allocated Capacity by Purchaser; Limitations and Right of First Refusal; No Requirement on Seller for Normal Capital Improvements

(A) The Parties hereto agree that this Agreement shall in no way limit or prohibit the resale by Purchaser of any water received from the Seller, and that Purchaser shall be solely entitled to the proceeds of such sale. In addition, subject to the terms and conditions of this Section 3.02, Purchaser may sell, lease, or otherwise dispose of all or any portion of

its Allocated Capacity, subject to the provisions of Section 3.02 (B) below.

(B) Unless otherwise agreed by Seller, Purchaser may sell, lease, or otherwise dispose of all or part of its Allocated Capacity to a third party (the “Secondary Purchaser”) only upon satisfaction of the following conditions:

(i) the Allocated Capacity shall first be offered to Seller on the same terms as have been offered by Purchaser to the Secondary Purchaser, except that Seller shall not pay more per gallon to reacquire the Allocated Capacity than Purchaser paid to acquire it under Section 3.01(A) or 4.01(B), and such offer shall remain open for a period of at least ninety (90) days unless extended by Purchaser;

(ii) if Seller elects not to purchase, lease, or otherwise acquire any portion of the Allocated Capacity proposed to be sold, leased, or otherwise disposed of to the Secondary Purchaser, then such portion may then be sold, leased, or otherwise disposed of by Purchaser to the Secondary Purchaser;

(iii) as a condition of any such sale, lease, or other disposition of the Allocated Capacity, the Secondary Purchaser shall have all the rights of the Purchaser and become obligated to discharge all obligations of the Purchaser under this Agreement with respect to the Allocated Capacity purchased, and Purchaser and Secondary Purchaser shall execute, acknowledge, and deliver to the Seller such instruments of transfer, assignment, and assumption and such other certificates, representations, governmental licenses, permits or approvals, and documents as Seller may deem reasonably necessary or desirable; and

(iv) no such sale, lease, or other disposition of Allocated Capacity shall relieve Purchaser of primary responsibility for the performance of any of its obligations with respect to the portion of the Allocated Capacity so sold, leased, or otherwise disposed of that accrued under this Agreement prior to the date of the sale, lease, or other disposition.

(C) Notwithstanding anything to the contrary in this Agreement, Seller shall have no obligation to make Normal Capital Improvements, Increased Capacity Capital Improvements, or other modifications, installations, or additions to the Facilities (or any other property, structure, equipment or feature of Seller’s water system) to accommodate the sale of Allocated Capacity by Purchaser to the Secondary Purchaser. It is further expressly agreed and understood that the cost of any such Normal Capital Improvements, Increased Capacity Capital Improvements, or other modifications, installations, or additions to which Seller may agree shall be the sole responsibility of the Secondary Purchaser.

Section 3.03 Sale of Water; Delivery Sites of Water to Seller; Rates and Charges; Annual Budget; Flow Exceeding Allocated Capacity; Water Characteristics; Flow Restrictions and Limitations.

(A) During the term of this Agreement, and during any extended term, Seller shall be eligible to provide and make available for sale to Purchaser an amount of potable water equal to the Allocated Capacity.

(B) Water sold to Purchaser shall be measured by Seller, and delivered to Purchaser, at the Connecting Meter(s).

(C) Purchaser shall pay for water on a monthly basis at a rate consisting of the Monthly Base Charge plus the Operation and Maintenance Charge. Purchaser and Seller have agreed that, upon the Effective Date, and during the duration of the year in which this Agreement is executed and delivered, the initial Monthly Base Charge based on current conditions shall be \$16,236.66. Seller agrees to install a 12-inch gravity-fed main which will provide water to Purchaser from the Seller's Cedar Rock storage facility. Upon completion of this new main, the Monthly Base Charge will increase to \$17,322.00. The initial Operation and Maintenance Charge shall be \$0.66 per thousand gallons of Metered Flow. For each succeeding year, the Monthly Base Charge and the Operation and Maintenance Charge for such year shall be established annually as set forth in Section 3.04 (B) below.

(D) Purchaser agrees to pay any applicable Excess Usage Surcharge for a Monthly Billing Cycle. In addition, if there are sixty (60) or more Overage Days during any consecutive 365-day period, then Seller may require that Purchaser purchase additional Allocated Capacity in an amount that (i) is equal to or greater than the Minimum Future Capacity Purchase, and (ii) causes Purchaser's Allocated Capacity to equal or exceed Purchaser's average consumption during all of such Overage Days.

(E) Seller shall provide to Purchaser potable water of sufficient quality to allow Purchaser to meet all applicable standards for drinking water required by the Federal Environmental Protection Agency and the South Carolina Department of Health and Environmental Control at the point of final delivery by Seller to Purchaser at the Connecting Meter. Seller and Purchaser agree, however, that isolated instances of violations of such standards shall not constitute a violation of this Agreement, it being understood that the presence of constituents in water supplies may occasionally exceed such standards without compromising the safety or health of consumers.

(F) In the event of Drought, Purchaser shall be subject to mandatory water conservation requirements and as Seller shall reasonably impose.

Section 3.04 Payment for Water Services; Computation of Rates and Charges; Payment Obligation.

(A) For the term or any extended term of this Agreement, Purchaser shall pay to Seller the amounts due as billed in accordance with the terms and conditions of this Agreement. Beginning the month after the Effective Date, Seller shall invoice Purchaser for each Monthly Billing Cycle and Purchaser shall remit payment within thirty (30) days thereafter. All monies due Seller shall be paid in immediately available United States currency.

(B) Each year, the Monthly Base Charge, Operation and Maintenance Charge, and Excess Usage Surcharge are subject to adjustment as determined by Seller based on its evaluation of its audited financial statements for the preceding Seller Fiscal Year. The average daily percentage water loss for the Facilities will also be subject to annual adjustment

as determined by the Seller based on its annual evaluation of water loss. Seller will notify the Purchaser of the adjusted Monthly Base Charge, Operation and Maintenance Charge and Excess Usage Surcharge at least 60 days prior to going into effect. The adjusted Monthly Base Charge, Operation and Maintenance Charge, and Excess Usage Surcharge will go into effect on July 1 of the year following the end of the applicable Seller Fiscal Year and shall be applicable for the succeeding twelve (12) month period. Seller shall provide such information to Purchaser as is reasonably necessary to review and separately calculate the adjusted Monthly Base Charge, Operation and Maintenance Charge, and Excess Usage Surcharge.

(C) At the request of Purchaser, Seller agrees to make senior finance and/or engineering personnel available to meet with representatives of Purchaser, prior to the adoption of the adjusted rates and charges in order to discuss in detail their effect upon Purchaser. In the event that Purchaser disagrees with the adjusted Monthly Base Charge, Operation and Maintenance Charge, and/or Excess Usage Surcharge, Seller agrees to meet and further discuss the adjusted Monthly Base Charge, Operation and Maintenance Charge, and/or Excess Usage Surcharge. Notwithstanding any such objections, Seller has the exclusive and absolute right to set rates and charges for the provision of its water supply service. Regulatory Capital Payments that do not increase Allocated Capacity shall not be subject to the provisions of this Section 3.04(B), it being understood and agreed that such Regulatory Capital Payments will be incurred by Seller as necessary in accordance with Section 3.01 (B) above, with such increases going into effect on July 1 of the year after which Seller gives notice to Purchaser.

(D) Purchaser obligates and binds itself to punctually make the payments of the rates and charges required hereunder, free of any deduction, and without abatement, diminution, or set-off of any sort, subject only to any adjustment for annual rate adjustments provided for in Section 3.04 (B), above.

(E) No payment required to be made by Purchaser hereunder shall constitute a debt or pecuniary obligation of Purchaser. Neither the faith nor the credit of the Purchaser is pledged for the payment of such amounts. Instead such payments will be payable solely from the revenues of Purchaser's System as operating expenses. Notwithstanding the foregoing, Purchaser acknowledges that it is obligated to make all payments set forth herein, including the installments for the Initial Capacity Payments set out in Schedule A, and its failure to do so will constitute an event of default triggering the remedies available to Seller under Section 5.01 below.

(F) On October 1 of each year, beginning with the calendar year following the Effective Date, Seller's senior management, finance and engineering personnel shall hold a meeting at Seller's offices with the senior management, finance, and engineering personnel of the Seller's wholesale customers that purchase Allocated Capacity (which includes Purchaser), to review Seller's rates and charges and their impact on such customers. Seller's personnel conducting this meeting shall review with such customers any significant changes in Seller's operating budget and Capital Improvement Program that may have an impact on rates and charges. This meeting shall commence at 10:00 a.m. on that day.

Section 3.05 Transmission Line and Connecting Meter Installation, Ownership, and

Inspection.

(A) Seller shall be responsible for the installation, operation, and maintenance of its transmission line(s) before and up to the point where a Connecting Meter is located, including a new 12-inch gravity-fed line to be constructed. Purchaser shall be responsible for the installation, operation and maintenance of its transmission line(s) from and after the point where a Connecting Meter is located.

(B) Purchaser shall be responsible for the cost of acquisition and installation of all Connecting Meters, which shall be transferred to Seller by bills of sale upon acceptance by Seller after installation and inspection. All Connecting Meters shall meet the specification and service capability criteria as are from time to time established by Seller for its other wholesale metered customers and shall be installed at such locations as mutually agreed upon by Seller and Purchaser based upon criteria to obtain the necessary readings.

(C) Seller agrees to conduct, or to permit Purchaser to conduct, such periodic inspection of the Connecting Meters as may be reasonably requested by Purchaser. Seller further agrees to provide to Purchaser copies of all data regarding the Connecting Meters as may be reasonably requested by Purchasers. In the event a Connecting Meter is determined to have malfunctioned, Metered Flows for such Connecting Meter will be deemed to be equal to the historical Metered Flows for such Connecting Meter for the same calendar period during the prior year. In the event that it shall be determined pursuant to any interim reading made at Purchaser's request that a Connecting Meter is functioning and reading properly, the cost of such interim reading or readings shall be paid by the Purchaser. Otherwise, the cost of such interim reading shall be considered as part of the Operation and Maintenance Costs.

Section 3.06 Operation and Maintenance of Facilities.

(A) Seller has the exclusive right to operate and maintain its Facilities and agrees to do so in a good and proper manner in accordance with all requirements of state and federal regulatory agencies consistent with Good Utility Practices.

(B) Seller shall designate a 24-hour contact person with authority to make day-to-day decisions relating to this Agreement and provide Purchaser with information sufficient to contact such person in an emergency.

(C) Seller shall obtain and maintain, or cause to be obtained and maintained, with responsible insurers all such insurance on the Facilities and Connecting Meters (to the extent applicable insurance is available) which is customarily maintained with respect to properties of like character against accident to, loss of, or damage to such properties. Purchaser shall obtain and maintain with responsible insurers all such insurance against accident, loss, or damage which is customarily maintained with respect to Purchaser's transmission lines or property of like character connected to the Facilities.

Section 3.07 Books and Records. Seller shall maintain accounting records with a level of detail sufficient for the calculation of the rates and charges associated the Facilities Benefiting Purchaser. Accounting records will be maintained in accordance with generally accepted

accounting principles and auditing standards related to governmental entities and audited annually by the Independent Certified Public Accountant. All books and records of Seller pertaining to the Facilities shall be available to Purchaser for inspection at all reasonable times upon reasonable notice, with Purchaser to pay Seller's reasonable costs for providing Purchaser with such books and records.

ARTICLE IV **ADDITIONAL CAPACITY**

Section 4.01 Purchase of Additional Allocated Capacity; Expansion of the Facilities to Provide Additional Capacity.

(A) If Purchaser determines that it desires to purchase additional Allocated Capacity in the Facilities Benefiting Purchaser, it may apply to do so, but only in amounts equal to or greater than the Minimum Future Capacity Purchases. At such time as Purchaser ascertains that it desires additional Allocated Capacity, it shall so notify Seller in writing, setting forth its estimate of desired additional Allocated Capacity and its estimate of when it desires to have such additional Allocated Capacity. Within a reasonable period after receipt of such notice, Seller will advise Purchaser with respect to Seller's willingness and ability to provide additional Allocated Capacity to Purchaser. Should Seller be so willing, representatives of Seller and Purchaser shall meet and exchange information in order to determine (i) the precise amount of additional capacity required to comply with Purchaser's request for additional Allocated Capacity and to accommodate such other expansions of capacity as Seller may determine to be necessary or desirable in connection therewith, (ii) the time-frame within which such additional Allocated Capacity is needed and can reasonably be made available, (iii) the manner of providing such additional Allocated Capacity, and (iv) such other matters relating to the provision of such additional Allocated Capacity as Seller or Purchaser may deem necessary.

(B) If Seller is willing and has the ability to provide such additional Allocated Capacity as part of the existing Facilities Benefiting Purchaser, Seller shall grant Purchaser's request to make a Future Capacity Purchase. Purchaser shall pay Seller an amount to be determined based on the prevailing Buy-In Charge at the time of the Future Capacity Purchase and the amount of additional Allocated Capacity to be acquired. However, should Seller determine, in its sole discretion and for its own purposes unrelated to the provision of additional capacity, to incur Increased Allocated Capacity Capital Improvements beyond that which is required to provide Purchaser with additional Allocated Capacity, then and in that event Purchaser shall be required to reimburse Seller only to the extent necessary to address Purchaser's request for additional Allocated Capacity.

(C) If such additional Allocated Capacity is not reasonably available as part of the existing Facilities Benefiting Purchaser, then Seller may agree to expand the Facilities to provide such desired additional Allocated Capacity, but shall be under no obligation to do so. Should Seller agree to do so, all costs of providing such Increased Allocated Capacity Capital Improvements shall be assumed by Purchaser except to the extent Seller increases capacity at the same time beyond that which Purchaser desires, in which case Purchaser shall be obligated only to the extent of its Pro Rata Share. If there is inadequate capacity in the

Facilities Benefiting Purchaser to accommodate Purchaser's request for additional Allocated Capacity, but Seller agrees to provide such additional Allocated Capacity, then Seller shall undertake the design and construction of the improvements to the Facilities necessary to provide the additional Allocated Capacity requested by Purchaser in a timely manner and diligently pursue the completion thereof such that said additional Allocated Capacity will be available on or before the date agreed upon by the Parties, however, that prior to Seller's undertaking of such obligations the following conditions are met, all to Seller's sole satisfaction:

(1) the requested availability date of additional Allocated Capacity shall be not less than six (6) months following the date of the notice delivered by Purchaser pursuant to Section 4.01(A) above;

(2) Seller shall not be required to add capacity to the Facilities in increments of less than ten (10) MGD;

(3) Purchaser shall advance such funds as Seller may reasonably require to cover the design and engineering expenses of the improvements needed to the Facilities Benefiting Purchaser necessary to provide the additional Allocated Capacity requested by Purchaser; and

(4) Purchaser shall have made provision for the payment of the Future Capacity Purchase associated with the additional Allocated Capacity and documented same to Seller's satisfaction.

(D) The Parties hereto agree to modify and amend this Agreement to the extent necessary to provide for the adjustment of the Allocated Capacity as a result of any increase in the Capacity of Facilities Benefiting Purchaser requested by the Purchaser.

ARTICLE V **EVENTS OF DEFAULT; REMEDIES**

Section 5.01 Events of Default; Remedies.

(A) To the extent permitted by law,

(1) In the event that Purchaser fails to make any monetary payment required by this Agreement within ten (10) days from the delivery of written notice to Purchaser of such failure, Seller may institute such action as may be necessary to enforce payment of such amounts, including interest on past due amounts, from the date such amount becomes due until paid in full, at a default interest rate of ten percent (10%) per annum, plus all bank charges and attorney and other professional fees incurred by Seller as a result thereof.

(2) In the event that Purchaser fails to perform any non-monetary covenant or agreement herein made within thirty (30) days from the date of written notice to Purchaser of such failure, Seller may bring action against Purchaser for the specific performance by Purchaser of such other covenant or agreement.

(3) In the event that a failure by Purchaser to perform any covenant or agreement herein made is the proximate cause of any physical damage to Seller's Facilities, then Purchaser shall be responsible for the cost of repairing such damages, and Seller may bring an action therefor.

(4) If Seller shall become indebted to Purchaser by reason hereof, Purchaser shall have the right to offset such indebtedness against its obligations to make payments under this Agreement.

(5) In the event that Seller fails to perform any material covenant or agreement herein made within thirty (30) days from the date of written notice to Seller of such failure, Purchaser may bring action against Seller for the specific performance by Seller of such covenant or agreement.

(B) In addition to any remedies provided under law or herein, should Purchaser fail to perform its obligation to pay the installment(s) of the Initial Capacity Payments under Section 3.01 and Schedule A, then upon the event of such default Seller shall be entitled to increase the water rate Purchaser pays under Section 3.03(c) to the rate which Seller charges to its wholesale customers which have not acquired capacity in Seller's facilities by having paid a Buy-In Charge. This increased water rate shall apply until such time as Purchaser shall have remitted any unpaid installment(s) to Seller plus interest at a rate of ten percent (10%) per annum..

ARTICLE VI **FORCE MAJEURE**

Section 6.01 Effects of Force Majeure. If by reason of Force Majeure either Party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then if such Party shall give notice and full particulars of such Force Majeure in writing to the other Party within a reasonable time after occurrence of the event or cause relied on, the obligation of such Party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such Party shall endeavor to remove or overcome such inability with all reasonable dispatch.

ARTICLE VII **MISCELLANEOUS**

Section 7.01 Binding Arbitration; Waiver of Jury Trial; Jurisdiction and Venue.

(A) In the event of any dispute arising out of or relating to this Agreement, **except as to any payment due from Purchaser to Seller under this Agreement and any matter pertaining to the term or any extended term of this Agreement**, Seller and Purchaser agree that, at the request of any Party hereto, a senior representative of each Party to the dispute will review the matter in dispute and, at the request of either Party, meet in person to discuss the matter at the place of business of the Party who is requesting the meeting (or at

such other location as agreed to by the Parties) within ten (10) days of the request. If the dispute cannot be resolved through settlement within twenty (20) days after the date of such request, either Party shall be free to pursue such rights or remedies that may be available under this Agreement, at law, or in equity. Nothing in this Section shall preclude any Party from exercising any right to seek injunctive relief or any right of termination created herein, at law, or in equity prior to the expiration of the period for discussion set forth in this Section except to the extent provided in Section 2.03(D), above.

(B) UPON DEMAND OF EITHER PARTY, WHETHER MADE BEFORE OR AFTER INSTITUTION OF ANY JUDICIAL PROCEEDING, ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF, CONNECTED WITH OR RELATING TO THIS AGREEMENT OR ANY RELATED DOCUMENT (A "DISPUTE") BETWEEN OR AMONG THE PARTIES HERETO AND TO THE RELATED DOCUMENTS EXCEPT AS TO RELIEF SOUGHT BY SELLER FOR PAYMENT FOR WATER SERVICE AS SET FORTH IN THIS AGREEMENT OR RELIEF SOUGHT BY SELLER AS TO THE TERM OR EXTENDED TERM OF THIS AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION AS PROVIDED HEREIN. INSTITUTION OF A JUDICIAL PROCEEDING BY A PARTY DOES NOT WAIVE THE RIGHT OF THAT PARTY TO DEMAND ARBITRATION HEREUNDER. DISPUTES MAY INCLUDE, WITHOUT LIMITATION, TORT CLAIMS, COUNTERCLAIMS, CLAIMS BROUGHT AS CLASS ACTIONS, CLAIMS ARISING FROM DOCUMENTS EXECUTED IN THE FUTURE, DISPUTES AS TO WHETHER A MATTER IS SUBJECT TO ARBITRATION, OR CLAIMS CONCERNING ANY ASPECT OF THE PAST, PRESENT OR FUTURE RELATIONSHIPS ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT OR THE RELATED DOCUMENTS. ARBITRATION SHALL BE INITIATED, CONDUCTED UNDER AND GOVERNED BY THE COMMERCIAL FINANCIAL DISPUTES ARBITRATION RULES (THE "ARBITRATION RULES") OF THE AMERICAN ARBITRATION ASSOCIATION (THE "AAA") AND THE FEDERAL ARBITRATION ACT. ALL ARBITRATION HEARINGS SHALL BE CONDUCTED IN PICKENS COUNTY, SOUTH CAROLINA. THE EXPEDITED PROCEDURES SET FORTH IN RULE 53, ET. SEQ. OF THE ARBITRATION RULES SHALL BE APPLICABLE TO CLAIMS OF LESS THAN \$50,000. ALL APPLICABLE STATUTES OF LIMITATIONS SHALL APPLY TO ANY DISPUTE. A JUDGMENT UPON AN AWARD IN ARBITRATION MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. NOTWITHSTANDING ANYTHING FOREGOING TO THE CONTRARY, A HEARING SHALL BEGIN WITHIN NINETY (90) DAYS AFTER A DEMAND FOR ARBITRATION AND SHALL BE CONCLUDED WITHIN ONE HUNDRED TWENTY (120) DAYS AFTER SUCH DEMAND. THESE TIME LIMITATIONS MAY NOT BE EXTENDED UNLESS THE PARTIES MUTUALLY AGREE TO SUCH EXTENSION OR A PARTY SHOWS CAUSE FOR EXTENSION AND THEN FOR NO MORE THAN A TOTAL OF SIXTY (60) DAYS UNLESS THE PARTIES MUTUALLY AGREE TO A LONGER EXTENSION. ARBITRATORS SHALL BE SELECTED FROM THE COMMERCIAL FINANCIAL DISPUTE ARBITRATION PANEL OF THE AAA IF NOT MUTUALLY AGREED UPON BY THE PARTIES. THE PARTIES HERETO DO NOT WAIVE APPLICABLE FEDERAL OR STATE SUBSTANTIVE LAW

EXCEPT AS PROVIDED HEREIN.

(C) THE PARTIES HERETO ACKNOWLEDGE THAT BY AGREEING TO BINDING ARBITRATION THEY HAVE EACH, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IRREVOCABLY WAIVED ANY RIGHT THEY MAY HAVE TO A JURY TRIAL WITH REGARD TO A DISPUTE. ALL PARTIES HEREBY CONSENT TO VENUE IN THE STATE AND FEDERAL COURTS IN PICKENS COUNTY, SOUTH CAROLINA AREA.

Section 7.02 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given as follows: (i) on the date of delivery when hand-delivered to the Parties named below; or (ii) three (3) days following the date when mailed by certified or registered mail, postage prepaid, and addressed as follows:

If to the Seller:

Chief Executive Officer
Greenville Water
P. O. Box 687
Greenville, South Carolina 29602

If to the Purchaser:

Mayor
City of Pickens, SC
219 Pendleton St
Pickens, South Carolina 29671

Rejection or other refusal to accept or inability to deliver because of a changed address of which no notice was given shall be deemed to be receipt of the notice, request, or other communication. Any Party may, by written notice given to the other Party, designate any further or different addresses to which subsequent notice, certificates, or other communications shall be sent.

Section 7.03 Authority/Beneficiaries. Each Party hereto hereby represents and warrants that all appropriate action has been taken by their respective governing bodies to authorize the execution of and the performance of the obligations set forth in this Agreement and that the person executing the Agreement on its behalf has been duly authorized to do so. This Agreement shall inure to the benefit of and shall be binding upon Seller and Purchaser and their respective successors or assigns.

Section 7.04 Severability. In the event any provision of this Agreement, other than the term or extended term provided for herein, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 7.05 Counterparts. This Agreement may be executed in several counterparts, each

of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.06 Governing Law. This Agreement is prepared and entered into with the intention that the law of the State of South Carolina shall govern its construction, without regard for its conflict of law principles.

Section 7.07 Amendments. This Agreement may not be amended, changed, modified, or terminated without in each instance the prior written consent of the Parties hereto.

Section 7.08 No Adverse Presumption. Seller and Purchaser hereby acknowledge that this Agreement arose as the result of arm's length negotiations between the Parties and that this Agreement, although manually prepared by representatives of Seller, was prepared with the advice, consent, recommendation and review of Purchaser and/or Purchaser's counsel, and is the product of input by both Parties hereto. As a result, any ambiguity or uncertainty is not to be construed against the Party whose counsel prepared this Agreement on the grounds that such Party's representatives drafted this Agreement.

Section 7.09 Third Parties. This Agreement does not and is not intended to confer in favor of any parties other than Seller and Purchaser any rights or remedies whatsoever, the Parties hereto intending by the provisions hereof to confer no such benefits or status.

Section 7.10 Captions. The Section headings of this Agreement are inserted for convenience only and shall not constitute a part of this Agreement in construing or interpreting any provisions hereof.

Section 7.11 Amendment to Payments. The Parties acknowledge that the Seller is undertaking a review of methodology for calculating the payments due under this Agreement. Once that process is complete, if the Parties agree, they may amend this Agreement to reflect those new charges. If the Parties are unable to agree to terms of an amended agreement at that time, this Agreement shall terminate. In the event of a termination under this Section 7.11, the Purchaser is relieved of its obligation to make any future installment payments of the initial Buy-In Charge for the Allocated Capacity in the Facilities Benefiting Purchaser, but Purchaser will not receive a refund for any payments made under this Agreement prior the effective date of any such termination.

Section 7.12 Further Assurances. The Parties agree to give such further assurances, and to execute, acknowledge and deliver such other instruments as shall be reasonably necessary or appropriate in the judgment of the other Party to carry out the intent of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed in their names by their duly authorized officers as of the date first written above.

GREENVILLE WATER

WITNESS/ATTEST:

By:
Its: Chief Executive Officer

CITY OF PICKENS

By:
Its:

SCHEDULE A

1. At or before the signing of the Agreement, Purchaser shall have paid to Seller the sum of \$_____ which shall constitute the first installment of the Initial Capacity Payment due from Purchaser to Seller. Thereafter, Purchaser shall pay to Seller on a monthly basis the sum of \$_____ for ___ months until the total sum of \$_____ has been paid to Seller. These monthly payments are due on the first day of each month and are in addition to any other monthly or other payments due from Purchaser to Seller under the Agreement.

2. Seller may pre-pay the Initial Capacity Payment at the discounted sum of \$_____ at or before the signing of the Agreement.