1. Agenda

   Documents:

   2024_07_01AGENDA.PDF

2. Meeting Materials

   Documents:

   2024_07_01SENECATRANSIT.PDF
   2024_07_01SS4AGRANT.PDF
   2024_07_01ANIMALCRUELTY.PDF
   2024_07_01WWTP.PDF
   2024_07_01SHAWCENTER.PDF
   2024_07_01BLACKHERITAGETRAIL.PDF
   2024_07_01PUBLICHEARING.PDF

CITY OF
Clemson
SOUTH CAROLINA

Agenda, Clemson City Council
July 1st, 2024
Council Chamber, Clemson City Hall

5:00 p.m. Call To Order
Executive Session
To receive legal advice regarding the South Carolina Freedom of Information Act; SC Code Section 30-4-70 (a)(2)
Note: Upon returning to open session, Council may take action on matters discussed in Executive Session.
5:30 p.m. Public Hearing on the proposed rezoning (#RZNE-000277-2024) of a group of six parcels totaling approximately 23 acres situated near Highway 76 and Ligon Street from RM-1 (Two-family Residential) District to RM-4 (Multi-family Residential) District.
The regular meeting will begin following the Public Hearing, but not before 6pm.
Call to Order: Regular Council Meeting
Invocation and Pledge of Allegiance: Mayor Halfacre
Recognition: Receive a grant award from the Duke Energy Foundation – Trent Acker
Oath of Office: Officer Brandon Couch, Sergeant Presentation: Officer Joshua Hullett
Public Session: (3-minute limit per speaker)
Approval of Minutes: June 17th, 2024
Reports/Discussion

- **a.** Receive a report on the status of the Black Heritage Trail and the proposed location for the city's portion of the trail. – Dr. Rhondda Thomas
- **b.** Discuss a request adding The Shaw Center as an approved non-profit for the digital sign located in the flag plaza at City Hall. – Council Member Fulmer
- **c.** Staff Reports

Policy Action ***(2-minute limit per speaker)***
Ordinances

- **a.** Consider 1st reading of an ordinance authorizing the execution and delivery of an intergovernmental wastewater capacity and services agreement and a project management agreement for the Pendleton/Clemson Wastewater Treatment Plant Expansion. – City Administrator Andy Blondeau
- **b.** Consider 1st reading of an ordinance to amend City Ordinance Section 4-6 Cruelty to Animals. and Section 4-31 Outside shelter requirements for Dogs. – Police Chief Jorge Campos
- **c.** Consider awarding the Clemson Area Action Plan development and approval to Stantec in the amount of $240,000. - City Engineer Nathan Hinkle

Other Policy Items

a. Consider approving a continuation agreement for transit services between the City of Seneca and the City of Clemson/Clemson Area Transit. – Transit Director Jerry Kerns

Mayor-Council reports/comments/new business

Adjourn

CITY OF CLEMSON

AGENDA ITEM REQUEST FORM

Requested By: Jerry Kerns

Date Submitted: 06/26/2024

Council Meeting Date: 07/01/2024

Type of Request: (check only one)

- ☐ Report/Discussion
- ☒ Policy/Action
- ☐ Executive Session

Agenda Item Summary: (brief for public information and posted agenda)

Consider approving a continuation agreement for transit services between the City of Seneca and the City of Clemson/Clemson Area Transit.

Agenda Item Detail: (expand as necessary for clarification)

The City of Seneca contracts with the City of Clemson to operate their transit system. The current contract will expire on 6/30/2024. The City of Seneca transit system is currently being evaluated. The proposed continuation agreement will allow for the contract to be extended on a month to month basis. The hourly rate will increase from $85 per hour to $90.36 per hour.

**CONTINUATION AGREEMENT FOR TRANSIT SERVICES
BETWEEN THE CITY OF SENECA AND
THE CITY OF CLEMSON/CLEMSON AREA TRANSIT**

WHEREAS, the City of Seneca (hereinafter "Seneca") issued a Request for Proposal for public transit services on May 18, 2019 ("2019 RFP"); and

WHEREAS, the City of Clemson/Clemson Area Transit (hereinafter "Clemson") submitted a proposal in response to said 2019 RFP on June 6, 2019; and

WHEREAS, Clemson was the low bidder in response to Seneca's 2019 RFP and, therefore, was awarded the contract to provide transit services for Seneca. Said contract was entered into on July 17, 2019 ("2019 Contract"); and

WHEREAS, the 2019 Contract contained within it an option to renew and extend the contract for up to four additional one-year terms before Seneca was required to once again bid out the services pursuant to South Carolina Department of Transportation regulations; and

WHEREAS, the fourth and final permitted contract renewal was entered into by and between Seneca and Clemson on May 4, 2023, ("2023 Renewal") with the term of the contract concluding on June 30, 2024; and

WHEREAS, upon the approaching expiration of the permitted five-year term, Seneca issued a new Request for Proposal for public transit services on January 22, 2024 ("2024 RFP"); and

WHEREAS, Clemson submitted a new bid proposal in response to said 2024 RFP on February 20, 2024; and

WHEREAS, Clemson was the low bidder in response to the 2024 RFP and has been awarded the contract; and

WHEREAS, Seneca and Clemson desire to continue operating under the terms and conditions of the existing contract, subject to the modifications delineated herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and in the 2023 Renewal, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Beginning on July 1, 2024, Clemson will continue to provide transit services for Seneca pursuant to the terms of the 2023 Renewal and the following amendments thereto as stated herein.

2. The term of this Continuation Agreement will be for one (1) month, beginning on July 1, 2024, and will automatically renew on the first day of each following month up to eleven (11) times, unless terminated pursuant to paragraph three (3) hereinbelow.

3. Either party may terminate this Continuation Agreement by delivering thirty (30) days' written notice of termination to the other party.

4. The fees for Clemson's services under this Continuation Agreement shall be increased from eighty-five dollars ($85.00) to ninety dollars and thirty-six cents ($90.36) per service hour of normal operations, Special Event services, and Paratransit services, in accordance with Clemson's proposal in response to Seneca's 2024 RFP.

5. The Route Service Calendar for fiscal year 2024-2025 as reflected in Exhibit A hereto is hereby adopted.

6. All other terms and conditions not specifically added, amended, or altered herein shall remain in full force and effect during the term of this Continuation Agreement and any automatic renewals resulting therefrom.

7. This Continuation Agreement, read in conjunction with the 2023 Renewal, shall constitute the entire agreement between Seneca and Clemson and shall supersede any prior agreements or contracts between the parties with respect to the subject matter hereof.

APPROVED AND ACCEPTED BY:

CITY OF SENECA	CITY OF CLEMSON
PLANNING DIRECTOR DATE	TRANSIT ADMINISTRATOR DATE
CITY ADMINISTRATOR DATE	CITY ADMINISTRATOR DATE
MAYOR DATE	MAYOR DATE

CITY OF CLEMSON

AGENDA ITEM REQUEST FORM

Requested By: Nathan Hinkle, City Engineer

Date Submitted: 6.26.2024

Council Meeting Date: 7.1.2024

Type of Request: (check only one)

- ☐ Report/Discussion
- ☒ Policy/Action
- ☐ Executive Session

Agenda Item Summary: (brief for public information and posted agenda)

Consider awarding the Clemson Area Action Plan development and approval to Stantec - $240,000.00

Agenda Item Detail: (expand as necessary for clarification)

The City & University applied for and was awarded a FHWA SS4A grant for the development and approval of an Action Plan. The grant was finally award to the City for up to $250,000.00 with a $50,000.00 match that will be split evenly between the City and Clemson University. The Grant agreement was executed in August 2023.

The public advertisement was placed on March 22, 2024, with a submittal requested by April 19, 2024. The Study team (comprised of a member from each partner) received five (5) responses from Stantec, Kimley-Horn & RK&K, Toole & Foresite group. The Study team elected to move forward with Stantec and develop a final scope and cost. The Study teams final scorning is attached, along with an example scoring metric.

The Scope of work has been reviewed by the Study team and is attached for review.

Respondent scoring metric

Clemson Area SS4A Action Plan :: Selection Committee 5/14/2024

Reviewer____
(Print) (Sign)

The Following Respondent(s) have been shortlisted for the ____________ Project:

Shortlist Team name	**Cumulative score** **(110 Pts. Max)**	**Criterion #1** **Statement of Organization & Personnel Qualification** **Weight :: 4** **(1-10)**	**Criterion #2** **Relevante Prior Project Experience** **Weight :: 3** **(1-10)**	**Criterion #3** **Understanding & Approach** **Weight :: 4** **(1-10**
Rk&k				
Stantec				
Kimley-Horn				
Toole Design				
Foresite Group				

Non Shortlisted Team Names	
(Intentionally Left Blank)	*(Intentionally Left Blank)*
(Intentionally Left Blank)	*(Intentionally Left Blank)*
(Intentionally Left Blank)	*(Intentionally Left Blank)*
(Intentionally Left Blank)	*(Intentionally Left Blank)*

	Study Team						
Respondent	Nathan Hinkle	Jacob Peabody	Art Holbrook	Barry Anderson	Shelly Foley	**Total**	**Average**
RK&K	87	77	77	40	91	372	74.4
Stantec	96	80	95	87	106	464	92.8
Kimley & Horn	96	66	74	74	96	406	81.2
Toole	83	62	77	59	85	366	73.2
Foresite Group	94	84	83	91	88	440	88

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into effective June 26, 2024 (the "Agreement Date") by and between:

"Client"

Name:	City of Clemson		
Address:	1250 Tiger Boulevard		
Phone:	864.624.1126		
Representative:	Nathan Hinkle, City Engineer	Email:	nhinkle@cityofclemson.org

"Stantec"

Name:	Stantec Consulting Services Inc.		
Address:	4969 Centra Pointe Drive, Suite 200, North Charleston, SC 29418		
Phone:	843.740.6335		
Representative:	Stuart Day, PE	Email:	stuart.day@stantec.com

Project Name (the "Project"):

City of Clemson, Safety Action Plan (SAP)

DESCRIPTION OF WORK: Stantec shall render the services described in Attachment "A" (hereinafter called the "Services") in accordance with this Agreement. Stantec may, at its discretion and at any stage, engage subconsultants to perform all or any part of the Services. The Client and Stantec by written amendment to this Agreement may from time to time make changes to the Services. All changed work shall be carried out under this Agreement. The time for completion of the Services shall be adjusted accordingly.

COMPENSATION: Charges for the Services rendered will be made in accordance with the Contract Price indicated in Attachment "A", or, if no Contract Price is indicated, in accordance with Stantec's Schedule of Fees and Disbursements in effect from time to time as the Services are rendered.

Invoices shall be paid by the Client in the currency of the jurisdiction in which the Services are provided without deduction or setoff upon receipt. Failure to make any payment when due is a material breach of this Agreement and will entitle Stantec, at its option, to suspend or terminate this Agreement and the provision of the Services. Interest will accrue on accounts overdue by 30 days at the lesser of 1.5 percent per month (18 percent per annum) or the maximum legal rate of interest. The Client will make payment by Electronic Funds Transfer when requested by Stantec.

REPRESENTATIVES: Each party shall designate in the space provided above a representative who is authorized to act on behalf of that party and receive notices under this Agreement. Such representatives have complete authority to act on behalf of their principals in respect to all matters arising under this Agreement.

NOTICES: All notices, consents, and approvals required to be given hereunder shall be in writing and shall be given to the representatives of each party. All notices required by this Agreement to be given by either party shall be deemed to be properly given and received within two (2) business days if made in writing to the other party by certified mail or email, addressed to the regular business address of such party as identified above.

CLIENT'S RESPONSIBILITIES: The Client shall provide to Stantec in writing, the Client's total requirements in connection with the Project, including the Project budget and time constraints. The Client shall make available to Stantec all relevant information or data pertinent to the Project which is required by Stantec to perform the Services. Stantec shall be entitled to rely upon the accuracy and completeness of all information and data furnished by the Client, including information and data originating with other consultants employed by the Client whether such consultants are engaged at the request of Stantec or otherwise. Where such information or data originates either with the Client or its consultants then Stantec shall not be responsible to the Client for the consequences of any error or omission contained therein.

When required by Stantec, the Client shall engage specialist consultants directly to perform items of work necessary to enable Stantec to carry out the Services. Whether arranged by the Client or Stantec, these services shall be deemed to be provided under direct contracts to the Client unless expressly provided otherwise.

The Client shall give prompt consideration to all documentation related to the Project prepared by Stantec and whenever prompt action is necessary shall inform Stantec of Client's decisions in such reasonable time so as not to delay the schedule for providing the Services.

When applicable, the Client shall arrange and make provision for Stantec's entry to the Project site as well as other public and private property as necessary for Stantec to perform the Services. The Client shall obtain any required approvals, licenses and permits from governmental or other authorities having jurisdiction over the Project so as not to delay Stantec in the performance of the Services.

STANTEC'S RESPONSIBILITIES: Stantec shall furnish the necessary qualified personnel to provide the Services. Stantec represents that it has access to the experience and capability necessary to and agrees to perform the Services with the reasonable skill and diligence required by customarily accepted professional practices and procedures normally provided in the performance of the Services at the time when and the location in which the Services were performed. This undertaking does not imply or guarantee a perfect Project and in the event of failure or partial failure of the product or the Services, Stantec will be liable only for its failure to exercise diligence, reasonable care, and professional skill. This standard of care is the sole and exclusive standard of care that will be applied to measure Stantec's performance. There are no other representations or warranties expressed or implied made by Stantec. In particular, but not by way of limitation, no implied warranty of merchantability or fitness for a particular purpose shall apply to the Services provided by Stantec nor shall Stantec warrant or guarantee economic, market or financial conditions, proforma projections, schedules for public agency approvals, or other factors beyond Stantec's reasonable control. Stantec does not warrant the Services to any third party and the Client shall indemnify and hold harmless Stantec from any demands, claims, suits, or actions of third parties arising out of Stantec's performance of the Services.

In performing the Services under this Agreement, Stantec shall operate as and have the status of an independent contractor and shall not act as or be an employee of the Client.

TERMINATION: Stantec may terminate this Agreement without cause upon thirty (30) days' notice in writing. If either party breaches this Agreement, the non-defaulting party may terminate this Agreement after giving seven (7) days' notice to remedy the breach. On termination of this Agreement, the Client shall forthwith pay Stantec for the Services performed to the date of termination. Non-payment by the Client of Stantec's invoices within 30 days of Stantec rendering same is agreed to constitute a material breach of this Agreement and, upon written notice as prescribed above, the duties, obligations, and responsibilities of Stantec are terminated.

SUSPENSION OF SERVICES: If the project is suspended for more than thirty (30) calendar days in the aggregate, Stantec shall be compensated for services performed and charges incurred prior to receipt of notice to suspend and, upon resumption, an equitable adjustment in fees to accommodate the resulting demobilization and remobilization costs. In addition, there shall be an equitable adjustment in the project schedule based on the delay caused by the suspension. If the Project is suspended for more than ninety (90) days, Stantec may, at its option, terminate this agreement upon giving notice in writing to the Client.

ENVIRONMENTAL: Except as specifically described in this Agreement, Stantec's field investigation, laboratory testing and engineering recommendations will not address or evaluate pollution of soil or pollution of groundwater.

BUILDING CODES, BYLAWS AND OTHER PUBLIC REGULATIONS: Stantec shall, to the best of its ability, interpret building codes, by-laws, and other public regulations as they apply to the Project and as they are published at the time Services commence. Furthermore, Stantec shall observe and comply with all applicable laws, ordinances, codes, and regulations of government agencies, including federal, state, provincial, municipal, and local governing bodies having jurisdiction over the conduct of the Services ("LAWS"). However, it is expressly acknowledged and agreed by the Client that as the Project progresses such building codes, by-laws, other public regulations, and LAWS may change or the interpretation of any public authority may differ from the interpretation of Stantec, through no fault of Stantec, and any extra costs necessary to conform to such changes or interpretations during or after execution of the Services will be paid by the Client.

Stantec shall continue to provide equal employment opportunity to all qualified persons and to recruit, hire, train, promote and compensate persons in all jobs without regard to race, color, religion, sex, age, disability or national origin or any other basis prohibited by applicable laws.

COST AND SCHEDULE OF CONSTRUCTION WORK: In providing opinions of probable cost and project schedule, it is recognized that neither the Client nor Stantec has control over the costs of labor, equipment, or materials, or over the Contractor's methods of determining prices or time. The opinions of probable cost or project duration are based on Stantec's reasonable professional judgment and experience and do not constitute a warranty, express or implied, that the Contractors' bids, project schedules, or the negotiated price of the Work or schedule will not vary from the Client's budget or schedule or from any opinion of probable cost or project schedule prepared by Stantec. Exact costs and times will be determined only when bids have been received for the Project and when the construction work has been performed and payments finalized.

INDEMNITY: The Client releases Stantec from any liability and agrees to defend, indemnify, and hold Stantec harmless from any and all claims, damages, losses, and/or expenses, direct and indirect, or consequential damages, including but not limited to attorney's fees and charges and court and arbitration costs, arising out of, or claimed to arise out of, the performance of the Services, excepting liability arising from the negligence or willful misconduct of Stantec.

LIMITATION OF LIABILITY: It is agreed that, to the fullest extent possible under the applicable law, the total amount of all claims (including any and all costs associated with such claims such as attorney and expert fees and interest) the Client may have against Stantec under this Agreement or arising from the performance or non-performance of the Services under any theory of law, including but not limited to claims for negligence, negligent misrepresentation and breach of contract, shall be strictly limited to the lesser of the fees paid to Stantec for the Services or $500,000. No claim may be brought against Stantec in contract or tort more than two (2) years after the cause of action arose. As the Client's sole and exclusive remedy under this Agreement any claim, demand or suit shall be directed and/or asserted only against Stantec and not against any of Stantec's employees, officers, or directors.

Stantec's liability with respect to any claims arising out of this Agreement shall be absolutely limited to direct damages arising out of the Services and Stantec shall bear no liability whatsoever for any consequential loss, injury or damage incurred by the Client, including but not limited to claims for loss of use, loss of profits and loss of markets.

In no event shall Stantec's obligation to pay damages of any kind exceed its proportionate share of liability for causing such damages.

DOCUMENTS: All documents prepared by Stantec or on behalf of Stantec in connection with the Project are instruments of service for the execution of the Project. Stantec retains the property and copyright in these documents, whether the Project is executed or not. Payment to Stantec of the compensation prescribed in this Agreement shall be a condition precedent to the Client's right to use documentation prepared by Stantec. These documents may not be used for any other purpose without the prior written agreement of Stantec. The Client shall have a permanent non-exclusive, royalty-free license to use any concept, product or process which is patentable or capable of trademark, produced by or resulting from the Services rendered by Stantec in connection with the Project, for the life of the Project. The Client shall not use, infringe upon, or appropriate such concepts, products or processes without the express written agreement of Stantec. In the event Stantec's documents are subsequently reused or modified in any material respect without the prior consent of Stantec, the Client agrees to indemnify Stantec from any claims advanced on account of said reuse or modification.

Any document produced by Stantec in relation to the Services is intended for the sole use of Client. The documents may not be relied upon by any other party without the express written consent of Stantec, which may be withheld at Stantec's discretion. Any such consent will provide no greater rights to the third party than those held by the Client under the contract and will only be authorized pursuant to the conditions of Stantec's standard form reliance letter.

Stantec cannot guarantee the authenticity, integrity or completeness of data files supplied in electronic format ("Electronic Files"). Client shall release, indemnify, and hold Stantec, its officers, employees, consultants, and agents harmless from any claims or damages arising from the use of Electronic Files. Electronic files will not contain stamps or seals, remain the property of Stantec, are not to be used for any purpose other than that for which they were transmitted, and are not to be retransmitted to a third party without Stantec's written consent.

PROJECT PROMOTION: Where the Client has control or influence over construction signage, press releases and/or other promotional information identifying the project ("Project Promotion"), the Client agrees to include Stantec in such Project Promotion.

FORCE MAJEURE: Any default in the performance of this Agreement caused by any of the following events and without fault or negligence on the part of the defaulting party shall not constitute a breach of contract: labor strikes, riots, war, acts of governmental authorities, unusually severe weather conditions or other natural catastrophe, disease, epidemic or pandemic, or any other cause beyond the reasonable control or contemplation of either party. Nothing herein relieves the Client of its obligation to pay Stantec for services rendered.

GOVERNING LAW: This Agreement shall be governed, construed, and enforced in accordance with the laws of the jurisdiction in which the majority of the Services are performed.

DISPUTE RESOLUTION: If requested in writing by either the Client or Stantec, the Client and Stantec shall attempt to resolve any dispute between them arising out of or in connection with this Agreement by entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties. The Parties agree that any actions under this Agreement will be brought in the appropriate court in the jurisdiction of Governing Law, or elsewhere by mutual agreement. Nothing herein however prevents Stantec from any exercising statutory lien rights or remedies in accordance with legislation where the project site is located.

ATTORNEYS FEES: In the event of a dispute hereunder, the prevailing party is entitled to recover from the other party all costs incurred by the prevailing party in enforcing this Agreement and prosecuting the dispute, including reasonable attorney's and expert's fees, whether incurred through formal legal proceedings or otherwise.

ASSIGNMENT AND SUCCESSORS: The Client shall not, without the prior written consent of Stantec, assign the benefit or in any way transfer the obligations of this Agreement or any part hereof. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and except as otherwise provided herein, upon their executors, administrators, successors, and assigns.

PROTECTION OF PRIVACY LAWS: The parties acknowledge that information relating to an identified or identifiable person ("Personal Information") may be exchanged in the course of this Project pursuant to this Agreement.

The party disclosing Personal Information (the "Disclosing Party") warrants that is has all necessary authorizations and approvals required to process and disclose the Personal Information and to enable the party receiving the Personal

Information (the "Receiving Party") to process it in performing the Services. The Disclosing Party will provide the Receiving Party with written notice containing the details of what Personal Information will be provided.

The Receiving Party will comply with any reasonable instruction from the Disclosing Party in respect of such Personal Information and implement appropriate technical and organization measures to protect the Personal Information against unauthorized or unlawful processing and accidental loss, theft, use, disclosure, destruction and/or damage.

The Receiving Party shall be permitted, upon prior written consent of the Disclosing Party, to transfer Personal Information outside the jurisdiction if required for performance of the Services provided that such transfers are in accordance with relevant and applicable requirements under applicable legislation. The Receiving Party shall provide the Disclosing Party with full cooperation and assistance in meeting its obligations under applicable privacy legislation, including in relation to the security of processing, the notification of Personal Information breaches, the notification of requests from individuals and Personal Information protection impact assessments.

On termination of this Agreement, the Receiving Party shall cease processing Personal Information and shall delete and destruct or return to the Disclosing Party (as the Disclosing Party may require) all Personal Information held or processed by the Receiving Party on the Disclosing Party's behalf. It is understood however, that the Receiving Party may need to keep a copy of all Personal Information for legal purposes and therefore it will continue to take reasonable steps to protect the Personal Information as outlined herein and will proceed with the destruction of the Personal Information within a reasonable period of time if there is no longer any legal justification to keep the Personal Information.

Nothing herein relieves either party from their responsibilities for compliance with applicable privacy legislation.

ENTIRE AGREEMENT: This Agreement constitutes the sole and entire agreement between the Client and Stantec relating to the Project and supersedes all prior agreements between them, whether written or oral respecting the subject matter hereof and no other terms, conditions, or warranties, whether express or implied, shall form a part hereof. This Agreement may be amended only by written instrument signed by both the Client and Stantec. All attachments referred to in this Agreement are incorporated herein by this reference; however, in the event of any conflict between attachments and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall take precedence.

SEVERABILITY: If any term, condition, or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall be binding on the Client and Stantec.

CONTRA PROFERENTEM: The parties agree that in the event this Agreement is subject to interpretation or construction by a third party, such third party shall not construe this Agreement or any part of it against either party as the drafter of this Agreement.

BUSINESS PRACTICES: Each Party shall comply with all applicable laws, contractual requirements and mandatory or best practice guidance regarding improper or illegal payments, gifts or gratuities, and will not pay, promise to pay or authorize the payment of any money or anything of value, directly or indirectly, to any person (whether a government official or private individual) or entity for the purpose or illegally or improperly inducing a decision or obtaining or retaining business in connection with this Agreement or the Services.

THE PARTIES EXPRESSLY ACKNOWLEDGE THAT THIS AGREEMENT CONTAINS LIMITATION OF LIABILITY PROVISIONS RESTRICTING RIGHTS FOR THE RECOVERY OF DAMAGES.

The Parties, intending to be legally bound, have made, accepted, and executed this Agreement as of the Agreement Date noted above.

City of Clemson		**Stantec Consulting Services Inc.**	
	David A. Blonduea, City Administrator		Stuart Day, PE, Senior Associate
	Print Name and Title		Print Name and Title
Signature		Signature	

Attached to and forming part of the Agreement BETWEEN:

City of Clemson

(Hereinafter called the "Client")

- and -

Stantec Consulting Services Inc.

(Hereinafter called "Stantec")

EFFECTIVE: June 26, 2024

This Attachment details the Services, Contract Time, Contract Price, Additional Conditions and Additional Attachments forming part of the above-described Agreement.

SERVICES: Stantec shall perform the following Services:

See ATTACHMENT B – Scope of work – Clemson Safety Action Plan – June 2024

(Hereinafter called the "Services")

CONTRACT TIME: Commencement Date: July 1, 2024

Estimated Completion Date: June 30, 2025

CONTRACT PRICE: Subject to the terms below, Client will compensate Stantec as follows:

Fixed Fee of $240,000

An eight percent (8%) flat rate disbursement (FRD) recovery charge will be applied to the Stantec fees to cover miscellaneous project expenses, internal incidental printing, copying and plots, film, CDs and report materials; communications expenses (e.g., faxes, office and mobile phones, blackberries, pagers, and other devices); office expenses (e.g., postage, couriers, equipment, common software and other supplies); staff local mileage/kilometrage; and archive maintenance. As this is an FRD, no supporting document will be provided with invoices.

Project specific charges, such as subconsultants; travel, accommodations, and meals; project-specific printing of deliverables; consumables; usage charges for specialized field equipment and company-owned, leased, or rented project vehicles; external testing lab charges and other external services charges; specialized computer software costs; and other significant project-specific expenses will be invoiced in addition to labor fees and to the FRD.

Where not stated as being included in the fees, project specific subconsultant, contractor, lab and other similar third-party charges will be charged as invoiced to Stantec with a zero percent (0%) markup.

Unless otherwise noted, the fees in this agreement do not include any value added, sales, or other taxes that may be applied by Government on fees for services. Such taxes will be added to all invoices as required.

Where the Services or services conditions change, Stantec shall submit to the Client in a timely manner, documentation of the revisions to Attachment "A" adjusting the Contract Services Time and Price as required.

Unless otherwise specified, charges for Services are based on Stantec's hourly billing rate table ("Rate Table"), attached hereto. The Rate Table is subject to escalation from time to time. At a minimum, effective each January 1 during the term of this Agreement, Stantec's charges for Services shall escalate by either (a) the most current Consumer Price Index year over year percentage increase, not seasonally adjusted, for the preceding July, all items, as published by Statistics Canada (for Projects in Canada) plus 1.0%, or (b) the most current Consumer Price

Index for All Urban Consumers (CPI-U) year over year percentage increase, not seasonally adjusted, for the preceding July, as published by the U.S. Bureau of Labor Statistics plus 1.0% (for all other projects).

ADDITIONAL CONDITIONS:

The following additional conditions shall be read in conjunction with and constitute part of this Agreement:

COVID-19: The parties acknowledge the ongoing COVID-19 pandemic and agree that the CONTRACT PRICE and CONTRACT TIME are based on what is currently understood. Where conditions change, the parties may have further discussions to manage and mitigate the impact of this evolving situation on the Project.

ADDITIONAL ATTACHMENTS:

The following additional attachments shall be read in conjunction with and constitute part of this Agreement:

n/a

INSURANCE REQUIREMENTS:

Before any services are provided under this agreement, Stantec shall procure, and maintain insurance coverage during the term of this agreement.

Safety Action Plan – Clemson, SC

Scope of Work – June 26, 2024

PROJECT PURPOSE

Development of a Safety Action Plan involves a systemic, data-driven approach to identifying local risk factors, prioritizing locations that are unsafe, and implementing proven safety countermeasures that prevent injuries and save lives.

The following Scope of Services describes the professional consulting services necessary to facilitate a Safety Action Plan as part of the Safe Streets and Roads for All (SS4A). These competitive grants are awarded to deserving communities that demonstrate a commitment to planning, infrastructure, behavior, and operational initiatives to prevent death and serious injury along our roadways. Tasks to follow describe the necessary steps to develop a Safety Action Plan, as guided by FHWA requirements for SS4A funding opportunities.

Task 1 – Project Management / Coordination

Stantec will utilize both digital platforms and in-person meetings/work sessions to coordinate logistics, share data resources, and maintain communication with the client. **Microsoft SharePoint** platform will be used for team access and distribution of files.

With logistical support from the Project Team (client) to invite participants, Stantec will facilitate project meetings, relying upon technical experts from our **Study Review Team** and consulting partners to generate content and facilitate discussions as appropriate. Once convened, the Study Review Team (often referred to as the Safety Task Force) will be critical to public engagement throughout this project. This group will also champion safety and maintain oversight of ongoing implementation and outcomes once this project concludes. A combination of four (4) virtual or in-person meetings are assumed for Study Review Team members. The anticipated focus for the meetings will be scheduled at key project milestones as follows:

1. **Organize**: kickoff and visioning meeting, information gathering, Public Engagement Plan
2. **Identify**: initial data analysis, trends, risk factors, and the high injury network (HIN)
3. **Select**: potential countermeasures, strategies, and projects and begin evaluation process
4. **Prioritize**: projects with select countermeasures, metrics and draft plan development

We assume the following meeting outline, and will remain flexible for unanticipated meeting needs:

- **Project Team** meetings – monthly logistics / coordination
- **Study Review Team** meetings – anticipating four (4) total meetings in total, at milestone schedule benchmarks
- **Stakeholder** collaboration / listening sessions – up to four (4) meetings with safety analysis and transportation practitioners
- **Public Engagement** – further refined within our Public Engagement Plan, assuming two rounds of engagement that focus on:
    - Identifying safety trends, contributing factors, and educational campaign materials

- Strategies for prioritization and policy moving forward
- **Board** & Council **updates** and endorsement – anticipating up to three (3) updates, prior to public engagement events, and upon completion of the SAP (see general timeline)

Deliverables: *Monthly coordination meetings (virtual) to review schedule and logistics; Meeting agendas, presentations, summary notes and action items; Preparation of public notices, flyers, and handouts; Summary of public engagement materials and feedback received; Presentation materials for Board updates.*

Client Responsibilities: *Designate a primary project manager; Identification and schedule coordination of meeting invites with key personnel; In-person meeting logistics, including locations and audio/video equipment; Distribution of public notices, and flyers; Review of meeting summaries and action items.*

Task 2 – Stakeholder and Public Engagement

Stantec's role in this outreach process will be to facilitate conversations around ***safer mobility***, and listening for key themes or risk factors that are supported by data trends (Task 3).

Outreach materials will be free of transportation jargon, and highly visual to communicate safety trends or unsafe driving behaviors. Notable tools and resources include an interactive web map built upon the **ArcGIS Online platform** that allows for residents to share points of interest ("hot spots" or safety hazards) and comment on specific locations they experience daily. In-person meetings with the public will allow for the deployment of **visual preference survey** boards that identify potential engineering strategies visually and allow for ranking/prioritizing of support for safety improvement types within the community.

Task 2A – Public Engagement Program

Stantec will generate a Public Engagement Plan (PEP) outlining the strategy for partner agencies and community members and describing the key concepts. The plan will include a general schedule along with a focus on obtaining essential feedback that will be creatively gathered and incorporated into the Safety Action Plan. The goal of the PEP will be equitable, inclusive, and meaningful engagement that meets people where they are, builds upon past and current engagement, and incorporates best practices put forward by national experts, emphasizing Safety Systems and FHWA guidance.

The Equity Review (Task 2B) will further inform the PEP and the plan will include specific strategies to engage low-income people, people of color, and non-English-speaking communities. Meaningful engagement to discuss transportation improvements in historically underserved communities can be challenging and emotionally charged; our approach will center on empathy, understanding, and education. We have learned from similar projects that success can only happen if we can reach and incorporate a diverse range of community members, have them present to share their vantage point, and focus their energy around achieving a few common goals. Our team will design, organize, and facilitate a public engagement program that will: *Listen & Share*, and *Involve & Educate*.

Phase 1 – LISTEN to the perspectives of local officials, business owners, Clemson University, non-government organizations, and residents. Inform the public on current risk factors and principles around Safe Systems and seek initial local input on safety issues and opportunities rooted in the living conditions experienced by residents. This phase will emphasize best practices for roadway safety and seek open-ended feedback around traffic safety concerns in the community. **SHARE** with the public the preliminary high injury network (HIN) locations and *potential* strategies to minimize risk. This phase will broadly reveal data analysis findings and draft recommendations.

- Establish project website – to be hosted by either the City or Stantec
    - Information, schedule, and progress updates
    - Bi-monthly media releases and email blasts – shared on website and via email lists
    - Interactive Webmap
- Meetings with Study Review Team (2)
- Public Meeting – Round #1 (1)
- Stakeholder or Focus Group virtual "listening sessions" (up to 4)

Phase 2 – INVOLVE the public in the prioritization of safety improvement project and policy recommendations, presenting the draft plan and providing an opportunity to prioritize an actionable draft implementation plan. Gauging community reactions to new transportation and safety countermeasures in the community. **EDUCATION** strategies geared towards continued discussion with the public, informing ongoing implementation of engineering concepts and proven safety countermeasures. This phase will include developing materials that translate industry jargon and terms into digestible formats via in-person events and/or digital media.

- Meetings with Study Review Team (2)
- Public Meeting – Round #2 (1)

Task 2B – Equity Review

Safety is a fundamental human right for all citizens; however, fatalities are not evenly shared between neighborhoods or communities. For a safety action plan, this means identifying underserved and transportation disadvantaged populations (utilizing Federal, State, and Local resources); then analyzing these populations and communities with respect to crash densities to identify streets, neighborhoods, communities, or population groups where a larger proportion of crashes are occurring (e.g., over-represented). This review will guide the selection of projects and strategies included in the Safety Action Plan. Risk factors for transportation disadvantaged areas may be different from other streets or neighborhoods, meaning that the public outreach process will be influenced and guided by outcomes from this equity analysis.

Deliverables: *Preparation of Public Engagement Program document; Establishment of a project website (host is tbd), interactive webmap; Preparation of materials and facilitation of two (2) rounds of public meetings; Facilitation of stakeholder focus group (virtual) listening sessions; Summary of feedback received; Equity review screening of transportation disadvantaged populations.*

Client Responsibilities: *Identification and reservation of public meeting venue(s), with appropriate audio-video equipment; Coordination and promotion of public outreach materials via email, social media, and through project stakeholders; Identification and invitation / coordination of stakeholders for focus groups.*

Task 3 – Development of a High Injury Network (HIN) with Risk Factors Identified

Review of crash data will focus on a redundant and multidisciplinary effort to improve roadway safety for all users. This type of ***proactive analysis*** is foundational to the Safe System Approach. The data review will include descriptive analysis identifying trends, location characteristics, and contributing factors that most commonly occur within the Clemson region, and screen for proven safety countermeasures that would be most effective at reducing crash severity.

Task 3A – Crash Data Analysis and Equity Screening

Our team will assemble and analyze crashes within a five-year crash period (2019-2023) for all crashes and a ten-year period if possible for pedestrian and bicycle crashes to identify local crash trends, determine high-risk factors (Task 3C), establish a regional High Injury Network (HIN, Task 3B) Using systemic safety analysis will help identify high-risk locations. While individual crashes may appear to occur at random, there are common contributing factors associated with similar crash types that once identified, crashes can be reduced with the appropriate selection of countermeasures. This analysis will identify characteristics across the regional network that correlate with fatal and serious injury crashes for each mode, even if the crashes are not geographically concentrated. These characteristics could include roadway features (e.g., lack of pedestrian infrastructure), driver behaviors (e.g., speeding), land use and roadway character, or external conditions (e.g., low lighting).

Evaluation of data for performance and equity will involve additional roadway characteristics data, including traffic volume data, intersection control, number of vehicle lanes, setting and surrounding land uses, proximity to key destinations such as schools or transit stops, as well as demographic data for transportation disadvantaged populations (relates with Task 2B), and barriers to mobility.

Task 3B – High Injury Network

Our Team will employ spatial Highway Safety Manual (HSM) analysis statistical techniques on the database established in Task 3A to comprehensively assess the severity-weighted corridors and intersections of greatest need. This analysis, along with statistical tests for over-representation and geospatial analysis for proximity/density, will be the basis of the HIN, i.e., locations with the greatest opportunity for roadway safety improvements. In addition, to proactively address crash risk before crashes occur, the location-specific HIN will be expanded to similar locations identified by a holistic set of risk factors. Our team anticipates that Clemson University roadways will be included within the HIN analysis.

In anticipation of future data requests, we will produce HINs by mode of travel and identify key locations by crash severity or crash type to facilitate countermeasure identification.

Task 3C – Risk Factors

Using systemic safety analysis will help identify high-risk locations. While individual crashes may appear to occur at random, there are common contributing factors associated with similar crash types that once identified, crashes can be reduced with the appropriate selection of countermeasures. Risk and vulnerability are quite different for non-vehicular travelers, and the individual perception of risk influences a person's mode choice and behavior. The assembled crash database (Task 3A), High Injury Networks (Task 3B), and Risk Factors (Task 3C) will be used to rank the degree of injury risk under current conditions, including roadways, transit and rail corridors, and bicycle/pedestrian facilities. Top-ranking project locations will be assessed for effectiveness in addressing the underlying risk factors and project countermeasures will be recommended.

A **crash data matrix** will be generated that examines human factors (e.g., driver impairment, behavior), vehicular and equipment factors (e.g., occupant restraints), and roadway and environmental factors (e.g., posted speed, roadway geometric design) to evaluate the *relative* importance of different factors in crash occurrence. This matrix will contribute to the development of the Countermeasure Toolkit, as part of the Implementation Plan (Task 4B).

Deliverables*: Technical memorandum summarizing a five-year crash dataset with tables, charts, infographics and maps, including risk factors; Identification and mapping of the HIN; Documentation of risk factors and systemic crash candidate locations within a crash data matrix; Risk assessment and project safety evaluation to support MTP project prioritization.*

Client Responsibilities*: Coordinate access to crash and roadway characteristics data, land use and demographic data in compatible GIS format; timely responses to questions regarding data; ensure participation of key City staff.*

TASK 4: Safe Streets Implementation Plan / Safety Action Plan

Documentation of the process, analysis, feedback, and strategies developed will be organized succinctly, and supported by graphics that establish our commitment to safe systems and transfers implementation to member jurisdictions.

Task 4A – Goals, Objectives, and Review of Policies

Defining our project goals, objectives, and policies is significant because change happens at the local level first. This task develops an overall framework for the City of Clemson & Clemson University that aligns the goals of the Safe Streets and Roads for All program with goals for reducing risk and improving safety over time. Vision and goals will be formulated concurrently with Task 1 to allow for the crash and roadway data analysis to ***inform*** the development of goals and objectives that directly speak to crash patterns, trends, and risk factors. Our team will review previous plans and current policies identified by the client, and that directly with traffic safety.

A **Vision Zero Resolution** will be generated that confirms local commitment to safer outcomes through the vision, goals, objectives, and now *policy* of safer streets.

Task 4B – Crash Reduction Strategy / Countermeasure Toolkit

A Safe Systems Approach combines the physical and behavioral elements that relate with risk, and its foundation within a data-driven approach of crash trends. The outputs of this task are focused on injecting safety concerns and practices into many City & University policies and programs so that safety is fully integrated into everyday activities.

The crash reduction strategy (Implementation Plan) will include quick-win projects in addition to middle- and longer-term needs that incorporate and are consistent with established prioritization tools within the region and state. We will develop guidance documents with example applications to evaluate the effectiveness of location-specific projects and systemic deployments and programs. We will incorporate community/stakeholder input for comprehensive, equity-focused countermeasures.

Regarding physical roadway safety improvements, our team will focus on proven countermeasures, including those identified by FHWA, NHTSA, and similar best practices that are effective at addressing the types of crashes identified by the HINs. Emphasis will be placed on low-cost/high-impact countermeasures that can be deployed ***systemically*** throughout the region. A performance monitoring strategy will be incorporated, for recurring evaluation of effectiveness. Recommendations will build upon risk factors and be relevant to the unique contexts in the City of Clemson's & University's planning area (e.g., rural, suburban, and urban roads and intersections), as well as non-physical elements that involve policy enhancements.

To be consistent with the Federal **Safe System Approach**, this task will organize recommendations into the following categories that show the relationship between the Safe System Approach and the historical classification of traffic safety "E's". Note that some Safe System principles overlap with multiple "E's":

- **Safe Roads and Safe Speeds** (Engineering) – engineering countermeasures, aligned to the emphasis areas identified as part of this effort and with recommendations catered to each context.
- **Safe Road Users** (Education and Equitable Enforcement) – building from SCDOT's Strategic Highway Safety Plan (SHSP), local partnerships, policy and programmatic recommendations will *complement* the physical improvements and grow a culture of safety.
- **Safe Vehicles and Safe Roads** (Emerging Technology) – relating with federal or state pilot programs, technological solutions like traffic signal ITS, and/or other innovative approaches to provide redundancy to engineering improvements and further reduce risk of death and serious injury.
- **Post-Crash Care** (Emergency Response) – opportunities for coordination on project design and delivery and on-system management for rapid response that can save lives following crashes.
- **Equity** - The team will also complete equity impact assessments of the recommended strategies (e.g., populations affected, opportunities to serve historically underserved communities). This may include recommendations for data monitoring for the plan implementation.

Digital appendix materials will include documentation of technical analyses, memorandums, meeting summaries, engagement materials generated, and prioritization methodologies for continual monitoring and re-evaluation.

Task 4C – Draft and Final Plan Adoption

Content from all previous tasks will be summarized into a draft version of the Safety Action Plan. The plan will cover existing conditions and data analysis, engagement summaries, recommended policy and process changes, and the infrastructure recommendations. The plan will include maps, photos, charts, and tables to concisely convey findings and recommendations, emphasizing public facing readability and transparency. The draft will be shared electronically for review and comment by members of the Study Review Team. The Final Safety Action Plan will address (one combined set of) comments received, and be made available for the public via the project website.

Plan endorsement will include presentation of the planning process, outreach, and prioritized list of safety improvements to the City Council. Assuming a typical 5–7-minute standard presentation, a set of presentation slides will be prepared with key talking points provided so that several project staff are prepared to present and discuss, depending on the audience.

Deliverables*: (1) Development of strategies and prioritization of treatments, including prioritized lists of project and policy recommendations; Draft and final versions of the Safety Action Plan; Digital resources and databases shared electronically as a digital Appendix; Final plan presentation for endorsement.*

Client Responsibilities: *Active participation in Project Team meetings, and coordinate direct/responsive feedback on draft materials from the Study Review Team members.*

SCHEDULE

The following schedule outlines the general timeline for key milestones associated with this scope of work, beginning July 2024.

#	Task	Month Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
1	**Project Management / Coordination**		1		2			3			4		
1A	City Council Briefings				1			2					3
2	**Stakeholder and Public Engagement**												
2A	Public Engagement Program				1			2					
2B	Equity Review												
3	**Development of a HIN with Safety Countermeasures**												
3A	Crash Data Analysis and Equity Screening												
3B	High Injury Network (HIN)												
3C	Risk Factors												
4	**Safe Streets Implementation Plan / Safety Action Plan**												
4A	Goals, Objectives, and Policies												
4B	Crash Reduction Strategy / Countermeasure Toolkit												
4C	Draft and Final Plan Adoption												

Note*: tentative schedule for project planning, subject to engagement activities and calendar of events.*

FEE

The following fee outlines the approximate budget by task.

#	TASK	BUDGET
1	Project Management / Coordination	$26,400
2	Stakeholder and Public Engagement	$72,000
3	Development of a HIN with Safety Countermeasures	$74,400
4	Safe Streets Implementation Plan / Safety Action Plan	$67,200
	Total Project Budget	**$240,000**

Note: this project is assumed to be a lump sum / fixed fee contract.

City of Clemson
Agenda Item Request Form

Requested By: Chief Campos

Date Submitted: 6/25/24

Council Meeting Date: 7/1/24

Type of Request: (check only one)

- [ ] Report/Discussion
- [x] Policy/Action
- [ ] Executive Session

Agenda Item Summary: (brief for public information and posted agenda)

Consider amendments and additions to City Ordinance Section 4-6 and 4-31.

Agenda Item Detail: (expand as necessary for clarification)

Consider changes to the Animal Cruelty Ordinance to clarify sheltering standards and adding an ordinance to establish standards to shelter dogs outside during extreme weather conditions.

CODE OF ORDINANCES

CHAPTER 4 ANIMALS AND FOWL (1)

FOOTNOTE(S):

--- (**1**) ---

Cross reference—Health and sanitation, ch. 10; racing animals by rider or driver, § 18-26.

State Law reference—Municipal authority to enact ordinances for care and control of dogs, cats, and other animals, S.C. Code 1976, § 47-3-20.

ARTICLE I. IN GENERAL

Sec. 4-6. Cruelty to animals.

It shall be unlawful for any person to inflict cruelty upon any animal; or ride, drive or work such animal when the animal is sick or unfit for work; override, overwork, overload, or ride when overworked; torture, torment, or beat or whip cruelly any animal; and it shall be unlawful for any such person owning or having charge of any animal to fail to provide such animal with proper food, drink, shelter, or protection from the weather.

Proper shelter is a structure large enough for the animal to stand, turn around in, and lie in a normal manner. The structure must adequately protect the animal from rain, snow, standing water, and from harsh weather; at a minimum, it shall have a roof, four sides, a floor (not earth), and an opening for ingress and egress.

An owner or keeper of animals shall, at all times, maintain a clean shelter and living area, free of accumulated waste and debris so that the animal shall be free to walk or lie down without coming in contact with any waste or debris. In cold weather, the shelter shall have bedding. Additional shelter requirements for dogs are contained in Section 4-31.

Any person who is an owner, manager, resident, or user of property, or structure where an animal is maltreated based on these provisions and knows, should have known, or has reason to know, these acts or omissions are occurring and fails to notify law enforcement is in violation of this Section.

CODE OF ORDINANCES

CHAPTER 4 ANIMALS AND FOWL (1)

FOOTNOTE(S):

--- (**1**) ---

Cross reference—Health and sanitation, ch. 10; racing animals by rider or driver, § 18-26.

State Law reference—Municipal authority to enact ordinances for care and control of dogs, cats, and other animals, S.C. Code 1976, § 47-3-20.

ARTICLE II. DOGS; RABIES CONTROL

Sec. 4-31. Outside shelter requirements for Dogs.

In addition to the shelter requirements contained in Section 4-6, the following requirements must be met when a dog is kept outside for longer than 4 hours:

1. During weather with a temperature equal to or greater than 90 degrees Fahrenheit, there must be adequate shade for the dog to have relief from direct sunlight. If no shade is available, then the shelter must have adequate ventilation to prevent temperatures inside the shelter from rising above the ambient outside temperature.
2. During weather with a temperature equal to or lower than 32 degrees Fahrenheit, there must be a shelter that is constructed in such a manner as to prevent wind from passing through the shelter and bedding must be provided such that the bedding is capable of maintaining the dog's body heat.

City of Clemson
Agenda Item Request Form

Requested By: Andy Blondeau

Date Submitted: June 26, 2024

Council Meeting Date: July 1, 2024

Type of Request: (check only one)

- [ ] Report/Discussion
- [x] Policy/Action
- [ ] Executive Session

Agenda Item Summary: (brief for public information and posted agenda)

Consider first reading of an Ordinance authorizing the execution and delivery of an intergovernmental wastewater capacity and services agreement and a project management agreement for the Pendleton/Clemson Wastewater Treatment Plant Expansion.

Agenda Item Detail: (expand as necessary for clarification)

This Ordinance includes an updated and consolidated Intergovernmental Agreement between the City of Clemson, Town of Pendleton and Anderson County for the management and operation of the Pendleton/Clemson Wastewater Treatment Plant. The Ordinance also includes a Project Management Agreement that outlines how the parties will work together to complete the treatment plant expansion project. Our Bond Attorney, Mike Burns, will be present to answer any questions.

INTERGOVERNMENTAL
WASTEWATER CAPACITY AND SERVICES
AGREEMENT

among the

Town of Pendleton, South Carolina

and

City of Clemson, South Carolina, and
Anderson County, South Carolina

_______, 2024

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MISCELLANEOUS

This **INTERGOVERNMENTAL WASTEWATER CAPACITY AND SERVICES AGREEMENT** (the "***Agreement***") is made this ____ day of __________, 2024 (the "***Effective Date***"), by and among the **CITY OF CLEMSON, SOUTH CAROLINA** ("***Clemson***"), **ANDERSON COUNTY, SOUTH CAROLINA** ("***Anderson***") (collectively the "***Purchasers***" and each, individually, a "***Purchaser***"), and the **TOWN OF PENDLETON, SOUTH CAROLINA** ("***Pendleton***," or the "***Seller***," as the context requires). Each entity may hereinafter be referred to as a "***Party***" or collectively as the "***Parties***."

BACKGROUND AND FINDINGS

(A) Capitalized terms used in this Agreement shall have the meanings given to such terms in Section 1.1 of this Agreement. In the event that a capitalized term is defined elsewhere in this Agreement and is also defined in Section 1.1 of this Agreement, and there is any inconsistency between such definitions, the definition in Section 1.1 of this Agreement shall control.

(B) Clemson is a municipal corporation and a political subdivision of the State of South Carolina (the "***State***") and possesses all general powers granted by the Constitution of the State of South Carolina 1895, as amended (the "***State Constitution***") and statutes of the State to municipal corporations. Clemson has heretofore lawfully established and now operates a municipal water and wastewater system, which generally serves the entire area of the City of Clemson and certain populated areas adjacent to its corporate limits.

(C) Anderson is a county and a political subdivision of the State, and possesses all general powers granted by the State Constitution and statutes of the State to counties thereof. Anderson has heretofore lawfully established and now operates a wastewater system, which generally serves portions of the unincorporated area of Anderson, and certain areas within the municipalities of Iva, Anderson, and Pendleton by agreement, however Anderson's Designated Service Area (as defined herein) consists of the entire unincorporated area of Anderson, except as depicted in Exhibit C hereto and as set forth herein.

(D) Pendleton is a municipal corporation and a political subdivision of the State and possesses all general powers granted by the State Constitution and statutes of the State to municipal corporations. Pendleton has heretofore lawfully established and now operates a municipal water and wastewater system, which generally serves the entire area of Pendleton and certain populated areas adjacent to its corporate limits. Pendleton has lawfully established and now operates a wastewater treatment and disposal system that provides service to the wastewater systems operated by Clemson and Anderson.

(E) Pursuant to agreements dated as of May 19, 1978, and June 7, 1978, Clemson and Pendleton jointly constructed a wastewater treatment plant (the "***Plant***") located on S.C. Highway 279 within the municipal limits of Pendleton. By agreements dated December 19, 1988, and July 21, 2015, Anderson obtained certain capacity in the Plant by agreement with Pendleton.

(F) The current permitted treatment capacity of the Plant is 2,000,000 gallons per day ("***GPD***"), which has been allocated 50% to Clemson, 40% to Pendleton, and 10% to Anderson. The Parties seek to expand the treatment capacity of the Plant to 5,000,000 GPD (the "***Project***") in order to meet existing and anticipated future wastewater treatment needs of the Parties, to promote economic growth, to provide cost effective sewer service to the Parties' respective customers, and prepare for continued population growth in and around the Parties. Capacity in the Plant following the Date of Substantial Completion (as defined herein) of the Project shall be as set forth at Exhibit A hereof.

(G) Through a separate project agreement (the "***Project Agreement***") of even date herewith, the Parties have memorialized the procurement, management, and cost-sharing responsibility of each Party related to the Project. The total cost of the Project is $64,328,198.00. The Parties expect the Project Agreement to provide for a Project cost allocation of 43.33% to Anderson, 23.33% to Pendleton, and 33.34% to Clemson, and further provide that any grant funds that have or will be obtained shall reduce the overall Project cost prior to allocation, except that the first $600,000 of the initial grant funds received shall be paid or applied against amounts due by Pendleton.

(H) Through this Agreement, the Parties seek to memorialize each Party's right to capacity in the Plant, the payment obligations of the Parties, and various other matters necessary to provide a comprehensive agreement whereby the Parties join together to provide wastewater services from the Plant for their mutual benefit. Each Party (i) has found this Agreement to be in the best interest of the public, the Parties, and the consumers to be served; and (ii) has been duly authorized by its respective governing body to sign this Agreement. The undersigned officers have been duly authorized to sign on behalf of their respective Parties.

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

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. In addition to any words and terms elsewhere defined in this Agreement, the following words and terms shall have the following meanings unless some other meaning is plainly intended:

"***2009 SRF Loan***" means the obligation issued by Pendleton and purchased by the South Carolina Water Quality Revolving Fund Authority (loan assistance number F1-123-09-472-05) to finance improvements to the Plant, issued in the original principal amount of approximately $1,620,850, dated November 12, 2009, with final maturity on January 1, 2031.

"***Accounting Principles***" means generally accepted accounting principles ("***GAAP***") and practices applicable to governmental entities in the United States, including those applicable to enterprise funds that relate to governmentally owned and operated utility systems, as may be amended or revised from time to time.

"***Advisory Board***" means the three-member board comprised of the County Administrator of Anderson, the City Administrator of Clemson, and the Town Administrator of Pendleton, and any person acting in an interim capacity as one of the foregoing. Each member shall serve on an *ex officio* basis while employed in such capacity and no person shall serve on the Advisory Board in a holdover capacity.

"***Agreement***" has the meaning given such term in the preamble to this Agreement.

"***Allocated Capacity***" or "***Allocated Capacities***" means, for the applicable period, the amount of the capacity of the Plant granted to Purchasers or retained by Seller. The Allocated Capacity for each Party, including the timeframe in which such Allocated Capacity is in effect, is set forth in Exhibit A to this Agreement. Allocated Capacity may be amended from time-to-time in accordance with Article III hereof. Allocated Capacity is expressed in MGD and is the maximum amount of wastewater that Seller is committed to accept from the holder of such Allocated Capacity in a day, as that term is defined in this Agreement.

"***Allocated Percentage***" or "***Allocated Percentages***" means, for the applicable period, the percentage derived by dividing each Purchaser's or Seller's Allocated Capacity by the capacity in the Plant. The Allocated Percentage for each Party, including the timeframe in which such Allocated Percentage is in effect, is set forth in Exhibit A to this Agreement.

"***Anderson***" has the meaning given such term in the preamble to this Agreement.

"***Anderson's System***" means Anderson's system for the collection and transmission of wastewater.

"***Annual Budget***" means, with respect to any given Fiscal Year, the budget prepared for the revenues and expenses of the Plant, exclusive of Seller's System, for such Fiscal Year. The Annual Budget shall contain detail comparable to the utility fund portion of Pendleton's annual budget for such Fiscal Year, and shall include a projection of the Revenue Requirement (including a line-item projection of the components thereof) for such Fiscal Year.

"***Bonds***" means any bonds, notes, loans, or other debt obligations issued or incurred by or on behalf of the Seller for purposes of financing or refinancing capital improvements to the Plant to the extent such capital improvements are necessary in order to provide the Wastewater Services to the Parties. Such term shall include only those Bonds listed on Exhibit B to this Agreement and such additional Bonds as may be authorized as provided in Sections 3.6 and 3.7 of this Agreement.

"***Business Day***" means any day other than a Saturday, Sunday, federal holiday in the United States of America, or day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"***Capital Charge***" means 1/12 of a charge calculated to recover from a Party its share of Capital Component for a given Fiscal Year, computed in compliance with the terms of this Agreement, it being understood that the Future Capital Component for a given Fiscal Year may be allocated by agreement among the Parties on a basis other than the then applicable Allocated Percentages.

"***Capital Component***" means, with respect to a given Fiscal Year, an amount equal to the sum of the Current Capital Component and the Future Capital Component described below:

(1) "***Current Capital Component***" means the Current Capital Costs for such Fiscal Year; and

(2) "***Future Capital Component***" means the Future Capital Improvement Costs for such Fiscal Year that are not defrayed by Bonds.

"***Clemson***" has the meaning given such term in the preamble to this Agreement.

"***Clemson's System***" means Clemson's system for the collection and transmission of wastewater.

"***Connecting Meters***" means the meters at the point or points of connection from Purchasers' Systems to Seller's System. Connecting Meters shall be installed or configured so as to accurately measure flow from each Party individually.

"***Contingency Fund***" means the fund of that name established and maintained by Seller for purposes of meeting contingency requirements during a given Fiscal Year, as described in Section 3.4(I) of this Agreement.

"***Contingency Fund Amount***" means, with respect to any Fiscal Year, an amount equal to that percentage of the aggregate Operation and Maintenance Expenses for the immediately preceding Fiscal Year as approved by a unanimous determination of the Advisory Board as part of the Annual Budget, as may be amended from time to time. Initially, for the first Fiscal Year, such amount shall be 0%.

"***Current Capital Costs***" means all capital costs treated as capital expenditures under Accounting Principles required in a given Fiscal Year to enable Seller to maintain the Plant's capability to accept the Parties' wastewater for treatment and to comply with all applicable regulatory standards, except for those capital expenses and costs that constitute Future Capital Improvement Costs.

"***Date of Substantial Completion***" means the date on which the Project is completed and is legally and actually capable of providing 5 MGD of Wastewater Services to the Parties.

"***Debt Service Charge***" means 1/12 of a charge calculated to recover from a Party its share of Debt Service Expenses for a Fiscal Year, computed in compliance with the terms of this Agreement.

"***Debt Service Expenses***" means an amount equal to the sum of the components described below:

(1) "***Prior Bonds Component***" means the amount of Debt Service Expenses associated with the 2009 SRF Loan listed on Exhibit B. Each Purchaser's share of the Prior Bonds Component is listed on Exhibit B.

(2) "***New Bonds Component***" means the amount of Debt Service Expenses associated with each series of Bonds (other than those Bonds listed on Exhibit B on the Effective Date) issued to defray the cost of Future Capital Improvement Costs as authorized by Sections 3.6 and 3.7 of this Agreement. Each Purchaser's share of the New Bonds Component shall be allocated as provided in Sections 3.6 and 3.7.

(3) "***Debt Service Coverage Component***" means an additional percentage applied proportionally to the Debt Service Expenses associated with each series of Bonds for which a Party is responsible for paying, that shall be sufficient to allow the Seller to comply with the reasonable debt service coverage ratios imposed in the authorizing documents under which those Bonds are issued. The Debt Service Coverage Component shall not exceed 20% of the Prior Bonds Component plus the New Bonds Component.

"***Depreciation Charge***" means 1/12 of a charge calculated to recover from a Party its share of the Depreciation Component for a given Fiscal Year, computed in compliance with the terms of this Agreement.

"***Depreciation Component***" means, with respect to any given Fiscal Year, the amount set forth in Seller's Annual Budget as the amount necessary and sufficient to fund the Plant Renewal and Replacement Fund for such Fiscal Year. The Depreciation Component shall be calculated to provide funds necessary and sufficient to provide a reasonable reserve for the repair, renewal, and replacement of the Plant.

"***Designated Service Area***" has the meaning given such term in Section 5-7-60 of the South Carolina Code and also includes the area within the municipal limits of the applicable municipality.

"***DHEC***" means the South Carolina Department of Health and Environmental Control, or any successor agency of the State with jurisdiction over the Plant.

"***Effective Date***" has the meaning given such term in the preamble to this Agreement.

"***Fiscal Year***" means the fiscal year of the Seller as it may be officially established or changed from time to time. The current Fiscal Year of the Seller begins each July 1 and ends on the following June 30.

"***Force Majeure***" means, to the extent beyond the control of the Party claiming an event of Force Majeure, any of the following: acts of God or nature; strikes, lockouts, or other industrial disturbances; acts of a public enemy; orders of any kind of the government of the United States or the State 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 pipe lines; partial or entire failure of electric supply; or the inability of Seller to receive wastewater or operate the Plant hereunder, or a Purchaser to control wastewater flows hereunder, on account of any other causes not reasonably within the control of the Party claiming such inability.

"***Future Capital Improvement Costs***" means all capital costs treated as capital expenditures under Accounting Principles to be completed in the then subsequent Fiscal Years, whether or not expenses are incurred in the then current Fiscal year, for projects needed to maintain or expand the capacity of the Plant as provided for in Sections 3.6 and 3.7 of this Agreement.

"***Good Utility Practices***" means any of the practices, methods, and acts engaged in or approved by a significant portion of the wastewater treatment industry in the United States during the relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in 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 do not require use of the optimum or a specific practice, method, or act, but only require use of practices, methods, or acts generally accepted in the wastewater treatment industry in the United States.

"***Independent Consultants***" means such firm or firms, consisting of or employing registered engineers, architects, rate consultants, accountants, or other professionals having skill and experience in utility financing and rate design, maintenance, operation, or evaluation of the costs and appropriate charges therefor of facilities such as Seller's System, and which are engaged by Seller in its discretion to perform such services.

"***Metered Flow***" means the actual measured flow of a Party's wastewater treated at the Plant.

"***MGD***" means millions of gallons per day, with the term "day" being understood to refer to the 24-hour period commencing at 12:00 a.m. (midnight) Eastern Time of a given calendar day.

"***Operation and Maintenance Charge***" means 1/12 of a charge calculated to recover from a Party its share of Operation and Maintenance Expenses for a Fiscal Year, computed in compliance with the terms of this Agreement.

"***Operation and Maintenance Expenses***" means reasonable and necessary direct expenses required (i) to operate the Plant for the provision of Wastewater Services; (ii) to maintain the Plant so that it will have a reasonable useful life; (iii) to defray the costs of current repairs to the Plant necessary for the delivery of Wastewater Services; (iv) to provide accounting, auditing, clerical and other related services relating to the foregoing, including the determination of and invoicing for all charges and expenses set forth in this Agreement; and (v) to replenish and maintain the Contingency Fund, all in accordance with this Agreement, and all as calculated in accordance with Accounting Principles. Operation and Maintenance Expenses do not include expenses that can be recovered as Depreciation Charges, Capital Charges, or Debt Service Charges.

"***Party***" or "***Parties***" has the meaning given such term in the preamble to this Agreement.

"***Pendleton***" has the meaning given such term in the preamble to this Agreement.

"***Plant***" has the meaning given such term in the preamble to this Agreement, as the same may be improved or expanded from time to time in accordance herewith.

"***Plant Renewal and Replacement Fund***" means the fund established by Seller to account for payments of Depreciation Charges and any analogous charges paid by the Parties.

"***Prior Agreements***" means the following agreements:

(1) June 7, 1978 agreement between Pendleton and Clemson regarding the construction of the Plant;

(2) June 7, 1978 agreement between Pendleton and Clemson regarding the operation of the Plant;

(3) June 2, 1980 agreement between Pendleton and Clemson regarding the operation of the Plant;

(4) May 19, 1988 agreement between Pendleton and Clemson regarding the Plant;

(5) December 19, 1988 agreement among Pendleton, Clemson, and Anderson regarding Anderson's capacity in the Plant;

(6) November 17, 1989 agreement between Pendleton and Clemson regarding capacity allocation in the Plant and other matters;

(7) March 10, 1992 agreement between Pendleton and Clemson regarding certain reimbursements;

(8) May 31, 2001 letter of understanding between Pendleton and Clemson regarding staffing at the Plant and other matters;

(9) July 1, 2001 agreement among Pendleton, Clemson, and Anderson regarding capacity leasing;

(10) November 12, 2009 agreement among Pendleton, Clemson, and Anderson regarding debt service payments in connection with the Plant; and

(11) July 21, 2015 agreement between Pendleton and Anderson regarding capacity in the Plant, service areas, and related matters.

"***Purchaser***" means, together or individually as the context requires, Anderson or Clemson, or both, and their respective successors and assigns.

"***Purchaser's System***" or "***Purchasers' Systems***" means, individually or collectively, as the context requires, Anderson's System or Clemson's System, or both.

"***Revenue Requirement***" means, for each Fiscal Year or period in question, all revenue necessary to recover the Operation and Maintenance Expenses, Debt Service Expenses, Capital Component, and Depreciation Component. An illustrative calculation of the Revenue Requirement in the detail required to be provided to the Advisory Board is attached as Exhibit D.

"***Seller***" means the Town of Pendleton, South Carolina.

"***Seller's System***" means Seller's entire system for the collection, transmission, treatment, discharge, management, and disposal of wastewater, including the Plant.

"***Service Area***" means, with respect to each Party, the area within which each Party is permitted by applicable law to provide wastewater services. The Service Areas of the respective Parties are shown in Exhibit C hereto.

"***South Carolina Code***" means the Code of Laws of South Carolina 1976, as amended.

"***State***" has the meaning given such term in the Background and Findings of this Agreement.

"***State Constitution***" has the meaning given such term in the Background and Findings of this Agreement.

"***Wastewater Services***" means Seller's collection, transmission, treatment, discharge, management, and disposal of wastewater through the Plant.

Section 1.02 Construction. In this Agreement, unless context otherwise requires:

(1) Articles and Sections referred to by number mean the corresponding Articles and Sections of this Agreement.

(2) The terms "hereby," "hereof," "hereto," "herein," "hereunder," and any similar terms refer to this Agreement, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the Effective Date of this Agreement.

(3) Words of the masculine gender shall mean and include correlative words of the female and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa, unless context clearly dictates otherwise.

(4) Exhibits to this Agreement constitute an integral part of this Agreement.

(5) Where Business Days are not specified in this Agreement, days should be interpreted as actual calendar days, and time periods shall be computed so as to exclude the reference day for the period and include the day on which the act or event is to happen.

(6) Three asterisks mark the end of each Article.

* * *

ARTICLE II

GENERAL REPRESENTATIONS AND COVENANTS

Section 2.1 Representations of Seller. Seller hereby represents that it is a municipal corporation and political subdivision of the State and as such it is a validly created governmental entity and a public body politic and corporate of the State and that it has the power, authority, and legal right to own and operate Seller's System and is capable of providing Wastewater Services 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 (but subject to the provisions of bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors' rights and to usual equity principles, which may limit the specific enforcement of certain remedies); that, as of the Effective Date, there is no litigation or proceeding pending or, to its knowledge, 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 2.2 Representations of Each Purchaser. Each Purchaser hereby represents that it is a duly organized and existing political subdivision of the State and has all necessary power and authority to own and operate the Purchaser's System and to 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 Purchaser; that this Agreement has been duly authorized, executed, and delivered by Purchaser, and constitutes a legal, valid, and binding obligation of Purchaser, enforceable in accordance with the terms hereof, particularly Section 3.3(E) (but subject to the provisions of bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors' rights and to usual equity principles, which may limit the specific enforcement of certain remedies); that, as of the Effective Date, there is no litigation or proceeding pending or, to its knowledge, threatened against 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 2.3 Discharge Rights. Seller represents that it has all rights, powers, authority, experience, and skills necessary to operate the Plant and to treat and dispose of wastewater and to perform its obligations under this Agreement as evidenced by, but specifically subject to, the provisions of the applicable wastewater construction, operating, and surface water discharge ("***NPDES***") permits issued by the DHEC Bureau of Water (a "***NPDES Permit***"). Seller maintains sole responsibility for maintaining its NPDES Permit and for renewals of the permit as required by State and federal law. In additional, Seller retains sole responsibility for operating within the requirements of its NPDES Permit. Any enforcement actions by federal or State agencies in the nature of fines, penalties, and facility upgrades which are required by a federal or state agency for failure of the Seller to comply with its NPDES Permit will be the sole responsibility of Seller and any such fines and penalties shall not be included as part of the Operation and Maintenance Charges, or any other charges, to the Purchasers.

Section 2.4 Purchasers' Rate Covenant. Each Purchaser covenants that at all times during the term of this Agreement it will impose fees for services provided by such Purchaser's System sufficient at all times to enable such Purchaser to meet its obligations hereunder.

Section 2.5 Seller's Rate Covenant. Seller covenants that at all times during the term of this Agreement it will impose fees for services provided to the customers of Seller's System, other than the Purchasers, that, when combined with the fees and revenues generated under this Agreement, shall be sufficient at all times to enable the Seller to meet its obligations hereunder. Without limiting the foregoing, Seller covenants that it and all other customers of Seller's System shall be charged rates or amounts computed on a similar basis as those charged to Purchasers, that such amounts shall be sufficient to cover Seller's proportionate share of the charges set forth at Section 3.3(A), and that receipts from such charges shall be deposited and used for the purposes of the charges set forth at Section 3.3(A).

* * *

ARTICLE III

SALE AND PURCHASE OF WASTEWATER SERVICES AND ALLOCATED CAPACITY

Section 3.1 Term of Agreement. This Agreement shall be effective upon the Effective Date and shall extend for an initial period of 30 years from that date. Absent receipt of Notice from a Party of its intent not to renew, this Agreement shall be automatically extended, to the extent permitted by law, for two separate ten-year periods thereafter. In the event any Party intends not to renew at the end of a term, such Party shall notify the other Parties of its intent, in writing, not less than two years prior to the end of such term. At the termination of this Agreement and any successor agreements, Purchasers shall retain their rights to the Allocated Capacity granted hereunder and shall be entitled to continue to use the same, and shall be required to pay for such use in the amounts and at the times provided by this Agreement, pending negotiation of a successor agreement.

Section 3.2 Sale of Wastewater Services.

(A) Seller shall make available to each Purchaser an amount of treatment capacity in the Plant equal to such Purchaser's Allocated Capacity set forth on Exhibit A and shall provide Wastewater Services delivered hereunder in compliance with all applicable State and federal laws and regulations.

(B) Seller shall receive and transmit wastewater from the Connecting Meters to the Plant in compliance with all applicable State and federal laws and regulations.

(C) At any time, if Seller determines that the daily delivery of wastewater by a Purchaser has exceeded such Purchaser's Allocated Capacity for at least 30 days during any 12-month period (whether or not such days are consecutive), Seller shall notify such Purchaser. Thereupon Seller and such Purchaser shall meet and exchange information concerning the demand for wastewater treatment services on such Purchaser's System and the availability of unused capacity in the Plant. If this information indicates to Seller that such Purchaser's demand is likely to exceed its Allocated Capacity on an on-going basis, then Seller may require that such Purchaser, and such Purchaser shall, obtain additional Allocated Capacity as permitted under the terms of this Agreement, either through purchase or transfer of capacity rights from another Party or through Plant expansion.

Section 3.3 Payment for Wastewater Services; Calculation of Revenue Requirement.

(A) Beginning on the Effective Date and in each succeeding month during the term of this Agreement, Seller shall invoice each Purchaser not later than the 5th day of each month and Purchaser shall pay by the 15th day of each month, an amount equal to:

(1) the Operation and Maintenance Charge,

(2) the Capital Charge,

(3) the Debt Service Charge, and

(4) the Depreciation Charge.

While Section 3.3(B)(1) is in effect, invoices for all or a portion of the Fiscal Year may be compiled and sent in advance at the beginning of each Fiscal Year and shall be payable for the applicable months on or before the 15th day of such month as described above.

(B) Operation and Maintenance Charges shall be established each Fiscal Year as follows:

(1) From the Effective Date through June 30 of the second full Fiscal Year following the Date of Substantial Completion, Operation and Maintenance Charges shall be established through the Annual Budget and shall be billed monthly as non-volumetric charges on the basis of each Party's Allocated Percentage. Seller shall perform a true-up at the end of its Fiscal Year based on the audited financial statements for Seller's System. If, based on such audit, a Purchaser has paid more than its Allocated Percentage of Operation and Maintenance Charges, Seller shall return the overage within 30 days of the date of such audit. If, based on such audit, a Purchaser has paid less than its Allocated Percentage of Operation and Maintenance Charges, such Purchaser shall pay such additional amount to Seller within 30 days of Notice of the same. Seller shall provide to Purchasers six months into each Fiscal Year a schedule based on such audit comparing actual revenues and expenses to budgeted amounts with the same detail provided in the Annual Budget.

(2) Beginning July 1 of the Fiscal Year immediately following the second full Fiscal Year following the Date of Substantial Completion, Operation and Maintenance Charges shall be based on such Purchaser's Metered Flow divided by all Parties' Metered Flows and shall be billed monthly. Seller shall perform a true-up at the end of its Fiscal Year based on the audited financial statements for Seller's System. If, based on such audit, a Purchaser has paid more than its share of Operation and Maintenance Charges, Seller shall return the overage within 30 days of the date of such audit. If, based on such audit, a Purchaser has paid less than its share of Operation and Maintenance Charges, such Purchaser shall pay such additional amount to Seller within 30 days of Notice of the same. Seller shall provide to Purchasers six months into each Fiscal Year a schedule

based on such audit comparing actual revenues and expenses to budgeted amounts with the same detail provided in the Annual Budget.

(C) Capital Charges, Debt Service Charges, and Depreciation Charges shall be established each Fiscal Year as follows through the Annual Budget and shall be billed monthly as non-volumetric charges on the basis of each Party's Allocated Percentage. Debt Service Charges will automatically be adjusted at any time that Seller's actual Debt Service Expenses change. Seller shall perform a true-up at the end of its Fiscal Year based on the audited financial statements for Seller's System. Amounts representing the Debt Service Coverage Component paid by a Purchaser, shall be returned to such Purchaser within 30 days of the completion of Seller's audited financial statements for a given Fiscal Year.

(D) In calculating the Revenue Requirement and Annual Budget, Seller shall include in its calculations projected income to be derived during the Fiscal Year in question from the treatment of septage waste and other sales of treatment services to customers that do not have an assignment of Allocated Capacity. Such projected income shall be allocated based on Allocated Capacities to offset Operation and Maintenance Expenses during such Fiscal Year.

(E) Each Purchaser hereby agrees to pay all amounts due hereunder from the revenues of its Purchaser's System. The obligation of each Purchaser to pay all of the charges set forth at Section 3.3(A) hereof shall be absolute and unconditional and shall not be suspended or discontinued for any cause whatsoever, including without limiting the generality of the foregoing, the failure of Seller to complete the acquisition, construction, improvement, or up-grading of any portion of the Plant; any acts or circumstances that may constitute failure of consideration, destruction of or damage to any portion of the Plant; and any failure on the part of Seller to perform and observe any agreement, whether expressed or implied, under this Agreement. Each Purchaser hereby covenants to impose rates and charges of the respective Purchaser's System to make 100% of the payments of its portion of the Revenue Requirement each Fiscal Year as required hereunder.

(F) The obligations hereunder shall not in any event constitute an indebtedness of a Party within the meaning of any provision, limitation, or restriction of the State Constitution or statutes of the State and the faith, credit and taxing power of each Purchaser is expressly not pledged therefor. Each Purchaser is not obligated to pay the amounts provided for hereunder, save and except from the revenues of its Purchaser's System.

Section 3.4 Annual Budget; Contingency Fund.

(A) The Parties will form the Advisory Board to make decisions concerning the operation of the Plant and recommendations regarding the Annual Budget, provided, however, the Plant will continue with its current operations until such time as the Advisory Board decides otherwise. Voting on the Advisory Board shall be on a one vote per Party basis, with a majority of all votes entitled to be cast required to approve any item, unless unanimity is specified for the particular approval or action.

(B) The Advisory Board will meet monthly or at some other interval that the Advisory Board may agree upon, provided that the Advisory Board must meet at least quarterly.

Professionals, advisors, and employees of each Party may attend meetings of the Advisory Board along with the Advisory Board member of such Party. Seller shall prepare a monthly financial statement and a monthly operating report and the same will be provided to the Advisory Board not more frequently than monthly, and not less frequently than quarterly; in each case such reports shall be made available within 15 days of the close of the applicable period. Such monthly report shall include a comparison of actual revenues and expenses to budgeted amounts with the same detail provided in the Annual Budget.

(C) Every year, the Advisory Board will discuss possible structural changes to the Advisory Board, the ownership of the Plant, and the Parties' Service Areas and Designated Service Areas. Notwithstanding the foregoing or anything else in this Agreement, the Parties agree to diligently pursue, on terms reasonably agreeable to all Parties, the formation of a Joint Sewer Authority pursuant to Title 6, Chapter 25 of the South Carolina Code in order to purchase, construct, acquire, own, operate, maintain, repair, and improve the Plant.

(D) Seller shall as soon as practicable deliver to the Advisory Board a proposed Annual Budget; provided, that the proposed Annual Budget shall be provided to the Advisory Board no later than the earlier of either (i) April 1 of a Fiscal Year, or (ii) the time when the utility fund portion of the Pendleton's proposed annual budget is publicly presented to Pendleton's governing body for approval. The Advisory Board shall provide a formal written recommendation regarding the proposed Annual Budget within 30 days of receipt from Seller. The proposed Annual Budget shall specify all expense items, charges, and other financial data necessary to compute the Revenue Requirement for such Fiscal Year and the charges payable by each Purchaser, and shall include the comparable data for each entry for the prior Fiscal Year and an explanation of any material variances.

(E) At the request of a Purchaser, Seller will cause the senior management official to meet with such Purchaser, prior to Pendleton's public hearing on the ordinance adopting its annual budget, in order to discuss the Annual Budget in detail. In the event that a Purchaser objects to any part of the proposed Annual Budget, Seller will permit that Purchaser to present its objections to Pendleton's governing body, in open or executive session, prior to final approval of Pendleton's annual budget. Exercise of this right of petition shall not be a precondition of seeking other relief for improper charges.

(F) As part of compiling its Annual Budget and the information provided to the Advisory Board under Section 3.4(B), Seller shall compute and provide a calculation of the Revenue Requirement and the charges to be paid by each Purchaser according to the terms of this Agreement and using a generally accepted cost-of-service rate-making methodology which categorizes costs on a functional basis and allocates them on a cost-causation basis. Charges under Section 3.3(A) shall be computed for each Fiscal Year to be adequate to recover from all Parties sufficient revenues to operate and maintain the Plant on an on-going basis. All revenues received by Seller's System attributable to the Plant shall be reflected in the calculations.

(G) Mid-period adjustments to the Annual Budget and resulting changes to the Section 3.3(A) charges may be implemented by Seller in cases of clearly demonstrated need based on unforeseen costs or circumstances, following submission of the adjustment to the Advisory Board and receiving a recommendation from the Advisory Board regarding such

Annual Budget amendment and revisions to charges. Such adjustments shall be calculated consistent with the Accounting Principles, ratemaking methodologies and cost allocation provisions referenced above. Any such adjustment shall require Notice to the Purchasers with a detailed description on the reasons for the change and accounting and other data supporting the need for the adjustment and the calculation of new Section 3.3(A) charges, with such Notice to be given no later than 30 days prior to the first reading of an ordinance of the Town Council of Pendleton to adjust Section 3.3(A) charges. The recommendation of the Advisory Board shall be provided to Seller's governing body on or before first reading of such ordinance amending the Annual Budget.

(H) If necessary, but only in cases of clerical, metering, or computation error, Seller may issue a corrected billing statement to Purchasers together with a detailed description of the corrections. In such event, Purchasers shall pay to Seller the corrected billing statement within 30 days of the issuance thereof.

(I) Seller shall establish and maintain a Contingency Fund, to be funded at all times in the amount of the Contingency Fund Amount. The Annual Budget shall determine the amount necessary to replenish or maintain the amount on deposit in the Contingency Fund, which amount shall be included in the Operation and Maintenance Charge. Amounts on deposit in the Contingency Fund may be used only for purposes of paying Operation and Maintenance Expenses during periods in which revenues generated by the Operation and Maintenance Charges are insufficient for such purpose. At any time that the amount on deposit in the Contingency Fund exceeds the Contingency Fund Amount, the Seller, in its discretion, shall either refund to the Purchasers the excess amounts or apply them as a credit against the Operation and Maintenance Expenses for the next ensuing billing period.

(J) The Advisory Board shall develop a five-year capital improvement plan for the Plant addressing capital projects, particularly those to be funded under Section 3.6 or 3.7 of this Agreement, and update it annually no later than the time it provides its recommendation regarding the Annual Budget. Upon development and at each update, the five-year capital improvement plan shall encompass the immediately succeeding five full Fiscal Years.

Section 3.5 Plant Renewal and Replacement Fund; Investment Earnings; Initial Funding. There is hereby established the Plant Renewal and Replacement Fund, which may only be used upon the approval of the Advisory Board. Revenues generated by Depreciation Charges, and analogous charges to other customers of Seller's System, shall be credited to the Plant Renewal and Replacement Fund by Seller. Amounts deposited into the Plant Renewal and Replacement Fund may be used from time to time to pay for renewal and replacement of capital improvements of the Plant. Appropriate records of expenditures from this fund shall be maintained by Seller. Allocations into the Plant Renewal and Replacement Fund shall be set forth in the Annual Budget. Allocations into the Plant Renewal and Replacement Fund attributable to Seller's Allocated Capacity shall be billed to Seller's customers and treated as provided in Section 3.3. No Depreciation Charge shall be due when the balance in the Plant Renewal and Replacement Fund equals or exceeds 5% of the replacement value of the Plant as determined by an Independent Consultant or as may be agreed by the Advisory Board. Earnings on the Plant Renewal and Replacement Fund shall be retained in such fund and become exclusively part of such fund.

Section 3.6 Capital Costs Not Related to Increases of a Purchaser's Allocated Capacity in Plant.

(A) Seller shall make all capital improvements necessary to maintain Seller's ability to provide Purchasers Wastewater Service consistent with each Party's Allocated Capacity, including improvements necessary to satisfy applicable regulatory agency requirements, and shall provide information regarding the need for any such capital improvement to the Advisory Board. All capital improvements under this Section 3.6 shall be reviewed by the Advisory Board, which shall provide a recommendation regarding the same, which shall be distributed to the Parties in the same manner as Notice. The costs therefor will be paid as follows:

(1) First, such costs shall be paid from annual Current Capital Component revenues;

(2) Second, remaining costs shall be paid from the Plant Renewal and Replacement Fund; and

(3) Third, remaining costs shall be paid as Future Capital Improvement Costs, with each Purchaser's share of the remaining cost of such improvements to be computed based on its Allocated Percentages. Purchasers shall pay such Future Capital Improvement Costs over the duration of the construction project in amounts reflecting the cash flow requirements of the project (and which may be paid in whole or in part from bonds issued by a Purchaser).

(B) Upon recommendation of the Advisory Board, and in order for the Parties to spread out the costs of capital costs under this Section 3.6 over multiple Fiscal Years, the Parties may agree either (i) for the Seller to issue Bonds to defray the costs of identified capital improvements and make the required payments thereafter to cover the associated Future Capital Improvement Costs on terms agreeable to the Seller and Purchasers, the debt service on which will be paid by such Purchasers as Debt Service Charges, or (ii) for each Party to provide its share of the required sum for the capital improvements by a date certain through any legally available funds, including the issuance of bonds of such Party. Such agreement and terms regarding the provision of funds shall be approved by the governing body of each Party by either resolution or ordinance. Upon the issuance of any Bonds, Exhibit B hereto shall be updated within 30 days of the issuance of such Bonds and provided to the Parties in the same manner as Notice. All amounts payable under this Section 3.6 shall be based on Allocated Percentages. In the absence of such agreement, charges under this Section 3.6 shall be imposed pursuant to paragraphs (1)-(3) of Section 3.6(A). Improvements to expand the capacity of the Plant shall not be included in any calculation under this Section.

(B) Seller shall promptly provide each Purchaser Notice and copies of all correspondence and documents related to any regulatory deficiency in the Plant the correction of which might result in Future Capital Improvement Costs, within five days following its receipt thereof, provided that this requirement shall not apply to any documents protected by the attorney-client privilege. As soon as practicable following such Notice, Seller shall procure an estimate of cost from an Independent Consultant and, upon completion thereof, provide the same to the Purchasers with an estimate of the related Future Capital Component.

Section 3.7 Expansion of the Plant to Provide Additional Capacity.

(A) Additional Allocated Capacity needed by any Party shall be made available from time to time by Seller, if feasible as reasonably determined by unanimous approval of the Advisory Board, with the costs of providing such additional capacity being assumed on a *pro rata* basis by the Party or Parties requesting or needing such additional capacity. If any Party shall determine that it requires additional capacity in the Plant, then it shall provide Notice to the other Parties in writing setting forth its estimated requirement for additional capacity and the time at which it estimates such additional capacity will be required. Seller shall promptly provide Notice of any such request to all other Parties. Within 60 days of the receipt of the initial Notice requesting capacity, representatives of the Seller, the requesting Party, and other interested Parties shall meet and exchange information in order for Seller to determine (i) the total capacity required by all Parties, (ii) the time for providing additional capacity, (iii) the manner of providing such capacity, (iv) the feasibility of the expansion, and (v) such other matters relating to the provision of such capacity as any Party may deem necessary.

(B) Seller agrees to undertake the design and construction of the improvements necessary to provide the additional capacity requested or needed by a Purchaser in a timely manner and diligently pursue the completion thereof such that such capacity will be available on or before the date set forth in such Notice. Provided, however, that, prior to Seller's undertaking of such obligations, the following conditions are met:

(1) The requested availability date shall be not less than 30 months following the date of the notice of approval of expansion by the applicable regulatory authorities;

(2) Seller shall not be required to add capacity to the Plant in increments of less than one MGD;

(3) Purchaser shall advance to Seller such funds as are required to cover the design and engineering expenses of the improvements necessary, and related consulting and legal fees, to provide the additional capacity requested by such Purchaser, following the review of the engineering scope of work and contract for such work by the Advisory Board and recommendation by the Advisory Board regarding the same prior to the award of such contract;

(4) Purchaser shall make provision for the payment of the costs of construction, construction management, permitting, and related consulting and legal fees of such expansion through (i) the payment of such Purchaser's share of the Future Capital Improvement Costs of such expansion for deposit into and administration under an escrow account during the construction period; or (ii) an amendment to this Agreement among the Parties providing for Seller to issue Bonds on terms agreeable to the Seller and such Purchaser, the allocable portion of the proceeds of which will be deposited into an escrow account and the allocable portion of the debt service on which will be paid by such Purchaser as Debt Service Charges; and

(5) Seller shall be able to obtain all necessary discharge or other permits required to support the expansion and operate the Plant after such expansion.

(C) In case of expansion, the Parties agree that Exhibit A to this Agreement will be modified by mutual agreement to the extent necessary to set forth the new Allocated Capacities and the Allocated Percentages required as a result of any expansion.

Section 3.8 Additional Future Capacity. Should capacity in the Plant increase beyond that then contemplated in Exhibit A, as may be amended from time to time, by any means other than pursuant to Section 3.7, including, without limitation and by way of example only, improvements funded through a grant, technological enhancements added as part of normal operations, or otherwise, such additional capacity shall be allocated on the basis of then applicable Allocated Capacities unless otherwise agreed among all Parties in writing. Any change in Plant capacity and the resulting changes in Allocated Capacities and Allocated Percentages shall be promptly reflected in an amendment to Exhibit A hereto.

Section 3.9 Response to Capacity Limitations. The Parties recognize that circumstances may arise in which the Purchasers may request additional capacity to serve the needs of wholesale or direct industrial customers under either Section 3.7 or Section 3.8 of this Agreement, and that these requests may come at a time when Seller has reasonably determined that the ability of the Plant to meet projected future needs for sewer treatment capacity is limited by environmental, regulatory, or other engineering constraints. In cases where capacity in the Plant cannot be expanded to meet both the reasonably projected needs within the Parties' respective Service Areas and the request for additional capacity to serve the needs of wholesale or direct industrial customers located outside of the Parties' respective Service Areas, then the Seller shall provide the Purchasers with a capacity needs and expansion study prepared by an engineer licensed in the State of South Carolina selected by the Advisory Board. The purpose of this study shall be to validate and test the estimated needs within the Parties' respective Service Areas and the environmental or engineering limitations that prevent the expansion of capacity in the Plant to meet all of those needs. Such study shall reflect a planning horizon of no greater than five years and shall reflect the independent professional judgment of the engineer who prepared it as to the reasonableness and suitability of all data and assumptions contained in it. In cases where the report validates the inability to serve both sets of needs, the Seller may limit the provision of additional capacity to serve the needs of wholesale or direct industrial customers located outside of the Parties' respective Designated Service Areas in order to ensure that the needs within the Parties' respective Designated Service Areas are met on a priority basis. However, in no case shall Seller offer to provide additional service to wholesale or direct industrial customers located outside of Pendleton's Designated Service Area, or provide capacity to others for doing so, until the Purchasers' prior requests for additional capacity have been met. Should the study indicate capacity may be added, the Parties shall proceed under Section 3.7 hereof.

Section 3.10 Measurement of Wastewater Flows. Each Purchaser's flow shall be individually measured at the applicable Connecting Meters, all as reasonably specified by Seller from time to time. The Connecting Meters shall be selected and installed, if necessary and as applicable, by Seller after consultation with the appropriate Purchaser to permit such Purchaser to provide input into the selection, installation and calibration of such Connecting Meters.

Purchasers shall have the right to observe and inspect the installation of Connecting Meters. The cost of the Connecting Meters and all installation, repair, and maintenance costs thereto as well as the cost of the activities necessary to accurately calculate the Metered Flows shall be paid by the appropriate Purchaser. Seller agrees to permit the Purchasers to conduct such inspection of the Connecting Meters as reasonably requested by Purchasers. Seller further agrees to provide to the Purchasers copies of all data regarding total flows treated at the Plant and the Connecting Meters as reasonably requested by Purchasers. Seller further agrees to provide routine testing and calibration of Connecting Meters no less frequently than once every six months. A Purchaser may request testing outside of the six-month testing cycle. If this out-of-cycle testing shows the Connecting Meters to be accurate within 5% of actual flow, the Purchaser shall pay the costs associated with such testing. If the Connecting Meters are found to be inaccurate by 5% or more, Seller shall pay the costs for such testing and subsequent recalibration.

Section 3.11 Operation and Maintenance of Plant.

(A) Seller agrees to operate and maintain the Plant in a good and proper manner in accordance with all applicable requirements of state and federal regulatory agencies, consistent with Good Utility Practices, and in such a manner as to enable it to comply with its obligations under the Agreement.

(B) Seller shall obtain and maintain, or cause to be obtained and maintained, with responsible insurers such insurance on the Plant (to the extent applicable insurance is available) that is customarily maintained with respect to properties of like character against accident to, loss of, or damage to such properties in an amount, less reasonable deductibles, sufficient to restore the Plant to operation in case of casualty loss.

Section 3.12 Books and Records. Seller shall maintain separate accounting records for both Seller's System and the Plant which records shall be maintained in accordance with Accounting Principles and audited annually by a licensed certified public accountant. All books and records of Seller pertaining to both Seller's System and the Plant and to the Revenue Requirements, and the components thereof, charged hereunder shall be available to each 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. Seller shall collect data necessary to allocate costs in conformity with cost allocation principles established in this Agreement.

Section 3.13 Sale of Wastewater Services and Allocated Capacity.

(A) Seller and Purchasers agree that this Agreement shall in no way limit or prohibit the sale by any Party within its respective Service Area of wastewater collection or disposal services to the Parties' respective current or future customers using the Wastewater Services provided under this Agreement.

(B) A Party may sell or lease all or any portion of its Allocated Capacity to any other Party on such terms and conditions as shall be agreed to by such Parties.

(C) A Party may sell or lease all or any portion of its Allocated Capacity to a person who is not a Party, as a sale of capacity rights separate and apart from the sale of bundled Wastewater Services to that person, but only upon written consent of all Parties, and compliance with the following conditions:

(1) the Allocated Capacity shall first be offered to the other Parties on the same offered terms for a period of 30 days following Notice of such offer unless extended by the Party selling such Allocated Capacity;

(2) if all of the Parties elect not to purchase any portion, then that portion may then be offered to a new purchaser who is not a Party;

(3) as a condition to such sale or lease, such new purchaser shall become a Purchaser under this Agreement; and

(4) no such sale, lease, or other disposition of Allocated Capacity shall relieve any Party of primary responsibility for the performance of its obligations under this Agreement absent express written consent of all Parties.

(D) Notwithstanding any other provision of this Agreement to the contrary, each Purchaser hereby acknowledges that (i) Seller may finance costs of Seller's System with the proceeds of Bonds and that the interest paid to the holders of certain of the Bonds is tax exempt pursuant to Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended (the "***Code***") and Treasury Regulations promulgated thereunder (the "***Regulations***") and (ii) the Code and Regulations prescribe certain limitations (the "***Private Business Use Limitations***") on the amount of Wastewater Services supplied by Seller's System that Seller is permitted to sell, directly or indirectly, to a person or entity other than a state or local governmental unit as defined by the Code and Regulations ("***Private Persons***") (such direct or indirect sales shall hereinafter be referred to as "***Private Business Use***"). For purposes of this Section, the United States of America and any agency or instrumentality of the United States of America are Private Persons, and providing Wastewater Services by Seller's System to the United States of America and any agency or instrumentality of the United States of America may constitute Private Business Use.

Purchaser hereby further acknowledges that any direct or indirect sale by Purchaser of such Purchaser's Allocated Capacity that constitutes Private Business Use in excess of the Private Business Use Limitations (i) may cause Bonds to be deemed to be private activity bonds under the Code and Regulations, and (ii) may cause the interest on Bonds to be included in gross income of the holders of the Bonds retroactively to the issue date of the Bonds.

The Parties hereby represent, warrant, and covenant as follows:

(1) Each Party shall ensure that for any Fiscal Year (i) not in excess of 10% of the amount its Metered Flows is subject to Private Business Use, if, in addition, the payment of more than 10% of its payments hereunder arise out of such use.

(2) To the extent permitted by law, in the event a Party enters into any contract, arrangement, or agreement, whether formal or informal, that may cause, or

causes, any of the Bonds to fail to satisfy the Private Business Use Limitations, that Party will pay, or cause to be paid, on behalf of the Seller, all amounts required to be paid in order to preserve the tax-exempt status of the Bonds under the Code and the Regulations, including without limitation, (i) all amounts determined to be due and payable to the United States of America with respect to the Bonds in connection with any examination of the Bonds by the Internal Revenue Service, (ii) all amounts determined to be due and payable to the United States of America with respect to the Bonds in connection with the Internal Revenue Service Voluntary Compliance Program, (iii) all amounts determined to be due and payable to the United States of America arising out of any other method or manner of determination by the Internal Revenue Service that the interest on the Bonds is included in the gross income of the holders of the Bonds due to the failure of the Bonds to comply with the Private Business Use Limitations, and (iv) all reasonable attorneys' fees, charges, and costs incurred by the Seller to protect and maintain the tax-exempt status of the Bonds.

(3) The terms of any direct or indirect sale by Purchaser of such Purchaser's Allocated Capacity shall be deemed to include the terms of this Section which shall be binding on all purchasers including all subsequent purchasers. Any transfer of Allocated Capacity or of any other rights arising under this Agreement which transfer is not subject to the terms of this Section shall be void *ab initio*.

Section 3.14 Pretreatment.

(A) The Purchasers grant to the Seller full authority to administer and manage Pendleton's industrial pretreatment program in the Service Areas of Clemson and Anderson, and to their significant industrial users, to be served by the Plant.

(B) The Purchasers grant to the Seller full responsibility and authority of issuing new industrial user permits to all of the Purchaser's existing and future significant industrial customers to be served by the Plant.

(C) The Purchasers grant to the Seller full responsibility and authority for monitoring and sampling all significant industrial users to be served by the Plant in the Purchasers' Service Areas for compliance with the Seller's industrial pretreatment program.

(D) The Purchasers grant to the Seller all rights and remedies in their Service Areas, including the levying of fines, administering civil penalties, and administering criminal penalties as prescribed in the Seller's sewer use ordinance to enforce compliance with the Seller's industrial pretreatment program by customers of the Purchasers served by the Plant. The Advisory Board shall review and approve the imposition of all civil and criminal penalties to be imposed by Seller on a customer of a Purchaser.

(E) The Purchasers grant to the Seller full authority to levy and collect fees and charges from the Purchasers' significant industrial users in their Service Areas to be served by the Plant as are required to cover the costs of Seller's industrial pretreatment program on an equitable basis with all customers of Seller's System.

(F) The Seller agrees to accept the administration, management, monitoring, and enforcement duties and responsibilities of its industrial sewer use ordinance as it relates to the Purchasers' Systems and Service Areas for industrial user customers only and will endeavor to keep the Purchasers fully informed of its permitting activities and proposed enforcement actions relating thereto, subject to Section 3.14(D).

(G) The Purchasers agree to keep the Seller fully informed on all significant industrial user customers of Purchaser in their respective Service Areas served by the Plant, to cooperate regarding the administration and management of the Seller's sewer use ordinance as it applies to significant industrial user customers of the Purchasers, and to assist the Seller regarding compliance and enforcement within the Purchasers' applicable respective Service Areas.

(H) The Parties agree that nothing herein grants Seller the right to waive the terms of any Purchaser ordinance or resolution, or the imposition and collection of any fee or charge imposed by a Purchaser.

Section 3.15 Service Areas.

(A) Anderson, by ordinance, has designated the entire unincorporated area of Anderson as the Designated Service Area of Anderson's System, and provides service within certain areas of the unincorporated area of the County and within certain municipalities as described at paragraph (C) of the Background and Findings hereof.

(B) Anderson consents to Pendleton providing sewer service, at Pendleton's sole expense, within that portion of Anderson's Designated Service Area shown in Exhibit C hereto regardless of whether Pendleton annexes such areas or not (the "***Consented Service Area***"). Consent to Pendleton providing service in such Consented Service Area in no way transfers ownership of any part or portion of Anderson's System and Anderson retains the right to utilize its trunk lines within the Consented Service Area for the conveyance of wastewater. In the portion of the Consented Service Area where Anderson has sewer lines, e.g. the School District area, Pendleton shall exercise reasonable efforts to utilize such existing sewer lines for transportation of wastewater to the Plant and pay Anderson a mutually agreed upon transportation fee as contemplated in that Memorandum of Understanding among Anderson, Pendleton, and Anderson County School District Four dated January 26, 2017. Any wastewater transported by Anderson to the Plant from such area will not count against Anderson's Allocated Capacity.

(C) If Pendleton becomes aware that development is planned in areas outside of the Consented Service Area that does not presently have sewer service and are contiguous to Pendleton's municipal boundaries or the Consented Service Area, and desires to provide such service, Pendleton will immediately provide Notice to Anderson of such development and its interest in providing service. Anderson shall review such Notice and consider whether to grant additional consent for Pendleton to provide service within Anderson's Designated Service Area, with any consent requiring an ordinance of Anderson's County Council.

(D) If Clemson seeks to provide sewer service in Anderson or Pendleton, Clemson will provide Notice to Anderson or Pendleton of such interest in providing service. Anderson or

Pendleton shall review such Notice and consider whether to grant consent for Clemson to provide service within Anderson's Designated Service Area or within Pendleton, with any consent requiring an ordinance of Anderson's County Council or Pendleton's Town Council, as applicable.

(E) If Anderson seeks to provide sewer service in Clemson or Pendleton, Anderson will provide Notice to Clemson or Pendleton of such interest in providing service. Clemson or Pendleton shall review such Notice and consider whether to grant consent for Anderson to provide service within Clemson or Pendleton, with any consent requiring an ordinance of Clemson's City Council or Pendleton's Town Council, as applicable.

* * *

ARTICLE IV

EVENTS OF DEFAULT; REMEDIES

Section 4.1 Events of Default; Remedies.

(A) To the extent permitted by law:

(1) In the event that a Purchaser fails to make any monetary payment required by this Agreement when due, 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 10% per annum. In addition, if such Purchaser fails to make payment when due, upon 60 days Notice from the Seller, the defaulting Purchaser shall forfeit its capacity rights under this Agreement immediately following such 60-day period and does hereby appoint Seller as its agent for the purpose of transferring such Purchaser's Allocated Capacity to the nondefaulting Parties in proportion to their relative Allocated Percentages (for example, if Allocated Percentages were split in thirds, the nondefaulting Parties would each get half of the defaulting Party's Allocated Capacity). Should the defaulting Party pay all amounts due and otherwise comply with the terms of this Agreement, a nondefaulting Party may transfer Allocated Capacity to such Party upon such terms as may be mutually agreeable, or not at all.

(2) In the event that Purchaser fails to perform any non-monetary covenant, obligation, term, or promise in this Agreement after 30 days from the date of Notice to Purchaser of such failure, Seller may bring action against Purchaser for the specific performance by Purchaser of such covenant, obligation, term, or promise.

(3) In the event that a failure by Purchaser to perform any covenant, obligation, term, or promise in this Agreement is the proximate cause of any physical damage to Seller's Plant, then Purchaser shall be responsible for the cost of repairing such damages, and Seller may bring an action therefor.

(B) To the extent permitted by law:

(1) In the event that Seller fails to make any monetary payment required by this Agreement within 30 days from the date when due, Purchasers 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 10% per annum.

(2) In the event that Seller fails to perform any non-monetary covenant, obligation, term, or promise in this Agreement after 30 days from the date of Notice to Seller of such failure, Purchaser may bring action against Seller

for the specific performance by Seller of such covenant, obligation, term, or promise.

(3) In the event that a failure by Seller to perform any covenant, obligation, term, or promise in this Agreement is the proximate cause of any physical damage to Purchaser's System, Seller shall be responsible for the cost of repairing such damages, and Purchaser may bring an action therefor.

(4) If Seller shall become indebted to Purchaser by reason of any provision in this Agreement, Purchaser shall have no right to offset such indebtedness against its obligations to make payments under the provisions of Article III of this Agreement. Seller shall not be liable in any event for consequential, incidental, punitive, economic, or third-party damages. The fact that the obligations of Purchaser to make payments under this Agreement are absolute and unconditional shall not be construed to diminish the exclusive remedies provided by this Section 4.1 for any failure by Seller to perform under this Agreement.

* * *

ARTICLE V

MISCELLANEOUS

Section 5.1 Effects of Force Majeure. If by reason of Force Majeure any Party shall be rendered unable wholly or in part to carry out its obligations under this Agreement, other than the obligations of Purchaser to make the payments required under Section 3.3 of this Agreement, then if such Party shall give notice and full particulars of such Force Majeure in writing to the other Parties 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 diligence.

Section 5.2 Ownership and Sale of the Plant; Purchaser Right of First Refusal. The Plant shall at all times be the sole and absolute property of Seller; provided, however, Seller acknowledges that each Purchaser has the right to its Allocated Capacity within the Plant in accordance with the provisions of this Agreement. In the event that Seller determines to sell the Plant, and receives written consent from each Purchaser to solicit or receives proposals for the purchase of the Plant, Seller hereby grants to each Purchaser a right of first refusal and agrees to obtain a written proposal from the entity offering to purchase the Plant and will offer the Plant to each Purchaser on the same terms. Seller shall provide Notice and a copy of the proposal to each Purchaser, and each Purchaser may elect in writing within 90 days of Notice of the proposal, to purchase the Plant on the terms indicated. If more than one Purchaser seeks to purchase the Plant, then the Purchasers so electing shall purchase the Plant in shares determined by their relative Allocated Percentages. If a Purchaser does not respond to Notice of Seller's written offer within 90 days from the date of Seller's offer, that Purchaser shall be deemed to have waived its right to purchase the Plant and to have consented to the sale thereof. Seller agrees not to undertake a sale of any of the Plant to any entity unless Seller provides to each Purchaser an opinion of counsel experienced in matters of tax-exempt bonds to the effect that such sale will not adversely affect the tax-exempt status of bonds issued or to be issued by either Purchaser.

Section 5.3 Cooperation in Issuance of Obligations by Each Party. Each Party covenants and agrees that it will cooperate with each other Party in the issuance of any bonds or other obligations proposed to be issued by a Party and secured by revenues of such Purchaser's System or Seller's System. In connection therewith, each Party shall promptly comply with all reasonable requests of each other Party and will, upon request:

(1) Make available general financial and operational information about itself and its Seller's System or Purchaser's System;

(2) Consent to publication and distribution of its financial information;

(3) Certify that information provided by it is accurate, does not contain an untrue statement of a material fact, and does not omit to state a material fact necessary in

order to make the statements in that information, in light of the circumstances under which they were made, not misleading;

(4) Make available certified copies of official proceedings and records, if applicable;

(5) Provide reasonable certifications to be used in a transcript of closing documents;

(6) Provide reasonably requested opinions of counsel as to the validity of its actions taken with respect to and the binding effect of this Agreement, its title to its Seller's System or Purchaser's System, pending or threatened litigation that could materially affect its performance hereunder, and any other reasonably requested opinions; and

(7) Provide such other information, documents, and certifications as each Party may reasonably request.

Provided, however, that each Party's obligation to cooperate as set forth herein shall be conditional upon agreement by the requesting Party to reimburse any and all reasonable costs associated with such request, provided the requesting Party shall have first received an estimate of such costs from the Party receiving such request.

Section 5.4 Waiver of Jury Trial; Jurisdiction and Venue.

THE PARTIES HERETO HAVE EACH, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IRREVOCABLY WAIVED ANY RIGHT THEY MAY HAVE TO A JURY TRIAL WITH REGARD TO ANY DISPUTE HEREUNDER. ALL PARTIES HEREBY CONSENT TO VENUE IN THE STATE COURTS IN ANDERSON COUNTY, SOUTH CAROLINA.

Section 5.5 Notices. "***Notice***" is duly given hereunder: (a) if by transmission by hand delivery, when delivered; (b) if mailed via the official governmental mail system, three Business Days after the post mark, *provided* said notice is sent first class, postage pre-paid, via certified or registered mail, with a return receipt requested; (c) if mailed by an internationally recognized overnight express mail service such as Federal Express, UPS, DHL Worldwide or a similar organization, one Business Day after deposit therewith prepaid; or (d) by e-mail upon delivery with receipt confirmed. Notices shall be transmitted to the principal addresses of the Parties as follows:

If to the Town of Pendleton:

Town of Pendleton
Attn: Town Administrator
310 Greenville Street
Pendleton, SC 29670
Email: stevem@townofpendleton.org
with a copy (which is not Notice) to:

Town of Pendleton
Attn: Town Attorney

If to the City of Clemson:

City of Clemson
Attn: City Administrator
1250 Tiger Boulevard, Suite 1
Clemson, SC 29631
Email: ablondeau@cityofclemson.org

City of Clemson
Attn: Utilities Director
300 Cochran Road
Clemson, SC 29631
Email: bmcgill@cityofclemson.org

with a copy (which is not Notice) to:

City of Clemson
Attn: City Attorney
1250 Tiger Boulevard, Suite 1
Clemson, SC 29631

If to Anderson County:

Anderson County
Attn: County Administrator
P.O. Box 8002
Anderson, SC 29622
Email: rburns@andersoncountysc.org

Anderson County
Attn: Wastewater Manager
P.O. Box 8002
Anderson, SC 29622
Email: dbsingleton@andersoncountysc.org

with a copy (which is not Notice) to:

Anderson County
Attn: Anderson County Attorney
P.O. Box 8002
Anderson, SC 29622
Email: lharmon@andersoncountysc.org

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 hereto may, by written notice given to the other Parties to this Agreement, designate any further or different addresses to which subsequent Notice, certificates or other communications shall be sent.

Section 5.6 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 their behalf has been duly authorized to do so. This Agreement shall inure to the benefit of and shall be binding upon Seller and Purchasers and their respective successors or assigns.

Section 5.7 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

Section 5.8 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 5.9 Governing Law. This Agreement is prepared and entered into with the intention that the law of the State shall govern its performance and construction, and such performance and construction shall be governed by such law.

Section 5.10 Amendments. This Agreement may not be amended, changed, modified or terminated without in each instance the prior written consent of the Parties hereto. Seller shall promptly circulate all executed amendments to this Agreement to the Parties with the Notice thereof.

Section 5.11 No Adverse Presumption. Seller and Purchasers hereby acknowledge that this Agreement arose as the result of arm's length negotiations between the Parties and that this Agreement was prepared with the advice, consent, recommendation and review of each and all Parties and their counsel, and is the product of input by all Parties. 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 or any part thereof.

Section 5.12 Third Parties. This Agreement does not and is not intended to confer in favor of any persons or entities other than Seller and Purchasers any rights or remedies whatsoever, the Parties hereto intending by the provisions hereof to confer no such benefits or status.

Section 5.13 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 5.14 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 Parties to carry out the intent of this Agreement.

Section 5.15 Fully Integrated Agreement, Prior Agreements Superseded. The Parties agree that this Agreement constitutes the entire agreement between or among the Parties related to any aspect of the subject matter hereof, particularly the Plant and Designated Service Areas within Anderson. Reference is made to Section 3.15 regarding Anderson's Designated Service Areas and the requirement of consent to provide service therein. This Agreement shall supersede all existing agreements, understandings, and courses of dealings related to the purchase and sale of Wastewater Services among the Parties hereto. All prior agreements and understandings between or among the Parties related to any aspect of the Plant, and Designated Service Areas within Anderson, are hereby terminated and superseded in full by this Agreement. Specifically, and without limitation, the Prior Agreements are no longer of any force or effect.

(Signature Pages Follow)

IN WITNESS WHEREOF, the Parties hereto have caused this Intergovernmental Wastewater Capacity and Services Agreement to be signed in their names by their duly authorized officers as of the Effective Date.

TOWN OF PENDLETON, SOUTH CAROLINA

By:____________________________[Seal]

Print Name:____________________

Title:__________________________

Witness:

____

IN WITNESS WHEREOF, the Parties hereto have caused this Intergovernmental Wastewater Capacity and Services Agreement to be signed in their names by their duly authorized officers as of the Effective Date.

CITY OF CLEMSON, SOUTH CAROLINA

By:___________________________[Seal]

Print Name:____________________

Title:_________________________

Witness:

____

IN WITNESS WHEREOF, the Parties hereto have caused this Intergovernmental Wastewater Capacity and Services Agreement to be signed in their names by their duly authorized officers as of the Effective Date.

ANDERSON COUNTY, SOUTH CAROLINA

By:____________________________[Seal]

Print Name:_____________________

Title:_________________________

Witness:

____

(Signature Page to the Intergovernmental Wastewater Capacity and Services Agreement dated ____, 2024)

EXHIBIT A

ALLOCATED CAPACITY AND ALLOCATED PERCENTAGE

Prior to the Date of Substantial Completion of the Pendleton Plant Project

Capacity Held By:	Allocated Capacity (MGD)	Allocated Percentage
Pendleton	0.80	40.00%
Clemson	1.00	50.00
Anderson	0.20	10.00
Total Capacity	2.00	100.00%

Upon the Date of Substantial Completion of Pendleton Plant Project

Capacity Held By:	Allocated Capacity (MGD)	Allocated Percentage
Pendleton	1.50	30.00%
Clemson	2.00	40.00
Anderson	1.50	30.00
Total Capacity	5.00	100.00%

EXHIBIT B

PRIOR BONDS COMPONENT AND DEBT SERVICE

Issue	Original Principal Amount	Annual Debt Service	Debt Service Allocation (Anderson)	Debt Service Allocation (Clemson)	Final Maturity
2009 SRF Loan (F1-123-09-472 -05)	$1,620,850	$97,099.92	10.00%	50.00%	1/1/2031

EXHIBIT C

SERVICE AREAS MAP

PROPOSED PENDLETON SERVICE AREA

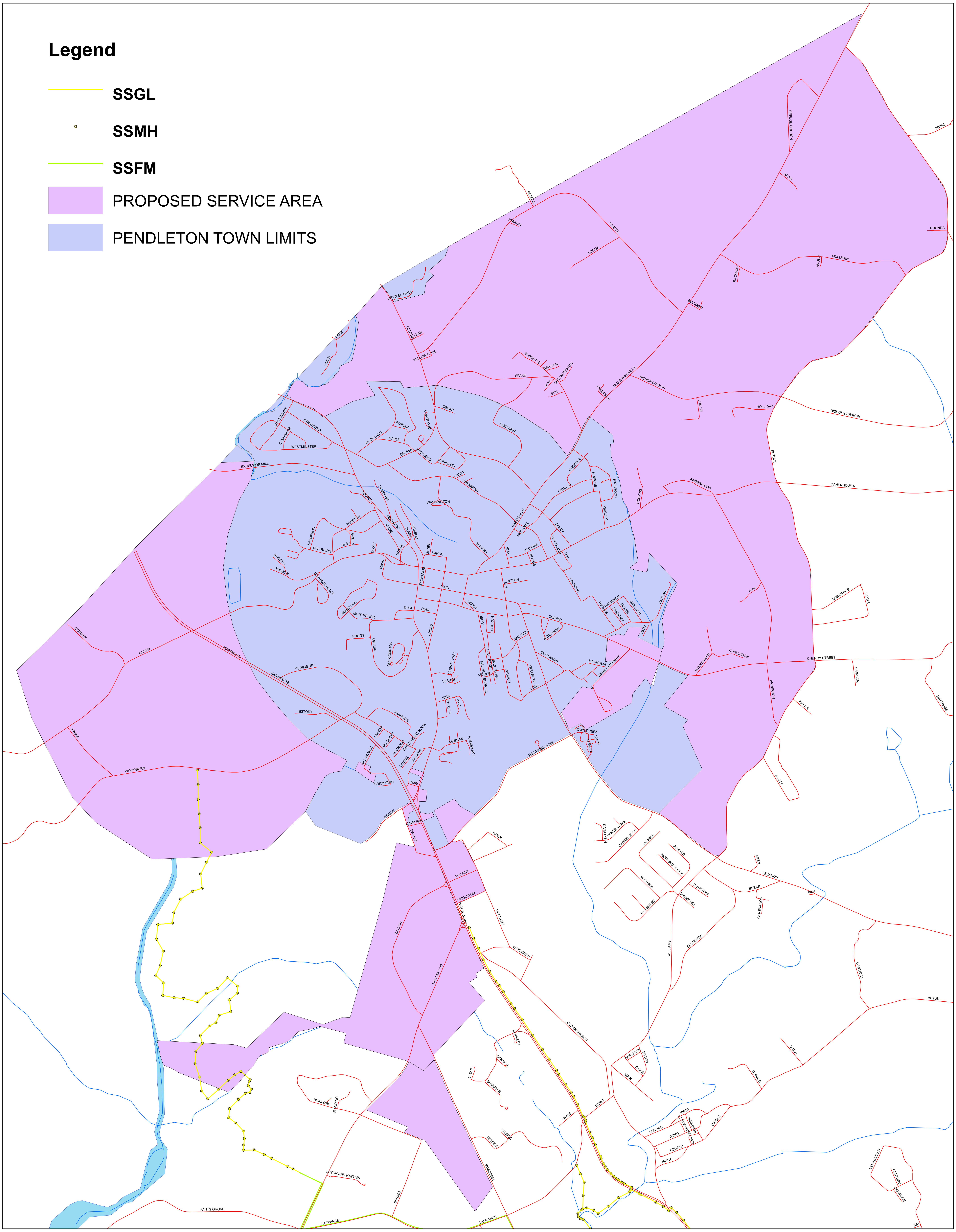

EXHIBIT D

REVENUE REQUIREMENT CALCULATION

Draft of 12 June 2024

PROJECT MANAGEMENT AGREEMENT FOR
WASTEWATER TREATMENT PLANT EXPANSION

among the

Town of Pendleton, South Carolina,
City of Clemson, South Carolina,
Anderson County, South Carolina,

and

U.S. Bank Trust Company, National Association, as Escrow Agent

_______, 2024

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This **PROJECT MANAGEMENT AGREEMENT FOR WASTEWATER TREATMENT PLANT EXPANSION** (this "***Agreement***") is made this ____ day of __________, 2024 (the "***Effective Date***"), by and among the **CITY OF CLEMSON, SOUTH CAROLINA** ("***Clemson***"), **ANDERSON COUNTY, SOUTH CAROLINA** ("***Anderson***"), the **TOWN OF PENDLETON, SOUTH CAROLINA** ("***Pendleton***" and together with Clemson and Anderson, the "***Project Participants***") and **U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION** (the "***Escrow Agent***"). Each entity may hereinafter be referred to as a "***Party***" or collectively as the "***Parties***."

BACKGROUND AND FINDINGS

(A) Capitalized terms used in this Agreement shall have the meanings given to such terms in Section 1.1 of this Agreement. In the event that a capitalized term is defined elsewhere in this Agreement and is also defined in Section 1.1 of this Agreement, and there is any inconsistency between such definitions, the definition in Section 1.1 of this Agreement shall control.

(B) Clemson is a municipal corporation and a political subdivision of the State of South Carolina (the "***State***") and possesses all general powers granted by the Constitution of the State of South Carolina 1895, as amended (the "***State Constitution***") and statutes of the State to municipal corporations. Clemson has heretofore lawfully established and now operates a municipal water and wastewater system, which generally serves the entire area of Clemson and certain populated areas adjacent to its corporate limits.

(C) Anderson is a county and a political subdivision of the State, and possesses all general powers granted by the State Constitution and statutes of the State to counties thereof. Anderson has heretofore lawfully established and now operates a wastewater system, which generally serves portions of the unincorporated area of Anderson, and certain areas within the municipalities of Anderson and Pendleton by agreement as set forth in the hereinafter defined Intergovernmental Agreement.

(D) Pendleton is a municipal corporation and a political subdivision of the State and possesses all general powers granted by the State Constitution and statutes of the State to municipal corporations. Pendleton has heretofore lawfully established and now operates a municipal water and wastewater system, which generally serves the entire area of Pendleton and certain populated areas adjacent to its corporate limits. Pendleton has lawfully established and now operates a wastewater treatment and disposal system that provides service to the wastewater systems operated by Clemson and Anderson.

(E) Section 6-15-20 of the South Carolina Code (as defined herein) provides that:

> Every governmental entity shall be empowered to enter into contracts with other governmental entities for the collection of sewage, for the disposal of sewage, and for the treatment of sewage, and to that end shall be jointly and severally empowered to construct, operate, maintain, enlarge and improve sewer facilities designed for use by the parties to the contract. Such contract may provide for the

> joint ownership of the sewer facilities or for the ownership of such facilities by any of the contracting parties, provided that, in such event, the remaining parties shall be empowered to utilize such sewer facilities to the extent provided for in the contract.

(F) Section 5-31-890 of the South Carolina Code provides that:

> All municipalities in this State owning, controlling, leasing or planning to construct a system of sewage disposal with or without outfalls, rights of way, easements and appurtenances thereto, may, through proper officials, commissioners of public works, sewer commissions or any of them or like bodies, enter into contracts and agreements with persons or political subdivisions outside the corporate limits of such municipalities, whether contiguous thereto or not, for the construction, maintenance, operation, improvement, leasing, controlling or furnishing the use, benefits and facilities thereof upon such terms and at such rates and charges as may be fixed by the contract or agreement between the parties when, in the judgment of the proper officials, commissioners of public works, sewer commissions, or any of them or like bodies, as the case may be, it is for the best interest of the city, town or municipality so to do. But no such contract or agreement shall be for a period exceeding thirty years from the effective date thereof.

(G) Pursuant to an Intergovernmental Wastewater Capacity and Services Agreement (the "***Intergovernmental Agreement***") among the Project Participants dated of even date herewith, the Project Participants have entered into a new agreement regarding the operation and use of the Plant (as defined in the Intergovernmental Agreement), superseding and terminating all prior agreements among the Project Participants with regard to Wastewater Services (as defined in the Intergovernmental Agreement).

(H) The current permitted treatment capacity of the Plant is 2.0 million gallons per day ("***MGD***"), which has been allocated 50% to Clemson, 40% to Pendleton, and 10% to Anderson. The Project Participants seek to expand the treatment capacity of the Plant to 5.0 MGD (the "***Project***," as further defined herein) in order to meet existing and anticipated future wastewater treatment needs of the Project Participants, to promote economic growth, to provide cost effective sewer service to the Project Participants' respective customers, and prepare for continued population growth in and around the Project Participants.

(I) Through this Agreement, the Project Participants seek to memorialize the procurement, management, and cost-sharing responsibilities of each Project Participant related to the Project; provide for a Project cost allocation of 43.33% to Anderson, 23.33% to Pendleton, and 33.34% to Clemson; and further provide that any Project Grants (as defined herein) that have been or will be obtained shall reduce total allocable Project Costs prior to allocation, except that the first $600,000 of the initial Project Grants received shall be disbursed to or retained by Pendleton.

(J) Each Project Participant has found that this Agreement (i) is in the best interest of the public, the Project Participants, and the consumers to be served; and (ii) has been duly authorized by its respective governing body to sign this Agreement. The undersigned officers have been duly authorized to sign on behalf of their respective Project Participants.

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

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. In addition to any words and terms elsewhere defined in this Agreement, the following words and terms shall have the following meanings unless some other meaning is plainly intended:

"***Accounting Principles***" means generally accepted accounting principles and practices applicable to governmental entities in the United States, including those applicable to enterprise funds that relate to governmentally owned and operated utility systems, as may be amended or revised from time to time.

"***Advisory Board***" has the meaning given in the Intergovernmental Agreement.

"***Agreement***" has the meaning given such term in the Background and Findings to this Agreement.

"***Allocated Capacity***" has the meaning given such term in the Intergovernmental Agreement.

"***Anderson***" has the meaning given such term in the Background and Findings to this Agreement.

"***Anderson Representative***" means the County Administrator of Anderson and the Wastewater Manager of Anderson, either of whom may act independently.

"***Anderson Account***" means the Anderson Account of the Project Fund created under Section 4.2 hereof.

"***Anderson's System***" means Anderson's system for the collection and transmission of wastewater.

"***Business Day***" means any day other than a Saturday, Sunday, or federal holiday in the United States of America or a day on which the New York Stock Exchange is closed or a day on which the payment system of the Federal Reserve Bank is not operational.

"***Clemson***" has the meaning given such term in the Background and Findings to this Agreement.

"***Clemson Account***" means the Clemson Account of the Project Fund created under Section 4.2 hereof.

"***Clemson Representative***" means the City Administrator and the Utilities Director of Clemson, either of whom may act independently.

"***Clemson's System***" means Clemson's system for the collection and transmission of wastewater.

"***Construction Advisors***" means those representatives from the three Project Participants that will supervise the construction and approve certain matters with regard to the Project; the initial Construction Advisors shall be the Utilities Director of Clemson, the Town Administrator of Pendleton, and the Wastewater Manager of Anderson.

"***Construction Contract***" means the guaranteed maximum price contract with Harper General Contractors, or any successor or assign.

"***Deposit Certificate***" means the certificate of each Project Participant to be executed and delivered in connection with a Project Participant's deposit of its Project Costs Share in the Project Fund, the form of which is attached as Exhibit B.

"***Disbursement Request***" means a request executed by a representative of a Project Participant to requisition funds from the Project Fund for Project Costs, the form of which is attached hereto as Exhibit C.

"***Effective Date***" has the meaning given such term in the Background and Findings to this Agreement.

"***Escrow Agent***" has the meaning given such term in the Background and Findings to this Agreement.

"***Force Majeure***" means, to the extent beyond the control of the Party claiming an event of Force Majeure, any of the following: acts of God or nature; strikes, lockouts, or other industrial disturbances; acts of a public enemy; orders of any kind of the government of the United States or the State 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 pipe lines; partial or entire failure of electric supply; or the inability of Pendleton to receive wastewater or operate the Plant hereunder, or a Participant to control wastewater flows hereunder, on account of any other causes not reasonably within the control of the Party claiming such inability.

"***Intergovernmental Agreement***" has the meaning given such term in the Background and Findings of this Agreement.

"***MGD***" means millions of gallons per day, with the term "day" being understood to refer to the 24-hour period commencing at 12:00 a.m. (midnight) Eastern Time of a given calendar day.

"***Operation and Maintenance Expenses***" has the meaning given such term in the Intergovernmental Agreement.

"***Participant***" means, together or individually as the context requires, Anderson or Clemson, or both, and their respective successors and assigns.

"***Participant's System***" means, individually or collectively, as the context requires, Anderson's System or Clemson's System, or both.

"***Party***" or "***Parties***" has the meaning given such term in the Background and Findings to this Agreement.

"***Pendleton***" has the meaning given such term in the Background and Findings to this Agreement.

"***Pendleton Account***" means the Pendleton Account of the Project Fund created under Section 4.2 hereof.

"***Pendleton Representative***" means the Town Administrator.

"***Pendleton's System***" means Pendleton's entire system for the collection, transmission, treatment, discharge, management, and disposal of wastewater, including the Plant.

"***Plant***" has the meaning given such term in the Intergovernmental Agreement.

"***Project***" has the meaning given such term in Section 3.1 hereof.

"***Project Budget***" has the meaning and is the amount provided at Section 3.1.

"***Project Costs***" means, and is limited to, Project expenditures that are treated as capital expenditures under Accounting Principles. In general, costs shall be treated as capital costs if they are incurred for the planning, acquisition, construction, or improvement of property having a useful life of more than one year and include costs related to the planning, acquisition, construction, or improvement of land, buildings, infrastructure improvements, and intangible assets. Capital costs also include costs and expenditures that increase the value of existing property with a useful life of more than one year or that extend the useful life of existing property for a period of more than one year. Capital costs consist of both direct costs and indirect costs.

"***Project Costs Share***" means, as to a particular Project Participant, such Project Participant's share of the Project Costs.

"***Project Fund***" means the fund of such name created under Article IV of this Agreement.

"***Project Grants***" means any grant to one of the Parties made with respect to the Project, including, but not limited to, the SCIIP Grant.

"***Project Participant***" has the meaning given such term in the Background and Findings to this Agreement. References herein to the direction of or consent of a Project Participant shall be deemed to mean a direction or consent given by the Representative of such Project Participant.

"***Representative***" means, individually or collectively as context requires, the Anderson Representative, the Clemson Representative, and the Pendleton Representative.

"***SCIIP Grant***" means the $10,000,000 grant awarded to Pendleton in 2023 from the South Carolina Infrastructure Investment Program administered by the South Carolina Rural Infrastructure Authority using State and Local Recovery Funds received through the American Rescue Plan Act

"***South Carolina Code***" means the Code of Laws of South Carolina 1976, as amended.

"***State***" has the meaning given such term in the Background and Findings of this Agreement.

"***State Constitution***" has the meaning given such term in the Background and Findings of this Agreement.

"***Wastewater Services***" has the meaning given such term in the Intergovernmental Agreement.

Section 1.02 Construction. In this Agreement, unless context otherwise requires:

(1) Articles and Sections referred to by number mean the corresponding Articles and Sections of this Agreement.

(2) The terms "hereby," "hereof," "hereto," "herein," "hereunder," and any similar terms refer to this Agreement, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the Effective Date of this Agreement.

(3) Words of the masculine gender shall mean and include correlative words of the female and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa, unless context clearly dictates otherwise.

(4) Exhibits to this Agreement constitute an integral part of this Agreement.

(5) Where Business Days are not specified in this Agreement, days should be interpreted as actual calendar days, and time periods shall be computed so as to exclude the reference day for the period and include the day on which the act or event is to happen.

(6) Three asterisks mark the end of each Article.

* * *

ARTICLE II

REPRESENTATIONS

Section 2.1 Representations of Pendleton. Pendleton hereby represents that it is a municipal corporation and political subdivision of the State and as such it is a validly created governmental entity and a public body politic and corporate of the State and that it has the power, authority, and legal right to own and operate Pendleton's System and is capable of providing Wastewater Services as contemplated by the Intergovernmental 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 Pendleton; that this Agreement has been duly authorized, executed, and delivered by Pendleton, and constitutes a legal, valid, and binding obligation of Pendleton, enforceable in accordance with its terms (but subject to the provisions of bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors' rights and to usual equity principles, which may limit the specific enforcement of certain remedies); that, as of the Effective Date, there is no litigation or proceeding pending or, to its knowledge, threatened against or affecting Pendleton 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 2.2 Representations of Each Participant. Each Participant hereby represents that it is a duly organized and existing political subdivision of the State and has all necessary power and authority to own and operate the Participant's System and to 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 Participant; that this Agreement has been duly authorized, executed, and delivered by Participant, and constitutes a legal, valid, and binding obligation of Participant, enforceable in accordance with the terms hereof (but subject to the provisions of bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors' rights and to usual equity principles, which may limit the specific enforcement of certain remedies); that, as of the Effective Date, there is no litigation or proceeding pending or, to its knowledge, threatened against or affecting Participant 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 Participant has taken all necessary action to authorize the execution and delivery of this Agreement.

Section 2.3 Project Permits and Related Matters. Pendleton represents that it has obtained or satisfied, or is in the process of obtaining and satisfying, all permits, permissions, approvals, easements, and other requirements necessary to complete the Project.

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ARTICLE III

THE PROJECT

Section 3.1 Scope of Project. The "***Project***" encompasses the scope of work necessary to increase the capacity of the Plant from 2.0 MGD to 5.0 MGD and improve water quality of treated effluent to Eighteen Mile Creek. The Project should be developed in accordance with the following:

- The Project Budget is $64,328,198.00.
  - $3,334,000.00 represents design costs incurred and paid by the Project Participants. No further design costs are owing from any Project Participant.
  - $60,994,198.00 is the cost of the Construction Contract. Of such amount:
    - $17,620,639.59 represents the portion of the Construction Contract funded in part from the SCIIP Grant; of such amount $9,400,000 will come from the SCIIP Grant and $8,220,639.59 will be provided by the Project Participants through their respective Project Costs Shares.
    - $43,373,558.41 represents the portion of the Construction Contract that is not funded in part from the SCIIP Grant and which shall be provided in whole by the Project Participants through their respective Project Costs Shares.
  - Any increase in the Project Budget or any component thereof recited in this Section 3.1 requires an amendment to this Agreement.
- The substantial completion date of the Project is June 2026.
- Pendleton shall execute the Construction Contract within ten days of:
  - Confirmation from the granting authority of the availability to proceed with expending proceeds of Projects Grants in an amount of not less than $9,400,000.00, and
  - Receipt of Deposit Certificates in the aggregate amount of $51,594,198.00.

Section 3.2 Change Orders; Increased Costs.

(A) Pendleton shall not make any material changes in the scope of the Project, the improvements on the site of the Project, or any component part of the Project, without an amendment to this Agreement. Any reduction in the scope of the Project that would cause the capacity of the Plant at substantial completion of the Project to be below 5.0 MGD is a material change. Nonmaterial changes shall be subject to the review and approval of the Construction Advisors as contemplated in Section 3.3 hereof.

(B) Should Pendleton, after consulting with the Construction Advisors, anticipate that construction costs of the Project will exceed the Project Budget, Pendleton shall provide Notice of the same, and include the proposed change order from the contractor, the amount of the increase in the costs of the Project, and the reason for the change with supporting documentation. Each Project Participant agrees to submit the proposed amendment providing for the amended Project Budget to its governing body for consideration within 30 days of receiving Notice thereof. Nothing herein shall be interpreted to require approval of such request by a Project Participant's governing body.

(C) Following any amendment to this Agreement to provide for an amended Project Budget, each Project Participant shall transfer to the Escrow Agent for deposit to the credit of the Project Fund their allocable share of the increased Project Budget in accordance with the terms of and within the timeline established in such amendment.

(D) The Escrow Agent shall not be liable for any increased amounts or any deficiency in the Project Fund, except as may be caused by its negligence or willful misconduct in the performance of any obligation imposed on it under this Agreement.

Section 3.3 Owner of Plant; Role of Construction Advisors.

(A) The Plant shall at all times be the sole and absolute property of Pendleton, unless otherwise agreed to in writing; provided, however, Pendleton acknowledges that each Participant has the right to its Allocated Capacity within the Plant in accordance with the Intergovernmental Agreement.

(B) In connection with the accomplishment of the Project, the Participants hereby appoint Pendleton as their agent for the purpose of signing and performing any and all agreements and contracts necessary or applicable in connection with all phases of the Project; provided, however, that prior to signing any contract or making any agreement or amendment thereto whether written or oral, including the final form of the Construction Contract, the Construction Advisors shall in each case review and approve such contract or agreement. Approval by the Construction Advisors shall require unanimity thereof, and may be evidenced by mail, email, or other writing in such form as to clearly evidence approval by each of the Construction Advisors.

(C) Pendleton shall keep the Construction Advisors fully informed with regard to, and provided free access to all aspects of, the Project, including, without limitation, planning and budgeting of the construction of the Project, selecting contractors, negotiating contracts, regular monitoring of construction work to assure compliance with plans and specifications for the Project, reviewing and paying of construction invoices, and coordinating required inspections, permits, and licenses for the Project. Pendleton, as the agent of the Participants for the foregoing purposes, shall cause the Project to be completed in accordance with this Agreement, the Construction Contract, the Intergovernmental Agreement, and any applicable requirements of governmental authorities and law.

Section 3.4 Enforcement of Contracts. Pendleton has the right to enforce in its own name and/or in the name of the Participants such purchase orders or contracts, in consultation with and upon approval by the Advisory Board.

Section 3.5 Acceptance. Pendleton, for $1.00 and other good and valuable consideration in hand received, does hereby accept the foregoing appointment as agent of each of the Participants for the purposes set forth in, and subject to the limitations of, this Agreement.

Section 3.6 Books and Records. Pendleton shall maintain accounting records for the Project which records shall be maintained in accordance with Accounting Principles. All documents, contracts, and other records pertaining to the development of the Project shall be available to each Participant for inspection at all reasonable times upon reasonable notice. Pendleton shall collect data necessary to allocate costs in conformity with cost allocation principles established in this Agreement.

* * *

ARTICLE IV

THE PROJECT FUND

Section 4.1 Project Costs Share. The Project Participants agree that the Project Costs of $51,594,198.00 (which is equal to the total Project Cost of $64,328,198.00, less design fees previously expended of $3,334,000.00 and less Project Grants of $9,400,000.00) to be allocated among the Project Participants shall be based on the following Project Costs Shares:

Project Participant	Dollar Value of Project Costs Share	Percentage of Project Costs Share
Anderson	$ 22,355,765.99	43.33%
Clemson	17,201,505.61	33.34
Pendleton	12,036,926.39	23.33
Total:	$ 51,594,198.00	100.00%

The Project Participants acknowledge and agree that each Project Participant has met all of its obligations with regard to remitting design fees and the same have been fully paid, that no additional design fees are contemplated, and that no moneys required for design fees are being deposited to the Project Fund.

Section 4.2 Creation of Project Fund.

(A) There is hereby created and established with the Escrow Agent a special fund designated the Project Fund to be held in the custody of the Escrow Agent separate and apart from other funds and accounts of the Project Participants and the Escrow Agent. Within the Project Fund, there is hereby created and established with the Escrow Agent the following accounts and subaccounts: (i) the Anderson Account, (ii) the Clemson Account, and (iii) the Pendleton Account. The Escrow Agent shall create additional accounts and subaccounts within the Project Fund on any Project Participant's written direction, provided that the Escrow Agent may only create a subaccount within a Project Participant's account of the Project Fund with the written direction of such Participant.

(B) Money in the Project Fund shall be applied to the costs of the Project. The Project Fund, including all accounts and subaccounts thereof, shall remain open until this Agreement is terminated in accordance with Section 6.14 herein. The balance, if any, remaining in the Project Fund, including any account or subaccount thereof, after termination of this Agreement in accordance with Section 6.14 herein, shall be disbursed back to the applicable Project Participant and may be used for any purpose permitted by applicable law and the bond documents authorizing the revenue bonds from which the funds derive.

(C) The Escrow Agent will hold each account and subaccount of the Project Fund as a separate escrow fund wholly segregated from all other funds and accounts held in any capacity and will make disbursements from each account and subaccount of the Project Fund only in accordance with the provisions of this Agreement

(D) Under no circumstances will the Escrow Agent have a lien on the Project Fund for its charges, fees and expenses and under no circumstances will the Escrow Agent make any claim against the Project Fund for such charges, fees, and expenses.

Section 4.3 Deposits to Project Fund. Within 30 days of the Effective Date of this Agreement, each Project Participant shall each cause to be irrevocably deposited with the Escrow Agent, in a single deposit, funds representing the full amount of its Project Costs Share. When depositing funds into the Project Fund, each Project Participant shall execute and deliver to the Escrow Agent a Deposit Certificate, substantially in the form attached hereto as Exhibit B, and the Escrow Agent shall acknowledge its receipt. Upon receipt of funds from the Project Participants which is accompanied by a corresponding Deposit Certificate, the Escrow Agent shall deposit such funds in the applicable account of the Project Fund as directed in such Deposit Certificate.

Section 4.4 Investment. The money in the respective accounts and subaccounts of the Project Fund will be held as cash uninvested or invested as permitted under Section 6-5-10 of the South Carolina Code, at the written direction of the applicable Project Participant depositing such funds to such subaccount. Investment earnings shall accrue only to the subaccount generating such earnings. If the Escrow Agent has not received written investment direction from the applicable Representative with respect to any amounts held by the Escrow Agent, the Escrow Agent shall hold such amounts uninvested in cash, without liability for interest. The Escrow Agent shall be fully protected in relying on the written investment directions it receives from the appliable Representative as to the legality and suitability of such directed investments and their qualification as permitted under Section 6-5-10 of the South Carolina Code. Investments may be made by the Escrow Agent through its own bank investment department and (a) will have maturities or be readily marketable prior to maturity in the amounts and not later than the dates as may be necessary to provide funds for the purpose for which the money in any account is to be used, (b) will be held by or under the control of the Escrow Agent, and (c) will at all times be considered a part of the subaccount for whose benefit the investment was made. Each Project Participant acknowledges that regulations of the Comptroller of the Currency grant the Representatives the right to receive brokerage confirmation of security transactions as they occur. Each Project Participant specifically waives such right to notification to the extent permitted by law and acknowledges that it will receive periodic transaction statements that will detail all investment transactions.

Section 4.5 Requisition and Disbursements.

(A) The Escrow Agent shall disburse the money in the Project Fund to pay Project Costs upon receipt of a properly executed Disbursement Request executed by a Pendleton Representative, an Anderson Representative, and a Clemson Representative. The Project Participants shall have the right to request from Pendleton, and Pendleton shall provide, information related to Disbursement Requests and requisitions from the Project Fund as they determine necessary or convenient to maintain adequate books and records, including but not limited to bills, paid invoices, payroll records, inspections, and certifications.

(B) Upon the receipt of a Disbursement Request, the Escrow Agent shall withdraw from each of the Anderson Account, the Clemson Account, and the Pendleton Account, amounts based on each Project Participant's Project Costs Share. Under no circumstances shall amounts attributable to one Project Participant's Project Costs Share be withdrawn from another Project Participant's subaccount of the Project Fund. Each Disbursement Request shall reflect the Project Costs Share of each Project Participant with respect to such Disbursement Request on which the Escrow Agent shall be entitled to rely.

(C) For any Disbursement Request that is reimbursed in whole or in part with the proceeds of a Project Grant, including specifically the SCIIP Grant, such reimbursement shall be deposited to the Project Fund and allocated among the Anderson Account, the Clemson Account, and the Pendleton Account on the basis of each Project Participant's Project Costs Share.

Section 4.6 Report. The Escrow Agent shall provide to each Project Participant online access to monthly statements and transaction activity for the accounts and subaccounts related to that Project Participant's accounts and subaccounts of the Project Fund as specified in Section 4.2 above. The Project Participants shall each designate one or more authorized representatives who shall promptly establish online account access and who shall make reasonable efforts to maintain active online account access by accessing at least one account or subaccount every ninety days. In addition, Pendleton hereby directs the Escrow Agent to provide to the Participants online access to all monthly statements and transaction activity for all of the accounts and subaccounts created under 4.2 above. Upon receipt by the Escrow Agent of written direction by Pendleton or by any authorized representative of any Participant, the Escrow Agent shall also cause monthly statements to be delivered to the authorized representative by United States Postal Service. Upon written request by Pendleton, the Escrow Agent will use best efforts to create and provide any specific report reasonably requested.

Section 4.7 Escrow Agent Fees. The Escrow Agent's fees and costs for and in carrying out the provisions of this Agreement are as set forth in Exhibit D hereto, which fees and costs are to be paid by Pendleton annually in advance as part of the Operation and Maintenance Expenses of the Plant and not from funds in the Project Fund. The Escrow Agent is not liable for any loss resulting from any investment made pursuant to the terms and provisions of this Agreement.

Section 4.8 Escrow Agent Generally.

(A) The Escrow Agent has no responsibility to the Project Participants or any person in connection herewith except as specifically provided herein and is not responsible for anything done or omitted to be done by it, except for its own negligence or willful misconduct in the performance of any obligation imposed on it hereunder.

(B) Subject to the exception in paragraph (a) as to its own negligence or willful misconduct, the Escrow Agent has no responsibility for verifying the genuineness, correctness, or competence of any document, instrument or writing, and shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein.

(C) The Escrow Agent may conclusively rely and act on any written notice, request, waiver, consent, certificate, receipt, authorization, power of attorney, or other instrument or document received from the Representatives which the Escrow Agent reasonably and in good faith believes to be genuine and to be what it purports to be.

(D) The Escrow Agent has no duty to determine or inquire into the happening or occurrence of any event or contingency or the performance or failure of performance of the Project Participants with respect to arrangements or contracts with others. The Escrow Agent may request from the Project Participants or any person such reasonable evidence as the Escrow Agent in its discretion deems necessary to determine any fact relating to the occurrence of any event or contingency and in this connection may inquire and consult with the Project Participants, among others, at any time. The Project Participants shall provide such evidence to the Escrow Agent and the Escrow Agent is entitled to rely thereon. The Escrow Agent's permissive rights hereunder shall not be construed as duties

(E) The Escrow Agent has no liability for following any instructions given by the Project Participants or in this Agreement or set forth in any court or administrative order.

(F) The Escrow Agent is authorized to comply with orders issued or process entered by any court with respect to the Project Fund, without determination by the Escrow Agent of such court's jurisdiction in the matter. If the Project Fund or any portion is at any time attached or levied on under any court order, or if the payment, assignment, transfer or delivery of any such property is stayed or enjoined by any court order, or if any order, judgment or decree is made or entered by any court affecting such property, then and in any such event, the Escrow Agent is authorized to rely on and comply with any such order, judgment or decree without the need for appeal or other action; and if the Escrow Agent complies with any such order, judgment or decree, it is not liable to any party hereto or to any other person or entity by reason of such compliance even if such order, judgment or decree is subsequently reversed, modified, set aside or vacated.

(G) With respect to the Project Fund, the duties and responsibilities of the Escrow Agent set forth herein shall control over any terms or provisions of any other agreement or undertaking between or among the Parties.

(H) The Escrow Agent may resign and thereby become discharged from the trusts hereby created by providing notice in writing given to the Parties not less than 30 days before such resignation is to take effect. The Escrow Agent agrees to serve as Escrow Agent until a successor is appointed. Such resignation is effective immediately, however, on the appointment of a successor Escrow Agent if such successor Escrow Agent is appointed before the expiration of said notice period. If such appointment of a successor Escrow Agent is not made within 30 days after the date that such resignation was to take effect as provided in the notice thereof given to the Parties, then the Escrow Agent may apply to a court of competent jurisdiction to appoint a successor Escrow Agent. In such event, the Escrow Agent shall give notice thereof to the Parties and not object to the Parties’ intervention therein.

(I) The Escrow Agent may be replaced by Pendleton with the consent of the Participants and thereby become discharged from the obligations hereby created by notice in writing given from Pendleton to the Escrow Agent not less than 30 days before such replacement is to take effect. The Escrow Agent agrees to serve as Escrow Agent until a successor is appointed. Such replacement is effective immediately, however, on the appointment of a successor Escrow Agent if such successor Escrow Agent is appointed before the expiration of said notice period.

(J) If a disagreement or dispute arises under this Agreement, or if adverse claims or demands are made in connection with this Agreement or any property involved herein or affected hereby, the Escrow Agent may petition any court of competent jurisdiction within Anderson County, South Carolina to resolve the disagreement or dispute or adverse claims or demands and shall, at the time of filing such petition, give notice thereof to the Parties within 5 Business Days after the date of such filing. In connection therewith, the Escrow Agent may (but is not required to) tender into the custody of the court all money or property in its hands under the terms of this Agreement, and then be discharged from all further duties under this Agreement. The filing of any such legal proceeding does not deprive Escrow Agent of its compensation earned before such filing.

(K) The Escrow Agent may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees but shall be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to consult with counsel and act on an opinion of counsel concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers, and employees as may reasonable be employed in connection with the trusts hereof.

(L) The Escrow Agent has no obligation to use its own funds to satisfy any obligations under this Agreement.

(M) Notwithstanding any other provision in this Agreement to the contrary, no provision of this Agreement shall be construed to relieve the Escrow Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that: (i) the Escrow Agent shall not be liable for any error in judgment made in good faith, unless it is proved that the Escrow Agent was negligent in ascertaining the pertinent facts, and (ii) the Escrow Agent is not liable with respect to any action it takes or omits to be taken by it in good faith in accordance with the direction of the Parties under any provision of this Agreement relating to the time, method and place of conducting any proceeding for any remedy available to the Escrow Agent, or exercising any trust or power conferred upon the Escrow Agent under this Agreement.

Section 4.9 Directions to the Escrow Agent; Designation of Representatives. The Escrow Agent may accept and act upon directions or instructions given pursuant to this Agreement and signed by a Representative. Each Project Participant shall provide to the Escrow Agent an incumbency certificate substantially in the form attached hereto as Exhibit A (the "***Incumbency Certificate***") designating the Representatives for such Project Participant and containing specimen signatures of such Representatives and email and telephone contact information, which incumbency certificate may be amended from time to time by submitting a new Incumbency Certificate to the Escrow Agent. The Escrow Agent shall accept and act upon instructions or directions pursuant to this Agreement sent by unsecured e-mail, facsimile transmission, or other similar unsecured electronic methods from the persons specified in the incumbency certificate. The Escrow Agent shall not be liable for any losses, costs, or expenses arising directly or indirectly from the Escrow Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. Each Project Participant agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Escrow Agent, including without limitation, the risk of the Escrow Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties; provided that such unauthorized instructions, interception or misuse was not due to the Escrow Agent's gross negligence or the compromise of the Escrow Agent's security systems.

* * *

ARTICLE V

EVENTS OF DEFAULT; REMEDIES

Section 5.1 Events of Default; Remedies.

Events of default and remedies hereunder shall be governed by Article IV of the Intergovernmental Agreement; provided, however, that should any Project Participant fail to make the deposit required by Section 4.3 hereof, each non-defaulting Project Participant shall have the right to withdraw all funds from the Project Fund deposited in its respective subaccount.

* * *

ARTICLE VI

MISCELLANEOUS

Section 6.1 Effects of Force Majeure. If by reason of Force Majeure any Party shall be rendered unable wholly or in part to carry out its obligations under this Agreement, other than the obligations of Participant to make the payments required under Section 4.3 of this Agreement, then if such Party shall give notice and full particulars of such Force Majeure in writing to the other Parties 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 diligence.

Section 6.2 Waiver of Jury Trial; Jurisdiction and Venue.

THE PARTIES HERETO HAVE EACH, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IRREVOCABLY WAIVED ANY RIGHT THEY MAY HAVE TO A JURY TRIAL WITH REGARD TO ANY DISPUTE HEREUNDER. ALL PARTIES HEREBY CONSENT TO VENUE IN THE STATE COURTS IN ANDERSON COUNTY, SOUTH CAROLINA.

Section 6.3 Notices. "***Notice***" is duly given hereunder: (a) if by transmission by hand delivery, when delivered; (b) if mailed via the official governmental mail system, three Business Days after the post mark, *provided* said notice is sent first class, postage pre-paid, via certified or registered mail, with a return receipt requested; (c) if mailed by an internationally recognized overnight express mail service such as Federal Express, UPS, DHL Worldwide or a similar organization, one Business Day after deposit therewith prepaid; or (d) by e-mail upon delivery with receipt confirmed. Notices shall be transmitted to the principal addresses of the Parties as follows:

If to the Town of Pendleton:

Town of Pendleton
Attn: Town Administrator
310 Greenville Street
Pendleton, SC 29670
Email: stevem@townofpendleton.org

If to the City of Clemson:

City of Clemson
Attn: City Administrator
1250 Tiger Boulevard, Suite 1
Clemson, SC 29631
Email: ablondeau@cityofclemson.org

City of Clemson
Attn: Utilities Director
300 Cochran Road
Clemson, SC 29631
Email: bmcgill@cityofclemson.org

with a copy (which is not Notice) to:

City of Clemson
Attn: City Attorney
1250 Tiger Boulevard, Suite 1
Clemson, SC 29631

If to Anderson County:

Anderson County
Attn: County Administrator
P.O. Box 8002
Anderson, SC 29622
Email: rburns@andersoncountysc.org

Anderson County
Attn: Wastewater Manager
P.O. Box 8002
Anderson, SC 29622
Email: dbsingleton@andersoncountysc.org

with a copy (which is not Notice) to:

Anderson County
Attn: Anderson County Attorney
P.O. Box 8002
Anderson, SC 29622
Email: lharmon@andersoncountysc.org

If to the Escrow Agent:

U.S. Bank Trust Company National Association
1441 Main Street, Suite 775
Columbia, SC 29201
Attn: Corporate Trust

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 hereto may, by written notice given to the other Parties to this

Agreement, designate any further or different addresses to which subsequent Notice, certificates or other communications shall be sent.

Section 6.4 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 their behalf has been duly authorized to do so. This Agreement shall inure to the benefit of and shall be binding upon Pendleton and Participants and their respective successors or assigns.

Section 6.5 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

Section 6.6 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 6.7 Governing Law. This Agreement is prepared and entered into with the intention that the law of the State shall govern its performance and construction, and such performance and construction shall be governed by such law.

Section 6.8 Amendments. This Agreement may not be amended, changed, modified or terminated without in each instance the prior written consent of the Parties hereto. Any amendment to this Agreement shall be approved by the governing body of each Party.

Section 6.9 No Adverse Presumption. The Parties hereby acknowledge that this Agreement arose as the result of arm’s length negotiations between the Parties and that this Agreement was prepared with the advice, consent, recommendation, and review of each and all Parties and their counsel, and is the product of input by all Parties. 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 or any part thereof.

Section 6.10 Third Parties. This Agreement does not and is not intended to confer in favor of any persons or entities other than Pendleton and Participant any rights or remedies whatsoever, the Parties hereto intending by the provisions hereof to confer no such benefits or status.

Section 6.11 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 6.12 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 Parties to carry out the intent of this Agreement.

Section 6.13 Fully Integrated Agreement. The Parties agree that this Agreement represents all agreements between or among the Parties related to the Project, other than the Intergovernmental Agreement.

Section 6.14 Duration; Termination. This Agreement shall be effective on the Effective Date and shall remain in full force and effect until (i) the Project is complete and all remaining costs and expenses related to the Project have been paid, each as certified in writing to the Escrow Agent by a Pendleton Representative, and (ii) no funds remain in the Project Fund. This Agreement may be terminated by the mutual consent of the Parties, provided that if an Event of Default has occurred and is continuing, the provisions of Section 5.1 herein shall apply

* * *

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have caused this PROJECT MANAGEMENT AGREEMENT FOR WASTEWATER TREATMENT PLANT EXPANSION to be signed in their names by their duly authorized officers as of the Effective Date.

TOWN OF PENDLETON, SOUTH CAROLINA

By:____________________________[Seal]

Print Name:____________________

Title:_________________________

Witness:

____

(Signature Page to the Project Management Agreement for Wastewater Treatment Plant Expansion dated ____, 2024)

IN WITNESS WHEREOF, the parties hereto have caused this PROJECT MANAGEMENT AGREEMENT FOR WASTEWATER TREATMENT PLANT EXPANSION to be signed in their names by their duly authorized officers as of the Effective Date.

CITY OF CLEMSON, SOUTH CAROLINA

By:____________________________[Seal]

Print Name:_____________________

Title:__________________________

Witness:

____

IN WITNESS WHEREOF, the parties hereto have caused this PROJECT MANAGEMENT AGREEMENT FOR WASTEWATER TREATMENT PLANT EXPANSION to be signed in their names by their duly authorized officers as of the Effective Date.

ANDERSON COUNTY, SOUTH CAROLINA

By:___________________________[Seal]

Print Name:____________________

Title:_________________________

Witness:

____

IN WITNESS WHEREOF, the parties hereto have caused this PROJECT MANAGEMENT AGREEMENT FOR WASTEWATER TREATMENT PLANT EXPANSION to be signed in their names by their duly authorized officers as of the Effective Date.

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION

By:____________________________[Seal]

Print Name:____________________

Title:_________________________

Witness:

____

EXHIBIT A

INCUMBENCY CERTIFICATE

Anderson Representatives

Russell D. Burns, County Administrator	______________________
Name and Title	Specimen Signature
(864) 260-4031	rburns@andersoncountysc.org
Phone Number	Email
Derrick B. Singleton, Wastewater Manager	______________________
Name and Title	Specimen Signature
(864) 260-4023	dbsingleton@andersoncountysc.org
Phone Number	Email

Clemson Representatives

Andy Blondeau, City Administrator	______________________
Name and Title	Specimen Signature
(864) 653-2030	ablondeau@cityofclemson.org
Phone Number	Email
Benjie McGill, Utilities Director	______________________
Name and Title	Specimen Signature
(864) 624-1177	bmcgill@cityofclemson.org
Phone Number	Email

Pendleton Representative

Steve Miller, Town Administrator	______________________

Name and Title	Specimen Signature
(864) 646-5425 ______________________________	stevem@townofpendleton.org______
Phone Number	Email

EXHIBIT B

FORM OF DEPOSIT CERTIFICATE

DEPOSIT CERTIFICATE

The undersigned County Administrator of Anderson County, South Carolina has this day deposited into the Anderson Account of the Project Fund the sum of $22,355,765.99, which represents the full amount of Anderson’s Project Costs Share as such term is defined in that Project Management Agreement for Wastewater Treatment Expansion among the Town of Pendleton, South Carolina; City of Clemson, South Carolina; Anderson County, South Carolina; and U.S. Bank Trust Company, National Association dated ___________, 2024.

ANDERSON COUNTY, SOUTH CAROLINA

By: ____
Russell D. Burns
County Administrator

The undersigned representative of the Escrow Agent hereby acknowledges receipt of the above-referenced deposit of Anderson’s Project Costs Share into the Anderson Account of the Project Fund.

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION

By: ____
Natalie M. Charles
Vice President

__________, 2024

DEPOSIT CERTIFICATE

The undersigned City Administrator of the City of Clemson, South Carolina has this day deposited into the Clemson Account of the Project Fund the sum of $17,201,505.61, which represents the full amount of Clemson's Project Costs Share as such term is defined in that Project Management Agreement for Wastewater Treatment Expansion among the Town of Pendleton, South Carolina; City of Clemson, South Carolina; Anderson County, South Carolina; and U.S. Bank Trust Company, National Association dated ___________, 2024.

CITY OF CLEMSON, SOUTH CAROLINA

By: ____
Andy Blondeau
City Administrator

The undersigned representative of the Escrow Agent hereby acknowledges receipt of the above-referenced deposit of Clemson's Project Costs Share into the Clemson Account of the Project Fund.

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION

By: ____
Natalie M. Charles
Vice President

__________, 2024

DEPOSIT CERTIFICATE

The undersigned Town Administrator of the Town of Pendleton, South Carolina has this day deposited into the Pendleton Account of the Project Fund the sum of $12,036,926.39, which represents the full amount of Pendleton's Project Costs Share as such term is defined in that Project Management Agreement for Wastewater Treatment Expansion among the Town of Pendleton, South Carolina; City of Clemson, South Carolina; Anderson County, South Carolina; and U.S. Bank Trust Company, National Association dated ___________, 2024.

TOWN OF PENDLETON, SOUTH CAROLINA

By: ____
Steve Miller
Town Administrator

The undersigned representative of the Escrow Agent hereby acknowledges receipt of the above-referenced deposit of Pendleton's Project Costs Share into the Pendleton Account of the Project Fund.

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION

By: ____
Natalie M. Charles
Vice President

__________, 2024

EXHIBIT C

FORM OF DISBURSEMENT REQUEST

REQUISITION
(DISBURSEMENT REQUEST FROM PROJECT FUND)

U.S. Bank Trust Company, National Association
Columbia, South Carolina

Re: Direction to Make Disbursement from the Project Fund

To the Addressee:

You are hereby directed to disburse from the Project Fund created under that Project Management Agreement for Wastewater Treatment Expansion among the Town of Pendleton, South Carolina; City of Clemson, South Carolina; Anderson County, South Carolina; and U.S. Bank Trust Company, National Association dated ___________, 2024 (the "Project Agreement"; capitalized terms used herein and not otherwise defined have the meanings given such terms in the Project Agreement), the amount set forth below in accordance with the instructions set forth below:

1. The amount to be paid: $___________________________. Such amount shall be withdraw from each of the Anderson Account, the Clemson Account, and the Pendleton Account based on each Party's percentage of Projects Costs Share, in the following amounts:

   (a) Anderson Project Costs Share: (43.33%) $________________________

   (b) Clemson Project Costs Share: $________________________ (33.34%)

   (c) Pendleton Project Costs Share: $________________________ (23.33%)

2. The nature of the purpose of the obligation for which this payment is requested is:

   ____

   ____

   ____

3. The name and address of the person, firm, or corporation to whom such obligation is owed or to whom a reimbursable advance has been made:

   ____

4. With respect to Project Costs, the undersigned hereby certifies as follows:

   (a) the Project Costs for which payment is being requested (i) have been paid or incurred in the amount and for the purpose specified, (ii) have not been the subject of any previous request for payment, and (iii) if this request is for an amount to reimburse a Project Participant for an expenditure paid by a Project Participant prior to the date on which the Project Fund was established, specifies the prior cost, and

   (b) all requirements of the Project Agreement relevant to the disbursement of money from the Project Fund have been met.

3. The Project Participants have retained in their records copies of any invoices, receipts, canceled checks, payroll records and other data which are reasonably required to evidence the paying or incurring of any Project Costs for which payment is being requested. Such records will be made available upon request.

Dated this _____ day of __________, 20___.

ANDERSON COUNTY, SOUTH CAROLINA

By:____
Anderson Representative

CITY OF CLEMSON, SOUTH CAROLINA

By:____
Clemson Representative

TOWN OF PENDLETON, SOUTH CAROLINA

By:____
Pendleton Representative

EXHIBIT D

ESCROW AGENT FEE SCHEDULE

Print Form

CITY OF CLEMSON
AGENDA ITEM REQUEST FORM

Requested by: John Fulmer

Date Submitted: 06/26/2024

Council Meeting Date: 07/01/2024

Type of Request: (check only one)

- [x] **Report/Discussion**
- [ ] **Policy/Action**
- [ ] **Executive Session**

Agenda Item Summary: (brief for public information and posted agenda)

Consider adding The Shaw Center as an approved non-profit for the digital sign located in the flag plaza at City Hall.

Agenda Item Detail: (expand as necessary for clarification)

Council is asked to consider adding the George and Roszena Shaw Center for Housing & Economic Growth to the list of approved non-profits for the digital sign. The Shaw center helps to create safe, inclusive, and livable home environments through their repairs and maintenance program, focusing on the historically under served neighborhoods located within the Clemson community.

City of Clemson
Agenda Item Request Form

Requested By: Andy Blondeau

Date Submitted: June 26, 2024

Council Meeting Date: July 1, 2024

Type of Request: (check only one)

- [x] Report/Discussion
- [ ] Policy/Action
- [ ] Executive Session

Agenda Item Summary: (brief for public information and posted agenda)

Receive a report on the status of the Black Heritage Trail and the proposed location for the city's portion of the trail.

Agenda Item Detail: (expand as necessary for clarification)

Dr. Rhondda Thomas and Shelby Henderson will provide an update on the status of the Black Heritage Trail and are seeking Council's blessing to move forward with plans to locate the Clemson portion of the trail on the Calhoun Bridge Center property. The use of city property and the final design would need to be approved by city council prior to the trail exhibit being installed.

Approved by Planning Commission 5/13/24
(File #2024-R-01)

Report on RZNE-000277-2024 Proposed Map Amendment (Hwy 76 / Ligon St. Parcels)

Approved by Planning Commission 5/13/24
(File #2024-R-01)

Parcel Information

The proposed zoning map amendment (rezoning) was initiated by the Planning Commission following staff's recommendation. If approved, it would change the current zoning of a group of six parcels totaling approximately 23 acres situated near Highway 76 and Ligon Street (see map below) from RM-1 (Two-family Residential) District to RM-4 (Multi-family Residential) District.

Tax Parcel Number	Acreage	Current Zoning
4053-10-36-5501	11.62	RM-1 District
4053-10-36-9806	5.00	RM-1 District
4053-10-47-1211	2.88	RM-1 District
4053-10-47-2549	1.49	RM-1 District
4053-10-46-3813	.76	RM-1 District
4053-10-46-2681	.90	RM-1 District

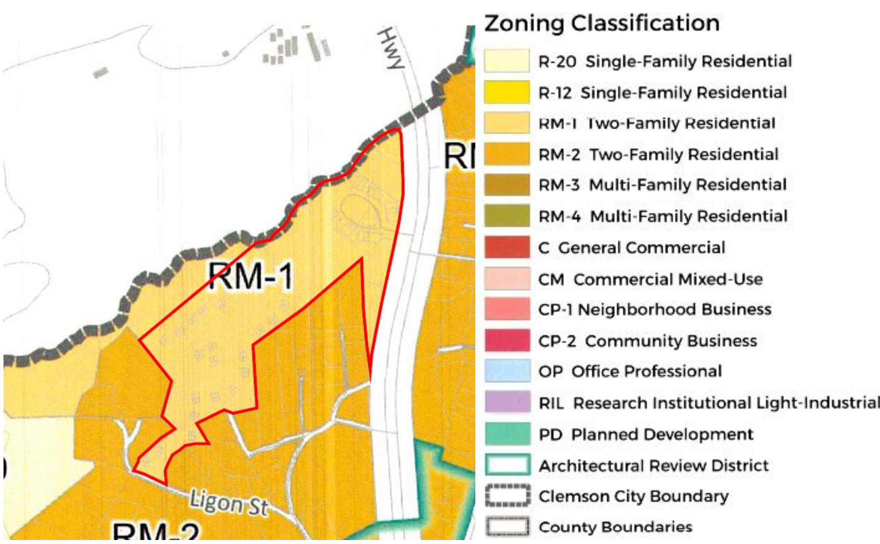
Zoning

As noted above, the properties are currently zoned RM-1 Two-family Residential District, which is defined as being:

> *intended for conventional residential development, patio home, zero-lot-line housing, and two-family dwellings on relatively small lots in areas where it is appropriate to increase density but maintain a neighborhood scale that serves as a transition between higher density multi-family districts and traditional lower density residential districts.*

And, the purpose of the proposed zoning, RM-4 Multi-family Residential District, is:

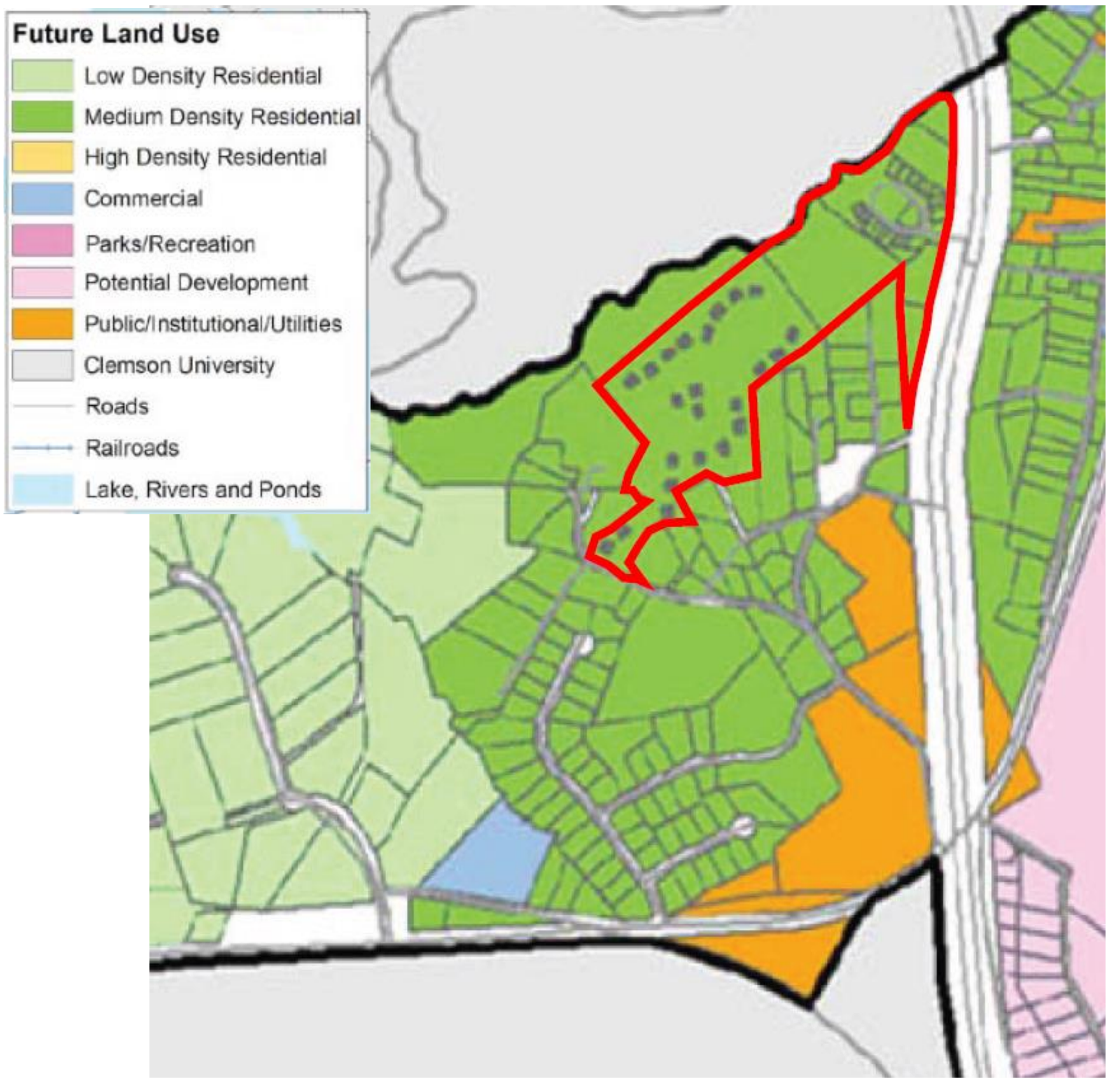
> *to maintain and promote medium- to high-density residential development as appropriate for multiple-unit, patio home and zero-lot-line housing. This district is intended to provide alternatives to low-density, single-family, detached housing with an emphasis on walkable, environmentally responsible design principals.*



It should be noted that, because current zoning requirements do not allow for the construction of townhomes in the RM-1 District, the existing structures on the properties, some of which contain 4 bedrooms and were constructed under old rules no longer in the Code, are *legal non-conformities*. This means that any future projects involving similar construction on the properties cannot be permitted, even in the event existing structures are destroyed by fire or other calamity and the owner wishes to rebuild what is now there. Also, added to this is the fact that site conditions and current construction costs, when combined with the number of units that might be reasonably expected to result from projects permitted under existing zoning (only single-family or duplexes), leaves the opportunity for financially feasible development significantly limited.

Comprehensive Plan

Although the Comprehensive Plan does not call out the specific properties, they are included in a group identified by the Future Land Use Map for medium density residential use, which the Plan defines as properties used “primarily for single-family or duplex residential structures on moderately-sized lots (4,000 to 8,000 square feet), but may also include patio homes, zero-lot-line development, lower density multi-family developments, and manufactured homes on individual lots in some limited areas.”



The current RM-1 District zoning, however, is shown by the plan to be among the low density residential uses, which are for “single-family, site-built residential structures on large or medium-sized lots….” The proposed RM-4 zoning, which is classified by the plan as high density residential, would allow for a greater range of development, including “single-family residential structures, duplexes, patio homes, townhomes, and multi-family developments.”

Review Status

Owners of the subject properties, as well as the owners of other properties situated within 200 feet of any subject property, were duly notified of the proposal in advance, and signs were posted at the site. The matter was taken up for discussion by the Planning Commission at their regular monthly meeting on April 8, 2024; and was formally considered as an action item and approved at their May 13, 2024 meeting.