

**SPECIAL MEETING OF FLORENCE CITY COUNCIL**

**MONDAY, JUNE 15, 2009 - 4:00 P.M.**

**CITY-COUNTY COMPLEX, COUNCIL CHAMBERS, #604**

**FLORENCE, SOUTH CAROLINA**

**I. CALL TO ORDER**

**II. INVOCATION**

*Pledge of Allegiance to the American Flag*

**III. ORDINANCES IN POSITION**

**a. Bill No. 2009-19 - Second Reading**

*An Ordinance to raise revenue and adopt a budget for the City of Florence, South Carolina, for fiscal year beginning July 1, 2009, and ending June 30, 2010.*

**b. Bill No. 2009-20 - Second Reading**

*A Series Ordinance to authorize the borrowing of not exceeding \$18,868,479, plus capitalized interest, if any, from the South Carolina Water Quality Revolving Fund Authority for blended 2.81% interest loan to finance, over a period of twenty (20) years, a portion of the construction costs of a wastewater treatment plant to be constructed at the existing facility site.*

**c. Bill No. 2009-21 - Second Reading**

*An Ordinance to abandon a portion of right-of-way on Brogdon Street.*

**IV. BUDGET WORKSESSION**

**V. ADJOURN**

**FLORENCE CITY COUNCIL MEETING**

**DATE:** May 21, 2009

**AGENDA ITEM:** First Reading of FY 2009-10 Budget Ordinance

**DEPARTMENT/DIVISION:** Finance

**I. ISSUE UNDER CONSIDERATION**

Adoption of Fiscal Year 2009-10 Budgets for the City of Florence

**II. CURRENT STATUS/PREVIOUS ACTION TAKEN**

No previous action taken

**III. POINTS TO CONSIDER**

The General Fund, Water & Sewer Enterprise Fund, Stormwater Enterprise Fund, Utility Construction Fund, Utility Equipment Replacement Fund and the Hospitality Fee Fund budgets for the fiscal year ending June 30, 2010 recommended for adoption by the City Council are enclosed for your review.

**IV. OPTIONS**

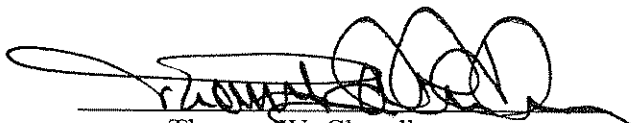
Adoption of the budgets.  
Modification of the budgets as presented.


**III. STAFF RECOMMENDATION**

Adoption of the budgets.

**IV. ATTACHMENTS**

Budget ordinance and detailed proposed budgets.

  
\_\_\_\_\_  
Thomas W. Chandler  
Finance Director

  
\_\_\_\_\_  
David N. Williams  
City Manager

**ORDINANCE NO. 2009 -**

**AN ORDINANCE TO RAISE REVENUE AND ADOPT A BUDGET FOR THE CITY OF FLORENCE, SOUTH CAROLINA, FOR THE FISCAL YEAR BEGINNING JULY 1, 2009, AND ENDING JUNE 30, 2010.**

**WHEREAS**, Section 5-7-260 of the South Carolina Code requires that a Municipal Council shall act by ordinance to adopt budgets and levy taxes pursuant to public notice.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Florence in Council duly assembled and by the authority of the same:

**Section 1**

- (a) There is hereby adopted a General Fund budget for the City of Florence for the fiscal year beginning July 1, 2009, and ending June 30, 2010, as filed in the office of the City Clerk which is hereby incorporated by reference as if set forth fully herein, providing for revenues and appropriations in a total amount of \$27,030,000.
- (b) Further, there is hereby adopted a Water and Sewer Utilities Enterprise Fund budget for the City of Florence for fiscal year beginning July 1, 2009, and ending June 30, 2010, as filed in the office of the City Clerk which is hereby incorporated by reference as if set forth fully herein, providing for revenues and appropriations in a total amount of \$27,082,000.
- (c) Further, there is hereby adopted a Stormwater Utility Enterprise Fund budget for the City of Florence for the fiscal year beginning July 1, 2009, and ending June 30, 2010, as filed in the office of the City Clerk which is hereby incorporated by reference as if set forth fully herein providing for revenues and appropriations in the total amount of \$1,235,000.
- (d) Further, there is hereby adopted a Water and Sewer Utilities Construction Fund budget for the City of Florence for fiscal year beginning July 1, 2009, and ending June 30, 2010, as filed in the office of the City Clerk which is hereby incorporated by reference as if set forth fully herein, providing for revenues and appropriations in a total amount of \$3,539,000.
- (e) Further, there is hereby adopted a Stormwater Utility Construction budget for the City of Florence for fiscal year beginning July 1, 2009, and ending June 30, 2010, as filed in the office of the City Clerk which is hereby incorporated by reference as if set forth fully herein, providing for revenues and appropriations in a total amount of \$2,336,000.
- (f) Further, there is hereby adopted a Utility Equipment Replacement Fund budget for the City of Florence for the fiscal year beginning July 1, 2009, and ending June 30, 2010, as filed in the office of the City Clerk which is hereby incorporated by reference as if set forth fully herein providing for revenues and appropriations in the total amount of \$422,500.

## **Fiscal Year 2009-10 Budget Ordinance (continued)**

- (g) Further, there is hereby adopted a Hospitality Fee Special Revenue Fund budget for the City of Florence for the fiscal year beginning July 1, 2009, and ending June 30, 2010, as filed in the office of the City Clerk which is hereby incorporated by reference as if set forth fully herein providing for revenues and appropriations in the total amount of \$2,872,000.

### **Section 2**

That a tax to cover the period from July 1, 2009, and ending June 30, 2010, for the sums and in the amount hereinafter mentioned, is and shall be levied, collected and paid into the treasury of the City of Florence for the use and service thereof. A tax of fifty four and nine-tenths (54.9) mills upon each one dollar (\$1.00) in value of real estate and personal property of every description owned and used in the City of Florence, South Carolina, is and shall be levied and paid into the City treasury for the credit to the City of Florence for the corporate purposes, permanent improvements, and for the purpose of paying current expenses of said municipality. Such a tax is levied on such property as is assessed for taxation for County and State purposes.

### **Section 3**

The City Manager shall administer the budget and may authorize the transfer of appropriate funds within and between departments as necessary to achieve the goals of the budget.

### **Section 4**

If for any reason, any sentence, clause or provision of this Ordinance shall be declared invalid, such shall not affect the remaining provisions thereof.

### **Section 5**

That all ordinances or parts of ordinances conflicting with the provisions of this Ordinance are hereby repealed, insofar as the same affect this Ordinance.

### **Section 6**

That this Ordinance shall become effective July 1, 2009.

**Fiscal Year 2009-10 Budget Ordinance (continued)**

**ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2009.**

**Approved as to form:**

\_\_\_\_\_  
James W. Peterson, Jr.  
**City Attorney**

\_\_\_\_\_  
Stephen J. Wukela  
**Mayor**

**Attest:**

\_\_\_\_\_  
Dianne M. Rowan  
**Municipal Clerk**

**FLORENCE CITY COUNCIL MEETING**

**DATE:** June 8, 2009  
**AGENDA ITEM:** Ordinance--First Reading  
**DEPARTMENT/DIVISION:** Finance

**I. ISSUE UNDER CONSIDERATION**

A Series Ordinance to authorize the borrowing of not exceeding \$18,868,479, plus capitalized interest, if any, from the South Carolina Water Quality Revolving Fund Authority (the "State Authority") for a blended 2.81% interest loan to finance, over a period of twenty (20) years, a portion of the construction costs of a wastewater treatment plant to be constructed at the existing facility site (WWTP Contract # 1).

**II. CURRENT STATUS/PREVIOUS ACTION TAKEN**

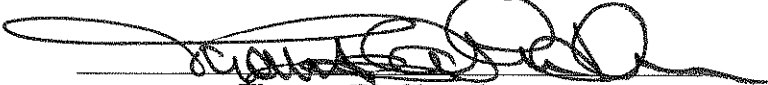
- A. On April 13, 2009 City Council adopted Resolution No. 2009-03 authorizing the execution and submission of an application to the State Authority for a low interest loan from the Water Pollution Control Revolving Loan Fund to finance the costs of the WWTP Contract # 1.
- B. Bids were opened on May 20, 2009 for the WWTP Contract # 1 construction. The low bid was submitted by Seaside Utilities Company of Moncks Corner, SC in the amount of \$16,550,048.
- C. The total project cost, including construction, inspection and engineering, legal fees, construction contingency, and loan closing fees, is estimated at \$18,942,821.

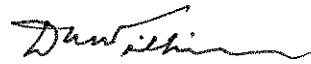
**III. POINTS TO CONSIDER**

- A. Funding for the complete construction of a new wastewater treatment plant will require several sources of funding including a state revolving fund loan, a bond issue, and grant funding.
- B. The Water Pollution Control Revolving Loan Fund, approved by the State Authority provides a source of low interest financing for the City. This loan includes \$4 million at 0% interest and the balance of the loan at 3.5% interest for a total blended interest rate of 2.81%.
- C. The \$4 million at 0% interest was provided through the American Recovery and Reinvestment Act of 2009 (ARRA) stimulus funds.
- D. The adoption of this ordinance is required prior to the closing of the Water Pollution Control Revolving Loan for the financing of the WWTP Contract # 1.

**IV. STAFF RECOMMENDATION**

Approval and adoption of the proposed ordinance.

  
Thomas W. Chandler  
Finance Director

  
David N. Williams  
City Manager

## A SERIES ORDINANCE

MAKING PROVISION FOR THE TERMS AND CONDITIONS OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BORROWING OF THE CITY OF FLORENCE, SOUTH CAROLINA, AUTHORIZED BY A BOND ORDINANCE OF THE CITY OF FLORENCE ADOPTED OCTOBER 24, 1989; APPROVING THE FINANCING OF SYSTEM IMPROVEMENTS IN THE CITY OF FLORENCE, SOUTH CAROLINA, THROUGH THE BORROWING OF NOT EXCEEDING \$18,868,479 PLUS CAPITALIZED INTEREST, IF ANY, FROM THE STATE WATER POLLUTION CONTROL REVOLVING FUND, BY AGREEMENT WITH THE SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY PURSUANT TO TITLE 48, CHAPTER 5, CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED; PROVIDING FOR THE AGREEMENT TO MAKE AND TO ACCEPT A LOAN, THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BETWEEN THE CITY OF FLORENCE AND THE SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY, THE EXECUTION AND DELIVERY OF A PROMISSORY NOTE FROM THE CITY OF FLORENCE TO THE SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY; AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FLORENCE, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED:

### ARTICLE I

#### FINDINGS OF FACT

SECTION 1.1. Findings of Fact. As an incident to the adoption of this Series Ordinance, the City Council ("City Council") of the City of Florence, South Carolina (the "City") has made the following findings:

(a) The City of Florence is a municipality created pursuant to the laws of the State of South Carolina and empowered by the provisions of Title 48, Chapter 5, Code of Laws of South Carolina, 1976, as amended (the "Act") (i) to undertake construction of, among other things, publicly owned treatment works as defined in the Federal Water Pollution Control Act, Chapter 26, Title 33, of the United States Code, as amended; (ii) to receive assistance including such assistance which may be available by virtue of the American Recovery and Reinvestment Act of 2009 (the "ARRA") which makes available additional resources to the Authority defined below, for use on loans and additional subsidization to rapidly create and preserve jobs through investment in wastewater infrastructure facilities; (iii) to comply with regulations relating to the receipt and disposition of money of the State Water Pollution Control Revolving Fund; (iv) to apply for and receive state grants; (v) to enter into loan agreements; and (vi) to comply with all terms and conditions of any loan agreement.

(b) Title 6, Chapter 17, Code of Laws of South Carolina, 1976, as amended, permits the incurring of debt for the purpose of financing facilities for the furnishing of water and wastewater treatment services and permits the securing of such indebtedness with a pledge of revenues derived from the operation of the Waterworks and Sewerage System (the "System") of the City.

(c) By ordinance entitled AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BONDS OF THE CITY OF FLORENCE, SOUTH CAROLINA, AND OTHER MATTERS RELATING THERETO, adopted on October 24, 1989 (the "Bond Ordinance"), City Council made

provision for the issuance from time to time of Combined Waterworks and Sewerage System Revenue Bonds of the City payable from revenues derived from the operation of the System.

(d) The revenues derived from the System are now hypothecated and pledged to the payment of the following:

- (i) the outstanding installments of an original issue of \$858,982 State Water Pollution Revolving Fund Loan dated August 19, 1991;
- (ii) the outstanding installments of an original issue of \$23,828,128 State Water Pollution Revolving Fund Loan dated June 25, 1993;
- (iii) the outstanding installments of an original issue of \$2,779,488 State Drinking Water Revolving Loan Fund Loan dated May 10, 1999;
- (iv) the outstanding installments of an original issue of \$4,000,000 South Carolina Infrastructure Revolving Loan Fund Loan dated May 10, 2000;
- (v) the outstanding installments of an original issue of \$6,000,000 State Drinking Water Fund Loan dated May 10, 2000;
- (vi) the outstanding \$22,120,000 of an original issue of \$25,690,000 Combined Waterworks and Sewerage System Revenue Bonds, Series 2000, dated May 1, 2000;
- (vii) the outstanding \$7,520,000 of an original issue of \$8,360,000 Combined Waterworks and Sewerage System Acquisition Revenue Bonds, Series 2002, dated October 3, 2002;
- (viii) the outstanding installments of an original issue of \$2,517,834 State Drinking Water Revolving Fund Loan, dated January 30, 2003; and
- (ix) the outstanding installments of an original issue of \$2,000,000 Combined Waterworks and Sewerage System Revenue Bond, Series 2003B, dated November 5, 2003.

The above-described borrowings in this paragraph (d) are hereinafter referred to as the "Parity Bonds."

(e) The City has determined to defray the cost of the capital improvements described in attached Exhibit A (the "Project") through the borrowing authorized herein. The Project will be part of the System.

(f) On April 13, 2009, City Council adopted a Resolution authorizing application to the South Carolina Water Quality Revolving Fund Authority (the "State Authority") for a loan from the State Water Pollution Control Revolving Fund created by the Act (the "Loan"), to provide for the financing of the Project.

(g) On April 28, 2009, the State Authority upon review of the City's loan application conditionally approved the Loan.



(h) The Bond Ordinance provides that a Series Ordinance shall be adopted with respect to each Series of Bonds which Series Ordinance shall express the approval of City Council to the issuance of a Series of Bonds and City Council's agreement to abide by the terms, provisions and agreements set forth in the Bond Ordinance and shall specify and determine:

(1) As prescribed by Section 6-17-60 of the Enabling Act, the then period of usefulness of the System;

(2) The Date or Dates of Issue of such Series of Bonds;

(3) The precise principal amount of the Series of Bonds;

(4) The specific purposes for which the proceeds of such Series will be used;

(5) The title and designation of the Bonds of such Series and manner of numbering and lettering, and the denomination or denominations of the Bonds of such Series;

(6) The date or dates of maturity and the amounts thereof;

(7) The interest rate or rates, or the manner of determining such rate or rates, of the Bonds of such Series;

(8) The time for the payment of interest on the Bonds in such Series and the Record Date;

(9) The redemption price or redemption prices and the redemption date or redemption dates and other terms of redemption (if any) applicable to any of the Bonds of such Series for such payments;

(10) The Registrar for such Bonds if other than the Trustee;

(11) The portion of such Series that are serial Bonds and that are Term Bonds, if any, including the amount and date of each mandatory redemption or sinking fund installment, if any, required by such Series Ordinance to be paid for the retirement of any such Bonds;

(12) The portion of such Series that are Capital Appreciation Bonds, if any, including the time for payment of such Capital Appreciation Bonds in order to address the information requested in paragraphs (7) and (8) above.

(13) Any other applicable redemption requirement for the Bonds of such Series and the method of satisfying the same;

(14) The manner in which Bonds of such Series are to be sold and provisions for the sale thereof;

(15) The form or forms for the Bonds of each Series;

(16) That the then applicable Reserve Requirement has been or will be met;

(17) The disposition of the proceeds of the sale of the Bonds of such Series and the manner of their application; and

(18) Any other provisions deemed advisable by the City not in conflict with or in substitution for the provisions of the Bond Ordinance and the Series Ordinance relating to the Bonds of such Series.

(i) The Loan is to be made and secured pursuant to a loan agreement (the "Loan Agreement") between the City and the State Authority, and a promissory note executed and delivered by the City registered in the name of the State Authority (the "Note" or the "Bond"). Pursuant to the Loan Agreement, the City will agree to use the Loan proceeds only to pay the actual eligible costs of the Project, and the City will agree to pay to the State Authority such amounts as shall be required to provide for the payment of all amounts due with respect to the repayment of the Loan. To secure its obligations the City will grant to the State Authority a pledge of, and lien upon, all revenues derived from the operation of the System and all funds and accounts of the City derived from such revenues, which pledge is on a parity with the Parity Bonds and any additional bonds issued on a parity therewith. In addition, the City will treat ARRA loan funds in the manner required by the Loan Agreement.

Upon any failure of the City to make any payments to the State Authority pursuant to the Loan Agreement or the Note, the State Authority shall require the State Treasurer to pay to the State Authority, subject to the provisions of the Act, such amount from State appropriations to which the City may be or may become entitled as may be necessary to provide for the payment of all amounts due with respect to the Note.

(j) The Bond Ordinance permits the issuance of further bonds on a parity with the Parity Bonds, on the following conditions. Capitalized terms used herein shall have the meanings ascribed thereto in the Bond Ordinance.

(1) There shall exist, on the occasion of the issuance of the Bonds, no default in the payment of the principal of or interest on any Prior Lien Bonds, Bonds or Junior Lien Bonds then Outstanding;

(2) Unless on the date of delivery of such Series of Bonds there shall be on deposit an amount equal to the Reserve Requirement for all Bonds to be Outstanding immediately following the issuance of such Series of Bonds, there shall be deposited in the Debt Service Reserve Fund such amount as is necessary to make the value of the moneys and securities in the Debt Service Reserve Fund equal to the Reserve Requirement; and

(3) Except in the case of Bonds issued for the purpose of refunding any Bonds, Net Earnings during the Fiscal Year immediately preceding the Fiscal Year in which such Series of Additional Bonds are to be issued, adjusted to reflect any rate increases currently adopted and to be in effect prior to or coincident with the issuance of such Additional Bonds, and determined pro forma as though such rate increases had been in continuous effect during such preceding fiscal year, and further adjusted to reflect estimated Net Earnings, as certified to the Trustee by a Consulting Engineer to be appointed by the City under the Series Ordinance, to be received from any new or existing water system or sewer system or customers to be acquired from the proceeds of such Additional Bonds, and further adjusted to reflect 80% of estimated Net Earnings, as certified to the Trustee by a Consulting Engineer to be appointed by the City under the Series Ordinance, to be received from construction of any new facilities or customers to be acquired as a result of construction of such new facilities, shall be not less than 125% of the highest Annual Principal and Interest Requirement for all Prior Lien Bonds and all Bonds then outstanding and then proposed to

be issued and not less than 100% of debt service requirements coming due on all outstanding Junior Lien Bonds during the fiscal year in which such Additional Bonds are to be issued. Such calculation shall be made by an independent firm of Consulting Engineers having skill and experience in utility financing and rate design, and the design and operation of water and sewer facilities, upon the basis of a report of the accountants of the City showing actual Net Earnings for the fiscal year preceding the fiscal year in which such series of Additional Bonds are to be issued. In addition, in determining Net Earnings for purposes of this subparagraph, the customer base of the System at the end of such preceding fiscal year may be assumed to be the customer base for the entire fiscal year.

It is specifically found with respect to paragraph (j)(2) above that in connection with the Parity Bonds, a surety bond payable to the Trustee in an amount equal to the Reserve Requirement has previously been obtained. The surety bond was initially issued by AMBAC Assurance Corporation ("AMBAC") and the amount of such surety bond has been increased with each subsequent issue of Parity Bonds. The increase in the Reserve Requirement occasioned by the Loan will be satisfied by a deposit of funds to the Debt Service Reserve Fund in the amount of such increase. Such amount, together with the amount of the AMBAC surety bond, satisfies the resulting Reserve Requirement. In addition, an amount equal to the maximum annual principal and interest requirements on the Loan will be advanced from the Wastewater Treatment Plant Construction Fund (the "Fund") as further security for the Loan. Such sum will be deposited with the State Investment Pool and held for the benefit of the State Authority. It is the City's expectation that refunding bonds will be issued over the course of the next twelve months which will defease the outstanding Parity Debt, with the exception of the Loan, and it is the City's further expectation that the amount of the Reserve Requirement, if any, will thereafter be on a series specific basis. It is specifically provided that if and when the outstanding Parity Debt, with the exception of the Loan, has been defeased and the Reserve Requirement, if any, is on a series specific basis, the City shall provide the Reserve Requirement for the Loan in such form as is satisfactory to the State Authority. Thereafter, the amount provided as additional security for the Loan as described above shall be released by the State Authority and be deposited by the City to the Fund.

It is further specifically found that the Note, whose issuance is herewith provided for, is issued for purposes permitted by and in full compliance with all of the provisions set forth in the Bond Ordinance and that the Note will be on a parity with said Parity Bonds. It is further found that the commitment from the State Authority to purchase the Note is for an amount not to exceed \$18,868,479 plus capitalized interest, if any. The final amount of the borrowing as well as the dates on which principal and interest payments will be made and the amount of such payments are subject to revision as construction proceeds. The final terms and conditions of the borrowing will be set forth in the Loan Agreement attached hereto as Exhibit B which terms and conditions are incorporated herein.

NOW THEREFORE BE IT ORDAINED BY COUNCIL IN MEETING DULY ASSEMBLED:

(1) The useful life of the System is found to be 40 years.

(2) The Date of Issue of the Note is to be no later than June 30, 2009, and the actual date of issue of the Note will be as set forth in a certificate to be delivered by the Mayor and contained in the final Note.

(3) The Note shall be in the original principal amount of not exceeding \$18,868,479 plus capitalized interest, if any, and the actual principal amount of the Note will be as set forth in the Agreement.

(4) The proceeds of the Note shall be used to defray the cost of the Project described in attached Exhibit A;

(5) The Note shall be designated City of Florence, South Carolina, Combined Waterworks and Sewerage System Revenue Bond, Series 2009, and shall be issued in the denomination of the final principal amount borrowed and shall be numbered 1.

(6) The date of maturity and amounts thereof shall be as set forth in the Loan Agreement. Inasmuch as the final principal amount may be reduced to reflect lower than anticipated construction costs, any changes to the principal amount to provide for a reduction in the amount borrowed shall be permitted and shall be evidenced by the City's execution of the Loan Agreement, as it may be amended from time to time.

(7) Interest on the Note shall be as set forth in the Loan Agreement.

(8) The Note is subject to prepayment in whole or in part together with any accrued interest thereon at any time without penalty or premium; all such prepayments shall be applied against principal installments due on the Note in inverse order of maturity.

(9) The Registrar for the Bond shall be the Trustee under the Bond Ordinance.

(10) The Bond shall be sold to the State Authority pursuant to the State Authority's final approval of the Loan.

(11) The Note shall be substantially in the form attached to the Loan Agreement.

(12) Provision for the Reserve Requirement required by the Bond Ordinance shall be made by the deposit in the Debt Service Reserve Fund established pursuant to the Bond Ordinance of an amount necessary to satisfy the Reserve Requirement as set forth in the Bond Ordinance and the Loan Agreement. In addition, a cushion fund shall be established to secure the Loan as described in Section 1.1(j) above as well as at paragraph 1 of Appendix "D" of the Loan Agreement.

(13) The proceeds of the Note shall be applied to defray the cost of the Project.

(14) The proceeds of the Note shall be disbursed in accordance with the requirements of the Loan Agreement.

## ARTICLE II

### THE LOAN

SECTION 2.1. Authorization of Loan. Council hereby authorizes the City's acceptance of the Loan from the State Authority of not exceeding \$18,868,479 plus capitalized interest, if any, pursuant to and in accordance with, the provisions of the Loan Agreement.

SECTION 2.2. Repayment of Loan by the City. Council hereby authorizes the repayment of the Loan by the City to the State Authority from revenues of the System or, if said revenues are

not sufficient, from state appropriations as the City may become entitled pursuant to and in accordance with the provisions of the Loan Agreement and the Note.

ARTICLE III

LOAN AGREEMENT AND NOTE

SECTION 3.1. Authorization of Loan Agreement and the Note. The Loan Agreement and the Note in substantially the forms attached hereto as Exhibit "B" with such changes as the executing officers shall approve (their execution to be conclusive evidence of such approval) are hereby approved and the execution and delivery of the Loan Agreement and the Note, on behalf of the City are hereby authorized and directed. The Loan Agreement and the Note shall be executed on behalf of the City by the Mayor and attested by the Clerk of Council (the "Clerk").

ARTICLE IV

MISCELLANEOUS

SECTION 4.1. Other Instruments and Actions. In order to implement the Loan pursuant to the Loan Agreement and Note and to give full effect to the intent and meaning of this Ordinance and the agreements and actions herein authorized, the Mayor and Clerk are hereby authorized to execute and deliver such certificates, showings, instruments and agreements and to take such further action as they shall deem necessary or desirable.

SECTION 4.2. Ordinance a Contract. This Ordinance shall be a contract between the City and the State Authority, and shall be enforceable as such against the City.

SECTION 4.3. Effective Date. This Ordinance shall become effective upon receiving approval on second reading by Council.

DONE, RATIFIED AND ADOPTED THIS 15<sup>th</sup> day of June, 2009.

(SEAL)

\_\_\_\_\_  
Mayor, City of Florence, South Carolina

Attest:

\_\_\_\_\_  
Clerk, City of Florence, South  
Carolina

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

I, the undersigned, Clerk of the City Council of the City of Florence, South Carolina ("Council"), DO HEREBY CERTIFY:

That the foregoing constitutes a true, correct and verbatim copy of an Ordinance adopted by Council. The Ordinance was read at two public meetings of Council on June 8, 2009, and June 15, 2009. An interval of at least six days occurred between each reading. At each meeting, a quorum of Council was present and remaining present throughout the meeting.

The Ordinance is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my Hand this \_\_\_\_ day of June, 2009.

\_\_\_\_\_  
Clerk

## EXHIBIT A

### Description of the Project

Upgrade of wastewater treatment plant to include new influent pump station screens, new headworks including fine screens and grit removal, flow division box, rehabilitation of existing secondary clarifiers, scum pump station, sodium hypochlorite feed facility, rehabilitation of existing chlorine contact chamber, rehabilitation of existing post aeration basin, rehabilitation of existing waste sludge holding tanks, and miscellaneous related yard piping, electrical and instrumentation work and site improvements. Also included is the upgrade of several manholes in the City's collection system.

EXHIBIT B

Form of Loan Agreement and Note



**LOAN AGREEMENT**

**between**

**SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY**

**and**

**CITY OF FLORENCE**

Dated

June \_\_\_\_, 2009

relating to

Regional Wastewater Treatment Plant Upgrade – Phase I

South Carolina Water Pollution Control Revolving Fund

Loan Number: S1-121-09-378-19

No. \_\_\_\_ of Two Executed Original Counterparts

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## LOAN AGREEMENT

THIS LOAN AGREEMENT is entered into as of the \_\_\_ day of June, 2009, between the SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY, a public instrumentality of the State of South Carolina (the "**Authority**") and the CITY OF FLORENCE, a municipal corporation of the State of South Carolina (the "**Project Sponsor**").

### WITNESSETH:

WHEREAS, the Authority is authorized by Title 48, Chapter 5, Code of Laws of South Carolina, 1976, as amended (the "**Act**") to administer the South Carolina Water Pollution Control Revolving Fund (the "**Fund**") for the purpose of assisting Project Sponsors (as defined in the Act) in the construction of, among other things, publicly owned treatment works as defined in the Federal Water Pollution Control Act, Chapter 26, Title 33, United States Code, as amended; and

WHEREAS, the South Carolina Department of Health and Environmental Control (the "**Department**") is authorized by the Act to, among other things, develop a priority system and prepare an annual plan to insure compliance with the Federal Water Pollution Control Act; and

WHEREAS, the American Recovery and Reinvestment Act of 2009 (the "**ARRA**") makes available additional resources to the Fund for use on loans and additional subsidization to rapidly create and preserve jobs through investment in wastewater infrastructure facilities; and

WHEREAS, the Authority is authorized by the Act to enter into Loan Agreements (as defined in the Act) with Project Sponsors in order to finance Projects (as defined in the Act); and

WHEREAS, the Act authorizes Project Sponsors, among other things, to undertake Projects, to receive assistance in the financing of such Projects by way of loans made from the Fund and to enter into loan agreements providing for the repayment of amounts received from the Fund, together with interest thereon; and

WHEREAS, the Project Sponsor proposes to acquire and construct the facilities described in Appendix "A" hereto (the "**Project**"), which Project will be part of the Project Sponsor's combined waterworks and sewerage system (the "**System**"); and

WHEREAS, the Project Sponsor proposes to finance the Project with a loan made from the Fund, such loan to be pursuant to, and on a parity with debt previously issued under, an ordinance enacted by the Project Sponsor on October 24, 1989 entitled "An Ordinance Providing For The Issuance And Sale Of Combined Waterworks And Sewerage System Revenue Bonds Of The City Of Florence, South Carolina, And Other Matters Relating Thereto" (the "**Master Bond Ordinance** ");

NOW, THEREFORE, BE IT AGREED AS FOLLOWS:

## ARTICLE I

### LOAN

SECTION 1.1. Loan Made and Accepted; Repayment. In consideration of the mutual promises of this Agreement, and upon and subject to its terms and conditions, the Authority agrees to make, and the Project Sponsor agrees to accept, the loan herein provided for (the "*Loan*"). The obligation of the Project Sponsor to repay the Loan and interest thereon is evidenced by this Agreement and a promissory note (the "*Note*") registered in the name of the Authority. The amount of the Loan (the "*Loan Amount*"), the interest rate on the Loan and the repayment schedule with respect to the Loan (the "*Repayment Schedule*") shall be as set forth in Appendix "B" hereto, as may be changed or modified pursuant to Section 1.4 hereof; the terms and form of the Note are set out in Appendix "E". The Project Sponsor shall make payments with respect to the Loan at the times and in the amounts set forth in Appendix "B", as modified, on the due date of any such payment.

SECTION 1.2. Purpose Limited to Project. The Project Sponsor shall use the proceeds of the Loan only to pay the actual eligible costs of the Project. The Project is described in Appendix "A" and more specifically as approved in the Project files of the Department. Except to the extent otherwise approved in writing by the Authority, only the costs shown in the Project budget set forth in Appendix "A" shall be allowed and only in the amounts provided for each category. Costs of construction shall be allowed only for work called for in plans and specifications approved by the Department. Proceeds may not be used to pay for labor performed by employees of the Project Sponsor but may be used to pay for materials installed by them.

### SECTION 1.3. Disbursements.

1.3.1. The Authority shall make and the Project Sponsor shall accept full or partial disbursements only against incurred, actual eligible costs up to the Loan Amount and by category as provided in this Agreement.

1.3.2. For purposes of making requests for disbursement and representing the Project Sponsor in all administrative matters pertaining to administration of this Agreement, the Project Sponsor shall designate a single officer or employee (the "*Sponsor Representative*") prior to the first disbursement request.

1.3.3. In those cases when the Project Sponsor has paid the incurred Project costs and is seeking reimbursement for payment of such costs theretofore paid by the Project Sponsor, any check for disbursement from the Fund for reimbursement to the Project Sponsor shall be drawn and mailed to the Project Sponsor. In those cases when the Project Sponsor is seeking funds with which to pay incurred Project costs, any check for disbursement from the Fund to pay such costs may, at the option of the Authority, be drawn to the Project Sponsor alone or jointly to the Project Sponsor and contractor engaged by the Project Sponsor for the Project. Such check will be mailed to the Project Sponsor.

1.3.4. Before any disbursement, the Project Sponsor shall execute any documents requested by the Authority reasonably necessary or convenient to the foregoing and shall have satisfied all conditions of Section 1.6 hereof.

1.3.5. Requests for disbursement may be made only after the costs for which the draw is requested have been incurred. The Project Sponsor may not request a disbursement until all construction contracts are signed. The first request for disbursement submitted by the Project Sponsor pursuant to this Agreement shall include an amount for incurred construction costs and all amounts requested by the Project Sponsor for payment or reimbursement of amounts set forth in any of the categories "Planning and Design Engineering", "Land Acquisition", and "Legal and Appraisal Fees" which appear in the Project Budget in Appendix "A" hereto. The Project Sponsor shall not request disbursement against retainage until retainage is paid and shall not request disbursement for change orders unless such change orders have been approved by the Department. Unless the Authority otherwise approves or except as provided in the following Section 1.3.6, when the Project budget indicates that the Loan shall bear only a portion of the eligible costs of the Project, or a portion of certain itemized costs, any draw shall not exceed the same proportion of such costs reported for disbursement.

1.3.6. When any portion of the "Construction" category in the Project Budget contained in Appendix "A" hereto is shown to be from ARRA Loan funds, then all draw requests for construction shall first be disbursed entirely from such funds until the ARRA funds are completely exhausted.

1.3.7. Requests for disbursement shall be made on forms of the Department unless the Authority or Department otherwise directs, and shall be accompanied by such invoices and other proofs as the Authority and Department may reasonably require. The final disbursement shall not be released until the Department issues its approval to place the Project into operation (the "**Permit to Operate**"). No disbursement requests will be accepted more than one hundred twenty (120) days after the date of such Permit to Operate.

1.3.8. The Authority may require that each draw request shall be submitted to the Authority and Department at least twenty-one (21) days before the day disbursement is needed and may limit draw requests to one per month. The Authority will exert its best efforts to mail its check in response to a disbursement request within twenty-one (21) days of receiving such request, but no assurance is given by the Authority that such schedule will be met and the Authority shall incur no liability to any Project Sponsor. Processing on shorter notice or faster schedule shall not amend this provision.

#### SECTION 1.4. Changes in Payment Initiation Date, the Loan Amount and Repayment Schedule.

1.4.1. The Loan Amount has been determined, in part, upon the basis of the projected cost of the Project as shown in Appendix "A". The Payment Initiation Date shown in Appendix "B" (the "**Payment Initiation Date**") is determined by a combination of factors, including, but not limited to the expected Project schedule shown in Appendix "A". Appendix "B" shows the Repayment Schedule anticipated by the parties on this basis and provides for repayment of the Loan, including interest thereon, in eighty (80) equal,

or approximately equal, quarterly payments beginning on the first day of the third month after the month of the Payment Initiation Date. The Loan Amount, the Payment Initiation Date and the Repayment Schedule may be changed but only as provided in paragraph 1.4.2, below. The Interest Rate is fixed for the term of the Loan and may not be changed from the rate originally established in Appendix "B" hereof.

1.4.2. (a) At the written request of the Project Sponsor, submitted to the Authority no later than sixty (60) days prior to the original Payment Initiation Date in Appendix "B", the Payment Initiation Date may be extended once by the Authority to any date not later than the earlier to occur of (i) six (6) months from the original Payment Initiation Date in Appendix "B", or (ii) thirty (30) months from the first day of the month following the date of this Agreement, or (iii) the first day of the month following the date of the Permit to Operate issued by the Department for the operation of the Project.

(b) In the event the Permit to Operate the Project is issued by the Department more than one (1) month prior to the Payment Initiation Date stated in Appendix "B", the Authority shall require that either the Payment Initiation Date be accelerated to the first day of the month following the date of the Permit to Operate, or the term of the Loan be shortened by a minimum of three (3) months.

(c) The Project Sponsor may request that the Loan Amount be increased by including in principal on the Payment Initiation Date the interest which has accrued on amounts theretofore advanced from the Fund. Any such request shall be submitted in writing to the Authority by the Project Sponsor not less than thirty (30) days prior to the Payment Initiation Date.

(d) The Authority or the Project Sponsor may initiate a reduction to the Loan Amount at any time there is a determination that a lesser amount is required for completion of the Project.

(e) The initial Repayment Schedule with respect to the Loan set forth in Appendix "B" shall be modified to reflect (i) changes in the Loan Amount, (ii) extension or acceleration of the Payment Initiation Date, and (iii) any other modification thereto agreed to by the Authority and the Project Sponsor.

(f) Modification of the Repayment Schedule resulting from a change in the Loan Amount subsequent to the Payment Initiation Date shall be made such that:

(i) at the time of final disbursement pursuant to Section 1.3 the Authority shall determine the final Loan Amount;

(ii) a revised Repayment Schedule shall be calculated by the Authority based on the final Loan Amount, the interest rate set forth in Appendix "B" and payment in eighty (80) equal, or substantially equal, quarterly installments beginning on the first day of the third month after the month of the Payment Initiation Date; and

(iii) any difference between the amount theretofore paid by the Project Sponsor prior to the revision of the Repayment Schedule and the amount which would have been paid had the revised schedule been in effect from and after the Payment Initiation Date shall be



credited against the next payment, or payments, due under the revised Repayment Schedule.

(g) For purposes of the Repayment Schedule, any amounts disbursed subsequent to the Payment Initiation Date shall be considered to have been advanced on the Payment Initiation Date.

1.4.3. Any change in the Loan Amount, extension or acceleration of the Payment Initiation Date or modification of the Loan Repayment Schedule shall be documented administratively by notice under this Agreement and shall be reflected in the substitution of a revised Appendix "B" hereto reflecting any such change or modification. In connection with any such change or modification, the Authority may, but need not, impose new terms and conditions, including cancellation of the Note and execution of a new Note.

SECTION 1.5. Deadline for Borrowing and Termination of Promise to Lend. The Authority, in its sole discretion, may terminate its promise to lend all, or any unadvanced portion of, the Loan Amount which has not been advanced if:

1.5.1. The Project Budget in Appendix "A" hereof identifies any funding from the ARRA and the Project Sponsor has not entered into all construction contracts applicable to the Project within one (1) month of the date of this Agreement.

1.5.2. The Project Sponsor does not request disbursement of the unborrowed balance of the Loan Amount on or before the one hundred twentieth (120th) day following the date of the Permit to Operate issued by the Department for the Project; or

1.5.3. An Event of Default (as defined in Section 5.1 hereof) occurs (in which event the remedies for default likewise shall be available); or

1.5.4. A circumstance arises or becomes known which, in the Authority's sole discretion and opinion, (a) substantially impairs the ability of the Project Sponsor to complete the Project, to operate the Project or to repay the Loan, or (b) substantially impairs the merit of the Project.

SECTION 1.6. Conditions Precedent to Disbursement of Loan Proceeds. In addition to any other conditions herein provided, the Authority's obligation hereunder to make disbursements from the Fund for advances on the Loan shall be subject to satisfaction of the following conditions:

1.6.1. The Project Sponsor's representations and warranties shall remain true and correct;

1.6.2. No Event of Default shall have occurred under this Agreement or the Note;

1.6.3. The Project Sponsor has complied with the requirements of Sections 1.3, 1.4 and 1.5; and

1.6.4. There shall be on deposit in any debt service reserve fund required by this Agreement the amount required at such time to be on deposit therein.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

The Project Sponsor represents and warrants to the Authority as follows:

SECTION 2.1. Status of Project Sponsor. The Project Sponsor is a municipal corporation of the State of South Carolina (the "*State*"), authorized to acquire and construct the Project and to operate the Project and provide wastewater treatment services.

SECTION 2.2. Financial Statements. The financial statements of the Project Sponsor delivered to the Authority are true and correct in all respects, have been prepared in accordance with generally accepted accounting principles for units of government, consistently applied, and fairly present the respective financial condition of the subjects thereof as of the respective dates thereof. No material adverse change has occurred in the financial conditions reflected in the statements since their date and no additional borrowing has been made by the Project Sponsor since then other than borrowing specifically disclosed and approved by the Authority. All other information submitted by the Project Sponsor in support of its application for this Loan is true and correct as of the date of this Agreement, and no material adverse change with respect to the Project Sponsor has occurred.

SECTION 2.3. Pending Litigation. There are no actions, suits or proceedings, at law or in equity, in court or before any governmental or administrative agency, either pending or to the knowledge of the Project Sponsor reasonably to be considered threatened, which may impair the validity or enforceability of the Note or this Agreement or the Project Sponsor's ability to repay the Loan or to construct and operate the Project for revenue.

SECTION 2.4. No Conflicting Transactions. Consummation of the transactions hereby contemplated and performance of this Agreement will not result in any breach of, or constitute a default under, any deed to secure debt, mortgage, deed of trust, indenture, security agreement, lease, bank loan or credit agreement, municipal charter, ordinances, contracts or other instruments to which the Project Sponsor is a party or by which it may be bound or affected.

SECTION 2.5. Ownership of Premises. The Project Sponsor owns in fee simple the real property which presently constitutes or which will constitute the main operating facilities of the Project and of the System as a whole, and further owns in fee simple or by sufficient easement the real property upon, across or under which the Project Sponsor has or will have its collection or trunk lines, manholes, pump stations and the like including those to be a part of the Project and otherwise. Property of which the Project Sponsor has taken possession pursuant to Section 28-2-90 of the South Carolina Eminent Domain Procedure Act (Title 28, Chapter 2, Code of Laws of South Carolina, 1976, as amended), and in connection with which no action pursuant to Section 28-2-470 of such Act has been instituted within thirty (30) days of the

Condemnation Notice with respect to such property, shall be deemed owned in fee simple by the Project Sponsor pursuant to this Section 2.5. The Project Sponsor has good record title to the real property described above (or has possession pursuant to the Eminent Domain Procedure Act, as described above) with only such exceptions of record as do not limit the fee simple ownership and do not and will not interfere with the full use and enjoyment of the premises by the Project Sponsor. With respect to the personal property and fixtures of the Project Sponsor necessary or convenient to the System and its operation, there are no liens or other claims of record against such property or other evidence of adverse ownership, and the Project Sponsor owns such personal property and fixtures in fee simple without conflicting claim of ownership.

SECTION 2.6. Other Project Arrangements. The Project Sponsor has secured the utilities, access, governmental approvals and other arrangements reasonably to be considered necessary for the undertaking of the Project.

SECTION 2.7. No Construction Default. Neither the Project Sponsor nor its contractor, architect or engineer for the Project or any related project is in default of any agreement respecting the Project or a related project.

SECTION 2.8. No Default. There is no default on the part of the Project Sponsor under this Agreement or the Note, and no event has occurred and is continuing, which, with notice or the passage of time would constitute a default under any part of this Agreement or the Note.

SECTION 2.9. Effect of Draw Request. Each request for and acceptance of disbursement by the Project Sponsor shall be affirmation that the representations and warranties of this Agreement remain true and correct as of the date of the request and acceptance, that no breach of other provisions hereof has occurred, and that no adverse developments affecting the financial condition of the Project Sponsor or its ability to complete the Project or to repay the Loan plus interest have occurred since the date of this Agreement unless specifically disclosed in writing by the Project Sponsor in the request for disbursement. Unless the Authority is notified to the contrary, such affirmations shall continue thereafter.

ARTICLE III

COVENANTS

SECTION 3.1. Contract Award, Construction Inspection and Completion.

3.1.1 The Project Sponsor should not execute construction contracts or issue the notice to proceed with respect to the Project prior to receiving written approval from the Department to award construction contracts.

3.1.2 The Project Sponsor shall provide and maintain competent and adequate engineering supervision and continuous inspection of the Project to insure that the construction conforms with the plans and specifications approved by the Department. A monthly inspection report shall accompany each disbursement request.

3.1.3 The Project Sponsor shall cause the Scope of Work identified in Appendix "A" to be completed pursuant to the Project Schedule also defined in Appendix "A" hereto. The Project Sponsor shall require all contractors to satisfactorily complete all work within the time stated in the executed construction contract. Extension of any contract completion date requires the Department's approval. Any costs incurred as a result of a time extension which has not received approval by the Department shall not be eligible for Loan participation.

3.1.4 The Project Sponsor shall pay all costs to complete the Project not covered by the Loan and commits itself to complete the construction of the operable treatment works and to complete the treatment system of which this Project is a part.

SECTION 3.2. Disbursements. The Project Sponsor shall receive and promptly disburse the funds to be provided hereunder as trust funds for the purpose of paying the eligible costs of the Project and for no other purpose.

SECTION 3.3. Release of Responsibility. The Project Sponsor shall undertake the Project on its own responsibility and shall release and hold harmless the Authority, the Department, the State and their officers, members and employees from any claim arising in connection with the design, construction or operation of the Project or any other aspect of the System including any matter due solely to their negligence.

SECTION 3.4. Other Agreements. The Project Sponsor shall comply with all terms and conditions of any construction contracts, architectural or engineering agreements, trust indentures, security deeds, promissory notes, loan agreements, or the like affecting the Project, the premises of the System and its operation. The Project Sponsor shall require its construction contractor to furnish both a performance bond and payment bond in the full amount of the construction contract. The requirement of such bonds shall be for the convenience of the Authority only and shall not be an undertaking by the Authority to the Project Sponsor or any third party.

SECTION 3.5. Accounting and Auditing.

3.5.1. Accounting. The Project Sponsor shall account for the Project and the System according to Generally Accepted Governmental Accounting Principles (GAAP), applying all relevant Government Accounting Standards Board (GASB) pronouncements, as well as, when applicable, Financial Accounting Standards Board (FASB) pronouncements and Accounting Principle Board (APB) opinions issued on or before November 30, 1989, unless those pronouncements conflict with, or contradict, subsequent GASB pronouncements.

3.5.2. Audit. Within six (6) months of the end of each fiscal year of the Project Sponsor, the Project Sponsor shall tender to the Authority an annual financial audit by a certified public accountant. The conduct of the audit and the audit shall be in accordance with Generally Accepted Auditing Standards as defined in Government Auditing Standards, Comptroller General of the United States, July 27, 2007, and revisions, updates or successors thereto. An audit, as required by OMB Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations, may be necessary for each year program funds are disbursed to the Project Sponsor (CFDA Number 66.458).

SECTION 3.6. Insurance. The Project Sponsor covenants and agrees that so long as any amount remains unpaid on the Note:

(A) It will insure and at all times keep the Project insured against physical loss or damage with a responsible insurance company or companies, authorized and qualified under the laws of the State, to assume the risks insured against, in an amount equal to the replacement cost of the Project;

(B) It will secure adequate fidelity bonds (blanket or individual) of a surety company doing business in the State, indemnifying the Project Sponsor against defalcation of all persons handling money derived from the System or signing checks on any bank accounts relating to the System;

(C) All insurance policies shall be open to the inspection of the Authority at any reasonable time;  
and

(D) All money received by the Project Sponsor as a consequence of any defalcation, covered by any fidelity bond, shall be used to restore the fund depleted by the defalcation. All sums received by the Project Sponsor from insurance policies covering the Project may, to the extent necessary, be applied to the repair and replacement of the damaged or destroyed property, but, in the event that such money is not used for such purposes, then the same shall be deposited in the Depreciation and Contingent Fund.

SECTION 3.7. Compliance with Governmental Authority. The Project Sponsor shall comply with all environmental laws, rules and other provisions of legal force and effect and all such other provisions which govern the construction or operation of the Project or the System.

SECTION 3.8. Adequate Rates. The Project Sponsor shall at all times establish and maintain in effect rates and charges for the services provided by, or made available by, the Project and the System as shall be sufficient to meet the requirements of this Agreement, and the Project Sponsor specifically covenants and agrees to maintain rates and charges for all services furnished by the System which shall at all times be sufficient:

3.8.1. To provide for the punctual payment of the principal of and interest on the Note and any other indebtedness of the Project Sponsor payable from revenues of the System that may from time to time hereafter be outstanding;

3.8.2. To maintain any Debt Service Reserve Fund required by this Agreement in accordance with the provisions hereof;

3.8.3. To provide for the payment of the expenses of administration and operation and such expenses for maintenance of the System as may be necessary to preserve the same in good repair and working order;

3.8.4. To build and maintain a reserve for depreciation of the System, for contingencies and for improvements, betterments and extensions to the System other than those necessary to maintain the same in good repair and working order; and

3.8.5. To discharge all other obligations imposed by the Act and by this Agreement.

The Project Sponsor further covenants and agrees that it shall at all times establish and maintain in effect rates and charges for the services provided by, or made available by, the Project and the System which, together with other income, are reasonably expected to yield annual Net Earnings, as defined in the Master Bond Ordinance, in any fiscal year equal to the greater of (i) one hundred ten percent (110%) of the annual principal and interest on all debt paid from or secured by revenues of the System; or (ii) such other percentage of the annual principal and interest on all debt paid from or secured by revenues of the System as the Project Sponsor shall have covenanted that its Net Revenues/Earnings would meet with respect to other outstanding indebtedness of the System.

SECTION 3.9. Review of Rates. The Project Sponsor covenants that, so long as any amount remains unpaid on the Note, it will review the adequacy of its rates and charges to comply with the requirements of this Agreement promptly upon any material changes in circumstances, but not less frequently than once in each fiscal year of the Project Sponsor. The Project Sponsor shall submit any adjustments to its rates and charges to the Authority immediately upon adoption.

SECTION 3.10. Disclosure of Events to Authority. The Project Sponsor covenants that, so long as any amount remains unpaid on the Note, it will submit to the Authority event specific information

within thirty (30) days of an event adversely affecting more than five (5) percent of revenues of the System and any other information which is released to a municipal bond information repository service.

SECTION 3.11. Procurement Requirements. The Project Sponsor shall comply with all procurement requirements of law and, to the extent compliance therewith does not contravene any provision of law applicable to the Project Sponsor, shall comply with the procurement requirements set forth in Appendix "C" hereto.

SECTION 3.12. Inspection and Information. On reasonable notice, the Authority or the Department shall have for its own convenience and benefit, and without obligation to the Project Sponsor or any third party, the right to audit the books and records of the Project Sponsor as they may pertain to or affect the System and this Agreement and to enter upon the premises to inspect the Project. The Project Sponsor shall cause its architects, engineers, contractors, and auditors to cooperate during such inspections including making available any documents, records, reports or other materials pertinent to the Project and the inspection. The Project Sponsor shall comply with all reasonable requests by the Authority or the Department for information pertaining to the Project Sponsor's compliance with this Agreement.

SECTION 3.13. Consent to Changes. Without consent of the Authority and Department, the Project Sponsor shall make no modifications or changes to the Project, or allow to continue any defect, which would damage or reduce the value of the Project or the System. The Project Sponsor shall not divide the Project into component projects in order or in effect, so as to defeat the provisions of this Agreement. The Project Sponsor covenants that it shall remain the owner of the Project and agrees that it will not convey, transfer, mortgage or otherwise encumber the Project, the System or the revenues derived therefrom during the term of this Agreement without the express prior written approval of the Authority.

SECTION 3.14. Additional Covenants. The Project Sponsor further covenants and agrees that:

3.14.1. Neither the System, nor any part thereof, nor any of the revenues derived from the System, have been or will be hypothecated, mortgaged, otherwise pledged or encumbered, save and except as herein disclosed and provided for;

3.14.2. It will permit no free service to be rendered, or use to be made of the services and facilities of the System and for the services and facilities of the System used by the Project Sponsor, the reasonable cost and value of such services and facilities shall be paid as such services accrue. The revenue so received from the Project Sponsor shall be deemed revenue derived from the operation of the System, and shall be accounted for in the same manner as other revenues of the System;

3.14.3. It will permit no customer to be connected to the System, or to receive any service afforded by the System, unless such customer shall become obligated to pay for the service rendered at the appropriate rate according to the rate schedule then in force;

3.14.4. It will maintain in effect rules and regulations requiring connection to the System by all persons within the jurisdiction of the Project Sponsor to whom the services of the System shall be available and shall impose availability fees and charges with respect to customers and properties within its corporate limits to which or whom service is available but which or who have not connected into the System; and

3.14.5. So long as any amount due with respect to the Note is unpaid, it will perform all duties with reference to the System required by the Constitution and statutes of the State, and the Project Sponsor hereby irrevocably covenants, binds and obligates itself not to pledge, mortgage or otherwise encumber the System or any part thereof, or any revenues therefrom, except in the manner herein authorized, and it will not sell, lease or dispose of any portion of the System, necessary or useful, and the Project Sponsor further obligates itself and covenants and agrees with the Authority to maintain in good condition and to operate said System, and to collect and charge such rates for the services and facilities of the System so that the income and revenues of the System will be sufficient at all times to meet the requirements of this Agreement.



ARTICLE IV  
ESTABLISHMENT OF FUNDS AND  
DISPOSITION OF REVENUES

SECTION 4.1. Establishment of Gross Revenue Fund, Debt Service Fund, Operation and Maintenance Fund, and Depreciation and Contingent Fund. Beginning on the first day of the month following the delivery of the Note, except with respect to the Debt Service Fund, and continuing until all amounts due with respect to the Note have been paid in full, the following funds shall be established and maintained:

4.1.1. The Project Sponsor shall establish a Gross Revenue Fund, into which shall be placed all receipts, income and revenue that the Project Sponsor shall derive, directly or indirectly, from the ownership of the System. Moneys in the Gross Revenue Fund may be withdrawn on order of the Project Sponsor, but shall be made use of only in the manner and in the order of priority specified in Section 4.3 hereof.

4.1.2 The Debt Service Fund established pursuant to the Master Bond Ordinance shall be maintained as the Debt Service Fund for the Note. A separate sub-account shall be established therein for the purpose of monitoring those payments by the Project Sponsor required by the first sentence of subsection 4.3.2 herein.

4.1.3. The Project Sponsor shall establish an Operation and Maintenance Fund in order to provide for the payment of all expenses incurred in connection with the administration and operation of the System, and such expenses as may be reasonably necessary to preserve the System in good repair and working order.

4.1.4. The Project Sponsor shall establish a Depreciation and Contingent Fund in order to provide a reasonable reserve for the depreciation of the System, for contingencies and for improvements, betterments and extensions of the System. Moneys in this fund shall be used solely for the purpose of restoring depreciated or obsolete items of the System; for improvements, betterments and extensions to the System, other than for those things which are reasonably necessary to maintain the System in good repair and working order; to defray the cost of unforeseen contingencies; and to prevent defaults of, or for the optional redemption of, the Note and Parity Debt (as defined in Section 4.3.2 hereof), and Junior Lien Bonds (as defined in the Master Bond Ordinance).

4.1.5. In the event the Project Sponsor shall have established funds analogous to, or serving the purpose of, the funds required to be established by this Article IV, such funds may be continued and employed for the purposes of this Agreement, and the Project Sponsor shall not be required to establish duplicate funds.

SECTION 4.2. Establishment and Funding of Debt Service Reserve Fund.

4.2.1. The Debt Service Reserve Fund established pursuant to the Master Bond Ordinance shall

be maintained for the security of the Note in accordance with the Master Bond Ordinance. The Debt Service Reserve Fund requirement (the "**Reserve Requirement**") with respect to the Note shall equal the maximum annual principal and interest requirements on the Note.

4.2.2. Prior to the delivery of this Agreement to the Authority, the Project Sponsor shall deposit, or cause to be deposited, in the Debt Service Reserve Fund funds in an amount, or investments permitted by subsection 4.4.3 having a value, equal to the Reserve Requirement. In the event that the Reserve Requirement shall increase due to an increase in the Loan Amount pursuant to subsection 1.4.2(c), the Project Sponsor shall immediately deposit, or cause to be deposited, in the Debt Service Reserve Fund funds in an amount equal to such increase in the Reserve Requirement.

SECTION 4.3. Disposition of Revenues. All revenues derived from the operation of the System shall be deposited in the Gross Revenue Fund. Beginning in the month following the delivery of this Agreement with respect to payments pursuant to subsections 4.3.1 and 4.3.3 to 4.3.6, inclusive, and beginning in the month of the Payment Initiation Date with respect to payments pursuant to subsection 4.3.2, withdrawals from the Gross Revenue Fund shall be made on or before the fifteenth (15<sup>th</sup>) day of each month in the following order of priority:

4.3.1. There shall be deposited into the Operation and Maintenance Fund that sum which has been currently determined by the Project Sponsor to be the cost of operating and maintaining the System for the next ensuing month.

4.3.2. The monthly fraction of the next payment of principal and interest to become due on the Note on the next succeeding payment date shall be deposited in the Debt Service Fund. Simultaneously with making the monthly deposit in the Debt Service Fund required by this Section 4.3.2, the Project Sponsor shall deposit (a) the monthly fraction of the next payment of principal and interest to become due on the promissory note of the Project Sponsor to the South Carolina State Budget and Control Board relating to loan number 016-91-378-09 from the Fund (the "**1991 Project Note**"); (b) the monthly fraction of the next payment of principal and interest to become due on the promissory note of the Project Sponsor to the Authority relating to loan number 022-93-378-10 from the Fund (the "**1993 Project Note**"); (c) the monthly fraction of the next payment of principal and interest to become due on the promissory note of the Project Sponsor to the Authority from the South Carolina Drinking Water Revolving Loan Fund (the "**Drinking Water Fund**") relating to loan number 3-003-99-2110001-02 (the "**1999 Project Note**"); (d) the monthly fraction of the next payment of principal and interest to become due on the Project Sponsor's Combined Waterworks and Sewerage System Revenue Bonds, Series 2000 (the "**2000 Revenue Bonds**"); (e) the monthly fraction of the next payment of principal and interest to become due on the promissory note of the Project Sponsor to the South Carolina Infrastructure Facilities Authority relating to loan number 2-014-99 from the South Carolina Infrastructure Revolving Loan Fund (the "**2000A Project Note**"); (f) the monthly fraction of the next payment of principal and interest to become due on the promissory note of the Project

Sponsor to the Authority relating to loan number 3-008-00-2110001-01 from the Drinking Water Fund (the "2000B Project Note"); (g) the monthly fraction of the next payment of principal and interest to become due on the Project Sponsor's Combined Waterworks and Sewerage System Acquisition Revenue Bond, Series 2002 (the "**2002 Revenue Bond**"); (h) the monthly fraction of the next payment of principal and interest to become due on the promissory note of the Project Sponsor to the Authority relating to loan number 3-008-00-2110001-01 from the Drinking Water Fund (the "**2003 Project Note**"); (i) the monthly fraction of the next payment of principal and interest to become due on the Project Sponsor's Combined Waterworks and Sewerage System Revenue Bond, Series 2003B (the "**2003B Revenue Bond**") and (j) the monthly fraction or fractions of the next payment or payments due with respect to any obligations of the Project Sponsor (the "**Obligations**") secured by a pledge of revenues on a parity with the pledge securing the Note, the 1991 Project Note, the 1993 Project Note, the 1999 Project Note, the 2000 Revenue Bonds, the 2000A Project Note, the 2000B Project Note, the 2002 Revenue Bond, the 2003 Project Note, and the 2003B Revenue Bond. The 1991 Project Note, the 1993 Project Note, the 1999 Project Note, the 2000 Revenue Bonds, the 2000A Project Note, the 2000B Project Note, the 2002 Revenue Bond, the 2003 Project Note, the 2003B Revenue Bond, and the Obligations are hereinafter sometimes referred to as "**Parity Debt**". In the event amounts available for payments into the Debt Service Fund with respect to the Note and all Parity Debt are not sufficient to make all payments then required to be made, such available amounts, including amounts available in the Debt Service Reserve Fund, shall be deposited into, and allocated within, the Debt Service Fund on a pro rata basis.

4.3.3. (a) In the event any amounts shall be withdrawn from the Debt Service Reserve Fund in order to provide for payment of any amounts due with respect to the Note, there shall be deposited in the Debt Service Reserve Fund not less than one-eleventh (1/11) of the amount of any such withdrawal and such deposits with respect to any such withdrawal shall begin in the month following such withdrawal and shall continue in each month thereafter until the amount on deposit in the Debt Service Reserve Fund shall equal at least the Reserve Requirement.

(b) If the value of the Debt Service Reserve Fund is ever less than the Reserve Requirement, other than as provided in (b) above, or as provided in subsection 4.2.2 with respect to any increase in the Loan Amount, there shall be deposited in the Debt Service Reserve Fund not less than one-eleventh (1/11) of an amount equal to the total Reserve Requirement deficiency, beginning in the month following such a determination. Such deposits shall continue to be made until the amount on deposit in the Debt Service Reserve Fund shall equal at least the Reserve Requirement.

4.3.4. If, in any month, for any reason, the Project Sponsor shall fail to pay all or any part of the money it has herein agreed to pay into said Debt Service Fund or Debt Service Reserve Fund, the amount of any such deficiency shall be added to and shall become a part of the amount due and payable into said Debt Service Fund or Debt Service Reserve Fund in the next succeeding month.

4.3.5. Provision shall then be made for the payment of any other indebtedness which is junior and subordinate to the Note and all Parity Debt in the order of priority contemplated by the proceedings authorizing their issuance.

4.3.6. There shall be deposited in the Depreciation and Contingent Fund that sum which is one-twelfth (1/12) of the sum determined by the Project Sponsor to be needed for the Depreciation and Contingent Fund for the then current fiscal year.

4.3.7. Any revenues remaining after the foregoing deposits have been made shall be disposed of for any lawful purpose in such manner as the Project Sponsor shall from time to time determine.

SECTION 4.4. Concerning the Debt Service Fund and the Debt Service Reserve Fund. The Debt Service Fund established pursuant to Section 4.1.2 hereof and the Debt Service Reserve Fund established pursuant to Section 4.2 hereof shall be established with a bank whose deposits are insured by the Federal Deposit Insurance Corporation (the "*Trustee*") chosen by the Project Sponsor with the written approval of the Authority. The Debt Service Fund and the Debt Service Reserve Fund shall be held and administered by the Trustee in accordance with the provisions of the Master Bond Ordinance and the following provisions of this Section 4.4. The Trustee shall acknowledge and accept its duties and responsibilities with respect to the Debt Service Fund and the Debt Service Reserve Fund in a written instrument delivered to the Authority with this Agreement.

4.4.1. The Trustee shall notify the Authority in writing of the date of the establishment of the sub-account within the Debt Service Fund and the Debt Service Reserve Fund for the Note, and the initial amount of the deposit in each of these two funds for purposes of the Note. If the Project Sponsor fails to deposit the amount required by this Agreement [in either fund] at the time required for such deposit, the Trustee, no later than the fifth day after the date on which such deposit is to be made, shall provide written notification to the Project Sponsor, with a copy to the Authority, of the amount required for deposit into the Debt Service Fund or the Debt Service Reserve Fund pursuant to the provisions of this Agreement. The Trustee shall also verify balances in the Debt Service Reserve Fund, as requested by the Authority, but no less often than semiannually during any period of monthly deposits and no less often than annually when the full Reserve Requirement is met and maintained.

4.4.2. From sums deposited in the Debt Service Fund by the Project Sponsor, the Trustee shall transmit to the Authority a check made payable to "Office of Local Government - SRF" in the amount, and at the times, required by the Agreement and Note. If insufficient sums exist in the Debt Service Fund for any payment then due, the Trustee shall transfer the amount needed for payment from the Debt Service Reserve Fund and the Trustee shall notify the Project Sponsor of the amounts required to be deposited in the Debt Service Reserve Fund in order to replenish such a withdrawal and have on deposit therein the amount required by this Agreement. A copy of any such notice shall be provided to the Authority by the Trustee.

4.4.3. Pending disbursement pursuant to this Section 4.4, money in the Debt Service Reserve Fund shall be invested and reinvested by the Trustee at the direction of the Project Sponsor as permitted by Section 6-5-10, Code of Laws of South Carolina, 1976, as now or hereafter amended. Subject to the remaining provisions of this subsection 4.4.3, the earnings from such investments shall be added to and become a part of the Debt Service Reserve Fund. Whenever, and as of any date of calculation, the value of the securities and money in the Debt Service Reserve Fund shall exceed the Reserve Requirement, such excess shall, at the direction of the Project Sponsor, either be used to effect partial redemption of the Note and all Parity Debt, or shall be removed from the Debt Service Reserve Fund and transferred into the Gross Revenue Fund.

4.4.4. Upon payment in full of all amounts due with respect to the Note, which payment shall be evidenced to the Trustee in writing by the Authority, the Trustee shall pay over all amounts remaining in the Debt Service Fund and Debt Service Reserve Fund to the Project Sponsor upon the receipt of written directions from the Project Sponsor and the Trustee shall thereafter have no further responsibilities under this Agreement; provided, however, that in the event any Parity Debt remains outstanding upon the payment in full of the Note, the disposition of funds then remaining in the Debt Service Fund and Debt Service Reserve Fund shall be controlled by the proceedings authorizing the issuance of such outstanding Parity Debt.

## ARTICLE V

### EVENTS OF DEFAULT

SECTION 5.1. Events of Default. The following occurrences shall constitute Events of Default hereunder:

(A) The Project Sponsor fails to comply with any of the covenants, terms and conditions made in this Agreement;

(B) The Project Sponsor fails to pay any amount due on the Note at the time and in the manner provided in the Note and this Agreement;

(C) Any representation, warranty or statement made by the Project Sponsor in this Agreement or in connection with it or the Loan shall be or become untrue, incorrect or misleading in any material respect;

(D) The Project Sponsor makes an assignment for benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions for appointment of a receiver or trustee for any substantial part of its property or is the subject of such a petition or commences or has commenced against it or its property (a) any similar proceeding under any bankruptcy law or other debtor-relief or similar law or (b) any foreclosure of any mortgage or similar implementation of a trust indenture or like instrument;

(E) Dissolution of the existence of the Project Sponsor;

(F) Any legal or equitable action is commenced against the Project Sponsor which, if adversely determined, could reasonably be expected to impair substantially the ability of the Project Sponsor to perform each and every obligation under this Agreement;

(G) Construction of the Project is not carried out with reasonable dispatch, ceases and is not resumed for forty-five (45) days or is abandoned; and

(H) The Authority reasonably suspects the occurrence of any default or Event of Default by the Project Sponsor, and following request by the Authority, the Project Sponsor fails to provide evidence reasonably satisfactory to the Authority that such default or Event of Default has not in fact occurred.

## ARTICLE VI

### REMEDIES

SECTION 6.1. Acceleration. Upon the occurrence of an Event of Default, the Authority may, by notice in writing to the Project Sponsor, declare the principal balance of the Note immediately due and payable; and such amount and all interest accrued thereon shall become and be immediately due and payable, anything in the Note or in this Agreement to the contrary notwithstanding. In such event, there shall be due and payable on the Note an amount equal to the total principal amount disbursed on the Note, plus all interest accrued thereon and which will accrue thereon to the date of payment.

SECTION 6.2. Additional Remedies and Enforcement of Remedies. Upon the occurrence and continuance of any Event of Default, the Authority may proceed forthwith to protect and enforce its rights by such suits, actions or proceedings as the Authority shall deem expedient, including but not limited to:

(A) Requiring the Project Sponsor to carry out its duties and obligations under the terms of this Agreement and under the Act;

(B) Suit upon all or any part of the Note;

(C) Civil action to require the Project Sponsor to account as if it were the trustee of an express trust for the Authority;

(D) Civil action to enjoin any acts or things which may be unlawful or in violation of the rights of the Authority; and

(E) Enforcement of any other right of the Authority including the right to make application for the appointment of a receiver to administer and operate the System.

SECTION 6.3. Remedies Not Exclusive. No remedy by the terms of this Agreement conferred upon or reserved to the Authority is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or existing at law or in equity or by statute (including the Act) on or after the date hereof.

SECTION 6.4. Termination of Proceedings. In case any proceeding taken by the Authority on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Authority, the Authority and the Project Sponsor shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Authority shall continue as if no such proceeding had been taken.

## ARTICLE VII

### SECURITY

SECTION 7.1. Pledge of Revenues. For the payment of the Note and as security for its other obligations under this Agreement, the Project Sponsor hereby grants to the Authority a pledge of, and lien upon, all Revenues (as defined in the Master Bond Ordinance) which remain after paying the cost of the operation and maintenance of the System. Such pledge and lien upon the revenues shall be on a parity in all respects to the pledge and lien securing any Parity Debt (as defined in Section 4.3.2) and shall at all times and in all respects be and remain superior to any pledges made to secure any other obligations of the Project Sponsor payable from the revenues of the System except to the extent otherwise agreed to in writing by the Authority. Parity Debt may be issued only in compliance with Article IV of the Master Bond Ordinance or, if the Master Bond Ordinance is no longer in effect, only with the prior written approval of the Authority.

SECTION 7.2. Additional Security. Upon any failure of the Project Sponsor to make any payment to the Authority in accordance with the provisions of the Note and this Agreement, the Authority shall, without further action, require the State Treasurer to pay to the Authority, subject to the provisions of the Act, the amount of state appropriations as the Project Sponsor may become entitled to until all delinquent payments under the Note have been paid.



## ARTICLE VIII

### SPECIAL REVOLVING FUND PROVISIONS

SECTION 8.1. Compliance. The Project Sponsor agrees that no date reflected in this Agreement, or in the project completion schedule, or extension of any such date, shall modify any compliance date established in an NPDES permit. It is the Project Sponsor's obligation to request any required modification of applicable permit terms or other enforceable requirements.

SECTION 8.2. Standard Conditions. The Project Sponsor acknowledges and agrees to comply with the following Federal and/or State requirements:

(A) The Project Sponsor shall provide access to the Project work whenever it is in preparation or progress and provide proper facilities for access and inspection. The Project Sponsor shall allow the Regional Administrator, the Comptroller General of the United States, the Department and the Authority, or any authorized representative, to have access to any books, documents, plans, reports, papers, and other records of the contractor which are pertinent to the Project for the purpose of making audit, examination, excerpts, copies, and transcriptions.

(B) Civil Rights and Labor Standards Requirements and use of Disadvantaged Business Enterprise (DBE) firms and Debarment or Suspension Prevention. (Executive Order 12549)

(1) Positive efforts shall be made by the Project Sponsor and its consultants to utilize DBE firms as sources of supplies, services and construction. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts and subcontracts to be performed utilizing Loan funds. Documentation of efforts made to utilize DBE firms shall be maintained by the Project Sponsor and its consulting firms and construction contractors.

(2) The Project Sponsor shall not award contracts to any firm that has been debarred for noncompliance with Federal Law where the contract amount equals or exceeds the federal small purchase procurement threshold.

(3) The Project Sponsor shall require all prime construction contractors to certify that subcontracts have not and will not be awarded to any firm that has been debarred for noncompliance with Federal Law, where the subcontract amount is expected to equal or exceed the Federal small purchase procurement threshold.

(4) The Project Sponsor agrees to comply with all the requirements of 41 CFR Part 60-4 which implements Executive Order 11246 as amended (Equal Employment Opportunity).

(5) The Project Sponsor agrees to require all construction contractors and their subcontractors to comply with the Affirmative Action, Equal Opportunity Clause, Goals and Timetables, if the amount of the contract or subcontract is in excess of \$10,000.

(6) The Project Sponsor shall require all contractors on the Project to comply with the Department of Labor's Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (PL 91-956) and under Section 107 of the Contract Work Hours and Safety Standards Act (PL 91-54).

(C) The Project Sponsor shall comply with Section 1606 (Davis-Bacon and Related Acts) of ARRA and certify that all laborers and mechanics employed by prime contractors and subcontractors are paid wages at rates not less than those listed on the prevailing wage rate contained in the Project's contract documents and that all applicable provisions of the Davis-Bacon and Related Acts have been met. The Project Sponsor shall require the prime contractor to comply with the Davis-Bacon and Related Acts.

(D) The Project Sponsor shall comply with Section 1605 (Buy American) of ARRA and certify that all of the iron, steel and manufactured goods used in the Project are produced in the United States unless a waiver is granted by the U. S. Environmental Protection Agency. The Project Sponsor shall require all bidders to certify compliance with the Buy American provisions.

(E) The Project Sponsor shall comply with all applicable provisions of the Uniform Relocation and Real Property Acquisition Act of 1970 (PL 92-646) in regard to acquisition of real property (including easements) for the Project and any resulting relocation of persons, business and farm operations.

ARTICLE IX

GENERAL CONDITIONS

SECTION 9.1. No Waiver. No disbursements shall waive any provision of this Agreement or the Note or preclude the Authority from declaring a default if the Project Sponsor is unable to satisfy any such provisions or perform hereunder.

SECTION 9.2. Satisfactory Proceedings. All proceedings taken in connection with transactions provided for in this Agreement shall be satisfactory to the Authority.

SECTION 9.3. Evidence. Any condition of this Agreement which requires a submission of evidence of the existence or nonexistence of facts shall imply as a condition the existence or nonexistence, as the case may be, of such fact or facts, and the Authority shall, at all times, be free independently to establish to its satisfaction and in its absolute discretion such existence or nonexistence.

SECTION 9.4. No Beneficiaries. All conditions of the obligations of the Authority to make disbursements are imposed solely and exclusively for its benefit, its successors and assigns, and no other person shall have standing to require satisfaction of such conditions or to assume that the Authority will refuse to make disbursements in the absence of strict compliance. No person shall be deemed the beneficiary of any such conditions or any other provisions of this Agreement.

SECTION 9.5. Review and Inspection of Work. Any audit or review of plans and specifications and any inspection of the work shall be for the convenience of the Authority and Department only in order to determine that they are within the approved scope of the Project. No such review and inspection, approvals and disapprovals shall be an undertaking by the Authority or Department of responsibility for design or construction.

SECTION 9.6. Notices. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by registered or certified mail to the other party hereto, with instruction to show to whom delivered and return receipt requested addressed as follows:

If to the Project Sponsor:

City of Florence  
City County Complex AA  
180 North Irby Street  
Florence, South Carolina 29501-3456

Attention: City Manager

If to the Authority:

South Carolina Water Quality Revolving Fund  
Authority  
c/o Office of Local Government - SRF  
South Carolina State Budget and Control Board  
1122 Lady Street, Suite 1080  
Columbia, South Carolina 29201

Attention: Patricia A. Comp

Each party may notify the other by the same process of any change of such address. Loan requests and disbursements and other routine loan administration may be conducted by regular mail.

SECTION 9.7. No Joint Venture, Etc. The Authority is not a partner, joint venturer, or in any other way a party to the Project or the operation of the System of the Project Sponsor. The Authority shall not be in any way liable or responsible by reason of the provisions hereof, to the Project Sponsor or any third party, for the payment of any claims in connection therewith.

SECTION 9.8. Assignment. This Agreement may not be assigned by the Project Sponsor without the prior written consent of the Authority. The Authority may assign the Note and this Agreement, and any such holder and assignee of same shall succeed to and be possessed of the same rights as the Authority under both to the extent so transferred or assigned.

SECTION 9.9. Entire Agreement. This Agreement and the Note contain the entire terms of this Agreement and transaction. They may not be changed, waived or discharged in whole or in part, except by written instrument executed by the party sought to be charged therewith.

SECTION 9.10. Continuity. This Agreement shall be binding upon the legal representatives, successors and assigns of each party and shall inure to their benefit; provided, however, that nothing herein said shall be deemed to limit any restriction on assignment impressed upon the Project Sponsor.

SECTION 9.11. South Carolina Contract. This Agreement shall be governed by and construed in accordance with the laws of the State.

SECTION 9.12. Limitations on Actions by Project Sponsor. No action shall be commenced by the Project Sponsor against the Authority for any claim under this Agreement unless notice thereof specifically setting forth the claim shall have been given to the Authority within thirty (30) days after the occurrence of the event or omission which the Project Sponsor alleges gave rise to such claim. Failure to give such notice shall constitute a waiver of any such claim. Liability of the Authority to the Project Sponsor for any breach of the terms of this Agreement shall not exceed a sum equal to the amount which the Authority shall have failed to disburse in consequence of a breach by the Authority of its obligations under this Agreement. Upon the making of any such payment by the Authority to the Project Sponsor, it shall be treated as a disbursement under this Agreement.

SECTION 9.13. Counterparts. This Agreement is executed in two counterparts, which are separately numbered, but each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.

SECTION 9.14. Appendices. The appendices attached to this Agreement are a part of it.

SECTION 9.15. Special Conditions. The Statements of Special Conditions in Appendix "D" shall govern the matters they address.

SECTION 9.16. Time of Essence. Time is of the essence of this Agreement.

SECTION 9.17. Severability. If any provision of this Agreement, or any portion thereof, should be ruled void, invalid, unenforceable or contrary to public policy by any court of competent jurisdiction, any remaining provisions of this Agreement shall survive and be applied, and together with the invalid or unenforceable portion shall be construed or reformed to preserve as much of the original words, terms, purpose and intent as shall be permitted by law.

IN WITNESS WHEREOF, the Project Sponsor and the Authority have caused these presents to be signed, sealed and delivered all as of the date hereof.

CITY OF FLORENCE

(SEAL)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Its \_\_\_\_\_

SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY

By: \_\_\_\_\_

Michael S. Gulledge, Director,  
Office of Local Government,  
South Carolina State Budget and Control Board

SCOPE OF WORK

Project Sponsor: City of Florence

Project Name: Regional Wastewater Treatment Plant Upgrade – Phase I

Loan Number: S1-121-09-378-19

Upgrade of wastewater treatment plant to include new influent pump station screens, new headworks including fine screens and grit removal, flow division box, rehabilitation of existing secondary clarifiers, scum pump station, sodium hypochlorite feed facility, rehabilitation of existing chlorine contact chamber, rehabilitation of existing post aeration basin, rehabilitation of existing waste sludge holding tanks, and miscellaneous related yard piping, electrical and instrumentation work and site improvements. Also included is the upgrade of several manholes in the Project Sponsor's collection system.

PROJECT BUDGET

Project Sponsor: City of Florence

Project Name: Regional Wastewater Treatment Plant Upgrade – Phase I

Loan Number: S1-121-09-378-19

CWSRF LOAN

<u>ITEM</u>	<u>ARRA FUNDS</u>	<u>REGULAR FUNDS</u>	<u>TOTAL ELIGIBLE COSTS</u>
Legal and Appraisal Fees		\$ 25,000	\$ 25,000
Construction	4,000,000	12,550,048	16,550,048
Construction Contingency		1,655,005	1,655,005
Construction Inspection and Engineering	_____	<u>638,426</u>	<u>638,426</u>
Total	\$4,000,000	\$14,868,479	\$18,868,479

SUBJECT TO REVISION PRIOR TO CLOSING



PROJECT SCHEDULE

Project Sponsor: City of Florence  
Project Name: Regional Wastewater Treatment Plant Upgrade – Phase I  
Loan Number: S1-121-09-378-19

<u>ACTION</u>	<u>DATE</u>
Bid Opening	May 20, 2009
Contract Execution	July 20, 2009
Notice to Proceed	July 27, 2009
Start of Construction	August 3, 2009
DHEC Permit to Operate	March 18, 2011

SUBJECT TO REVISION PRIOR TO CLOSING

REPAYMENT SCHEDULE

Project Sponsor: City of Florence

Project Name: Regional Wastewater Treatment Plant Upgrade – Phase I

Loan Number: S1-121-09-378-19

Loan Amount: \$18,868,479

Payment Initiation Date: April 1, 2011

Interest Rate: 2.81% per annum blended  
\$4,000,000 at 0% from ARRA funds  
\$14,868,479 at 3.50% from Regular funds

First Payment Due Date: July 1, 2011

- (1) Prior to the Payment Initiation Date, amounts disbursed shall bear interest from the date of the Authority's check for each disbursement and accrued interest only shall be due on the Payment Initiation Date.
- (2) Repayment of the principal and interest shall be due in 80 installments, commencing on the first day of the third month after the month of the Payment Initiation Date and continuing quarterly on the first day of each third month thereafter.
- (3) Repayment shall be in 79 equal installments in the amount of Three Hundred Nine Thousand Two Hundred Thirteen and 16/100 Dollars (\$309,213.16) each, and one final installment in the amount of Three Hundred Nine Thousand Two Hundred Twelve and 99/100 Dollars (\$309,212.99).

SUBJECT TO REVISION PRIOR TO CLOSING

LOAN CLOSING FEE

Project Sponsor: City of Florence

Project Name: Regional Wastewater Treatment Plant Upgrade – Phase I

Loan Number: S1-121-09-378-19

Regular Loan Funds: \$14,868,479

.5% Loan Closing Fee: \$74,342

The Loan Closing Fee identified above shall be due and paid at the time of delivery of the Loan Agreement, Note and other required Loan closing documents. Such fee is not reimbursable through the Loan. No closing fee is associated with the ARRA Loan Funds.

SUBJECT TO REVISION PRIOR TO CLOSING

Project Sponsor: City of Florence

Loan Number: S1-121-09-378-19

PROCUREMENT REQUIREMENTS

ARRA Funds

- I. Prior to construction contract award, the Project Sponsor shall:
  - A. Advertise the Project for a minimum of thirty (30) days in advance of bid opening using at least one of the following methods:
    1. Local newspapers of general circulation.
    2. MBE/WBE publications.
    3. Statewide or regional newspapers of general circulation.
    4. With prior notification to the Department, the South Carolina Business Opportunities (SCBO).
  - B. Modify bid documents only by written addenda, which require prior Department approval.
  - C. Hold a public bid opening.
  - D. Utilize competitive sealed construction bids.
  - E. Require at least a five percent (5%) bid bond or certified check.
  - F. Require one hundred percent (100%) payment and performance bonds.
  - G. Require the contractor, during construction, to provide fire, extended coverage, vandalism and malicious mischief insurance equal to the actual value of the insured property.
  - H. Follow the Buy American provision (Section 1605) of ARRA and certify that all of the iron, steel and manufactured goods used in the Project were produced in the United States unless a waiver was granted by the U. S. Environmental Protection Agency. The Project Sponsor's Buy American Certification must accompany all draw requests. Require the prime contractor to follow the Buy American provision of ARRA and provide a Buy American certification with the Project's bid package documentation.
  - I. Follow the Davis-Bacon and Related Acts (Section 1606) of ARRA which requires that all laborers and mechanics employed by contractors and subcontractors be paid wages at rates not less than those listed on the prevailing wage rate contained in the contract documents and that all applicable provisions of the Davis-Bacon and Related Acts be met. The Project Sponsor's Davis-Bacon Certification must accompany all draw requests. Require the prime contractor to follow the Davis-Bacon provision of ARRA.
  - J. Create and maintain a list of all firms that bid or quote on prime contracts and/or subcontracts (Bidders List) including both disadvantaged business enterprises and non-disadvantaged business enterprises. The Bidders List must be kept until Project completion.
  - K. If other funding sources are included which have stricter bidding requirements or if applicable Federal, State or local laws or ordinances have stricter requirements, these stricter requirements govern.
  - L. After bid opening, provide the Department with the following:
    1. Project Construction Summary Form (DHEC Form #3589).
    2. A certified copy of the advertisement with date(s) of publication.

3. A copy of the Project Sponsor's Bidders List.
  4. Detailed bid tabulation certified by Project Sponsor's engineer.
  5. Proposal of successful bidder(s).
  6. Bid Bond with associated Power of Attorney.
  7. A copy of the Davis-Bacon Wage Rate used in bidding the Project.
  8. Engineer's award recommendation of low bidder(s) to Project Sponsor. If the award is recommended to other than the low bidder(s), provide justification for decision.
  9. Certified copy of Project Sponsor's tentative award resolution listing the proposed contractor(s) and contract amount(s).
  10. A copy of the proposed prime contractor's Buy American Certification (DHEC Form #2556).
  11. Prime Contractor's Subagreement Certification (DHEC Form #3591).
  12. Evidence that the low bidder(s) complied with the Disadvantaged Business Enterprise (DBE) requirements listed in the bid documents. DBE approval must precede bid package approval.
  13. A copy of the prime contractor's Bidders List.
  14. DBE Subcontractor Performance Form (EPA Form 6100-3) from all DBE firms.
  15. EEO Documentation Form (DHEC Form #2323), with all required attachments, including Certification by Proposed Prime or Subcontractor Regarding Equal Employment Opportunity (DHEC Form #3592) from the proposed prime contractor(s) and all subcontractors whose contract amount is expected to exceed \$10,000.
  16. Certification Regarding Debarment, Suspension and Other Responsibility Matters (DHEC Form #3590) from the proposed prime contractor(s) and all subcontractors whose contract amount is expected to exceed \$25,000.
  17. Project Inspection Designation Form (DHEC Form #2324), with all required attachments, indicating the selected method of providing continuous inspection during construction.
- M. Receive Department approval to award the construction contract(s).
- II. Subsequent to construction contract award, the Project Sponsor shall submit the following to the Department as proof of compliance with procurement requirements:
- A. Executed contract documents.
  - B. Notice to Proceed.
  - C. Semi-annual MBE/WBE Utilization Reports (EPA Form 5700-52A).
  - D. Monthly Construction Inspection Reports.
  - E. Project Sponsor's Buy American and Davis-Bacon Certification (DHEC Form #2557) which must accompany all draw requests.
- III. Subsequent to contract award, the Project Sponsor shall submit the following, for Department review and approval, on any proposed change orders:
- A. Need for the change.
  - B. Clear description of the change.
  - C. Cost and pricing data.
  - D. Documentation of negotiation.
  - E. For claims, information showing the claim did not result from the Project Sponsor's or contractor's mismanagement.

SPECIAL CONDITIONS

Project Sponsor: City of Florence  
Project Name: Regional Wastewater Treatment Plant Upgrade – Phase I  
Loan Number: S1-121-09-378-19

1. Notwithstanding provisions of Section 4.4 hereof and until the Project Sponsor has refinanced existing debt and enacted a new master bond ordinance governing the System's operation and debt issuance, the Project Sponsor shall establish a Cushion Fund, in an amount equal to the Reserve Requirement, solely for purposes of the Note and such fund shall be held by the South Carolina State Treasurer's Office as Custodian of the Cushion Fund. The Custodian shall hold the Cushion Fund for the benefit of the Authority until a separate Debt Service Reserve Fund has been established for the Note, this Agreement has been amended, and the Authority notifies the Custodian in writing that all amounts in the Cushion Fund may be released to the Project Sponsor.
2. No disbursement shall be made under this Agreement unless all requirements associated with the construction contracts have been satisfied, as evidenced by approval of the Department to execute such contracts.

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

**PROMISSORY NOTE TO SOUTH CAROLINA  
WATER QUALITY REVOLVING FUND AUTHORITY FOR  
SOUTH CAROLINA WATER POLLUTION CONTROL  
REVOLVING FUND LOAN**

CITY OF FLORENCE, SOUTH CAROLINA  
COMBINED WATERWORKS AND SEWERAGE SYSTEM REVENUE BOND, SERIES 2009

FOR VALUE RECEIVED, the City of Florence (the "*Project Sponsor*") promises to pay to the order of the South Carolina Water Quality Revolving Fund Authority (the "*Authority*") the principal sum owing from time to time by the Project Sponsor pursuant to, and in accordance with, the Loan Agreement (the "*Agreement*"), the terms of which are incorporated herein by reference, between the Project Sponsor and the Authority relating to Loan Number S1-121-09-378-19, Regional Wastewater Treatment Plant Upgrade – Phase I, principal sum, rate of interest and amount and due date of payments thereunder being set forth in Appendix "B" to the Loan Agreement. The records of the Authority with respect to the date and amount of payments on this Note shall be conclusive as to such matters. Interest shall be computed on a three hundred sixty-five-day year basis and compounded annually; the principal of this Note and any installment thereof shall bear interest until paid in full.

Time is of the essence of this Note.

The Project Sponsor may prepay the outstanding principal balance of this Note in whole or in part, together with any accrued interest thereon, at any time without penalty or premium; all such prepayments shall be applied against principal installments due on this Note in the inverse order of the maturity dates thereof.

All payments of principal and interest shall be made in money of the United States at the office of the Authority in Columbia, South Carolina, or at such place as the Authority may designate in writing, and shall be made in funds immediately available in Columbia, South Carolina.

The Project Sponsor agrees to pay at the time any such late payment hereunder is made a late charge of three percent (3%) of any payment not made on or before the tenth day of the month in which such payment is due. Interest which accrues after maturity of this Note or after its earlier acceleration shall be due and payable upon demand.

Payments shall be applied first to any late charge, then to interest, then to principal. There is no intent for any payment to exceed any legal limit on interest, if any such legal limit applies. If an excess sum occurs, it shall be applied to principal unless the Project Sponsor elects its return in writing.

If the Project Sponsor fails to make any payment of principal or interest within thirty (30) days of the date when due, or if the Project Sponsor defaults in the performance of any of the terms, covenants or conditions of any agreement or other documents concerning this Note, including without limitation the Agreement, the Authority may declare the principal of this Note and all unpaid interest accrued on it to be due and payable immediately, without prior notice or demand to the Project Sponsor.

The failure of the Project Sponsor to make any payment of principal or interest or both shall not constitute a default until thirty (30) days following the due date but the Authority shall have no obligation to give the Project Sponsor notice of any failure to make such payments. Upon any such payment default, the Authority shall immediately avail itself of the provisions of Section 7.2 of the Agreement relating to additional security for payment of amounts due on this Note.

The Project Sponsor waives presentment for payment, demand, protest, and notice of non-payment. Neither a failure to accelerate for default nor acceptance of a past due installment shall be a novation of this Note or constitute a waiver of the right to insist upon strict compliance with it and any related agreements and documents.

The Project Sponsor shall pay all costs of collection, including but not limited to reasonable attorney's fees if the Authority endeavors to collect this Note in any manner through an attorney at law. The rights and remedies of the Authority provided in this Note are cumulative and not exclusive of any other rights and remedies afforded the Authority by law or by any other document.

This Note shall be governed by and construed and interpreted in accordance with the laws of the State of South Carolina.



IN WITNESS WHEREOF, the Project Sponsor has caused this Note to be executed under its seal and to be registered in the name of the South Carolina Water Quality Revolving Fund Authority as of this \_\_\_\_ day of June, 2009.

CITY OF FLORENCE

[SEAL]

By: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_

Its \_\_\_\_\_

**CERTIFICATE OF AUTHENTICATION**

This Promissory Note is the obligation issued pursuant to the Project Sponsor's Master Bond Ordinance enacted October 24, 1989, as authorized by the Project Sponsor's Series Ordinance enacted June \_\_\_\_, 2009.

THE BANK OF NEW YORK MELLON TRUST COMPANY, N. A., TRUSTEE  
FORMERLY KNOWN AS THE BANK OF NEW YORK TRUST COMPANY, N. A.,

By: \_\_\_\_\_, Authorized Officer

Typed Name: \_\_\_\_\_

- MODEL -

DEBT SERVICE FUND AND  
DEBT SERVICE RESERVE FUND AGREEMENT

between

[PROJECT SPONSOR]

and

[TRUSTEE]

Dated \_\_\_\_\_, 20\_\_\_\_

relating to

[PROJECT NAME]

SOUTH CAROLINA WATER POLLUTION CONTROL REVOLVING FUND

LOAN NUMBER: \_\_\_\_\_

August, 1992

## DEBT SERVICE FUND AND DEBT SERVICE RESERVE FUND AGREEMENT

This DEBT SERVICE FUND AND DEBT SERVICE RESERVE FUND AGREEMENT, dated as of \_\_\_\_\_, 20\_\_\_\_, by and between [PROJECT SPONSOR] (the "Project Sponsor") and [TRUSTEE], a \_\_\_\_\_ organized under the laws of the \_\_\_\_\_, as Trustee (the "Trustee");

### WITNESSETH:

WHEREAS, the South Carolina Water Quality Revolving Fund Authority (the "State Authority") and the Project Sponsor have entered into a Loan Agreement (the "Loan Agreement") relating to South Carolina Water Pollution Control Revolving Fund Loan Number: \_\_\_\_\_ (the "Loan") in order to finance wastewater treatment facilities as more fully described in the Loan Agreement; and

WHEREAS, pursuant to the Loan Agreement, and to evidence the Project Sponsor's obligation to repay the Loan, the Project Sponsor has delivered its promissory note (the "Note") in the principal amount of \$\_\_\_\_\_, or such lesser principal sum as may be disbursed pursuant to the Loan Agreement; and

WHEREAS, Section 4.1.2 of the Loan Agreement requires the Project Sponsor to establish and maintain a Debt Service Fund (the "Debt Service Fund") to provide for the payment of principal and interest on the Note; and

WHEREAS, Section 4.2.1 of the Loan Agreement requires the Project Sponsor to establish and maintain a Debt Service Reserve Fund (the "Debt Service Reserve Fund") to provide a reserve for payment of principal of and interest on the Note; and

WHEREAS, the Project Sponsor has requested that the Trustee act as trustee with respect to the Debt Service Fund and the Debt Service Reserve Fund and the Trustee has agreed to so act;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Project Sponsor and the Trustee agree as follows:

SECTION 1. ACCEPTANCE OF TRUST. The Trustee hereby acknowledges and accepts the duties and responsibilities of the Trustee with respect to the Debt Service Fund and the Debt Service Reserve Fund as set forth in the Loan Agreement and particularly in Section 4.4 thereof. The Trustee acknowledges that, in accordance with Article IV of the Loan Agreement, it has established or will establish the Debt Service Fund and the Debt Service Reserve Fund at the times required by the Loan Agreement and that it will make payments from the Debt Service Fund to the State Authority in accordance with the schedule of payments presented to the Trustee by the State Authority, as such schedule may be amended by the State Authority from time to time.

SECTION 2. INDEMNITY. The Project Sponsor hereby assumes liability for, and hereby agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and keep harmless the Trustee and its respective successors, assigns, agents and servants, from and against any and all liabilities, obligations, losses,

damages, penalties, claims, actions, suits, costs, expenses and disbursements (including legal fees and disbursements) of whatsoever kind and nature which may be imposed on, incurred by, or asserted against at any time, the Trustee (whether or not also indemnified against the same by the Project Sponsor or any other person under any other agreement or instrument) and in any way relating to or arising out of the execution and delivery of this Agreement, the establishment of the Debt Service Fund and the Debt Service Reserve Fund, the acceptance of the money deposited therein, and any investment, payment, transfer or other application of funds or securities by the Trustee in accordance with the provisions of this Agreement; provided, however, that the Project Sponsor shall not be required to indemnify the Trustee against its own negligence or willful misconduct. The indemnities contained in this section shall survive the termination of this Agreement.

SECTION 3. RESPONSIBILITIES OF TRUSTEE. The Trustee and its respective successors, assigns, agents and servants shall not be held to any liability whatsoever, in tort, contract, or otherwise, in connection with the execution and delivery of this Agreement, the establishment of the Debt Service Fund or the Debt Service Reserve Fund, the acceptance of the money deposited in the Debt Service Fund or the Debt Service Reserve Fund, or any investment, payment, transfer or other application of money or securities by the Trustee or any act, omission or error of the Trustee made in good faith in the conduct of its duties and not constituting negligence. The Trustee shall, however, be liable to the Project Sponsor for its negligent or willful acts, omissions or errors which violate or fail to comply with the terms of this Agreement. The duties and obligations of the Trustee shall be determined by the express provisions of the Loan Agreement and this Agreement. The Trustee may consult with counsel, who may be counsel to the Project Sponsor, and in reliance upon the opinion of such counsel shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action under this Agreement, such matter may be deemed to be conclusively established by a certificate signed by an authorized officer of the Project Sponsor.

SECTION 4. RESIGNATION OF TRUSTEE. The Trustee may resign and thereby become discharged from the duties and obligations hereby created by notice in writing given to the Project Sponsor and the State Authority not less than sixty (60) days before such resignation shall take effect. Such resignation shall take effect immediately upon the appointment of a new Trustee hereunder, if such new Trustee shall be appointed before the time limited by such notice and shall then accept the duties and obligations thereof. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section, the resigning Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

SECTION 5. REMOVAL OF TRUSTEE.

(a) The Trustee may be removed at any time by an instrument or concurrent instruments in writing, executed by the Project Sponsor and the State Authority.

(b) The Trustee may also be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provisions of this

Agreement with respect to the duties and obligations of the Trustee, by any court of competent jurisdiction upon the application of the Project Sponsor or the State Authority.

SECTION 6. SUCCESSOR TRUSTEE. If at any time hereafter the Trustee shall resign, be removed, be dissolved or otherwise become incapable of acting, or shall be taken over by any governmental official, agency, department or board, the position of Trustee shall thereupon become vacant. If the position of Trustee shall become vacant for any of the foregoing reasons or for any other reason, the Project Sponsor shall, with prior written approval of the State Authority, appoint a Trustee to fill such vacancy.

SECTION 7. TERM. This Agreement shall commence upon its execution and delivery and shall terminate when the Note has been paid and discharged in accordance with the Loan Agreement, at which time all money and securities in the Debt Service Fund and the Debt Service Reserve Fund shall be delivered to the Project Sponsor.

SECTION 8. COMPENSATION FOR TRUSTEE. The Project Sponsor agrees to pay to the Trustee reasonable compensation for its services and to pay all of its expenses, including counsel fees which it may incur in acting hereunder. To the extent that any portion of the compensation of the Trustee has been agreed to by any separate agreement, such separate agreement shall control, to the extent so intended.

SECTION 9. SEVERABILITY. If any one or more of the covenants or agreements provided in this Agreement on the part of the Project Sponsor or the Trustee to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreements herein contained shall be null and void and shall be severed from the remaining covenants and agreements and shall in no way affect the validity of the remaining provisions of this Agreement.

SECTION 10. COUNTERPARTS. This Agreement will be executed in several counterparts, all or any of which shall be regarded for all purposes as duplicate originals and shall constitute and be but one and the same instrument.

SECTION 11. GOVERNING LAW. This Agreement shall be construed under the laws of the State of South Carolina.

SECTION 12. SECURITY FOR ACCOUNTS AND FUNDS. All accounts and funds maintained or held pursuant to this Agreement shall be continuously secured in the same manner as other deposits of trust funds are secured by the Trustee.

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

[PROJECT SPONSOR]

By \_\_\_\_\_  
[Title]

Attest:

\_\_\_\_\_  
[Title]

[TRUSTEE]

By \_\_\_\_\_  
[Title]

Attest:

\_\_\_\_\_  
[Title]

The South Carolina Water Quality Revolving Fund Authority hereby approves [Trustee] as Trustee of the Debt Service Fund and the Debt Service Reserve Fund.

SOUTH CAROLINA WATER QUALITY REVOLVING FUND AUTHORITY

By \_\_\_\_\_  
Michael S. Gulledge, Director  
Office of Local Government,  
South Carolina State Budget  
and Control Board

CITY OF FLORENCE COUNCIL MEETING

DATE: June 8, 2009

AGENDA ITEM: Ordinance  
First Reading

DEPARTMENT/DIVISION: City of Florence Urban Planning & Development Department

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**I. ISSUE UNDER CONSIDERATION:**

*A request by J.P. Costas to abandon a portion of the 50 foot right-of-way on Brogdon Street. The portion to be abandoned is 15 feet on either side of the street, leaving 20 feet for continued access.*

**II. CURRENT STATUS/PREVIOUS ACTION TAKEN:**

*Currently, Brogdon Street is a 50 foot right-of-way leading from a 14' alley, DeJongh Alley. The applicant is repairing his building after fire damage and would like to add a small 5 foot addition to the Brogdon side of his building for electrical systems. The current building has non-conforming setbacks on Brogdon Street. Approval of this request would reduce the existing non-conformities and be a more productive use of a 50 foot right-of-way which is unnecessary in this location.*

*Notifications have been sent to all affected property owners and public utilities. There have been no comments to date.*

*Public notice was published in the Morning News on May 29, 30 and June 1, 2009 as required by Section 2-28 of the City of Florence Code of Ordinances.*

**III. POINTS TO CONSIDER:**

*The existing 50 foot right-of-way is unnecessary for a short dead-end road which serves 8 properties, two of which have primary access from other streets. No city utilities are located in the areas to be abandoned. Both local gas and electric providers have been contacted and have indicated no problems with the request. The Fire Department staff has also reviewed the request and has no objections.*

**IV. OPTIONS:**

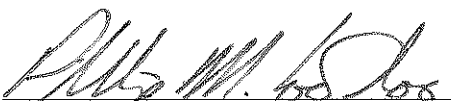
*City Council may:*


- (1) Approve request as presented based on information submitted.*
- (2) Defer request should additional information be needed.*
- (3) Suggest other alternatives.*
- (4) Deny request.*

**V. PERSONAL NOTES:**

**VI. ATTACHMENTS:**

*Map showing the location of the areas to be abandoned.  
Ordinance*

  
Phillip M. Lookadoo, AICP  
Urban Planning and Development Director

  
David N. Williams  
City Manager

May 6, 2009

Phillip Lookadoo, Director  
City of Florence Planning & Development  
218 W Evans Street  
Florence, SC 29501

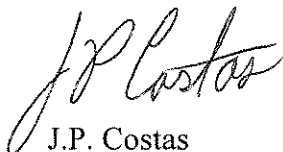
Dear Sir:

I would respectfully like to request that the City of Florence consider abandoning its interest in a portion of the right-of-way for Brogdon Street. My business is located on the corner of Brogdon and a 14 foot alley, Dejongh Alley. I am restoring my building after fire damage and have no options but to add a small electrical addition which would intrude into the current setback on Brogdon Street. I am attaching a survey showing details of my request.

This street has a 50 foot right-of-way which is far more than necessary to serve the few lots fronting on the street.

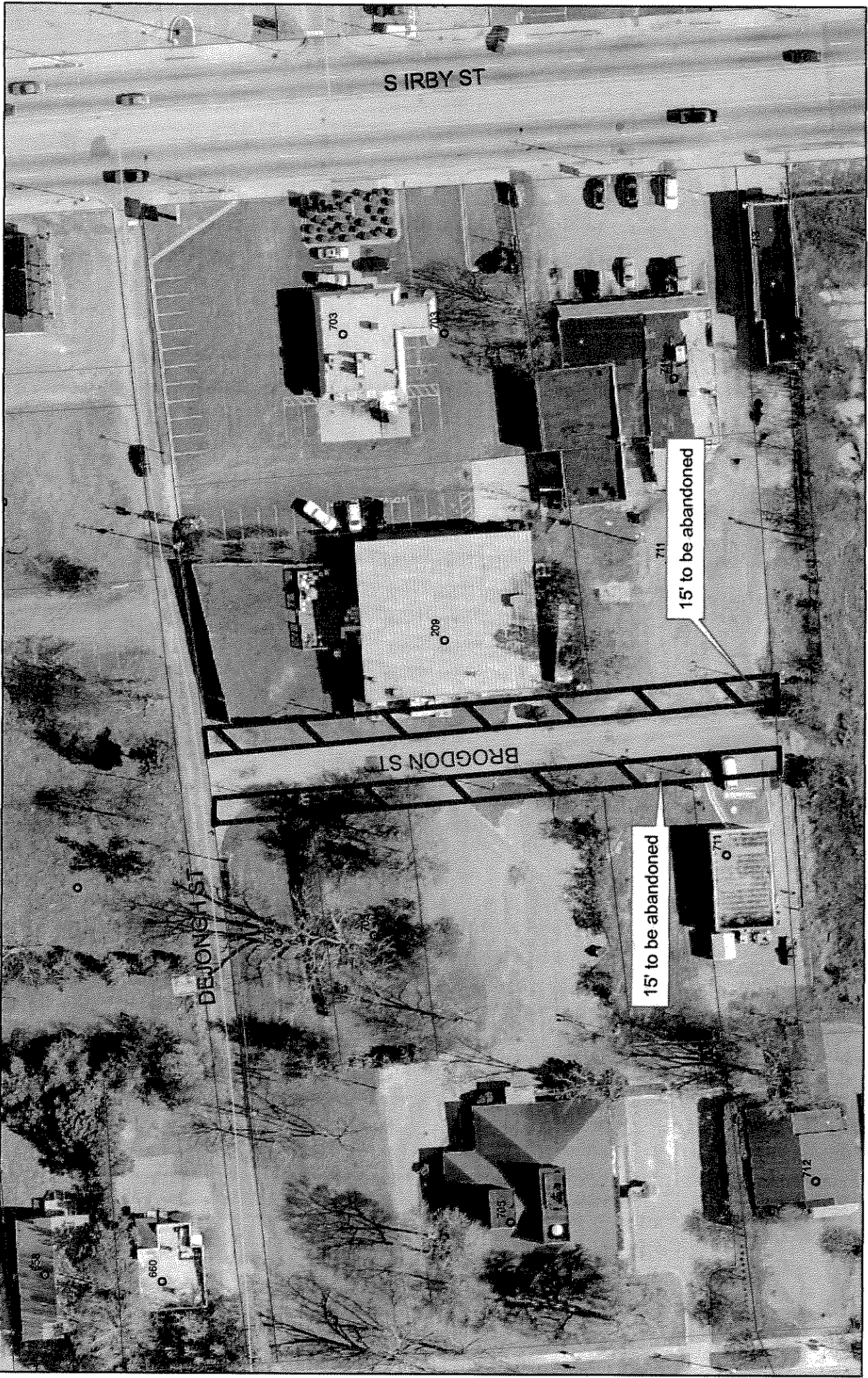
Favorable consideration of this request would be greatly appreciated as I have limited options due to the interior layout of the damaged building.

Yours respectfully,



J.P. Costas





S IRBY ST

DEJONGH ST

BROGDON ST

15' to be abandoned

15' to be abandoned

703

705

711

711

712

660

**ORDINANCE NO. 2009 \_\_\_\_\_**

**AN ORDINANCE TO ABANDON A PORTION OF RIGHT-OF-WAY ON BROGDON STREET.**

**WHEREAS**, a request has been made for the City to abandon its interest in a portion of the right-of-way on Brogdon Street, more specifically 15 foot on either side of the street, leaving the center 20 feet for continued access, and;

**WHEREAS**, a public notice was published three times in the Morning News prior to the June 9, 2009 City Council meeting as required by City Code Section 2-28(b) and adjacent property owners and utility providers were notified.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FLORENCE IN MEETING DULY ASSEMBLED AND BY THE AUTHORITY THEREOF:**

1. That the City of Florence abandons its interest in fifteen feet either side of the street which will then revert to the abutting property owners after the necessary legal documents have been completed.
2. That this Ordinance shall become effective seven days upon its approval and adoption by the City Council of the City of Florence.

**ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2009**

**Approved as to form:**

\_\_\_\_\_  
James W. Peterson, Jr.

\_\_\_\_\_  
Stephen J. Wukela, **Mayor**

**City Attorney**

**Attest:**

---

Dianne Rowan  
**Municipal Clerk**