

LETTER OF AGREEMENT

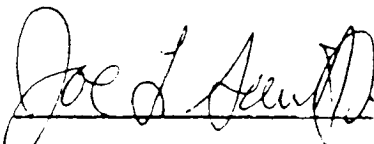
WHEREAS, the City of Abbeville, S.C. has entered into an agreement to sell potable water to the Town of Calhoun Falls, S.C. and they agreed not to operate their water plant during said agreement, and

WHEREAS, the Town of Calhoun Falls has incurred embedded debt costs in the amount of \$164,000, while designing and planning for a new water treatment plant, and

WHEREAS, the Town of Calhoun Falls S.C. has requested that the City of Abbeville, S.C. assist by providing a financial structure within which the Town can pay off these embedded debt costs and agrees to pay an increased wholesale water rate of 76 cents per thousand gallons to the City of Abbeville until the embedded debt is paid off, and

WHEREAS, this letter of agreement will become an Annex to the general agreement for providing water and detailed in Ordinance No.96-07 dated 9/17/96, and 10/17/96.

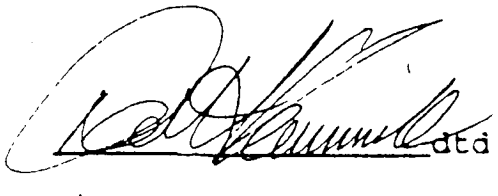
NOW THEREFORE, the City of Abbeville does hereby agree to pay the Town of Calhoun Falls' embedded debt costs off, not to exceed \$164,000, and to charge 76 cents per thousand gallons of water until said debt is retired. This agreement is based upon the structure and assumption that a final grant of \$500,000 is forthcoming from Senator Durmond after July 1, 1996. If said grant is not available within nine (9) months of July 1, 1996, this agreement will be void.

 dtd. 10-28-96

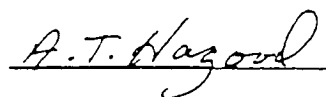
Mayor
City Of Abbeville, S.C.

 dtd. 10/28/96

Mayor
Town Of Calhoun Falls, S.C.

 dtd. 10/28/96

City Manager
City Of Abbeville, S.C.

 dtd. 10/28/96

City Administrator
Town Of Calhoun Falls, S.C.

ORDINANCE NO. 15-96

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN
AGREEMENT WITH THE TOWN OF CALHOUN FALLS TO
PROVIDE POTABLE WATER THROUGH A SIXTEEN INCH
WATER LINE FROM THE CITY OF ABBEVILLE, S.C.
TO THE TOWN OF CALHOUN FALLS

WHEREAS, the City of Abbeville, South Carolina has excess capacity at its water treatment plant and is looking for additional customers for which to sell its potable water, and

WHEREAS, the Town of Calhoun Falls, South Carolina is under DHEC order to upgrade its water treatment plant processes and is in the need for greater water plant capacity, and

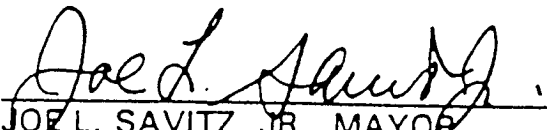
WHEREAS, the Town of Calhoun Falls, South Carolina has insufficient revenue funds to meet DHEC regulations and increase the capacity of its water plant, and is willing to purchase potable water from the City of Abbeville, and

WHEREAS, the City of Abbeville, South Carolina is willing to sell potable water to the Town of Calhoun Falls and deliver it to the town through a sixteen inch water line to be constructed by the City.

NOW, THEREFORE, BE IT ORDAINED, by the governing body of the City of Abbeville, South Carolina in council duly assembled this 8th day of October, 1996, that the City Manager is authorized to enter into a written contract with the Town of Calhoun Falls, South Carolina for the sale and delivery of water to said town. (Contract is attached as Annex A to this Ordinance)

Introduced by:

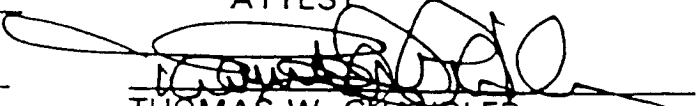
Council Member Peeler


JOE L. SAVITZ, JR., MAYOR
CITY OF ABBEVILLE, S.C.

First Reading: 9-10-96

Second Reading: 10-8-96


APPROVAL AS TO FORM
TOMMY E. HITE, JR.

ATTEST:

THOMAS W. CHANDLER
CITY CLERK/TREASURER

ORDINANCE NO. 96-07

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH
THE CITY OF ABBEVILLE TO PROVIDE POTABLE WATER THROUGH A
SIXTEEN INCH WATER LINE FROM THE CITY OF ABBEVILLE, SOUTH
CAROLINA TO THE TOWN OF CALHOUN FALLS

WHEREAS, the City of Abbeville, South Carolina has excess capacity at its water treatment plant and is looking for additional customers for which to sell its potable water, and

WHEREAS, the Town of Calhoun Falls, South Carolina is under DHEC order to upgrade its water treatment plant processes and is in the need for greater water plant capacity, and

WHEREAS, the Town of Town of Calhoun Falls, South Carolina has insufficient revenue funds to meet DHEC regulations and increase the capacity of its water plant, and is willing to purchase potable water from the City of Abbeville, and

WHEREAS, the City of Abbeville, South Carolina is willing to sell potable water to the Town of Calhoun Falls and deliver it to the town through a sixteen inch water line to be constructed by the City.

NOW THEREFORE, BE IT ORDAINED, by the governing body of the Town of Calhoun Falls, South Carolina in council duly assembled this 17th day of October, 1996, that the Mayor is authorized to enter into a written contract with the City of Abbeville, South Carolina for the sale and delivery of water to said town.

Introduced by:

Council, Michael White

Johnnie Waller

JOHNNIE WALLER, MAYOR
TOWN OF CALHOUN FALLS, SC

First Reading: 9/17/96

Second Reading: 10/17/96

ATTEST:

R. Eugene Pruitt, Jr.
APPROVAL AS TO FORM
R. EUGENE PRUITT, JR.

Pauline Thomas
PAULINE THOMAS
TOWN CLERK

4th draft
Final

Annex A.

1 INTERGOVERNMENTAL CONTRACT

2 BETWEEN

CITY OF ABBEVILLE AND TOWN OF CALHOUN FALLS

4 SALE AND PURCHASE OF WATER

TABLE OF CONTENTS

ARTICLE I - FACTUAL BACKGROUND	1
ARTICLE II - DEFINITIONS	2
ARTICLE III - PURCHASE AND SALE OF WATER	5
3.1 Purchase and Sale of Water	5
3.2 Effective Date and Term of Contract	6
3.3 Payment and Use Covenant	6
3.4 Payment	6
3.5 Acquisition, Construction and Construction Management	7
3.6 Allocation: Quality Standards and Monitoring	7
3.7	7
3.8 Notice of Completion Date	8
3.9 First Payment Date and Billing	8
3.10 Covenant Not to Compete	8
3.11	9
ARTICLE IV - COVENANTS, REPRESENTATIONS AND WARRANTIES	9
4.1 Authority	9
4.2 Approval and Permits	9
4.3 Preservation, Maintenance and Operation of a Party's Collection System	10
4.4 Cooperation in Construction of Project	10
ARTICLE V - FLOW VOLUMES, QUALITY OF DISCHARGE, AMOUNT, EXCESS	10
5.1 Supply of Water	10
5.2 Water Quality and Flows	10
ARTICLE VI - DELIVERY AND CONSERVATION	11
6.1 Points of Delivery	11
6.2 Parties to Maintain Water Quality and Collection System	11
6.3 Leaks	11
ARTICLE VII - MEASURING EQUIPMENT	
7.1 Abbeville to Supply Equipment, Official Record	11
7.2 Calibration	12
ARTICLE VIII - FORCE MAJEURE	13
ARTICLE IX - EVENTS OF DEFAULT, ENFORCEMENT AND REMEDIES	13

1	ARTICLE X - ADDITIONAL REMEDY WHEN THERE IS A FAILURE TO PAY THE	
2	MONTHLY SERVICE CHARGE	15
	10.1 <u>Late Payments</u>	15
4	10.2 <u>Cure of Default in Payment</u>	16
5	ARTICLE XI - INSURANCE REQUIREMENTS	16
6	11.1 <u>Common Insurance Requirements</u>	16
7		
8	ARTICLE XII - BILLING DISPUTES	16
9	12.1 <u>Payments Required</u>	16
10	12.2 <u>Resolution by Abbeville</u>	16
11	12.3 <u>Referral of Billing Disputes to Dispute Resolution Committee and Arbitration</u>	
12	<u>of Billing Disputes.</u>	
13		16
14	ARTICLE XIII - DEFINITION OF BREACH OR FAILURE TO PERFORM A MATERIAL	
15	OBLIGATION	17
16	ARTICLE XIV - DUTY TO MINIMIZE DAMAGES	17
17	ARTICLE XV - NOTICE TO CURE	18
18	ARTICLE XVI - RESOLUTION OF DISPUTES BY DISPUTE RESOLUTION COMMITTEE,	
	CONDITIONS PRECEDENT	18
20	16.1 <u>Disputes Resolution Committee</u>	18
21	16.2 <u>Resolution of Dispute</u>	19
22	16.3 <u>Failure to Resolve Dispute</u>	19
23	16.4 <u>Costs and Expenses</u>	19
24	ARTICLE XVII - AUDITS, RECORDKEEPING AND REPORTS	19
26	17.1 <u>Records of Abbeville</u>	19
26	17.2 <u>Calhoun Falls Records</u>	20
27	17.3 <u>Cooperation Between Parties</u>	20
28	ARTICLE XVIII - MISCELLANEOUS PROVISIONS	20
29	18.1 <u>Change of Law</u>	20
30	18.2 <u>Applicable Law</u>	20
31	18.3 <u>Notices and Evidence of Actions</u>	20
32	18.4 <u>Severability</u>	21
33	18.5 <u>Non-Assignability</u>	21
34	18.6 <u>Execution in Counterparts</u>	22
36	18.7 <u>Modification and Amendment</u>	22
38	18.8 <u>Exhibits Incorporated by Reference</u>	22

1 INTERGOVERNMENTAL CONTRACT
2 BETWEEN
3 CITY OF ABBEVILLE AND TOWN OF CALHOUN FALLS
4 SALE AND PURCHASE OF WATER

5 The following is a contract by and among the CITY OF ABBEVILLE ("Abbeville") and the
6 TOWN OF CALHOUN FALLS ("Calhoun Falls"), made and entered into this the 28 day of October, 1996 for sale and purchase of water:
7

8 ARTICLE I
9 FACTUAL BACKGROUND

10 Among the matters of mutual inducement resulting in the making of this contract, the Parties have
11 found and determined the following:

12 1. This contract will enable the Parties to take advantage of Federal and State funding and
13 other financing that may be available for these Parties and to provide for the terms of sale and purchase
14 of water.

15 2. Abbeville and Calhoun Falls are municipal corporations duly chartered by the State of
16 South Carolina pursuant to applicable constitutional and statutory provisions. Each now operates a
17 municipal water system.

18 3. Abbeville proposes to construct a major water line to run from Abbeville to Calhoun Falls
19 and to construct a major pump station with related appurtenances (the "Project") to bring Abbeville's
20 water supply to the Calhoun Falls Water Distribution System at the juncture of Highway 72 and the
21 Calhoun Falls city limits so that Calhoun Falls may abandon its existing water treatment plant.

22 4. The Parties find that it is in the public interest to close Calhoun Falls' present water
23 treatment facilities, to provide water service to the corridor between these towns to serve the growing
24 population and development, and to protect the public health and the environment.

25 5. The Highway 72 Line will be designed to transport an average flow at a maximum

1 capacity of 4,032,000 gallons per day.

2 6. The Constitution of South Carolina and statutes enacted pursuant thereto permit
3 incorporated municipalities to contract between themselves and the Parties contemplates that:

4 A. They will cooperate in obtaining grants or other funding for Abbeville to meet
5 the major capital expense to be incurred in the design and construction of the Project, including
6 acquisition of land and rights-of-way required by the Project and all other related costs and
7 expenses. Current funding and acquisitions herein mentioned shall apply to the Project and not
8 to the Calhoun Falls Distribution System which will continue to be owned and maintained by
9 Calhoun Falls. Calhoun Falls' obligation under this Agreement is to buy water supplied by
10 Abbeville. Calhoun Falls is not obligated to provide matching funds for grants for the Project
11 or for expenses of condemnation or other expenses related to construction of the Project.

12 B. Abbeville will be the recipient of any grant funds; will manage the administration
13 of grant funds; and comply with all applicable grant conditions, rules and regulations.

14 C. Abbeville will design, construct, own, operate and maintain the Project.

15 D. Calhoun Falls, for the term of this Contract, including any extensions hereof, will
16 pay Abbeville a monthly charge for this supply of water.

17 7. It is not presently contemplated that any bonds will be issued for this Project; however,
18 Abbeville may issue bonds and pledge revenues of its combined utility system to repay such bonds.

19 ARTICLE II
20 DEFINITIONS

21 Unless the context shall clearly indicate some other meaning or may otherwise require, the terms
22 defined in this Article, for all purposes of this Contract and of any agreement or other instrument
23 amendatory hereof or supplemental hereto, shall have the meanings herein specified, with the following

1 definitions to be equally applicable to both the singular and plural forms of any terms herein defined,
2 unless otherwise specifically provided herein.

3 2.1 "Abbeville Distribution System" means the water line distribution system owned and
4 operated by Abbeville to serve customers within the city limits and those existing users without the city
5 limits and those within areas defined in this contract.

6 2.2 "Bonds" means combined public utility system revenue bonds of the City of Abbeville.

7 2.3 "Calhoun Falls Distribution System" means the water line distribution system owned and
8 operated by Calhoun Falls to serve customers within the city limits and those existing users without the
9 city limits and those within areas defined in this contract.

10 2.4 "Completion Date" means the date the Project commences to deliver water.

11 2.5 "Contract" means this Contract.

12 2.6 "Contract year" means a twelve-month period commencing on July 1 of a calendar year
13 and ending on June 30 of the subsequent calendar year except for the first "Contract Year". The first
"Contract Year" shall commence on the Completion Date and end at midnight of the subsequent June 30.

14 2.7 "Corridor" means that area outside the city limits of Abbeville and town limits of Calhoun
15 Falls but within the territory contemplated to be served by the Project.

16 2.8 "Force Majeure" means an occurrence described below which affects the respective duties
17 and obligations of the Parties hereunder, which duties and obligations shall be suspended while and so
18 long as performance thereof is prevented or impeded. A Force Majeure occurrence means civil
19 disturbances, riots, vandalism, vendor delays, fires, floods, hurricanes, tornadoes, epidemics,
20 contamination of water supplies, quarantine restrictions, inclement weather, federal, state or local
21 governmental action or inaction, acts of war, acts of God, or any other cause which is beyond the
22 reasonable control of the party from whom the performance was due.
23

24 2.9 "GPD" means gallons per day.

1 2.10 "Monthly Service Charge" means the monthly charges payable by Calhoun Falls as
determined initially and in the future and set forth in the Rate Schedule Exhibit No. 1. This monthly
3 service charge refers to the charge to Calhoun Falls and is not applicable to charges Abbeville may
4 impose upon its customers. Increases in the monthly service charge may occur: a) by agreement of the
5 parties; b) by a determination by Abbeville that there has been an increase in the cost of providing and
6 delivering water to Calhoun Falls. Such an increase would be a direct increase related to costs of
7 delivery to Calhoun Falls; and c) upon determination by Abbeville that there has been a system-wide
8 increase in cost. Such a system-wide increase in cost would be a proportional increase applicable to all
9 users of this system and be a proportional increase based on use.

10 2.11 "Party" or "Parties" means Abbeville and Calhoun Falls.

11 2.12 "Plant" means the water treatment facility of Abbeville.

12 2.13 "Potable Water" means water which meets S. C. Department of Health and Environmental
13 Control drinking water standards.

14 2.14 "Project" means the 16-inch line, pump stations and other appurtenances to be constructed
15 by Abbeville along Highway 72 from Abbeville to Calhoun Falls city limits. This project does not
16 include the water lines owned by Calhoun Falls "Calhoun Falls Distribution System". These lines shall
17 continue to be owned by Calhoun Falls.

18 2.15 "Service Area" means, as between these Parties, those areas marked and shown on
19 Exhibit No. 2, entitled "Territory of Each Party" defining the assigned territory of each party outside city
20 and town limits, along the corridor of the Project contemplated to be served by Abbeville and Calhoun
21 Falls and in which these Parties have agreed not to offer competitive water service.

22 2.16 "Service Provider" means Abbeville.

23 2.17 "User" means a water customer using water from the Project.

ARTICLE III
PURCHASE AND SALE OF WATER

3.1 Purchase and Sale of Water

In consideration of Calhoun Falls' agreement to pay the Monthly Service Charge and of the other terms, warranties, representations and agreements herein contained, Abbeville agrees to construct and maintain a 16" water line to Calhoun Falls and, upon completion thereof, to sell potable water to Calhoun Falls. As an inducement to Abbeville to construct and maintain the 16" water line, Calhoun Falls has agreed to enter into this contract and to abide by its terms and conditions. Calhoun Falls covenants and agrees to maintain rates and charges for all services furnished by Calhoun Falls which shall at all times be sufficient to satisfy and discharge Calhoun Falls' obligations under this Contract, or under any grant, loan, bond or other agreement relating to the financing of the Project, and under any applicable law, statute or regulation.

A. It is agreed that Calhoun Falls will have an initial allocation of 800,000 gallons per day, but that Abbeville will supply up to a total of 4,032,000 gallons per day to Calhoun Falls if needed and as requested by Calhoun Falls. An additional need above the 800,000 gpd shall be requested in writing to Abbeville not less than ninety (90) days prior to the need for delivery of additional supply.

B. The commitment to provide a supply of water is to supply to Calhoun Falls and the area shown on Exhibit No. 2 and to no other entity or municipality; provided, however, Calhoun Falls may supply water out of the 4,032,000 gpd reserved to Calhoun Falls to the County of McCormick. In the event that McCormick chooses not to purchase water from Calhoun Falls, Calhoun Falls may reduce its allocation and reserve.

C. The essential part of this Agreement is that Calhoun Falls is to shut down their water plant, and pursuant to this contract thereafter to buy from Abbeville all water used for the

1 Town of Calhoun Falls.

2 3.2 Effective Date and Term of Contract

3 This Contract shall become effective upon the date shown above, and the Contract shall remain
4 in effect for forty (40) years.

5 3.3 Payment and Use Covenant

6 Calhoun Falls agrees to pay for the water contracted for in the Contract. Calhoun Falls covenants
7 to purchase all its requirements for potable water for the Town of Calhoun Falls and for the Calhoun
8 Falls Distribution System from Abbeville. Calhoun Falls' agreement to pay the Monthly Service Charge
9 is the primary inducement for Abbeville to make expenditures, seek grants, loans or to incur bonded or
10 other indebtedness for construction of the Project. While it is not presently contemplated that bonds will
11 be issued by Abbeville, if such becomes necessary, each Party acknowledges that this Contract may be
12 part of the inducement for issuance of bonds and that this Project shall be part of the Abbeville System.

13 3.4 Payment

14 A. All obligations of Calhoun Falls for payment of the Monthly Service Charge
15 under this Contract shall be limited to the revenues derived from the operation of Calhoun Falls'
16 waterworks and sewer system. The obligation of Calhoun Falls hereunder shall constitute a
17 pledge of all of such revenues pursuant to Section 6-21-80, Code of Laws of South Carolina,
18 1976, as amended, and shall not be construed as a pledge of the full faith, credit or taxing power
19 of Calhoun Falls.

20 B. Calhoun Falls shall make its first payment beginning the first of the month next
21 ensuing after completion of the Project and initial delivery of water to the delivery point or
22 points. Payment shall be made on the first of each month and each succeeding month during the
23 term of this Contract and shall consist of the Monthly Service Charge as shown on, or as may
24 in the future be determined and shown on Exhibit No. 1.

1 C. Calhoun Falls obligates and binds itself to punctually make the payments required
hereunder, free of any deduction, and without abatement, diminution or set-off of any sort.

3 D. Calhoun Falls covenants and agrees that it will, at all times, prescribe and
4 maintain and thereafter collect rates and charges for the water and facilities furnished by the
5 Calhoun Falls' Distribution System sufficient to pay its obligations under this agreement with
6 Abbeville and will not issue any bonds or incur any indebtedness, the payment of which is
7 secured by a pledge of any part of the revenues of Calhoun Falls' Combined Public Utility
8 System that is superior to the pledge securing its obligation to make payment under this Contract.

9 E. This Contract shall in no way limit or prohibit the sale by Calhoun Falls of any
10 water received by Calhoun Falls from the Project.

11 3.5 Acquisition, Construction and Construction Management

12 Abbeville agrees to use its best efforts through its own staff, or others employed by it, to build
13 and operate the water line including, but not limited to, such planning, designing, engineering,
14 construction, financing and acquisition, as is necessary to complete the Project. Calhoun Falls agrees to
15 cooperate on acquisitions of any rights of way, including, when requested to do so, by condemnation
16 proceedings; provided, however, Calhoun Falls shall not be responsible for any expenses incurred for
17 the acquisition of rights-of-way.

18 3.6 Allocation, Quality Standards and Monitoring

19 Abbeville shall allocate and deliver from the Project to Calhoun Falls up to but not exceeding
20 4,032,000 gpd at a residual pressure of 70 psi and to provide the following services:

21 A. Operation and maintenance. Abbeville covenants and agrees to provide, either
22 directly or through one or more contractors, all of the operation and maintenance requirements
23 of the Project and to maintain the Project in good repair and working condition, in accordance
24 with all requirements of state and federal regulatory agencies and consistent with generally

1 recognized good practice using industry standards.

2 B. Water Quality Monitoring. Abbeville covenants and agrees to install, maintain
3 and utilize equipment and facilities designed to monitor the quality of water, to notify Calhoun
4 Falls and to take appropriate action when contamination of the supply is observed, and to manage
5 the Project so as to optimize, within cost constraints, the quality of water delivered to Calhoun
6 Falls. The water supplied by Abbeville shall be potable, meeting drinking water standards of
7 South Carolina Department of Health and Environmental Control.

8 C. Points of Delivery; Backflows; Pressure. The points of delivery are defined as
9 the metering points where the Potable Water delivered hereunder leaves Abbeville's Water
10 System and enters Calhoun Falls' System. Connections to Abbeville's Water System will be
11 made only by Abbeville and in accordance with the standard set by Abbeville. Such connections
12 including the necessary valving, instrumentation, and safety valves will be designed to minimize
13 back-pressure surges from Calhoun Falls' System into the Project and vice versa.

14 3.7 Calhoun Falls agrees to establish and maintain a backflow prevention and cross-connection
15 control program approved by the South Carolina Department of Health and Environmental Control and
16 to provide Abbeville with copies of that program for review. Abbeville will provide operating
17 instructions and will assist in the training of Calhoun Falls' employees regarding the protection of both
18 Abbeville's Water System and Calhoun Falls' System from the effects of back-pressure fluctuations.
19 Abbeville and Calhoun Falls will each be responsible each to the other for operational/maintenance errors
20 or equipment failure cause unintentional damage to the other's system.

21 3.8 Notice of Completion Date

22 The Seller shall give the purchaser at least thirty (30) days prior notice of the completion date.

23 3.9 First Payment Date and Billing

24 The first monthly billing for the Monthly Service Charge shall be forwarded by Abbeville thirty

1 (30) days after the completion date. Thereafter, monthly billings shall be sent to the purchaser by the
2 seller on or before the 1st of each month showing the amount due for the previous month. Invoices shall
3 be due and payable on or before the 10th of each month.

4 **3.10** Covenants

5 During the contract term Calhoun Falls covenants not 1) to go into the business of providing
6 water treatment, 2) and not to provide a water supply. In the event the demand by Calhoun Falls shall
7 exceed 4,032,000 gpd, and in the event Abbeville is not able to meet this excessive demand, Calhoun
8 Falls may seek a water supply from other sources or provide water treatment itself to meet this excessive
9 demand.

10 3.11 Calhoun Falls reserves, however, its water rights in Lake Russell and agrees to transfer
11 these rights permitted by the U. S. Corps of Engineers to Abbeville and, if not transferable, to hold the
12 rights dormant until and unless consent to use the rights is given by Abbeville.

14 **ARTICLE IV**
COVENANTS, REPRESENTATIONS AND WARRANTIES

15 **4.1** Authority

16 Abbeville and Calhoun Falls represent and each warrants that it is a municipal corporation duly
17 chartered by the State of South Carolina and that it has all power and authority required to enter into this
18 Contract and to perform its obligations hereunder and to make the representations and warranties
19 contained herein.

20 **4.2** Approval and Permits

21 Abbeville covenants to use its best efforts to obtain all federal, state and local government
22 regulatory approvals and permits, all licenses and other rights necessary for the completion and operation
23 of the Project.

4.3 Preservation, Maintenance and Operation of a Party's Collection System

Each Party represents that it presently owns a water distribution system served by this Project providing water service to its users and contemplates some expansion of that system within the area's identified on Exhibit No. 2. Each Party covenants to use its best efforts to maintain its distribution system in good repair and working condition, unless prevented therefrom by Force Majeure.

4.4 Cooperation in Construction of Project

Calhoun Falls covenants to cooperate with the Abbeville in the construction and acquisition of the Project. It shall be the responsibility of Abbeville to acquire all necessary easements for construction, operation and maintenance of the Project. The cost of acquiring such easements shall be included in the costs of the Project. Calhoun Falls covenants to grant Abbeville access to its property to the extent reasonably necessary to construct and install the points of delivery and the appurtenant devices. Calhoun Falls also agrees, to the extent necessary, to exercise Calhoun Falls' powers of eminent domain to acquire easements required for the Project. Calhoun Falls will assist in every way possible to obtain signatures for rights-of-way necessary for construction.

Upon request of Calhoun Falls, Abbeville shall provide timely information to Calhoun Falls relating to system design of the Project and other information necessary for Calhoun Falls to make internal improvements and prepare for use of its portion of the Project.

ARTICLE V
FLOW VOLUMES, QUALITY OF WATER

5.1 Supply of Water

Abbeville agrees to supply a capacity of up to 4,032,000 to Calhoun Falls.

5.2 Water Quality and Flows

Calhoun Falls undertakes to accept, at the point of delivery by Abbeville, the water supplied by Abbeville which meet or exceed the potable water standards of South Carolina Department of Health and

1 Environmental Control.

ARTICLE VI DELIVERY AND CONSERVATION

4 6.1 Points of Delivery

5 The point of delivery shall be defined as the metering point where the Project water leaves the
6 Project line.

7 6.2 Parties to Maintain Water Quality and Collection System

8 Calhoun Falls agrees to operate its distribution system from the point of delivery on to its users
9 in such a manner as at no time to place Abbeville and the Combined Public Utility System of Abbeville
10 in jeopardy of failing to meet the regulations of any agency or governmental authority having jurisdiction
11 over its operation of water facilities. Calhoun Falls also agrees to notify Abbeville as promptly as
12 possible of all emergency and other conditions which may directly or indirectly affect the quantity or
13 quality of the water furnished by Abbeville.

6.3 Leaks

15 Abbeville agrees to use its best efforts to collect damages from any party responsible for creating
16 any such leak. The costs of repair and the expense of leaked wastewater arising from any leak in
17 Calhoun Falls' Distribution system shall be borne by Calhoun Falls.

ARTICLE VII MEASURING EQUIPMENT

20 7.1 Abbeville to Supply Equipment, Official Record

21 Abbeville shall furnish and install, own, operate, maintain, repair and replace, at the Project and
22 at the points of delivery, the necessary equipment and devices for properly measuring the quantity of
23 water delivered under this Contract, together with such above-ground structures or other structures as
24 Abbeville shall deem necessary to house and reasonably protect such equipment and devices. Such

1 equipment and devices shall be of a type meeting commonly accepted engineering standards. Such
2 structures and equipment shall be located at sites selected and provided for such purpose within the
3 service area of each respective Party or at a common boundary. Taps, measuring devices or other
4 standard equipment for the site and connection shall be at the expense of the Party served. Calhoun Falls
5 agrees to grant to Abbeville a property interest, easement or right of way in each respective site sufficient
6 to enable Abbeville to install, use, operate and maintain such structures and equipment and have right of
7 ingress or egress to such, during the term of this Contract. Abbeville and Calhoun Falls shall each have
8 access to such structures and equipment for examination and visual inspection at all reasonable times, but
9 the reading for billing purposes, calibration adjustment and maintenance thereof shall be done only by
10 the employees or agents of Abbeville. No tampering or adjustment shall be made by a Party. For the
11 purpose of this Contract, the official record of readings of the meter or meters shall be the journal or
12 computer record or other record book of Abbeville in its office in which the records of the employees
13 or agents of Abbeville who take the readings are or may be transcribed. Upon written request of a Party,
14 Abbeville will give the Party a copy of such journal or record book or permit the Party to have access
15 thereto in the office of Abbeville and into Abbeville meter sites during regular business hours.

16 7.2 Calibration

17 At least once in each Contract Year, Abbeville shall have an independent certified meter expert
18 calibrate its meters measuring water delivery to a Party. Abbeville shall give each Party at least 48 hours
19 advance notice of such calibration so that a representative of the Party may have the opportunity to be
20 present. Abbeville and Calhoun Falls may jointly observe any adjustments which are made to the meters
21 in case any adjustments may be necessary.

22 Upon the request of Calhoun Falls, Abbeville shall schedule certification of a particular meter
23 or meters by a certified meter expert and shall give Calhoun Falls such advance notification thereof as
24 is reasonable under the circumstances. In the event that such certification shows that the meter is accurate

1 within a range of +2% to -2%, Calhoun Falls shall pay therefor. In the event that such certification
2 shows that the meter is not accurate within a range of +2% to -2%, Abbeville shall pay for the
3 certification.

4 To adjust billing for a certification that is not accurate within such range, Abbeville and Calhoun
5 Falls shall review available data to determine as accurately as possible the date upon which the inaccuracy
6 began. Upon making such determination, the readings for the one year period prior to such date shall
7 be reviewed together with data relating to increase or decrease in use for the period from one year prior
8 to discovery of the problem to the then present time. Billing for the period of time during which the
9 problem persisted shall then be calculated upon such data.

10 ARTICLE VIII 11 FORCE MAJEURE

12 In case any Party by reason of Force Majeure shall be rendered unable wholly or in part to carry
13 out its obligations under this Contract, then if such Party shall give notice and full particulars of such
14 Force Majeure in writing to the other Parties within five days of the existence of such Force Majeure,
15 the obligation of the Party giving such notice so far as it is affected by such Force Majeure shall be
16 suspended during the continuance of the inability then claimed, but for no longer period, and any such
17 Party shall be required to resume performance of its obligations under this Contract upon the termination
18 of the aforementioned Force Majeure; provided, however, the Party unable to perform shall use its best
19 efforts and act in good faith to avoid or overcome the impediment.

20 ARTICLE IX 21 EVENTS OF DEFAULT, ENFORCEMENT AND REMEDIES

22 A. 1. In the event that Calhoun Falls fails to make any payment required by this
23 Contract, after exhaustion of the Dispute Resolution Procedure provided herein, and after ten (10)

1 days written notice to Calhoun Falls of such failure, Abbeville may institute such action as may
2 be necessary to enforce payment of such amounts, (including costs and reasonable attorney fees).

3 2. In the event that Calhoun Falls fails to perform any other covenant or agreement
4 herein made, Abbeville, after exhaustion of the Dispute Resolution Committee procedure, and
5 after ten (10) days written notice to Calhoun Falls of such failure, may bring action against
6 Calhoun Falls for the specific performance by Calhoun Falls of such other covenants or for the
7 enforcement of rights and remedies pursuant to the United States Bankruptcy Code.

8 3. In the event that a failure by Calhoun Falls to perform any covenant or agreement
9 herein made is the proximate cause of any physical damage to the Project, Calhoun Falls shall
10 be responsible for the cost of repairing such damages, and Abbeville may bring an action and
11 recover such cost.

12 4. The remedies herein granted to Abbeville shall be exclusive and shall be in lieu
13 of all other remedies that Abbeville may have at law or in equity. Calhoun Falls shall not be
14 liable in any event to Abbeville for punitive damages or third-party damages arising through acts
15 or omissions of Abbeville. In the event suit is filed to enforce these limits, Abbeville shall be
16 entitled to recover costs, any interest due at the legal rate and reasonable attorney's fees.

17 B. 1. In the event that Abbeville fails to perform any covenant or agreement herein
18 made, Calhoun Falls, after exhaustion of the Dispute Resolution Procedure, and after ten (10)
19 days written notice to Abbeville of such failure, may bring action against Abbeville for the
20 specific performance by Abbeville of such covenant or agreement and for direct but not for
21 consequential damages sustained by Calhoun Falls.

22 2. In the event that a failure by Abbeville to perform any covenant or agreement
23 herein made is the proximate cause of any physical damage to Calhoun Falls' System, Abbeville
24 shall be responsible for the cost of repairing such damages, and after exhaustion of the Dispute

1 Resolution Procedure and after ten (10) days written notice to Abbeville, Calhoun Falls may
bring an action therefor.

3 3. The remedies herein granted Calhoun Falls shall be exclusive and shall be in lieu
4 of all other remedies that Calhoun Falls may have at law or in equity, and notwithstanding that
5 if Abbeville shall become indebted to Calhoun Falls by reason hereof, Calhoun Falls shall have
6 a full right of recovery as provided herein, but no right to offset to its obligations to make
7 payments under the provisions of this Contract. Abbeville shall not be liable in any event to
8 Calhoun Falls for punitive damages or for third-party damages arising through acts of Calhoun
9 Falls. The fact that the obligations of Calhoun Falls to make payments under this Contract are
10 absolute and unconditional shall not be construed to diminish the exclusive remedies provided by
11 this section for any failure by Abbeville to perform under this Contract. In the event suit is filed
12 to enforce these limits, Calhoun Falls shall be entitled to recover costs, any interest due at the
13 legal rate and reasonable attorney's fees.

14 C. Abbeville and Calhoun Falls each agree to adopt reasonable and necessary enforcement
15 ordinances relating to the use of both the Project line and the distribution lines of each within the area
16 to be served by each. Where ordinances have no authority outside of city or town limits, each agrees
17 to comprehensively contract in a like binding manner with users to afford enforcement.

18 ARTICLE X
19 ADDITIONAL REMEDY WHEN THERE IS A FAILURE
20 TO PAY THE MONTHLY SERVICE CHARGE

21 10.1 Late Payments

22 If any late payment required of a Party under this Contract shall be received by Abbeville more
23 than two days after it is due, interest on the amount of such payment shall accrue during the period of
24 non-payment at a rate equal to the higher of the interest rate the City of Abbeville may obtain or could
25 obtain upon its own investments.

1 10.2 Cure of Default in Payment

2 A Party may cure a default in payment under Section 10.1 above and be restored to good standing
3 hereunder by paying such payment together with all interest penalties, as calculated in accordance with
4 Section 10.1 above. Such right to cure default shall terminate thirty days after the due date of the
5 payment not made.

6 ARTICLE XI
7 INSURANCE REQUIREMENTS

8 11.1 Common Insurance Requirements

9 Abbeville shall establish and maintain a program of insurance insuring its system, including,
10 where applicable, the following types of coverage: builder's risk, tort liability, auto liability, inland
11 marine coverage, replacement cost fire insurance, electronic data processing and contingent business
12 interruption.

13 Calhoun Falls shall establish and maintain similar coverage for its Distribution System.

14 ARTICLE XII
15 BILLING DISPUTES

16 12.1 Payments Required

17 If Calhoun Falls desires to dispute all or any part of any Monthly Service Charge or other
18 payment arising under this Contract, Calhoun Falls shall nevertheless pay the full amount of any such
19 payment when due and include with such payment written notification to Abbeville that the charges are
20 disputed, the grounds for the dispute, and the amount in dispute. Failure to make the full payment will
21 result in exercise of the remedies provided in the Agreement.

22 12.2 Resolution by Abbeville

23 Upon receipt of notification of dispute, representatives of Abbeville shall meet within fifteen days
24 with representatives of Calhoun Falls to resolve such dispute. No downward adjustment or relief on any

1 amount of any disputed charges by Calhoun Falls shall be made, or given, unless the disputed charges
2 have been paid as required by Section 12.1 and Abbeville has been given notice of the disputed charge
3 within fifteen days from the time Calhoun Falls knew or should have known of the facts giving rise to
4 the dispute. Abbeville and Calhoun Falls shall promptly attempt to resolve the dispute within five days
5 of meeting. In the event that it is determined that Calhoun Falls shall have overpaid, it shall receive a
6 refund of the overpayment.

7 12.3 Referral of Billing Disputes to Dispute Resolution Committee and Arbitration of Billing
8 Disputes.

9 In the event Abbeville and Calhoun Falls are unable to resolve the billing dispute within five days
10 of meeting, they shall notify the Dispute Resolution Committee and that Committee within ten days shall
11 meet and attempt to mediate the dispute between the Parties. In the event the mediation is unsuccessful
12 in mediating the billing dispute within such ten day period, it shall notify the Parties in writing and the
13 Parties shall each within five days select one arbitrator for an arbitration panel. The arbitration panel
14 shall consist of one arbitrator selected by Calhoun Falls and one by Abbeville, and one neutral third
15 arbitrator who shall be a certified public accountant or a registered professional engineer selected by the
16 other two arbitrators. The panel shall meet and make a final resolution of the dispute within thirty (30)
17 days of appointment of the last arbitrator and report to the Parties to the dispute.

18 ARTICLE XIII
19 DEFINITION OF BREACH OR FAILURE TO PERFORM
20 A MATERIAL OBLIGATION

21 A default, breach or failure to perform a material obligation of this Contract is such that causes
22 one or more of the following: (i) economic loss but not a de minimis economic loss, or (ii) impairment
23 of the ability of any Party to pay any obligation, or (iii) interference with the success of the Project for
24 or (iv) risk to public health or (v) risk of pollution of the environment.

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ARTICLE XIV
DUTY TO MINIMIZE DAMAGES

3 Every Party to this Contract shall have the affirmative duty to use its best efforts in good faith
4 to minimize any losses or damages arising each against the other.

5
6
ARTICLE XV
NOTICE TO CURE

7 Any Party defaulting in payment or performance shall be given a written notice and demand to
8 cure the breach or failure to perform within twenty (20) days by the Party claiming a breach or failure
9 who shall prepare a certificate of mailing.

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11
12
ARTICLE XVI
RESOLUTION OF DISPUTES
BY DISPUTE RESOLUTION COMMITTEE, CONDITIONS PRECEDENT

13
16.1 Disputes Resolution Committee

14 A Dispute Resolution Committee shall be established composed of one representative and one
15 alternate representative appointed by the governing body for each Party. In addition, the Parties shall
16 mutually agree upon a third member who shall serve as chairman but who shall have no vote except in
17 the event of a tie vote. Written notice of such appointments shall be given by each of the respective
18 governing bodies to the other; provided, however, no representative or alternate representative selected
19 by the governing body shall be holder of any other elected public office.

20 Each Party shall be entitled to one vote. A majority shall consist of one vote more than one-half
21 of the votes cast. The business of the Dispute Resolution Committee shall be conducted by a simple
22 majority vote. The Dispute Resolution Committee shall meet as needed. Meetings of the Dispute
23 Resolution Committee may, however, be held more frequently, as necessary, upon call for a meeting by

1 the Chairman.

2 16.2 Resolution of Dispute

3 The Disputes Resolution Committee shall meet within fifteen (15) days after receipt by each Party
4 of the notice about the dispute and attempt to mediate and resolve the dispute between the Parties. In the
5 event a resolution of the dispute is obtained, such resolution must be submitted for approval by the
6 governing bodies of the Parties in dispute. If the governing bodies of the Parties in dispute fail to ratify
7 the resolution reached by the Disputes Resolution Committee, the Disputes Resolution Committee shall
8 proceed pursuant to Section 16.3 as if no resolution had been achieved.

9 16.3 Failure to Resolve Dispute

10 In the event the Disputes Resolution Committee is unsuccessful in resolving the dispute between
11 the Parties, the chairman of the Disputes Resolution Committee within ten (10) days of meeting shall send
12 written notice to the Parties of the inability to resolve the dispute. No party shall commence an action
13 at law or in equity upon a dispute arising out of this Contract between the Parties until the procedures
14 of this Section have been fully exhausted and the Disputes Resolution Committee has notified the Party
15 in writing that it has been unable to resolve the dispute. Any action at law or in equity brought by any
16 Party after the exhaustion of the remedies provided in this Contract shall be limited to the remedies
17 specifically stated in this Contract.

18 16.4 Costs and Expenses

19 The costs and expenses of the Dispute Resolution Committee shall be borne equally by the
20 Parties.

21 ARTICLE XVII 22 AUDITS, RECORDKEEPING AND REPORTS

23 17.1 Records of Abbeville

24 Abbeville shall keep separate, distinct and accurate records and accounts for the water supply to

1 Calhoun Falls. An independent certified public accountant employed by Abbeville annually shall audit
such records and accounts, and such audit, including comments and recommendations, shall be made
3 available to the Dispute Resolution Committee and Calhoun Falls within thirty (30) days after completion.

4 17.2 Calhoun Falls Records

5 Calhoun Falls shall keep similar separate, distinct and accurate records for its water distribution
6 system and shall submit copies thereof to Abbeville upon request.

7 17.3 Cooperation Between Parties

8 Abbeville and Calhoun Falls shall be responsive to any reasonable request or demand from the
9 Dispute Resolution Committee to provide any additional information relating to any dispute, and further,
10 upon request, shall cooperate or furnish the data for an audit of physical facilities of the Project, or the
11 water distribution system of any Party receiving supply from the Project.

ARTICLE XVIII
MISCELLANEOUS PROVISIONS

14 18.1 Change of Law

15 The terms and conditions of this Contract and the mutual covenants made between the Parties are
16 based upon existing law as of the date of this Contract. A change of law or regulation occurring after
17 the date of execution of this Contract which occasions a financial impact upon the Project, increasing cost
18 of operation and maintenance, or necessitating expenditures or capital expense shall be justification for
19 an adjustment in the Monthly Service Charge commensurate with the costs incurred. If such an
20 adjustment is made, written notice shall be given to Calhoun Falls setting forth the reasons.

21 18.2 Applicable Law

22 This Contract shall be construed and enforced exclusively in accordance with the laws of the State
23 of South Carolina.

18.3 Notices and Evidence of Actions

1 All notices or communications provided for herein shall be in writing and shall be delivered either
2 in person or by United States Mail, by certified mail, return receipt requested, postage prepaid. Notices
3 or communications delivered or mailed to Calhoun Falls or Abbeville shall be addressed to the principal
4 office of such Party. Any notice or communication to be delivered or mailed to the Dispute Resolution
5 Committee shall be delivered pursuant to the terms of this Section and shall be addressed to:

6 The Town of Abbeville
7 CITY MANAGER
8 Abbeville, South Carolina

9 The Town of Calhoun Falls
10 John Wall
11 Calhoun Falls, South Carolina

12 18.4 Severability

13 Should any part of this Contract, for any reason, be declared invalid or void, such decision shall
14 not affect the remaining portions which shall remain in full force and effect as if this Contract had been
executed with the invalid portion eliminated.

16 18.5 Non-Assignability

17 Except to the extent herein provided, no party shall assign or transfer this Contract or any rights
18 or interests herein without the written consent of Abbeville and then only as provided in the Contract.
19 The right to receive all payments which are required to be made by Calhoun Falls to Abbeville in
20 accordance with the provisions of this Contract may be assigned by Abbeville to any trustee as provided
21 in any Abbeville Bond Ordinance to secure the payment of the principal of, premium, if any, and interest
22 on the Bonds as those amounts come due, subject to the application of those payments as may be provided
23 in the Bond Resolution. The Parties will, upon notice of assignment to any such trustee, make all
24 payments directly to such trustee. The rights of Abbeville to enforce the provisions of this Contract may
25 be assigned to such trustee and, in such event, the trustee will have the right to enforce this Contract at
law or in equity with or without the further consent or participation of Abbeville or Calhoun Falls.

1 Abbeville may also retain the right to enforce this Contract.

2 18.6 Execution in Counterparts

3 This Contract may be executed in several counterparts, each of which shall be deemed to be an
4 original, and all of which shall constitute but one and the same instrument. Any such counterpart may
5 be signed by one or more of the Parties hereto as long as each of the Parties hereto has signed one or
6 more of such counterparts.

7 18.7 Modification and Amendment

8 No change, amendment or modification to this Contract shall be made which will affect adversely
9 the prompt payment when due of the Monthly Service Charge required to be paid by the Parties under
10 the terms of this Contract, and no such change, modification or amendment shall be effected which would
11 cause a violation of any provisions authorized and issued under any Bond Resolution or any bonds issued
12 to refund any of the Bonds.

13 18.8 Exhibits Incorporated by Reference

14 All exhibits referenced in this Contract are incorporated herein by reference as integral parts of
15 this Contract.

16 IN WITNESS WHEREOF, the Parties hereto have caused their respective corporate names to be
17 subscribed hereto and their respective corporate seals to be hereto affixed and attested by their duly
18 authorized officers, all on the dates set opposite their respective corporate names.

19 (SEAL)
20

21 ATTEST:

22 Shirley C. Ender
23 Assistant City Clerk
24

THE TOWN OF ABBEVILLE

By: [Signature]

Its: _____

Mr. David H. Krumwiede
City Manager
City of Abbeville
P.O. Box 40
Abbeville, SC 29620-0040

1 (SEAL)

THE TOWN OF CALHOUN FALLS

2 ATTEST:

By: _____

Its: _____

3 Pauline Thomas
4 Clerk/Treasurer

John W. Allen
MAYOR

5
6 c:\wp60\hill\abberville.ag2 2/27/96



CITY OF ASHEVILLE

David H. Krumwiede
City Manager

P.O. Box 40 • Asheville, S.C. 28620-0040
Phone (803) 459-2109 FAX (803) 459-4273

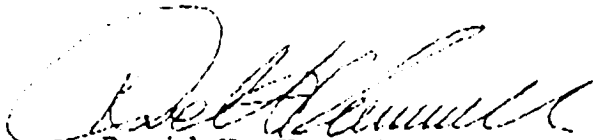
EXHIBIT NO. 1

TOWN OF CALHOUN FALLS WATER LINE

Wholesale Water Rate

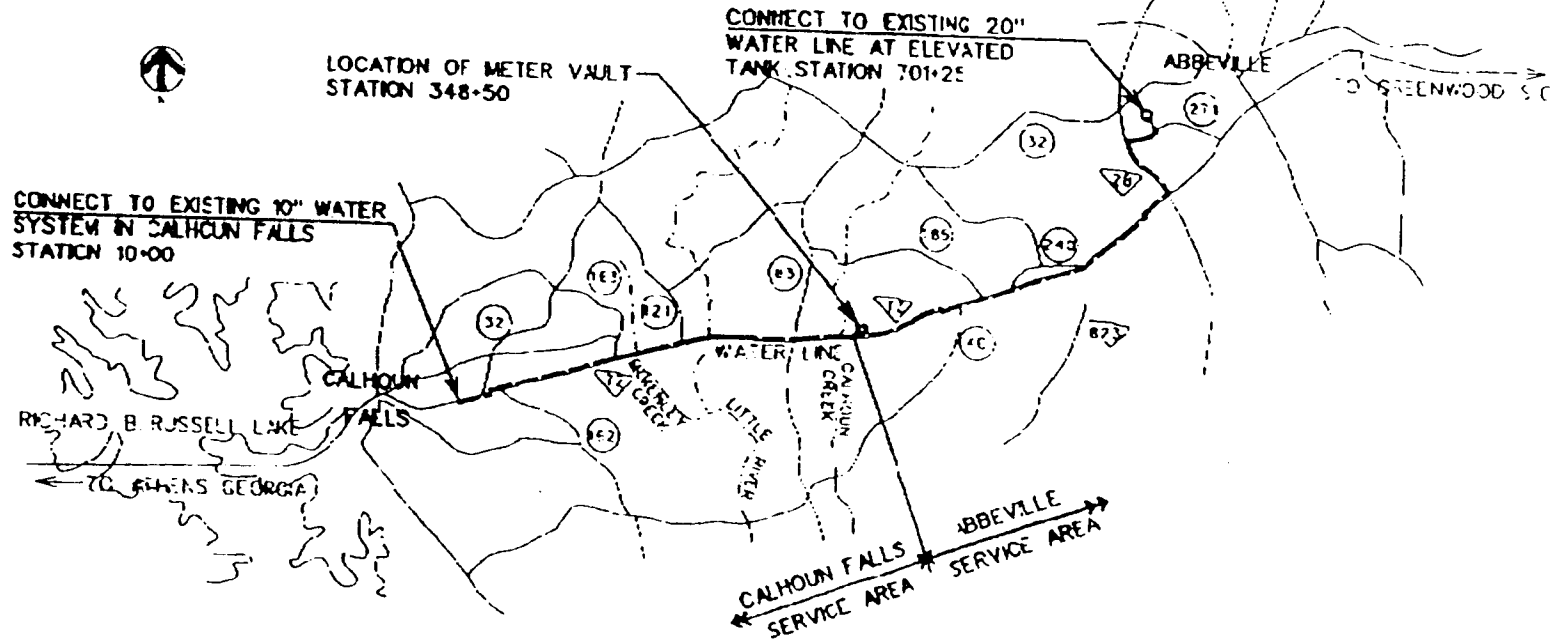
.75 dollars per thousand gallons

NOTE: This will be the rate charged to the Town of Calhoun Falls, S.C. for water delivered through a new 16 inch water line. This rate shall become effective upon completion of water line and the flow of water to the Town of Calhoun Falls, S.C. and remain in affect until changed under the terms of this water contract.



David H. Krumwiede
City Manager

WATER TRANSMISSION LINE ABBEVILLE TO CALHOUN FALLS CONTRACTED BY THE CITY OF ABBEVILLE



JUNE 1996

EXHIBIT NO. 2

DAVIS
 &
 ASSOCIATES
 ENGINEERS
 ARCHITECTS
 PLANNERS
 1000 N. GASTON ST.
 ABBENVILLE, SC 29001
 (803) 881-1111