

ORDINANCE NO.: 2010-161

ORIGINAL  
STAMPED IN RED

*Authorizing the City Manager to execute an Interim Agreement and a Services Agreement for Rehabilitation, Operation, Repair and Maintenance of the Canal Hydroelectric Facilities between the City of Columbia and Lockhart Power Company*

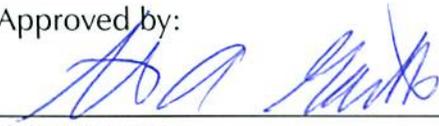
BE IT ORDAINED by the Mayor and City Council this 24th day of May, 2011, that the City Manager is authorized to execute an Interim Agreement and a Services Agreement for Rehabilitation, Operation, Repair and Maintenance of the Canal Hydroelectric Facilities between the City of Columbia and Lockhart Power Company.

Requested by:

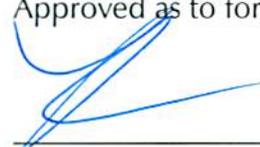
Steven A. Gantt, City Manager

  
MAYOR

Approved by:

  
City Manager

Approved as to form:

  
City Attorney

ATTEST:

  
City Clerk

Introduced: 5/17/2011

Final Reading: 5/24/2011

Execution Version

**INTERIM AGREEMENT**

BETWEEN

**LOCKHART POWER COMPANY**

AND

**CITY OF COLUMBIA, SOUTH CAROLINA**

DATED AS OF MAY 31, 2011

THIS INTERIM AGREEMENT (the "**Agreement**") is made and entered into as of this 25<sup>th</sup> Day of April, 2011 (the "**Effective Date**"), by and between The City of Columbia, South Carolina, a political subdivision of the State of South Carolina (hereinafter referred to as "**City**"), and Lockhart Power Company, a corporation, established under the Laws of South Carolina and having its principal place of business in Lockhart, South Carolina (hereinafter referred to as "**Lockhart**") (hereinafter referred to all together as "**Parties**" and each individually as "**Party**").

## RECITALS

**WHEREAS**, City is the owner, licensee and operator of the 10.6 MW Columbia Canal Hydroelectric Facility located on the Broad and Congaree Rivers, in the City of Columbia and Richland County, South Carolina, operating under a license issued by the Federal Energy Regulatory Commission in Docket No. P-1895 on May 30, 2002;

**WHEREAS**, The City and Lockhart plan to enter into an Agreement, "SERVICES AGREEMENT FOR REHABILITATION, OPERATION, REPAIR AND MAINTENANCE OF HYDROELECTRIC FACILITIES" ("**Services Agreement**");

**WHEREAS**, that Services Agreement contains, *inter alia*, conditions precedent, which must be satisfied before the Services Agreement takes effect;

**WHEREAS**, the Parties hereto desire that Lockhart shall perform functions necessary to operate and maintain the "Facility" as envisioned under and defined within the Services Agreement during the interim period from the Effective Date of this Agreement until the Effective Date of the Services Agreement, as contemplated in Article II of the Services Agreement;

**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements set forth herein, City hereby agrees for Lockhart to operate and maintain the Facility, subject to the following terms, conditions and understandings:

### I. Term and Termination

The term of this Agreement (the "**Term**") shall commence on the Effective Date of this Agreement, and end on the Effective Date of the Services Agreement, unless terminated earlier by mutual agreement of the Parties or as otherwise provided herein. If this Agreement is in effect on October 1, 2011, the Parties agree to renegotiate the terms of this Agreement based on then-current circumstances, with the intent to preserve the overall purpose of this Agreement. If, despite both Parties' commercially reasonable efforts, a revised Agreement has not been executed by December 31, 2011, and this Agreement otherwise has not been terminated, then this Agreement shall terminate effective December 31, 2011.

## II. RESPONSIBILITIES OF THE PARTIES

1. Prior to SCE&G vacating the Facility, Lockhart will provide personnel to obtain site-specific knowledge and documentation from SCE&G necessary to properly operate and maintain the Facility and comply with associated regulatory requirements, each as contemplated under the Services Agreement, during which time the Facility will continue to be under the operational control of SCE&G. Subsequent to SCE&G vacating the Facility, Lockhart shall operate, maintain, and provide regulatory services necessary for the Facility to continue operations throughout the Term, and the City, in consultation with SCE&G, shall have operational control of the Facility. Lockhart will coordinate with SCE&G regarding access to the Facility.

2. Lockhart shall have no duties or responsibilities for rehabilitation of the Facility during the Term.

3. City shall bear complete responsibility for the Facility during the Term, including financial responsibility for operation, maintenance, and regulatory costs. Such financial responsibility shall include paying Lockhart a fixed monthly amount for its internal personnel and travel expenses, plus reimbursement for all of Lockhart's out-of-pocket expenses incurred in performance of its duties under this Agreement, as described under "Compensation" below.

4. The intent of both Parties is that the approximate condition of the Facility at the beginning of the Term be maintained throughout the Term.

## III. COMPENSATION

City shall provide compensation to Lockhart for Lockhart's performance under this Agreement, consisting of reimbursement for all of Lockhart's actual documented out-of-pocket expenses for necessary and reasonable maintenance, operational, and regulatory compliance related costs, plus the following amounts for its internal personnel and travel expenses ("**Compensation**"):

- Prior to SCE&G vacating the Facility: \$20,000 per month
- Subsequent to SCE&G vacating the Facility: \$40,000 per month

For the final partial month in each of the above two periods, the Compensation shall be prorated based on the number of calendar days in the partial month divided by the total number of days in the month. City approval is required for any such out-of-pocket operational, maintenance, or regulatory expense in excess of five thousand dollars (\$5,000) per event.

## IV. MISCELLANEOUS

- A. To the extent required to give effect to the stated intent of the Parties in this Agreement, applicable provisions of the Services Agreement (Version 17 circulated on May 12, 2011) are incorporated herein, as if set forth verbatim. Applicable provisions of the Services Agreement shall be those reasonably pertaining to the

Parties' respective rights and responsibilities under, and the interpretation of, this Agreement.

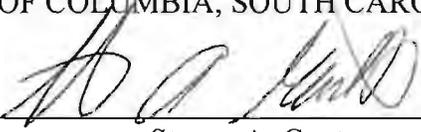
B. Lockhart shall have no liability under this Agreement, with the sole exception in the case of its gross negligence in performing its duties under this Agreement.

C. Lockhart has final decision-making authority regarding the safety of its personnel.

This Agreement will be binding on the City upon approval of the City Council, such approval to be pursued and obtained expeditiously and in good faith. For avoidance of doubt, any delay between the Effective Date and the date such approval is obtained shall not affect the Term or Compensation as described herein.

CITY OF COLUMBIA, SOUTH CAROLINA

BY: \_\_\_\_\_



Steven A. Gantt

ITS: \_\_\_\_\_

City Manager

DATE: 5-26-11

LOCKHART POWER COMPANY

BY: \_\_\_\_\_



Bryan D. Stone

ITS: \_\_\_\_\_

Chief Operating Officer

DATE: 5/31/11

Execution Version

**SERVICES AGREEMENT FOR REHABILITATION,  
OPERATION, REPAIR AND MAINTENANCE OF  
HYDROELECTRIC FACILITIES**

**SERVICES AGREEMENT FOR REHABILITATION,  
OPERATION, REPAIR AND MAINTENANCE OF  
HYDROELECTRIC FACILITIES**

BETWEEN

**LOCKHART POWER COMPANY**

AND

**CITY OF COLUMBIA, SOUTH CAROLINA**

DATED AS OF MAY 31, 2011

## TABLE OF CONTENTS

RECITALS	1
I. DEFINITIONS AND INTERPRETATION	2
II. TERM/OBLIGATIONS PRIOR TO EFFECTIVE DATE	5
III. PURPOSE, USE, OCCUPANCY AND COMPENSATION	6
IV. PURCHASE AND SALE OF ENERGY	6
V. PAYMENT	8
VI. CONDITION OF FACILITY UPON TRANSFER	9
VII. ACCESS TO FACILITY AND RECREATIONAL AREAS	9
VIII. QUIET ENJOYMENT	10
IX. ASSIGNMENT AND SUB-LETTING	10
X. ALTERATIONS AND IMPROVEMENTS	10
XI. FACILITY OPERATIONS, MAINTENANCE AND REPAIR	11
XII. CAPITAL INVESTMENTS FOR NEW FACILITIES	11
XIII. FACILITY INSPECTION/COMPLIANCE	12
XIV. REGULATORY MATTERS	12
XV. CHANGE IN LAW	14
XVI. DESTRUCTION OR DAMAGE TO FACILITY	14
XVII. SURRENDER OF FACILITY	14
XVIII. TERMINATION PAYMENT	14
XIX. DISPUTE RESOLUTION	15
XX. RESTRUCTURING OPTION/TERM EXTENSION	15
XXI. EVENTS OF DEFAULT	16
XXII. INSURANCE	16
XXIII. WATER WITHDRAWAL	17
XXIV. TERMINATION UPON ECONOMIC INFEASIBILITY	17
XXV. TAXES AND FEES	18
XXVI. MISCELLANEOUS	18
XXVII. NOTICES	21
Schedule "A"	Land/Facility Description
Schedule "B"	Rehabilitation Plan and Schedule
Schedule "C"	Water Withdrawal

## SERVICES AGREEMENT FOR REHABILITATION, OPERATION, REPAIR AND MAINTENANCE OF HYDROELECTRIC FACILITIES

THIS SERVICES AGREEMENT FOR REHABILITATION, OPERATION, REPAIR AND MAINTENANCE OF HYDROELECTRIC FACILITIES (the "**Agreement**") is made and entered into as of this \_\_\_\_ day of May, 2011, by and between The City of Columbia, South Carolina, a political subdivision of the State of South Carolina (hereinafter referred to as "**City**"), and Lockhart Power Company, a corporation, established under the Laws of South Carolina and having its principal place of business in Lockhart, South Carolina (hereinafter referred to as "**Lockhart**") (hereinafter referred to all together as "**Parties**" and each individually as a "**Party**").

### RECITALS

**WHEREAS**, City is the owner, licensee and operator of the 10.6 MW Columbia Canal Hydroelectric Project (the "**Project**") located on the Broad and Congaree Rivers, in the City of Columbia and Richland County, South Carolina, operating under a license issued by the Federal Energy Regulatory Commission ("**FERC**") in Docket No. P-1895 on May 30, 2002, which is operated exclusively for the public purposes of (a) generating electric energy for sale by the City for resale to reduce or offset the City's costs for procuring electric energy for the general benefit of the City and its taxpayers, and to serve the general welfare of consumers of electric energy in the City and the surrounding area, and (b) with respect to the Recreational Areas (as defined below), the continuation of the general public's rights of access and use thereto (collectively, and subject only to Lockhart's contractual rights from time to time, the "**Public Purposes**");

**WHEREAS**, City and SCE&G (as defined below) are parties to the Conveyance Agreement and the Franchise Agreement (each as defined below), providing, among other things, for City to provide to SCE&G the energy output from the Project, and for SCE&G to make certain deductions from its charges to City for City's electricity purchases from SCE&G, during the term of the Franchise Agreement, all in furtherance of the Public Purposes;

**WHEREAS**, City is a political subdivision of the State of South Carolina and has conducted an open and competitive process to select a service provider to rehabilitate, operate and maintain the Facility (as defined below) in furtherance of the Public Purposes and has found the services offered by Lockhart hereunder to best serve the needs of the City and its taxpayers;

**WHEREAS**, City is desirous of obtaining the services of Lockhart to occupy, rehabilitate, operate and maintain the Facility in order to achieve the Public Purposes more cost-effectively and to confer a greater benefit to the City and its taxpayers;

**WHEREAS**, Lockhart is desirous of occupying, rehabilitating, operating and maintaining the Facility on the terms and conditions as contained herein;

**WHEREAS**, in continued furtherance of the Public Purposes, City agrees to purchase from Lockhart and Lockhart agrees to sell to City on the terms and conditions set forth herein the energy output, net of station service, from the Facility, pursuant to Lockhart's market-based rate authorization as granted by FERC, for resale by the City to SCE&G in the same manner as was employed prior to the Effective Date (as defined below) so as for SCE&G to provide continued electric service to the consuming public in the City and the surrounding area and to reduce or offset the City's costs for its own electric use; and

**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements set forth herein, the Parties hereby agree that Lockhart shall occupy, rehabilitate, operate and maintain the Facility subject to the following terms, conditions and understandings:

## I. DEFINITIONS AND INTERPRETATION

In addition to those terms defined elsewhere in this Agreement, when utilized in this Agreement, the following terms have the following meanings:

**“Actual Output”** means the total energy (in kWh) generated by the Project as measured at the Project generator bus in the applicable calendar month.

**“Additional Equipment”** has the meaning set forth in Article XII of this Agreement.

**“Canal”** means the portion of the Facility comprised of the 10-foot-deep, 150-foot-wide, 3.5-mile-long canal, including the banks of the canal and associated concrete, masonry and earth (but not including vegetation or non-structural appurtenances on the banks), leading from the diversion dam to the powerhouse.

**“Capital Investments”** means investments in property that would be depreciated if such investments were subject to the FERC Accounting Principles; the amount of such Capital Investments shall be determined in accordance with FERC Accounting Principles.

**“Civil Works”** means the portions of the Facility that are upstream of the powerhouse, to and including the dam, except for anything solely associated with the generation of electric energy (e.g., the upstream fish passage). The Civil Works shall include: the 1,021-foot long, 14-foot-high timber crib diversion dam; the Canal; the 210-foot-long, granite-block masonry canal intake structure; the granite-block masonry canal spillway; and appurtenances associated with the foregoing.

**“Compensation”** has the meaning set forth in Article III of this Agreement.

**“Conveyance Agreement”** means that certain Conveyance Agreement by and between SCE&G and City, dated February 20, 2002, as amended on September 12, 2010, without regard to any subsequent amendments, which is incorporated by reference herein.

**“Early Termination Date”** has the meaning set forth in Article XXII of this Agreement.

**“Effective Date”** has the meaning set forth in Article II of this Agreement.

**“Environmental Condition”** means any condition at, on, beneath or emanating from the Facility which, pursuant to any present or future Law relating to pollution or protection of the environment or natural resource, is (i) required to be investigated, monitored, removed or remediated under such Law; or (ii) which may give rise to a claim, cause of action or liability for personal injury or damage to property, the environment or natural resources.

**“Event of Damage”** means the occurrence of a physical event that is sudden and unexpected, including, fire, explosion, flood or storm, that destroys a portion of but less than substantially all of the Facility.

**“Event of Default”** has the meaning set forth in Article XXI of this Agreement.

**“Event of Destruction”** means the occurrence of a physical event that is sudden and unexpected, including, fire, explosion, flood or storm, that destroys all or substantially all of the Facility.

**“Facility”** means the man-made facilities associated with the Project and located within the FERC Project Boundary as depicted in Schedule “A,” specifically including the Civil Works and the Hydroelectric Facilities, but not including the Recreational Areas or any other areas or facilities intended to be accessible by the general public.

**“Fees”** has the meaning set forth in Article XXV of this Agreement.

**“FERC Accounting Principles”** means applicable FERC accounting requirements as set forth in Title 18 of the Code of Federal Regulations, Chapter I, Subchapter C, as amended.

**“FERC License”** means the license issued by FERC in Docket No. P-1895 on May 30, 2002 for operation and maintenance of the Project, as amended from time-to-time and as transferred to City, with a term of 40 years.

**“FERC Requirements”** means those requirements set forth in the FERC License, including all FERC License conditions, and other applicable statutes, regulations, orders and requirements administered by FERC.

**“Franchise Agreement”** means the Franchise Agreement between City and SCE&G dated February 20, 2002, as approved by City Ordinance No. 2002-009 dated March 13, 2002.

**“Generating Assets”** has the meaning set forth in the Conveyance Agreement.

**“Generation Credit”** has the meaning set forth in Article IV of this Agreement and in the Conveyance Agreement.

**“Good Utility Practice”** means the practices, methods and acts that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with applicable Law, permits, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or acts to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the small hydropower generation industry in the United States.

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility, and its displacement of conventional energy generation, other than the energy output and capacity or other reliability benefits of the Facility. Green Attributes include but are not

limited to: (1) any renewable energy credits or other credits associated with renewable portfolio standards or similar programs, (2) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides, nitrogen oxides, carbon monoxide and other pollutants; (3) any avoided emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases that have been determined by applicable Law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere, and (4) Tax Benefits.

**"Hydroelectric Facilities"** means the following portions of the Facility: a granite-block and brick masonry powerhouse containing seven turbine-generator units with total installed capacity of 10,600 kilowatts; the powerhouse step-up substation; the upstream fish passage (fish ladder) located at the diversion dam; the downstream fish passage located at the powerhouse; the 12 manually operated vertical lift gates contained in the canal intake structure; the two, 12-foot-wide Tainter gates contained in the canal spillway and the associated 208-foot-long stoplog section; and appurtenances associated with the foregoing.

**"Initial Payment"** has the meaning set forth in Article III of this Agreement.

**"Interest Rate"** means, for any date, the lesser of the highest rate permitted by Law, or two percent (2%) plus the prime rate reported in *The Wall Street Journal's* "Money Rates" column (or any similar column published in *The Wall Street Journal* in replacement thereof) for the immediately preceding day. In the event *The Wall Street Journal* ceases to report the prime rate, the prime rate for purposes of this Agreement shall be the prevailing prime rate (or base rate) charged by major banks in the United States of America.

**"Interim Agreement"** has the meaning set forth in Article II.

**"kWh"** means kilowatt-hours.

**"Law"** means any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination by a court, regulatory agency or governmental authority of competent jurisdiction.

**"Material"** means having an adverse effect on Lockhart's gross expenses or gross revenues in an amount of one hundred thousand dollars (\$100,000) or more per applicable change or revision.

**"Major Repairs"** has the meaning set forth in Article XI.

**"Monthly Credit"** has the meaning set forth in Article IV of this Agreement.

**"Non-Facility Environmental Condition"** means any condition at, on, beneath or emanating from any portion of the Project that is not part of the Facility occupied and operated by Lockhart hereunder which, pursuant to any present or future Law relating to pollution or protection of the environment or natural resource, is (i) required to be investigated, monitored, removed or remediated under such Law; or (ii) which may give rise to a claim, cause of action or liability for personal injury or damage to property, the environment or natural resources.

**"Person"** means any individual, corporation, partnership, limited liability company, association, joint venture, trust, unincorporated organization or governmental authority or other entity.

**“Project Boundary”** means the project boundary shown by Exhibit “G” to the FERC License.

**“Recreational Areas”** means those areas within the Project Boundary intended to be accessible by the general public, including the Riverfront Park operated by City and the walking trails on and adjacent to banks of the Canal.

**“Rehabilitation Plan”** means the plan submitted by Lockhart for initial rehabilitation of the Facility to be carried out in calendar years 2011 and 2012, as further described in Schedule “B.” For avoidance of doubt, the Rehabilitation Plan does not include plans for further improvement, repair or rehabilitation of the Facility beyond the measures set forth in Schedule “B.”

**“SCE&G”** means South Carolina Electric & Gas Company, a South Carolina corporation.

**“Stipulated Water Withdrawal Amount”** has the meaning ascribed to such term in Article XXIII.

**“Tax Benefits”** means production, investment or other tax credits associated with the construction or operation of the Facility and other financial incentives in the form of grants associated with the Facility’s renewable energy or environmental attributes.

**“Taxes”** has the meaning set forth in Article XXV of this Agreement.

**“Term”** has the meaning set forth in Article II of this Agreement.

Unless the context of this Agreement requires otherwise, the following rules of interpretation shall apply: (a) the word “month” shall mean a calendar month and the word “day” shall mean a calendar day, unless otherwise indicated; (b) words using the singular or plural number also include the plural or singular number, respectively; (c) the words “hereof,” “herein,” “hereby,” “hereto” and similar words refer to this entire Agreement and not to any particular Article, Section, Clause or Schedule or any other subdivision of this Agreement; (d) references to “Article,” “Section,” “Clause,” or “Schedule” are to the Articles, Sections, Clauses and Schedules respectively of this Agreement; (e) the words “include” or “including” shall be deemed to be followed by the phrases “without limitation” or “but not limited to” whether or not such words are followed by such phrases or phrases of like import; (f) references to “this Agreement” or any other agreement or document shall be construed as a reference to such agreement or document as amended, modified or supplemented and in effect from time to time and shall include a reference to any document which amends, modifies or supplements it, or is entered into, made or given pursuant to or in accordance with its terms; and (g) titles for captions of Articles, Sections, Clauses, Schedules or other subdivisions contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, describe or otherwise affect the scope or meaning of this Agreement or the intent of any provision hereof.

## II. TERM/OBLIGATIONS PRIOR TO EFFECTIVE DATE

The term of this Agreement (the **“Term”**) shall commence on the Effective Date and end on December 31, 2036. The **“Effective Date”** shall mean that date upon which all of the following conditions have been satisfied:

- (a) FERC shall have issued a final order approving this Agreement in its entirety;
- (b) The Parties shall have executed this Agreement; and
- (c) City shall have delivered possession of the Facility to Lockhart.

City represents that all obligations pursuant to Section 2.2 of the Conveyance Agreement in connection with the Renewal License, as defined thereunder, have been fully performed. Prior to the Effective Date, City shall ensure that all rights and obligations of SCE&G under the Conveyance Agreement that are to be held or performed by Lockhart or City, as applicable, under this Agreement have been assigned to City, or Lockhart, as applicable. This obligation is in addition to any other obligations set forth herein to be performed during the period prior to the Effective Date. In addition, City and Lockhart may enter into an interim agreement (“**Interim Agreement**”) with respect to operation, maintenance and repair of the Facility, training, and an orderly transfer, including of permits and functions between SCE&G, City and Lockhart during the period prior to and, to the extent necessary, following, the Effective Date. As with this Agreement, the Project shall be operated under the Interim Agreement solely for Public Purposes. Lockhart represents, and shall provide to City appropriate documentation providing evidence that, SCE&G does not object to the sale of energy from the Facility by Lockhart to City as contemplated hereunder.

### III. PURPOSE, USE, OCCUPANCY AND COMPENSATION

The Project shall be operated exclusively for Public Purposes, and Lockhart’s occupancy and use under this Agreement is acknowledged as and permitted in furtherance of these purposes. The compensation (“**Compensation**”) to be paid under this Agreement shall consist of (i) an initial payment to be made by Lockhart to City at the time of the Facility delivery to Lockhart in the amount of five million dollars (\$5,000,000.00) (the “**Initial Payment**”) and (ii) the Monthly Credits to be paid by City to Lockhart pursuant to Article IV.

### IV. PURCHASE AND SALE OF ENERGY

City shall purchase and receive from Lockhart and Lockhart shall sell and deliver to City, for resale by City, one hundred percent (100%) of the energy output, net of station service, from the Facility during the Term of this Agreement, pursuant to Lockhart’s market-based rate authorization as granted by FERC, and at a price equal to the Generation Credit as such term is defined in the Conveyance Agreement and as calculated in accordance with this Article IV (“**Generation Credit**”). For avoidance of doubt, nothing in this Agreement shall affect the rates at which City sells energy or City’s obligation to provide one hundred percent (100%) of the energy output from the Facility to SCE&G pursuant to the Franchise Agreement or any extension or replacement thereof. City shall make a monthly energy payment to Lockhart in an amount equal to one hundred percent (100%) of the Generation Credit for the applicable month minus an amount equal to nineteen percent (19%) of the sum of (i) the Generation Credit and (ii) any revenues received by Lockhart from the sale or other disposition of capacity and Green Attributes, with the exception of Tax Benefits, of the Facility for such month (such amount, the “**Monthly Credit**”). Consistent with the Conveyance Agreement, the Generation Credit shall be calculated (in dollars) as the product of the following two amounts:

- (a) The amount determined by multiplying the Actual Output (in kWh) for each calendar month, as measured by Lockhart, by ninety-two percent (92%) and subtracting from that amount 328,500 kWh, provided, however, that if SCE&G confirms in writing to City that such 328,500 kWh is no longer to be deducted in the computation of the Generation Credit, then City shall promptly provide a copy of such notice to Lockhart and the calculation of the Generation Credit shall be changed to remove the subtraction of that amount; and
- (b) The Generation Credit Rate.

For purposes of this calculation, the “**Generation Credit Rate**” shall, consistent with the Conveyance Agreement and prior adjustments conducted thereunder, be set starting with a baseline amount applicable as of January 1, 2011 of \$0.07354 per kWh, and with such baseline amount adjusted by Lockhart as follows:

- (a) Whenever there is a change to the fuel component of SCE&G’s Rate 3 (Municipal Power Services), or any successor rate, as approved by the South Carolina Public Services Commission, the previously applicable fuel component, expressed in dollars per kWh, shall be subtracted from the current Generation Credit Rate and the new fuel component shall be added, yielding a new Generation Credit Rate.
- (b) Whenever there is a change in the Energy Charge of SCE&G’s Rate 3 or any successor rate, other than in the fuel component of such Energy Charge, the non-fuel component of the Generation Credit Rate shall change by the same percentage as the change in the non-fuel component of the Energy Charge of SCE&G’s Rate 3 or any successor rate. For purposes of calculating the Generation Credit Rate, the Energy Charge excludes Storm Damage Reserve.

For avoidance of doubt, it is the intent of the Parties that the Generation Credit Rate and Generation Credit be calculated by Lockhart in the same manner as they are to be calculated by SCE&G pursuant to the Conveyance Agreement as in existence as of the date of this Agreement.

In the event that SCE&G proposes to change the method for calculating the non-fuel component of the Energy Charge of its Rate 3 or any successor rate in a way that is materially different from the method used when SCE&G last made such calculation prior to the date of this Agreement, or proposes to cease the filing of Rate 3 or any successor rate or the calculation of the non-fuel component of the Energy Charge therein, then, (i) the Parties shall jointly defend against such proposal and (ii) if notwithstanding such efforts SCE&G changes such method or ceases such filing or calculation, at Lockhart’s option and upon fifteen (15) days prior written notice by Lockhart to City, (A) the Parties shall enter into good faith negotiations to amend this Agreement to substitute another applicable SCE&G rate that would provide substantially equal or greater value than the then-current Generation Credit Rate and (B) in the event that SCE&G ceases the filing of Rate 3 or any successor rate or the calculation of the non-fuel component of the Energy Charge therein, City, in cooperation with Lockhart, shall promptly enter into good faith negotiations with SCE&G and/or otherwise exercise its legal rights under or with respect to the Franchise Agreement to amend the Franchise Agreement to substitute an appropriate rate for use in calculating the Generation Credit or to terminate the Franchise Agreement and shall diligently seek to achieve such results in a timely manner.

Notwithstanding the foregoing, upon expiration or termination of City's obligation to provide one hundred percent (100%) of the energy output of the Project to SCE&G pursuant to the Franchise Agreement or any extension or replacement thereof, and for the remaining Term of this Agreement after such expiration or termination, Lockhart shall provide marketing services to assist City following the termination of SCE&G's former role as purchaser of the energy as follows: (i) Lockhart shall be entitled to sell one hundred percent (100%) of the energy output, net of station service, from the Facility to any party and City shall not have any obligation to purchase and receive such output from Lockhart; but (ii) City shall be entitled to nineteen percent (19%) of the net revenues received by Lockhart for sales of such output to third parties, after deduction of Lockhart's reasonable costs incurred in connection with marketing such output, including any costs or losses associated with transmission of such output, and after deduction of the Guignard legacy amount described in Section 4.3 of the Conveyance Agreement only if such legacy commitment survives the expiration or termination. Lockhart shall provide City with accounting details supporting the calculation of the amount to be paid by Lockhart pursuant to this paragraph, including with respect to the applicable deductions.

## V. PAYMENT

On or about the first (1st) day of each month beginning with the month following the month in which the Effective Date occurs and every month thereafter, and continuing through and including the first month following the end of the Term, Lockhart shall provide to City an invoice covering the payments due with respect to the preceding month, including payments determined in accordance with Articles III, IV and XXIII. City shall pay the amount of such invoices in immediately available funds on or before the later of the fifteenth (15th) day of each month and the fifth (5th) day after receipt of the invoice. Each Party shall make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent.

In the event an invoice or portion thereof or any other claim or adjustment arising hereunder is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with written notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall be required until the dispute is resolved. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Any disputes shall be resolved pursuant to Article XIX. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within five (5) days of such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment, but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice or an adjustment is waived unless the other Party is notified in accordance with this Article XIX within twelve (12) months after, as applicable, the invoice or adjustment to the invoice is rendered. If an invoice is not rendered within twelve (12) months after the close of the month during which service occurred, the right to payment for such performance is waived.

The Parties shall net all amounts due and owing, and/or past due, arising under this Agreement such that the Party owing the greater amount shall make a single payment of the net amount to the other Party.

## **VI. CONDITION OF FACILITY UPON TRANSFER**

Lockhart agrees to accept the Facility "AS IS," with no warranty or guaranty, whether expressed or implied, as to the condition or operational capacity of the Facility. City represents that it is granting access to, and use by Lockhart hereunder of, all of the real property and tangible assets included as part of the Generating Assets acquired by City from SCE&G pursuant to the Conveyance Agreement, including any associated warranties, except for those portions of such Generating Assets that are not part of the Facility and except as adjusted for additions to and subtractions from such Generating Assets in the normal course of business subsequent to such acquisition. City further represents that all such assets, and the Project generally, have been used exclusively for Public Purposes during the term of the Franchise Agreement. City further represents that it has possession of, and warrants that it will make available to Lockhart for its use during the Term, all of the records and accounts associated with the Facility, including such records and accounts acquired by City from SCE&G as part of the Generating Assets (as listed on Schedule G of the Conveyance Agreement) and all additions to such records and accounts made in the normal course of business subsequent to such acquisition. City shall use best efforts to ensure that SCE&G transfers to City all of the Generating Assets for use by Lockhart hereunder.

Notwithstanding anything to the contrary in this Agreement, (i) any Environmental Condition which existed prior to the Effective Date, regardless of the date of discovery, as well as any Non-Facility Environmental Condition, shall be the sole responsibility and liability of City, and (ii) any Environmental Condition which did not exist prior to the Effective Date and occurred during the Term of this Agreement, (except for any Environmental Condition created or caused by City), regardless of the date of discovery, shall be the sole responsibility of Lockhart. All losses, damages, costs, expenses, and liabilities of any and every nature arising out of or related to any Environmental Condition incurred by, assessed against, allocated to, imposed upon, charged to, or paid by a Party other than the Party responsible for such Environmental Condition pursuant to the immediately preceding sentence, including, but not limited to, all costs and expenses of investigation, removal, remediation, or correction of any Environmental Condition, all damages, fines, penalties, claims, or liability for injury to persons, property, or natural resources, shall be paid by the Party responsible for such Environmental Condition pursuant to the immediately preceding sentence.

## **VII. ACCESS TO FACILITY AND RECREATIONAL AREAS**

Upon reasonable advance notice by City to Lockhart and subject to reasonable conditions, including compliance with reasonable safety requirements and FERC Requirements, Lockhart shall permit City and City's representatives to have access to the Facility at any time. In the event of an emergency, City and City's representatives shall have the right to access the Facility without notice (or with such notice as is practical under the emergency circumstances). City employees and contractors shall have continuous access to the walkway between the powerhouse (containing the seven turbine-generator units) and the Canal as necessary to perform their authorized duties, to the extent that such access does not interfere with Lockhart's activities under this Agreement. City shall permit Lockhart and Lockhart's representatives to have access to the Recreational Areas and other portions of the Project at any time, provided that such access shall not materially interfere with the access of the general public to the Recreational Areas. Lockhart employees and contractors shall have continuous access to such roadways and walkways as necessary to operate, maintain, repair and replace the Facility and portions thereof, including as necessary to implement the Rehabilitation Plan. Within six (6) months following the Effective Date, Lockhart shall enter

into detailed discussions with City regarding arrangements to allow for viewing of the powerhouse operations by the public.

### **VIII. QUIET ENJOYMENT**

City covenants with Lockhart that upon Lockhart's performing, observing and keeping all of the terms, covenants, conditions, agreements and obligations of this Agreement on its part to be so performed, observed and kept, City shall not do anything which will affect Lockhart's right to quietly hold, occupy and enjoy the Facility (including the rights to all the energy output and associated capacity and Green Attributes of the Facility, subject to the payment obligations of Lockhart as delineated in Article III and the obligations of Lockhart with respect to the energy output as delineated in Article IV) during the Term of this Agreement, subject to City's rights to ensure compliance with the FERC License, FERC Requirements and FERC orders pursuant to Article XIV.

### **IX. ASSIGNMENT AND SUB-LETTING**

Except for an assignment or pledge of this Agreement to an affiliate of Lockhart or a financing party of Lockhart in connection with Lockhart's rights in the Facility, Lockhart shall not assign this Agreement, or sub-let or grant any license to use the Facility or any part thereof without the prior written consent of City, which shall not be unreasonably conditioned, delayed or withheld, it being acknowledged that no conditioning, delay, or withholding of consent shall be deemed unreasonable if the proposed transfer would demonstrably result in a change in the use of the Project so as to cause it to fail to be used exclusively for Public Purposes. Consent by City to one such assignment, sub-letting or license shall not be deemed to be a consent to any subsequent assignment, sub-letting or license. An assignment, sub-letting or license without the prior written consent of City or an assignment or sub-letting by operation of law shall be absolutely null and void, *ab initio*. City shall not assign this Agreement or grant any license to use the Facility or any part thereof without the prior written consent of Lockhart, which shall not be unreasonably conditioned, delayed or withheld.

### **X. ALTERATIONS AND IMPROVEMENTS**

Except for reasonable refurbishment and upgrading, including that performed as part of the Rehabilitation Plan, Lockhart shall make no alterations to the buildings or improvements on the Facility or construct any building or make any other improvements on the Facility without the prior written consent of City, which shall not be unreasonably conditioned, delayed or withheld, it being acknowledged that no conditioning, delay, or withholding of consent shall be deemed unreasonable if the proposed alteration would demonstrably result in a change in the use of the Project so as to cause it to fail to be used exclusively for Public Purposes. Any and all alterations, changes, and/or improvements built, constructed or placed on the Facility by Lockhart shall, unless otherwise provided by written agreement between City and Lockhart, be and become the property of City and remain on the Facility at the expiration or earlier termination of this Agreement, subject to the provisions of Article XVIII of this Agreement. All alterations and improvements to the Facility shall be in accordance with the FERC License. Lockhart acknowledges the historical significance of the Hydroelectric Facilities and will maintain their historical character in general.

## XI. FACILITY OPERATIONS, MAINTENANCE AND REPAIR

Lockhart shall, at its sole expense (except with respect to Major Repairs), keep, operate, maintain, and repair the Facility in accordance with Good Utility Practice, FERC Requirements and other applicable Law. Lockhart shall at its sole expense provide and complete the Rehabilitation Plan as described in Schedule "B." The Parties acknowledge that such anticipated expenses have been factored into the determination of the Compensation contemplated under this Agreement

Lockhart shall notify City in advance of material, non-routine maintenance and repairs to the Civil Works and shall engage in good faith consultations with City with respect to the timing, cost and nature of such material, non-routine maintenance and repairs. As to any maintenance or repairs to the Civil Works exceeding a cost of fifty thousand dollars (\$50,000.00) in aggregate per calendar year, excluding any maintenance and repairs associated with the Rehabilitation Plan ("**Major Repairs**"), Lockhart and City shall share such excess costs on a 50/50 basis, such arrangement having been factored into the determination of the Compensation otherwise contemplated under this Agreement. In calculating the \$50,000.00 threshold for Major Repairs and the amount of costs in excess of \$50,000.00 to be shared between Lockhart and City, Lockhart shall include costs for the direct maintenance and repair of the Civil Works. Such costs shall be determined in accordance with FERC Accounting Principles and shall not include any internal costs of Lockhart but rather shall include only those costs of unaffiliated contractors and unaffiliated engineering and technical assistance.

City shall be responsible, at its sole expense, for keeping, operating, maintaining and repairing all portions of the Project that are not part of the Facility occupied or operated by Lockhart hereunder. City and Lockhart shall reasonably cooperate with respect to any such activities that involve both the Facility and other portions of the Project.

## XII. CAPITAL INVESTMENTS FOR NEW FACILITIES

City shall be solely responsible for the costs of all Capital Investments associated with the addition of any new equipment or facilities installed as part of the Project or the Facility ("**Additional Equipment**") that are required by Law or otherwise approved by City pursuant to this Article XII. Additional Equipment shall not include any such new equipment or facilities installed as part of the Rehabilitation Plan. If such Additional Equipment is required by Law, then City shall timely provide or pay for such Additional Equipment as is necessary to comply with such Law; if such Additional Equipment is not required by Law, then City shall determine whether to approve the Additional Equipment. In either case, if Additional Equipment is to be installed, City will have the option of providing all necessary engineering, procurement, construction, and project management services, or reaching an agreement with Lockhart under which Lockhart would provide the same and be reimbursed by City for its costs. City and Lockhart shall reasonably cooperate to coordinate the installation of any such Additional Equipment. For avoidance of doubt, the Parties' responsibilities for expenditures for maintenance and repair of the Project and the Facilities (other than in connection with the Rehabilitation Plan), including replacement or refurbishment of existing facilities, are governed by Article XI, even if such expenditures may be classified as Capital Investments.

If any change in Law results in a requirement for the installation of Additional Equipment that City reasonably estimates will cost in excess of \$10 million, then upon written notice by City to Lockhart, the Parties shall negotiate in good faith to amend this

Agreement to address such change in Law while preserving to the extent possible the respective benefits and burdens to the Parties hereunder.

### **XIII. FACILITY INSPECTION/COMPLIANCE**

Lockhart shall at its own expense make regular inspections of the Facility as reasonable and required by Good Utility Practice and FERC Requirements. After reasonable advance notice and on an annual basis, there shall be a “walk-over” inspection of the Facility and the Canal area by one or more representatives of each of Lockhart and City. Such inspection shall be for the purpose of evaluating Lockhart’s maintenance of the Facility and the condition of the Facility.

Subsequent to the inspection, City shall notify Lockhart of any conditions of the Facility that are inconsistent with Good Utility Practice, FERC Requirements, or other applicable Law. Lockhart shall be responsible for curing such conditions within a reasonable period of time, consistent with Good Utility Practice, FERC Requirements and other applicable Law. If Lockhart fails to cure, or to commence diligent actions to cure, such conditions pursuant to the foregoing sentence within sixty (60) days after receipt by Lockhart of written notice from City of such failure, then City may perform the same with reimbursement from Lockhart for City’s reasonable costs and expenses within sixty (60) days of the submission of such costs and expenses by City. Lockhart shall grant to City and its agents, upon written notice, access to the Facility at reasonable times and subject to reasonable conditions, including compliance with reasonable safety and security requirements and FERC Requirements, to enable City and its agents to cure such conditions. An entry and exit inspection and a comprehensive inventory shall be performed and signed by a representative of each Party, with a copy to each Party.

City shall be responsible, at its sole expense, for making inspections of the portions of the Project that are not parts of the Facility occupied or operated by Lockhart hereunder.

### **XIV. REGULATORY MATTERS**

City acknowledges and represents that it holds, and warrants that it will continue to hold, all the property and other rights necessary for the construction, operation and maintenance of the Facility in compliance with all FERC Requirements. City represents that it maintains, and warrants that it will continue to maintain, sufficient control of the Facility in order to fulfil all FERC Requirements to enable FERC, through City, to carry out FERC’s regulatory responsibilities with respect to the Facility.

Lockhart shall do all those things reasonably necessary in connection with the Facility to maintain the FERC License and comply with all FERC Requirements, including conducting required studies, preparing required reports, and making and prosecuting necessary filings with FERC, provided, however, that Lockhart shall have no responsibility with respect to any matters associated with renewal of the FERC License. The Parties shall reasonably cooperate in preparation and prosecution of regulatory filings associated with the Facility.

Promptly after execution of this Agreement by both Parties, the Parties shall cooperate with each other to expeditiously request necessary regulatory approvals, including approval of this Agreement by FERC (with each Party bearing its own costs associated with

such efforts). If FERC or any other applicable regulatory authority fails to grant any required approval in a timely manner, or imposes conditions or modifications in connection with its approval, then the Parties shall negotiate in good faith to amend this Agreement or otherwise address the cause for such failure to obtain timely approval or the requested conditions or modifications while preserving to the maximum extent possible the Parties' relative benefits and burdens under this Agreement. In the event that, despite the Parties' efforts as described in the foregoing two sentences, (i) the Parties are unable to obtain all required approvals by FERC and by all other applicable regulatory authorities (other than any ministerial approvals that can be obtained in the normal course of business), or (ii) any such approval imposes any material condition or modification that is not satisfactory to either Party in its reasonable discretion and such condition or modification has not been eliminated or mitigated, within 180 days after execution of this Agreement by all Parties, then either Party (or, in the event of clause (ii) the Party adversely affected by such condition or modification) may terminate this Agreement upon written notice to the other Party with no further liability to either Party.

City shall be responsible, at its sole expense, for compliance with all FERC Requirements and other Law applicable to the portions of the Project that are not part of the Facility occupied or operated by Lockhart hereunder. In addition, City shall be responsible, at its sole expense, for all regulatory filings with respect to the Project other than FERC Requirements, including filings related to the National Pollution Discharge Elimination System permit, South Carolina Section 401 water quality certification, and the interbasin transfer registration. City and Lockhart shall reasonably cooperate with respect to compliance with any such FERC Requirements or Law that involve both the Facility and other portions of the Project and share the costs of such compliance based on a reasonable allocation between the costs attributable to the Facility and the costs attributable to the portions of the Project that are not part of the Facility. Lockhart may, upon request from City, make and prosecute regulatory filings with respect to portions of the Project that are not part of the Facility and with respect to requirements applicable to the Project other than the FERC Requirements, provided, however, that City shall reimburse Lockhart for Lockhart's reasonable out-of-pocket and fully-loaded internal costs incurred in connection with such filings.

City shall be responsible, at its sole expense, to pay headwater benefits attributable to the Project. City shall be responsible, at its sole expense, for payments of FERC annual charges assessed in connection with the FERC License.

City agrees that it shall maintain the FERC License in full force and effect and will not directly or indirectly request that any governmental authority place any conditions or requirements, including required improvements, on the FERC License, from the date of execution of this Agreement to the date of termination or expiration of this Agreement that will significantly and demonstrably reduce Lockhart's generation of electric energy from the Facility or increase Lockhart's cost of operating and maintaining the Facility, provided that nothing shall prohibit or bar City from requesting any provision to protect its ability to use water from the Canal or entering the Canal as it deems necessary for City's water operations, provided further that City bears all costs associated with such provision.

Each Party shall maintain its books and records in connection the Project and Facility in accordance with FERC Accounting Principles. Each Party shall make such books and records available to the other Party upon written request, either by providing copies or by providing access to the records at the normal offices of the Party maintaining such records during normal office hours, at the cost of the requesting Party. Facility records shall be maintained on-site.

The Parties hereby agree that this Agreement complies with all FERC Requirements. The Parties hereby agree that nothing in this Agreement shall be deemed to interfere with City's obligation to comply with all FERC Requirements. Notwithstanding anything to the contrary in this Agreement, City has the right to perform any and all acts required by an order of FERC affecting the Project without the prior approval of Lockhart or any other person.

#### **XV. CHANGE IN LAW**

To the extent that any expenditures are necessary to comply with any change occurring subsequent to the date on which both Parties execute this Agreement in the FERC Requirements or other applicable Law, or any new Law imposed after such date, directly associated with City's ownership and licensing of the Project, including expenditures associated with the evaluation or implementation of any construction, operation or maintenance requirements considered or prescribed subsequent to the Effective Date by any regulatory authority pursuant to the FERC License or any other applicable FERC Requirement or Law, City shall be solely responsible for such expenditures, including expenditures for Additional Equipment as provided for in Article XII.

#### **XVI. DESTRUCTION OR DAMAGE TO FACILITY**

If an Event of Destruction occurs, then this Agreement shall terminate from such time except for the purpose of enforcing rights that may have then accrued hereunder.

If an Event of Damage occurs and should a portion of the Facility thereby be rendered inoperable, then City shall have the option of either repairing such injured or damaged portion or terminating this Agreement. In the event that City exercises its right to repair such inoperable portion, such portion so injured shall be restored by City as speedily as practicable, and the Agreement shall continue according to its terms. City's options in the Event of Damage are subject to any applicable FERC Requirements.

#### **XVII. SURRENDER OF FACILITY**

At the expiration or termination of this Agreement or the termination of Lockhart's right of occupancy and use, Lockhart shall surrender the Facility to City.

#### **XVIII. TERMINATION PAYMENT**

Upon early termination pursuant to the terms of this Agreement, City shall pay to Lockhart the sum of (i) the depreciated net book value of all Capital Investments funded by Lockhart in the Facility plus (ii) the amount determined by multiplying the Initial Payment times the ratio of the number of days remaining in the Term as of the date of termination to the number of days in the period beginning on the Effective Date and ending on the last day of the Term; provided, however, that no payment shall be due to Lockhart pursuant to clause (ii) of this sentence if the termination is due to an Event of Default on the part of Lockhart or pursuant to a determination of economic infeasibility pursuant to Article XXIV. The payment addressed in the immediately preceding sentence is in addition to any other payment due by City to Lockhart upon termination of this Agreement.

Upon termination of this Agreement at the end of the Term, City shall pay to Lockhart the depreciated net book value of all Capital Investments funded by Lockhart in the Facility during the final ten (10) calendar years of the Term, provided, however, that the only Capital Investments included in such calculation shall be those Capital Investments for which Lockhart provided City with written notice (which should specifically reference Article XVIII of this Agreement) and received from City written approval, prior to making such Capital Investments. The payment addressed in the immediately preceding sentence is in addition to any other payment due by City to Lockhart at the end of the Term.

The Parties acknowledge that the foregoing economic requirements were factored into the determination of the Compensation payable hereunder and were necessary to induce Lockhart to undertake its obligations under this Agreement in recognition of the possibility of early termination and reversion of occupancy and use of the Facility to City.

### **XIX. DISPUTE RESOLUTION**

If any dispute arises on matters concerning this Agreement, either Party may provide written notice to the other Party of the existence and nature of the dispute. The dispute shall be referred to City's and Lockhart's designees, who shall attempt to resolve the dispute and, if they are unable to do so within fifteen (15) days, it will then be referred to representatives of senior management of the Parties. If such senior management representatives can resolve the dispute, such resolution shall be reported in writing to and shall be binding upon the Parties. If such senior management representatives cannot resolve the dispute within fifteen (15) days, or such other time as they may mutually agree, or a Party fails to appoint a senior management representative within ten (10) days of written notice of the existence of a dispute, or should a resolution of a dispute or controversy not be obtained within fifteen (15) days after referral to senior management representatives for such purpose, then either Party may then after written notice to the other Party submit the dispute to judicial resolution in accordance with, and subject to the conditions set forth in, this Article XIX. Any of the time periods specified in this Article XIX may be extended by mutual agreement of the Parties.

### **XX. RESTRUCTURING OPTION/TERM EXTENSION**

If (i) this Agreement is in effect between the Parties on January 1, 2034, (ii) Lockhart is not in default and (iii) not prohibited by Law, then the Parties shall begin negotiations no later than that date in good faith and on an exclusive basis regarding extending the term of this Agreement beyond its scheduled termination date and making other mutually agreeable modifications to be applicable during any such extended term. City acknowledges the financial investment and efforts of Lockhart at the Facility, and that investment shall be given favorable consideration by City. Accordingly, City will accept any commercially reasonable offer from Lockhart resulting from those negotiations if such offer is mutually beneficial to the Parties and would be in furtherance of the Public Purposes. If City rejects an offer from Lockhart, a commercially valid reason must be given by City. For avoidance of doubt, an example of a commercially valid reason to reject an offer by Lockhart would be a proposed reduction in the revenue split accruing to City or a failure by Lockhart to propose an acceptable increase in the revenue split accruing to City.

## XXI. EVENTS OF DEFAULT

The occurrence of any one of the following shall constitute an “**Event of Default**” under this Agreement:

- (a) Either Party shall fail to make payments for undisputed amounts due under this Agreement to the other Party within fifteen (15) days after receipt of written notice of such non-payment;
- (b) Either Party shall fail to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), including any failure to perform any material covenant or obligation pursuant to Article XI or Article XIV, if such failure is not cured within thirty (30) days after receipt of written notice thereof by the other Party, provided that, if the Party has commenced diligent efforts to cure such failure within such thirty (30)-day cure period and such failure cannot be reasonably cured despite the Party’s diligent efforts within such thirty (30)-day cure period, then such thirty (30)-day cure period shall be extended for the amount of time needed to cure such failure so long as the Party diligently pursues cure of such failure; or
- (c) a Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

If an Event of Default occurs at any time during the Term, the non-defaulting Party may, for so long as the Event of Default is continuing, (i) establish a date (which date shall be between five (5) and ten (10) days after the non-defaulting Party delivers written notice of such date to the defaulting Party) on which this Agreement shall terminate (the “**Early Termination Date**”), and (ii) immediately cease performance and/or withhold any payments due in respect of this Agreement, except for payment of amounts due before such Early Termination Date.

## XXII. INSURANCE

Lockhart will procure and maintain in full force and effect, at its sole cost and expense, the insurance coverages listed below, and shall provide City with certificates of insurance evidencing the required coverages:

- (a) Comprehensive commercial general liability with minimum combined limits of not less than \$2,000,000 per occurrence and aggregate limits of not less than \$5,000,000. Lockhart will request that its insurer(s) name City as an additional insured under such policy or policies.
- (b) Workers’ Compensation Insurance as required by South Carolina law.
- (c) Automobile liability coverage, under a blanket policy with limits of \$2,000,000, if and when Lockhart acquires one or more vehicles to be utilized in connection with the Facility. Lockhart will request its insurer to name City as an Additional Insured under said policy.

City will procure and maintain in full force and effect at all times and at its sole cost and expense the insurance coverages listed below, and shall provide Lockhart with certificates of insurance evidencing the required coverages:

- (a) Commercial Property Insurance covering the Facility, as part of City's "umbrella" property damage policy, with an Actual Cash Value limit of \$10,500,000 together with other coverages as are described on the certificate entitled, "Evidence of Commercial Property Insurance," naming City as the Insured and Hartford Fire Insurance Company as the insurer, such certificate dated January 25, 2011, a copy of which has been provided to Lockhart. City shall request that its insurer name Lockhart as a loss payee on its existing and future property damage policies.
- (b) City's general liability coverage, for which City is self-insured, consists solely of the protection and rights provided to City under the South Carolina Tort Claims Act. The currently effective limitations on liability under said Act are set forth in Section 15-78-120 of the Code of Laws of South Carolina 1976, as amended.

Lockhart has reviewed Section 11-71 of Article III, Chapter 11 of the City Code of Ordinances. Lockhart acknowledges that it will comply with any portions of that Code Section which are applicable to its role and its activities under this Agreement. City acknowledges that Lockhart is a utility company regulated by the South Carolina Public Service Commission, as referred to in subsection (b) of said Code Section 11-71.

### XXIII. WATER WITHDRAWAL

Schedule "C" sets forth the annual average daily amount of water City may withdraw from the Canal without being obligated to credit Lockhart for excess water withdrawals ("**Stipulated Water Withdrawal Amount**"), provided that in no event shall City withdraw water from the Canal in excess of the amount allowed to be withdrawn pursuant to any applicable Law. If City withdraws more than the Stipulated Water Withdrawal Amount, then City will credit Lockhart for water withdrawn above the Stipulated Water Withdrawal Amount. This credit will be computed as set forth in Schedule "C." The Parties acknowledge that this credit was considered in determining the amount of the Compensation hereunder.

City's use of water from the Canal to serve the needs of its citizens is an absolute priority above Lockhart's use of water for power generation. Lockhart shall not interrupt the water supply to City, except if the structural integrity of the Facility is threatened, personnel safety is endangered, or the long-term ability of the Project to operate per FERC or other legal requirements is impaired, in which case Lockhart will give appropriate advance notice to City and coordinate such a water interruption with City so as to minimize the impact to City to the extent practicable.

### XXIV. TERMINATION UPON ECONOMIC INFEASIBILITY

Notwithstanding any provision in this Agreement to the contrary, if at any time after the execution of this Agreement Lockhart determines, in its reasonable discretion, that Lockhart is unable to economically operate or maintain the Facility due to one or more of the following events that was not reasonably foreseeable by Lockhart as of the date when this Agreement was entered into and beyond Lockhart's control: (i) a Material change in the

availability of water flow to the Project, (ii) a Material revision to requirements under the FERC License or other requirements of Law related to the FERC License or its requirements, or (iii) a Material change in SCE&G's Rate 3 or any successor rate (including as a result of the events described in the penultimate paragraph of Article IV), then Lockhart may terminate this Agreement, with no liability of either Party to the other Party other than pursuant to Article XVIII, upon giving not less than three hundred sixty five (365) days written notice to City. Lockhart's notice shall include the reasons and justification for Lockhart's determination that Lockhart is unable to economically operate or maintain the Facility.

#### **XXV. TAXES AND FEES**

Lockhart shall pay or cause to be paid (i) all income taxes of Lockhart and (ii) any taxes on Lockhart's sales of energy output, capacity and Green Attributes (collectively, "Taxes"). The Parties agree that City shall not have any tax payment liability during the Term of this Agreement. City shall pay or cause to be paid all fees imposed by any governmental authority that are directly associated with City's ownership and licensing of the Project ("Fees"). In the event either Party is required by Law to remit or pay any Taxes or Fees which are the other Party's responsibility hereunder, the other Party shall promptly reimburse the Party who paid such Taxes or Fees for such Taxes or Fees.

#### **XXVI. MISCELLANEOUS**

Lockhart shall, within twelve months of the Effective Date, apply for a Certification from the Low Impact Hydropower Institute in the name of City and Lockhart.

Time is of the essence with respect to the performance of the duties and obligations arising under or relating to this Agreement.

Without prior written consent, which shall not be unreasonably conditioned, delayed or withheld, neither Party shall disclose to a third party (other than such Party's and its affiliates' employees, officers, directors, members, partners, lenders, potential lenders, equity investors, potential equity investors, counsel, accountants, financial advisors or consultants) any confidential information received from the other Party except in order to comply with any applicable Law; provided, however, that each Party shall notify the other Party of any legal proceeding of which it is aware that may result in such disclosure, and the Party subject to such proceeding shall use reasonable efforts to prevent or limit the disclosure. A breach of this confidentiality clause shall not give rise to the right to suspend or terminate this Agreement.

The invalidity, in whole or in part, of any of the sections or paragraphs of the Agreement will not affect the validity of the remainder of such sections or paragraphs.

No modification, amendment or other change to this Agreement will be binding on either Party unless consented to in writing and signed by both Parties.

This Agreement shall be governed by, and construed in accordance with, the Law of the State of South Carolina, exclusive of conflicts of Laws provisions of such State that would apply the Laws of another jurisdiction.

City hereby acknowledges that pursuant to South Carolina law, City does not have sovereign immunity as a defense to any action for breach of this Agreement or for enforcement of any judgment awarded in connection with any such action.

Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in the sentence following immediately below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. 527 (2008) ( the “Mobile-Sierra” doctrine). In addition, and notwithstanding the immediately preceding sentence, to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then the immediately preceding sentence shall not apply, provided that, consistent with the first sentence of this paragraph, neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the first sentence of this paragraph.

With respect to employees engaged in activities directly related to the Facility occupied or operated by Lockhart hereunder, Lockhart shall comply with all Federal and State Laws concerning fair employment and employment of the handicapped, and concerning the treatment of all employees, without regard or discrimination by reason of race, color, religion, sex, national origin or physical handicap, to the extent such Laws are applicable to Lockhart.

The Parties hereby agree that nothing in this Agreement shall be deemed to place City and Lockhart in the relationship of employer/employee, partners or joint venturers. No Party shall have the right to obligate or bind the other in any manner. Each Party agrees and acknowledges that it will not hold itself out as an authorized agent with the power to bind the other Parties in any manner.

This Agreement, together with any Interim Agreement, constitutes the entire understanding between the Parties and supersedes any and all previous understandings between the Parties with respect to the subject matter hereof. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

This Agreement is not intended to, and does not, confer any rights or benefits under this Agreement to any Person other than the Parties hereto, and their permitted successors and assigns.

The Parties may avail themselves of any and all remedies existing at law or in equity in the event of any default of breach hereunder. In addition to other remedies provided for herein, either Party may recover actual damages resulting from the other Party's default or breach. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES BY STATUTE, IN TORT OR CONTRACT.

This Agreement and any documents or instruments delivered pursuant hereto, shall be construed without regard to the identity of the Person who drafted the various provisions of the same. Each and every provision of this Agreement and such other documents and instruments shall be construed as though the Parties participated equally in the drafting of the same. Consequently, the Parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting Party shall not be applicable either to this Agreement or such other documents and instruments.

Any term or condition of this Agreement may be waived at any time by the Party hereto that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. The failure or delay of either Party to require performance by the other Party of any provision of this Agreement shall not affect its right to require performance of such provision unless and until such performance has been waived by such Party in writing in accordance with the terms hereof. No waiver by either Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.

Except as otherwise stated herein, any provision, article or section declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over the Parties, or deemed unlawful because of a statutory change, but not rendering the Agreement as a whole illegal or unenforceable, will not otherwise affect the remaining lawful obligations that arise under this Agreement.

Any obligations, limitations, exclusions and duties which by their nature extend beyond the expiration or termination of this Agreement, as well as any other provisions necessary to interpret the respective rights and obligations of the Parties hereunder, shall survive the expiration or earlier termination of this Agreement.

The Parties hereto agree to do all those things and execute all those documents, necessary to give full effect to this Agreement. The Parties agree to cooperate with one another with a view toward ensuring that the purposes of this Agreement are fulfilled as contemplated, and will convene to negotiate, in good faith towards a mutually acceptable modification(s) if any, that may later become necessary toward that end.

This Agreement may be executed in counterparts, all of which shall constitute one agreement binding on both Parties hereto and shall have the same force and effect as an original instrument, notwithstanding that both Parties may not be signatories to the same original or the same counterpart.

**XXVII. NOTICES**

All notices required or provided for in this Agreement shall be in writing and shall be either delivered by hand; or sent by registered or certified mail, postage prepaid, return receipt requested; or sent by internationally recognized courier; or sent by fax, receipt confirmed by sender requested.

Notices shall be sent:

If to Lockhart:

Address: Lockhart Power Company  
P.O. Box 10  
420 River Street  
Lockhart, SC 29364

Attention: Bryan D. Stone  
Telephone: (864) 545-2211  
Fax: (864) 545-2591

Copy to: Dewey & LeBoeuf LLP  
Address: 1101 New York Avenue, N.W.  
Washington, D.C. 20005

Attention: David R. Poe  
Telephone: (202) 346-8000  
Fax: (202) 956-3237

If to City: Office of the City Manager

Address: P.O. Box 147  
Columbia, South Carolina 29217

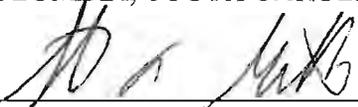
Attention: City Manager  
Telephone: (803) 545-3025  
Fax: (803) 733-8317

Copy to: City's Legal Department:  
Address: P.O. Box 667  
Columbia, South Carolina 29201

Attention: City Attorney  
Telephone: (803) 737-4242  
Fax: (803) 737-4250

or at such other address as either Party may designate from time to time by a written notice given in accordance with this Article XXVII. All notices provided hereunder shall be effective only upon actual receipt thereof.

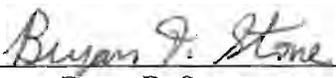
CITY OF COLUMBIA, SOUTH CAROLINA

BY:   
Steven A. Gantt

ITS: City Manager

DATE: 5-26-11

LOCKHART POWER COMPANY

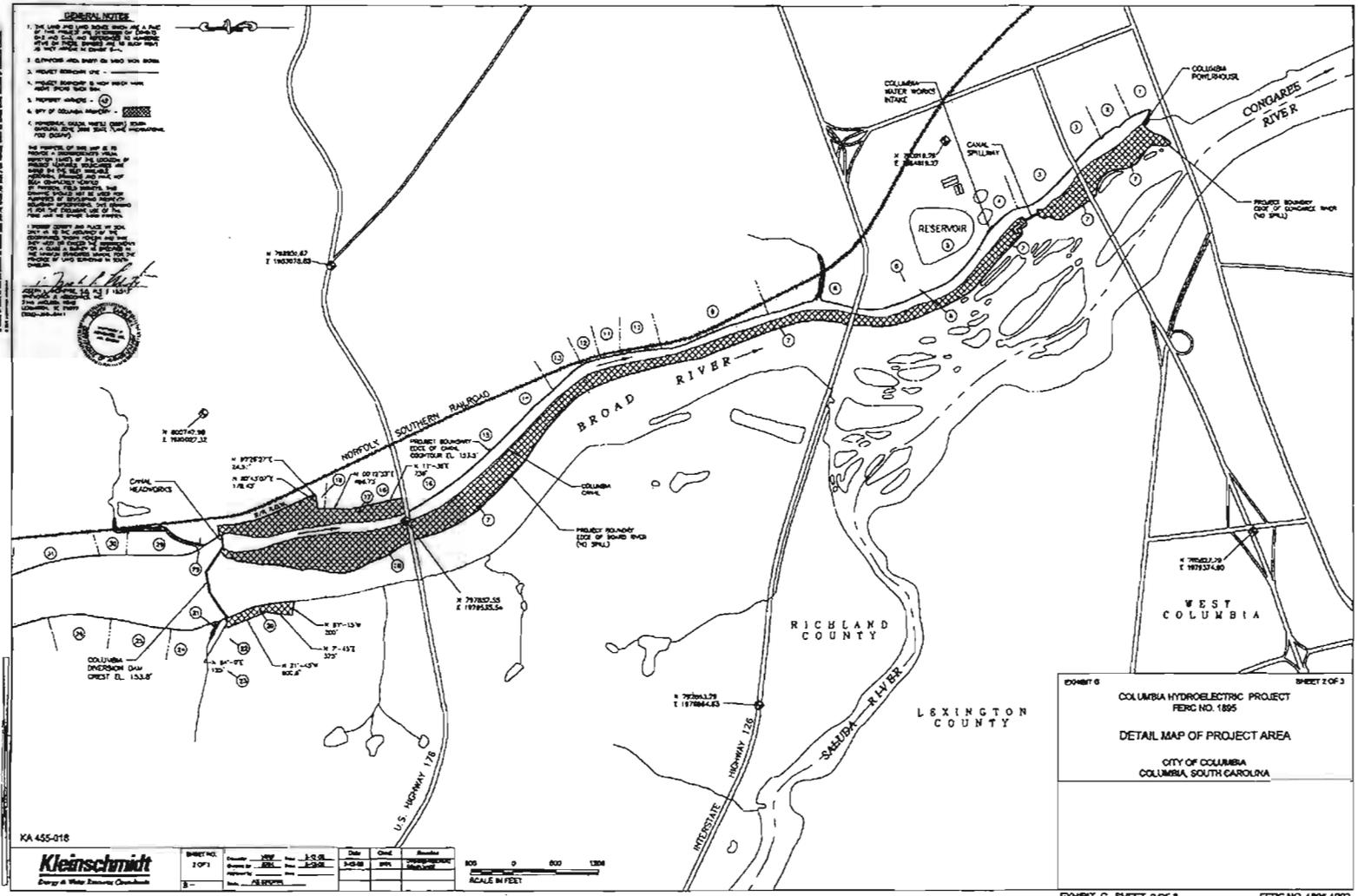
BY:   
Bryan D. Stone

ITS: Chief Operating Officer

DATE: 5/31/11

## **SCHEDULE “A”**

Exhibit “G” (Sheet 2 of 3) to the FERC License is incorporated herein by reference, as if set forth herein verbatim (copy included herein for convenience). For avoidance of doubt, only the portions of the Project set forth in the definition of Facility are included as part of the Facility.



- GENERAL NOTES**
1. THE LAND AND THIS PROJECT ARE A PART OF THE COLUMBIA HYDROELECTRIC PROJECT AS SHOWN ON THE PROJECT PLAN AND THE PROJECT PLAN IS THE BASIS FOR THIS MAP.
  2. ALL POINTS AND DATA ON THIS MAP HAVE BEEN OBTAINED FROM THE PROJECT PLAN AND THE PROJECT PLAN IS THE BASIS FOR THIS MAP.
  3. PROJECT BOUNDARY IS NOT TO BE CONSIDERED AS A PROPERTY LINE.
  4. CITY OF COLUMBIA MAPS.
  5. PROPERTY BOUNDARY IS NOT TO BE CONSIDERED AS A PROPERTY LINE.
  6. CITY OF COLUMBIA MAPS.

ALL SURVEYING AND MEASUREMENTS MADE HEREON ARE THE PROPERTY OF THE ENGINEER AND WILL BE KEPT IN HIS OFFICE FOR THE USE OF THE CITY OF COLUMBIA. THE ENGINEER ASSUMES NO LIABILITY FOR THE ACCURACY OF THE DATA OBTAINED FROM THE PROJECT PLAN AND THE PROJECT PLAN IS THE BASIS FOR THIS MAP.

*[Signature]*  
 PROFESSIONAL ENGINEER  
 STATE OF SOUTH CAROLINA  
 No. 12345  
 EXPIRES 12/31/2025

KA 455-018  
**Kleinschmidt**  
 Energy & Water Resources Division

SHEET NO.	DATE	BY	CHECKED	SCALE
1 OF 1	3-20-85	J. S. [Name]	J. S. [Name]	1" = 100'
	3-20-85	[Name]	[Name]	

SCALE IN FEET

EXHIBIT G SHEET 2 OF 3  
 COLUMBIA HYDROELECTRIC PROJECT  
 FERC NO. 1895  
 DETAIL MAP OF PROJECT AREA  
 CITY OF COLUMBIA  
 COLUMBIA, SOUTH CAROLINA

## SCHEDULE "B" (Page 1)

### REHABILITATION PLAN AND SCHEDULE

Lockhart will provide and complete an extensive and capital-intensive Rehabilitation Plan for the Columbia Canal Hydroelectric Project by the end of 2012 requiring an investment of approximately \$3.5 million. Lockhart also will provide ongoing Capital Investments after completion of the Rehabilitation Plan as needed to rehabilitate equipment it operates under this Agreement for the purposes of optimizing generation, totalling approximately \$3.5 million. Lockhart's rehabilitation investment after the specific plans in this Schedule "B" will be at its discretion and schedule, consistent with the intent of this Agreement.

**Rehabilitation Objective:** Refurbish and repair equipment and facilities as necessary to optimize generation and reliability throughout the duration of the Term. Key Elements of the plan, as listed under "Key Elements" below", are not inclusive of all work, but Key Elements are to be completed in an orderly schedule, maintaining Facility operations to the extent practicable.

#### **Key Elements:**

1. Repair broken elements and upgrade the design of turbine runners of Units #2 and #5;
2. Install a new automated trash rake system;
3. Replace the control system for remote monitoring and control;
4. Draft tube replacement Units #1, #3 and #4 (pending inspection); and
5. Gate rehabilitation: Tainter gates, spillway stoplogs, canal inlet gate guides.

**Other Elements:** Other Elements of the Rehabilitation Plan are included with the Key Elements in the following table on Page 2 of this Schedule "B." It is Lockhart's intent that, based on its preliminary inspection of the Facility, these items will be performed, by the end of 2012 if practicable, so long as additional information obtained after Lockhart occupies the Facility does not contradict the need to perform any of these Other Elements.

**Reporting:** Lockhart will submit a quarterly report on the project rehabilitation to City until the Rehabilitation Plan work is completed. This report will include items completed, items underway and planned items with a schedule for each activity.

**Notification:** Any substantial deviation from the Key Elements of this Rehabilitation Plan shall be provided to City, in writing, with justification for the change. City shall provide approval within 30 days. Such approval shall not be unreasonably withheld.

## SCHEDULE "B" (Page 2)

Item No.	Description
1	Units #1 through #6 and spare bay #8 Head Gate Rebuild: Remove gate and disassemble, reassemble with new timbers, and re-install. According to SCE&G the new timbers for the gates have already been purchased. (Unit #7 has been replaced recently)
2	Unit #2 Shaft Replacement: Remove runners from shaft, machine new stainless steel shaft to desired diameter, bore runners to fit and reassemble.
3	Unit #2 Turbine Runner Replacement: Replace both runners with new runners designed and manufactured to current industry standards on new shaft.
4	Unit #2 Turbine Overhaul: Replace wear parts, bushings, service bearings and repair surfaces as needed, remove wicket gates and repair as needed, install stop pins, fit runners to shaft and balance, reassemble unit.
5	Unit #5 Shaft Replacement: Remove runners from shaft, machine new shaft to desired diameter, bore runners to fit and reassemble.
6	Unit #5 Turbine Runner Replacement x2: Install 2 new runners designed and manufactured to current industry standards, installed on new shaft.
7	Unit #5 Turbine Overhaul: Replace wear parts, bushings, service bearings and repair surfaces as needed, remove wicket gates and repair as needed, install stop pins, fit runners to shaft and balance, reassemble unit.
8	Unit #5 Generator Rewind: The generator stator will be rewound on site. A stator core loop test and a rotor pole drop test will be performed. No additional cost is included to rebuild the stator core or rewind the rotor poles.
9	Spare Shaft: New forging to reduce unplanned outage that may occur as a result of a shaft failure, common to this type of turbine.
10	Draft Tube Replacement for units #1, #3, and #4: Remove draft tube from below powerhouse, fabricate and install new draft tubes (assuming inspection deems necessary).
11	Station Controls: Replace WDPF controls system with modern PLC system from Allan Bradley or equivalent; replace autosynchronizer.
12	Arc Flash Study: Perform detailed inventory of electrical system, perform short circuit study, perform arc flash study.
13	Replace Generator Breakers and switchgear assuming Arc Flash study deems necessary.
14	Powerhouse Roof Coating: Current O&M contractor has received cost estimate for re-coating the roof, with expected life span of 10 years, additional lead abatement may be required.
15	Tainter Gate Rehab: install stoplogs on canal side of gate, replace gate seals, repair structural steel and gate leafs, recoat surfaces, remove stop logs.
16	Canal Spillway Stoplogs: remove stoplogs from canal spillway, replace timbers and re-install.
17	Canal Inlet Gate Guide Repair; Divers contracted to repair guides by replacing fasteners.
18	Canal Embankment: Implementation of plan to be agreed upon by FERC, City and agencies, limited to cutting vegetation, removal of cut and dead vegetation, maintenance of inspection path on toe of dike, repair of sinks, sloughs, slides and evaluation of seepage.
19	Station Transformer Testing.
20	Have powerhouse Intake racks inspected by diving contractor.
21	Evaluate low pressure governor on Unit #1, replace or modify if necessary.
22	Safety analysis of plant and canal, abbreviated FERC part 12 inspection.
23	Trash Rake: replace with multidirectional rake to allow placement of large material onto truck (as opposed to requiring boom truck for log removal).
24	Improve aesthetics of plant, painting, remodeling, etc.
25	Purchase vehicles for transportation in and around project.
26	Electrical contractor to test remaining (non-rewound) generators and all switchgear.
27	Contingencies for immediate rehabilitation plan (10% of line Items 1 through 27).

## SCHEDULE “C”

### WATER WITHDRAWAL CREDIT

The Stipulated Water Withdrawal Amount as defined in Section XXIII is an annual average of 35 million gallons per day (MGD). By January 31<sup>st</sup> of each year during the Term, City shall provide Lockhart with the total quantity of water (measured in millions of gallons per year, or MGY) withdrawn from the Canal upstream of the hydroelectric powerhouse during the previous calendar year. This quantity will be divided by 365 days in order to determine the actual annual average daily water withdrawal amount. If this actual amount exceeds 35 MGD, City shall pay to Lockhart compensation for the associated lost generation value. The compensation amount will be calculated by multiplying the amount of annual average daily withdrawal above 35 MGD by a conversion constant, and multiplying this product by 81% of the Generation Credit Rate (as defined in the Conveyance Agreement Section 4.2) as described below:

#### Calculating Conversion Constant

##### **Basis:**

- Net Head = 30 feet (33 feet gross)
- Efficiency of the turbine-generator units = 77%
- Total hours in one year = 8,760 hours/year
- Percent of time when all needs are met with excess water = 25% (means plant output is not limited by water availability) or 2,190 hours/year
- Percent of time when insufficient water is available for running the project (i.e. < 280 cubic feet per second, or cfs, after minimum flow and City withdrawal) = 10% or 876 hours/year
- Affected Hours = 8,760 – 2,190 – 876 = 5,694 hours
- Conversion Factor = 1.55 cfs/MGD
- General Energy Loss Factor = 95%
- Hydropower Constant =  $11.81 \frac{f \cdot z^4}{k \cdot v^3 \cdot g}$

##### **Calculation:**

Conversion Constant = [Net Head (ft) x Efficiency x Affected Hours x Conversion Factor x General Energy Loss Factor] / Hydropower Constant

$$\text{Conversion Constant} = [30 \times 0.77 \times 5,694 \times 1.55 \times 0.95] / 11.81 = \underline{\underline{16,400 \text{ kWh/MGD}}}$$

##### **Note:**

Lockhart receives 81% of the lost energy value (City retains 19%)

##### **Example**

Assume Total Annual Withdrawal = 15,330 million gallons per year (MGY)

Assume Generation Credit Rate (per SCE&G tariff) = \$0.08/kWh

Avg. Daily Withdrawal: 15,330 MGY / 365 days = 42 MGD

Excess Withdrawal (MGD): 42 MGD – 35 MGD = 7 MGD

Lost Energy: 16,400 kWh/MGD x 7 MGD = 114,800 kWh

Compensation Amount: 114,800 kWh x \$0.08/kWh x 0.81 = \$7,439

