

**BOARD OF
COMMISSIONERS
REGULAR MEETING
AGENDA
OCTOBER 18, 2021
5:00 PM**



**R. Jay Foster Hall of
Justice Womack
Building Columbus, NC**

-
1. Call to Order - Chairman Melton.
 2. Invocation - Chairman Melton.
 3. Pledge of Allegiance - Commissioner Moore.
 4. Chairman and Commissioner Comments.
 5. Approval of Agenda
 - A. Items may be added or removed at this time.
Motion to approve or amend the meeting agenda.
 6. Consent Agenda - Motion to approve the consent agenda.
 - A. October 4, 2021 Regular Meeting Minutes.
 7. Citizen Comments on Agenda Items.
 8. Third Amendment to the Broad River Water District (BRWD), County of Polk, and Inman Campobello Water District (ICWD) Management Agreement - Belton Zeigler Partner Womble Bond Dickinson (US) LLP will lead the discussion.
 9. Vaya Health Medicaid Transformation Update - Angela L Garner Community Relations Regional Director Vaya Health.
 10. Citizen Comments on Non-Agenda Items.
 11. Adjournment

POLK COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

October 18, 2021 Regular Meeting

Agenda Item#: A.

ATTACHMENTS:

Description	Type	Upload Date
draft minutes	Cover Memo	10/14/2021

POLK COUNTY BOARD OF COMMISSIONERS
Public Hearing and Regular Meeting Agenda
October 4, 2021 - 5:00 PM
R. Jay Foster Hall of Justice Womack Building Columbus, NC
Columbus, NC
MINUTES

PRESENT: Chairman Melton, Vice-Chairman Beiler, Commissioner Moore, Commissioner Overholt, and Commissioner Yoder. Also in attendance were County Manager Pittman, County Attorney Berg, Clerk to the Board High, media, and citizens.

1. Public Hearing

- A. Call to Order the Public Hearing - Chairman Melton. The purpose of the public hearing was to take public comment on the third amendment and restatement of the Bright's Creek Development Agreement. The proposed modified agreement consolidates the previous documents, and provides for a completed Swim and Fitness Center by end of year 2022; extends phase three to be completed by end of year 2028; extends phase four to be completed by end of year 2034; extends phase five to be completed by January 1, 2040; and states public sewer and water service shall be provided by Aqua NC. The public hearing was properly advertised in the Tryon Daily Bulletin. Cathy Ruth, County Planner, was present.
- B. Citizen Comments. There were no citizen comments.
- C. Commissioner Comments. There were none.
- D. Commissioner Moore moved to adjourn the public hearing, seconded by Vice-Chairman Beiler and the motion carried unanimously.

2. Call to Order Regular Meeting - Chairman Melton.

3. Invocation - Commissioner Overholt.

4. Pledge of Allegiance - Chairman Melton.

- A. Missing Man Table of Remembrance - Joyce B. Preston.

Chairman Melton said today flags are lowered to half staff in honor of National Fallen Fire Fighters Memorial Day. He asked Joyce Preston to come to the podium to explain the symbolism of the Missing Man Table. She said the table had been set up for September for POW/MIA month in the lobby of the Womack Building.

Mrs. Preston, the President of the Polk County Memorial Auxiliary to VFW Post 9116, shared the significance of each item on the Prisoner of War, Missing In

Action table.

The small table is set for one symbolizing the frailty of one prisoner.

The table is round, showing our everlasting concern for our POW/MIA's.

The cloth is white, symbolizing the purity of our men and women's motives when answering the call of duty.

The single red rose reminding us of the lives of these men and women, their loved ones, and friends who keep the faith while seeking answers.

The red ribbon symbolizes our continued determination to account for them.

A slice of lemon reminds us of the bitter fate of those missing, captured, and held as prisoners in foreign lands.

A pinch of salt symbolizes the tears of our missing and their families, who long for answers after decades of uncertainty.

The Holy Bible represents the strength gained through faith in our country, founded as one nation under God, to sustain those lost from our midst.

The candle is reminiscent of the light of hope which lives in our hearts to illuminate their way home.

The glass is inverted to symbolize their inability to share this evening's toast.

The chair is empty; they are missing. Please remember and honor America's POW/MIA's and successful efforts to account for them.

The Commissioners thanked Mrs. Preston for selflessly serving veterans and their families in Polk County over the past four decades and presented her with a service commendation award.

5. Chairman and Commissioner Comments.

Chairman Melton read the following:

I wanted to make a few comments about our action at the last meeting to direct the County Attorney to research a referendum on partisan School Board Elections. After a lot of internal conversations with the other Commissioners, Polk County Schools, and citizens, we have decided that this isn't the right direction for our County to go.

A partisan election would cause unaffiliated voters to have to get more than 600 signatures on a petition to run. This is an unfair obstacle and would exclude potentially 6000 people from running for this office. There is also the risk that disrupting the school board with partisan politics could create a situation where the focus is away from our children and on other things.

Internally and externally, we have all talked about another option, that would accomplish the same goals as a referendum and would give us an immediate result. We would like to work in conjunction with citizens, such as Bill Miller, and other groups to have two forums for the School Board Candidates during the next election cycle in 2022. Candidates would be notified of these forums and could choose whether to attend, but citizens would have the ability to ask their questions during these forums.

We feel that this option would give the citizens better insight into who they are electing but would keep politics out of the school board meetings.

Our goal as Commissioners is to better the Children and Citizens of Polk

County. We believe that this option serves both interests and will be a solution that will serve everyone well for years to come. With all of that said, I would encourage a motion during the approval of the agenda to remove the update from our County Attorney (Item 10) on the potential referendum.

Chairman Melton thanked Bill Miller, Susan McHugh, and Aaron Greene for their comments and discussions on the matter. He said there is nothing more important in Polk County than our children.

Chairman Melton read the following press release:

The Polk County Board of Commissioners and Polk County Board of Education will work together in the coming months on a non-partisan approach to providing more information about candidates for local school board elections.

The two boards have historically worked together to place first the needs of local students and schools, one reason that Polk County Schools is consistently ranked as one of the top public school districts in North Carolina.

The boards will expand that relationship by developing candidate public forums for the 2022 election, in which four seats on the Board of Education will be on the ballot. The public forums will provide county voters with an opportunity to learn more about each candidate and their views on public education.

The boards will identify and work with a local non-partisan group to oversee the candidate forums. Former Polk County Schools Superintendent William J. Miller is expected to help lead that effort.

Given the planned approach, the Board of Commissioners voted Monday at its regular monthly meeting to remove an agenda item relating to adding a referendum to the November 2022 election that would have allowed voters to weigh in on changing school board elections to be partisan.

In addition to the candidate forums providing voters an opportunity to learn more about each candidate's views, commissioners noted that a move to partisan elections would make it extremely difficult for registered independent voters to run for a seat on the school board.

Vice-Chairman Beiler thanked the Chairman for all that he read. He thanked the citizens who came forward and engaged in the conversation and encouraged citizens to keep engaging.

Commissioner Yoder thanked Superintendent Greene for attending the meeting. He thanked the School Board as he knows the amount of pressure they have been under over the past year with COVID. He said we want to give the decision to the people, give the information to the people without alienating people from having a chance to run for the school board. He said this is a way to move forward and give the people a way to decide.

Commissioner Moore echoed the other comments and said he reached out to other counties with partisan school boards who said it did not benefit their education system.

Commissioner Overholt said they had many meaningful discussions by directing the County Attorney to look into a partisan school board, and it could have gone in a different direction. Instead, it created a discussion that united us for an extremely hopeful and encouraging future.

Chairman Melton asked Bill Miller, past Polk County Schools Superintendent, if he would like to speak. Mr. Miller said the priority is to make sure students and schools come first, and when politics enters School Boards, nothing good comes for students. He said the focus should be on helping students learn, teaching and learning, and relationships.

6. Citizen Comments on Agenda Items.

There were seven comments on agenda items.

7. Approval of Agenda

- A. Commissioner Moore moved to approve the agenda as amended, seconded by Vice-Chairman Beiler and the motion carried unanimously.

Chairman Melton requested amending the agenda to remove item 10. School Board Referendum Information (no action will be taken, discussion only).

8. Consent Agenda - Motion to approve the consent agenda.

Commissioner Yoder moved to approve the consent agenda, seconded by Vice-Chairman Beiler and the motion carried unanimously.

- A. September 7, 2021 and September 20, 2021, Regular Meeting Minutes.
- B. Tax refund requests through September 30, 2021 in the amount of \$536.14.
- C. Re-appoint Scott Woodworth to the Jury Commission as required in § 9-1.

9. Pea Ridge Waterline Extension Change Order.

Dave Odom, President, Odm Engineering, explained pipe price increased by \$6.48/LF, equalling a total increase of \$37,000.80 for the Pea Ridge Road Water Main Extension project. He said there was a \$23,099.34 contingency in the bid leaving a difference of \$13,901.46. Mr. Odom said Piedmont Utility Group, Inc. would split the difference with Polk County, and he would recommend a change order for \$6,950.73. Manager Pittman said this would use the contingency for the project, and if any other issue would arise, they would need to come back to the Board.

Commissioner Yoder moved to approve the change order, and amend the Pea Ridge Road Water Main Extension Project Budget Ordinance, seconded by Vice-Chairman Beiler and the motion carried unanimously.

10. School Board Referendum Information (no action will be taken, discussion only)
- Attorney Berg.

This item was removed from the agenda.

11. Third Amendment and Restatement of the Bright's Creek Development Agreement.

Cathy Ruth, Planner, reviewed the changes and the map of the third amendment and restatement of the Bright's Creek Development Agreement. The proposed modified agreement consolidates the previous documents and provides for a completed Swim and Fitness Center by end of year 2022; extends phase three to be completed by end of year 2028; extends phase four to be completed by end of year 2034; extends phase five to be completed by January 1, 2040; and states public sewer and water service shall be provided by Aqua NC.

Commissioner Moore moved to approve the third amendment and restatement of the Bright's Creek Development Agreement, seconded by Vice-Chairman Beiler and the motion carried unanimously.

12. Resolution to Authorize Amended and Restated St. Luke's Lease Agreement.

Attorney Berg explained this is a change to the current lease with St. Luke's Hospital on property where the current hospital is located. She said they had made previous addendums to the lease, which were incorporated into this one document. The other changes were adding insurance and indemnification terms and changing the reference to the general statute to reflect the 1985 changes in the general statutes.

Commissioner Yoder moved to adopt the Resolution to Authorize Amended and Restated St. Luke's Lease Agreement., seconded by Commissioner Overholt and the motion carried unanimously.

13. Volunteer Board Application(s)

- A. The following application was presented for consideration: Recycling Advisory Board - Donna (Pat) Linnon.

Commissioner Moore moved to appoint Donna (Pat) Linnon to the Recycling Advisory Board, seconded by Commissioner Yoder and the motion carried unanimously.

14. Citizen Comments on Non-Agenda Items.

There were three citizen comments on non-agenda items.

15. Closed Session

- A. Commissioner Moore moved to go into closed session for the purpose of attorney client privilege, seconded by Commissioner Overholt and the motion carried unanimously.
- B. Commission Overholt moved to return to open session, seconded by Commissioner Moore, and the motion carried unanimously.

16. Adjournment

Vice-Chairman Beiler moved to adjourn the meeting, seconded by Commissioner Overholt and the motion carried unanimously.

Attest:

POLK COUNTY BOARD OF
COMMISSIONERS

Ange High
Clerk to the Board

Tommy W. Melton
Chairman

POLK COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM

October 18, 2021 Regular Meeting

Agenda Item#: 7.

ATTACHMENTS:

Description	Type	Upload Date
FAQs Water Agreement	Cover Memo	10/14/2021
Draft Agreement	Cover Memo	10/14/2021

FAQs Regarding the Third Amendment to the Agreement between Polk County, Broad River Water Authority and Inman-Campobello Water District

Since 2008, Polk County, Broad River Water Authority (“BRWA”), and Inman-Campobello Water District (“ICWD”) have successfully worked together under a regional water contract.

1. BRWA supplies finished water to Polk County and ICWD from BRWA’s treatment plant.
2. ICWD operates Polk County’s water system and provides meter reading, billing, collection and customer service to Polk County’s customers.
3. Polk County customers receive water service at the same rates the ICWD charges its own customers. These rates are much lower than Polk County could provide on a stand-alone basis.
4. All three parties share use of a 20-inch water line that links the BRWA Treatment Plant to Polk County and ICWD.

The existing contract has made reliable and reasonably priced water service available to Polk County customers and provided BRWA an important source of revenue from wholesale water sales. That reduces what BRWA charges to its customers.

After twelve years of successful operation, it is time to revise the contract and plan for future needs. The existing contract will stay in place but be amended.

1. What is the purpose of the Third Amendment?

The Third Amendment:

- a. Creates a new regional commission to oversee the current contract and to hear concerns, requests and complaints from Polk County water customers.
- b. Provides a framework for the three entities to jointly secure future water supplies on a regional basis so that they continue their partnership.
- c. Extends the contract for the life of the regional water supply assets that the parties share to provide a continuing framework for service to Polk County customers and sales of water by BRWA to Polk customers and ICWD.

2. Will ICWD continue to operate Polk County’s water distribution system for Polk County?

- a. Yes. But now there will be a commission to oversee that service on behalf of customers. Polk County and BRWA will appoint two thirds of the commissioners.

3. What rates will Polk County water customers pay?

- a. Polk County residents will continue to pay rates that are no higher than those that ICWD charges its customers.
- b. If it ever becomes possible for Polk County to charge lower rates than ICWD on a stand-alone basis, it can do so. But because of economies of scale, that is unlikely.

4. How will service be extended to new customers in Polk County?

There are two ways that service can be extended to new customers in Polk County:

- a. ICWD will apply the same line extension standards that apply to its own potential customers.
- b. If the development density and forecasted water use is sufficient, ICWD will extend the service at its expense. If not, either the developer or Polk County can pay the difference as a contribution in aid to construction.

5. Will Polk County continue to own its water distribution system?

- a. Yes. Polk County will continue to own the all water distribution system assets in the county.

6. Who will maintain and operate the 20-inch line from BRWA to Polk County and ICWD?

- a. ICWD will continue to maintain and operate the 20-inch Polk County line at its expense. This is the main transmission line serving both Polk County and ICWD.

7. How will the ownership of the 20-inch line from BRWA to Polk County and ICWD be held?

- a. Polk County and ICWD will jointly own the 20-inch line based on the percentage of usage between Polk County customers and ICWD's customers.

8. How will Polk County, BRWA and ICWD provide for a future regional water supply?

- a. The Commission will establish the process for jointly acquiring new water supply assets. If any party believes additional water supply capacity is needed, it can request the Commission to study and act on the request. If approved, the parties may choose whether or not to participate in the construction and financing of the resulting project.

9. Has these approach been used before?

- a. Yes. The Catawba River Water Supply Project is a water treatment plant jointly owned 50/50 by Union County North Carolina and Lancaster County Water & Sewer District in South Carolina. It too is operated under a contract and subject to oversight by a commission. It has been operating successfully since 1991.

THIRD AMENDMENT TO THAT CERTAIN AGREEMENT
BY AND BETWEEN
THE BROAD RIVER WATER AUTHORITY; POLK COUNTY, NORTH
CAROLINA; AND THE INMAN-CAMPOBELLO WATER DISTRICT,
(BRWA/POLK/ICWD)
CONCERNING
CONSTRUCTION OF WATER TRANSMISSION LINE AND
SALE OF FINISHED WATER

This Third Amendment, made and entered into this the ____ day of _____, 2021, between BROAD RIVER WATER AUTHORITY, an authority organized and existing pursuant to Chapter 162A of the North Carolina General Statutes (“BRWA”), the COUNTY OF POLK, a municipal corporation and body politic organized and existing pursuant to Chapter 153A of the North Carolina General Statutes (“Polk County”), and INMAN-CAMPOBELLO WATER DISTRICT, a water district created and existing pursuant to Act 939 of the 1954 Acts and Joint Resolutions of the General Assembly of South Carolina as Amended by Act 521 of 1954 and subsequent enactments (“ICWD”).

Recitals:

On July 7, 2008, BRWA, Polk County, and ICWD (collectively, the “Parties” and singularly, a “Party”), entered into an Agreement for *Construction of Water Transmission Line and Sale of Finished Water* (“Agreement”) for an initial term of ten (10) years. Pursuant to the Agreement:

1. BRWA built a 20-inch high capacity water transmission line (the “Rutherford County Line”) from its facilities adjacent to US Highway 221 in Rutherford County to a point on the eastern side of the Broad River. BRWA and ICWD shared equally in the cost of the Rutherford County Line across the Broad River but the line remained the sole property and operational responsibility of BRWA.
2. ICWD and Polk County agreed to construct a 20-inch high capacity water transmission line beginning at the terminus of the Rutherford County Line and ending at the North Carolina/South Carolina border (the “Polk County Line”).
3. ICWD designed and built the Polk County Line and paid all costs of the line except for the cost of permitting, rights of way, and additional fire hydrants in Polk County which were paid for by Polk County.
4. Upon completion of construction, ICWD transferred the Polk County Line to Polk County at no cost.
5. ICWD agreed to operate and maintain the Polk County Line at its expense for thirty (30) years provided that it would have the right to use capacity in that line during that period.

6. ICWD at its sole cost and expense designed and built a 20-inch high capacity water transmission line beginning at the terminus of the Polk County Line and connecting to ICWD's water system at the Windmill Hill Tank Farm (the "South Carolina Line").
7. To increase its sales of water and augment its revenues, BRWA originally agreed to sell up to four (4) million gallons of water per day (MGD) to ICWD and Polk County from its existing water treatment plant, with Polk County having the right to receive not less than 500,000 gallons per day (GPD) of that amount. ICWD agreed to purchase not less than two (2) MGD of that amount each year from BRWA, all for an initial term of ten (10) years.
8. To provide reliable and reasonably-priced water service to customers of Polk County's water distribution system, ICWD agreed to operate and maintain the Polk County Line and Polk County's water distribution for a period of five (5) years.

Since 2008, ICWD has provided all operations, maintenance, repair, billing, collections, customer engineering, and customer service functions for Polk County's water customers at the same rates as apply on ICWD's utility system, greatly reducing the costs that would be paid by Polk County customers if the Polk County system were to operate on a stand-alone basis.

On September 8, 2008, the Parties entered into an Addendum to the Agreement to extend the initial term of the Agreement from ten (10) years to fifteen (15) years and to allow Polk County the right to purchase additional water supplies, up to 4.1 MGD.

On February 6, 2012, the Parties amended the Agreement to provide that ICWD would operate and maintain the Polk County Line and Polk County's water distribution system for an additional eight (8) years for a total period of thirteen (13) years from the initial date of operations under the Agreement (the "First Amendment").

On December 7, 2020, the Parties amended the Agreement a second time to extend its term to twenty (20) years or until December 31, 2028, to increase the rates paid to BRWA for water, and to increase the amount of water BRWA delivers to Polk County and ICWD to 6.1 MGD (the "Second Amendment"). The Second Amendment also required ICWD to operate and maintain the Polk County Line and operate and maintain the Polk County water distribution system for a total period of fifteen (15) years or until December 31, 2023.

The Parties have now operated under the terms of the Agreement, as amended, for approximately thirteen years. During that time, BRWA's system and finances have been supported by sales of water to Polk County and ICWD. Service under this Agreement began principally using existing and underutilized BRWA water

treatment capacity. The Agreement has given BRWA the revenues necessary to support seven (7) million dollars in infrastructure upgrades so that it now can supply 12 MGD of potable water to its customers and has allowed BRWA to achieve increased economies of scale and cost efficiency in its operations. Polk County customers have received reliable and reasonably priced water service based on the operational and customer service resources of ICWD, and ICWD has benefited from a reliable supply of bulk water to support service to its customers.

To continue, support and extend the benefits obtained under the Agreement, to provide for an orderly administration of the Agreement, to provide a suitable venue for the resolution of issues arising under the Agreement, including requests and concerns from Polk County water customers, to take steps to secure future water supplies to meet the needs of the Parties and the communities that they serve, and to otherwise place the Agreement on a footing to allow it to serve the needs of the Parties in future years, the Parties have agreed to the following amendments to the Agreement.

These amendments principally concern the following matters:

1. Creating a Commission to oversee administration of the Agreement, to plan for future water supplies, and to hear and resolve questions, concerns, requests and complaints from Polk County water customers and other interested parties. The Commission shall be a creature of contract only without status as a body corporate or politic acting as an agent of the Parties for administering the Agreement.
2. Providing a framework under which the Parties may jointly secure access to future water supplies on a cooperative basis so that they may continue and expand their successful collaboration under the Agreement.
3. Extending the Agreement for the life of the regional water supply assets that the Parties agree to share but allowing any Party that wants to exit the Agreement to share assets to do so by deeding over its interest in the shared assets to the others.
4. Providing for uniformity in rates and terms and conditions of service between ICWD and Polk County for so long as Polk County relies on ICWD to operate its system and so long as ICWD can do so more economically than Polk County standing alone, and providing terms on which Polk County can terminate ICWD's operation of its water distribution system.

NOW THEREFORE, in consideration of the promises made herein, the parties agree that the Agreement is hereby amended as follows:

1. By adding a new Paragraph 16:

16. Polk County Regional Water Commission.

16.1. Creation of Commission. The Parties hereby establish a commission to oversee the administration of the Agreement (the “Polk County Regional Water Commission” or the “Commission”). The Commission shall be a creature of contract without legal personality undertaking the functions assigned to it by the Parties to this Contract. All actions taken under the Agreement shall be actions of the Parties or a Party, and not the Commission.

16.2. General Authority of the Commission.

16.2.1. The Commission shall establish a regular schedule of meetings and shall meet not less than quarterly at such times and places as the Commissioners shall determine to receive information concerning: (i) operations, maintenance, construction, planning, engineering issues, or operating events related to the Polk County Line, the Rutherford County Line, the South Carolina Line, and the treatment plants by which BRWA provides service to the other Parties, (ii) the water supplies provided pursuant to the Agreement, (iii) expansion or service plans of the Parties, (iv) future water supply needs and growth projections, (v) regulatory matters related to drinking water supplies and distribution systems, and (vi) other topics germane to the administration of the Agreement or the water supply systems supplied under the Agreement.

- a. Oral or written reports shall be provided to the Commissioners by the executive directors, engineers or other representatives of the Parties concerning the matters for which that Party has primary responsibility under the Agreement in such form and with such content as the Commissioners may direct.
- b. The Parties to the Agreement may agree to hire experts, engineers or consultants on matters of shared interest to them and may designate that the Commission shall oversee and review the work of those experts, engineers or consultants.
- c. The Commission shall have special responsibility to oversee all aspects of the ICWD’s operation of the water distribution system as outlined in Paragraph 6 of this Agreement on behalf of Polk County water customers. Such oversight shall include establishing a customer service review and appeal process under the Commission’s oversight for customers of the Polk

County water distribution system. The Commission shall at its regular meetings reserve time to hear from customers, community groups, governmental entities and others with an interest in Polk County's water service to ensure that customer interests are protected and that the terms of the Agreement are followed.

- d. The Commission shall oversee efforts by the Parties to secure access to a future raw water supply from the Green River or other sources, as provided in Paragraph 17 of this Agreement.
- e. The Commission shall oversee the efforts by the Parties concerning permitting, construction and operation of the New Water Supply Facilities, including any future gauging stations on the Green River or other sources, as provided in Paragraph 17 of this Agreement.
- f. The Commission may review and advise the Parties on other matters of importance to their shared interests and relationships under the Agreement.
- g. After due deliberation and an opportunity for all Parties to be heard, the Commission, as agent and representative of the Parties, may issue determinations concerning the Parties' obligations under the Agreement. Determinations by the Commission as to Parties' obligations under the Agreement shall in all cases be consistent with the terms of this Agreement and general law and authorized by the terms of the Agreement. To the extent that determinations by the Commission are reasonable and consistent with the terms of the Agreement and general law and authorized by the terms of the Agreement, the Parties agree to treat those determinations as binding interpretations of the Agreement.
- h. Any Party may challenge a determination by the Commission that it believes to be unfair, unreasonable, or inconsistent with the Agreement or general law by appealing directly to the governing bodies of the other Parties or in the appropriate court of law. The other Parties to the Agreement (but not the Commissioners or the Commission) shall be the defendants in a legal action to interpret the terms of the Agreement.
- i. A Party shall not seek to exercise its rights under the Default or Dispute Resolution provisions of this Agreement (Paragraphs 10 and 11) until it has brought the matter before the Commission and given the Commission a reasonable time to deliberate and reach a conclusion, such time not to exceed one hundred and eighty (180) days.

16.3. Members of the Commission.

16.3.1. Unless otherwise provided for in this Agreement, the Commission shall consist of seven (7) Commissioners:

- a. The General Manager of BRWA;
- b. The Polk County Manager;
- c. The General Manager of ICWD;
- d. One (1) member appointed by the governing body of Polk County;
- e. One (1) member appointed by the governing body of BRWA;
- f. One (1) member appointed by the governing body of ICWD;
- g. The seventh Commissioner shall be appointed by a majority vote of the six (6) Commissioners provided in subsection (a) through (f).

16.3.2. The Commissioners appointed by the governing bodies of the Parties, along with the seventh member, shall be appointed for a four (4) year term or until a successor has been duly appointed. There is no limit on the number of terms an individual may serve.

16.3.3. A Commissioner may resign at any time by communicating such resignation in writing to the Commission.

16.3.4. Any vacancy on the Commission may only be filled in the manner in which the Commissioner whose seat is vacant was appointed.

16.3.5. There shall be Chairperson and Vice Chairperson of the Commission elected by a majority of the Commissioners from their number at the first meeting of each calendar year. The Chairperson, or in his or her absence the Vice Chairperson, shall preside at all meetings of the Commission and perform such other duties as directed by the Commission.

16.3.6. A Party shall no longer have representation on the Commission and the number of Commissioners shall be reduced to five (5), where said Party: (a) withdraws from future obligations under the Agreement under Paragraph 15.2 or (b) loses the voting rights of its two representative members under the provisions of Paragraphs 16.4.4 or 16.5 and those voting rights are not reinstated in accordance with those Paragraphs.

16.3.7. All Commissioners shall serve without compensation.

16.3.8. It is the hope and expectation of the Parties that other governmental entities in the region may wish to join in the Parties' regional

water supply collaboration and become signatories to an amended Agreement. That amended Agreement shall define changes required in the membership and practices of the Commission to accommodate additional members.

16.4. Meetings and Actions Taken by Commissioners.

16.4.1. All meetings of the Commissioners shall be held in accordance with all applicable North Carolina and South Carolina open meetings laws and at a location that is convenient to all members.

16.4.2. Any regularly scheduled Commission meeting may be rescheduled by the Chairperson on ten (10) days' written notice to the members.

16.4.3. The Chairperson, Vice Chairperson or any three Commissioners may schedule a special meeting of the Commission upon five (5) days' written notice to the other Commissioners. An agenda specifying the special topics to be considered at that meeting shall accompany any notice of a special meeting. No items outside of that agenda may be considered absent an affirmative vote of two-thirds of all Commissioners.

16.4.4. The affirmative vote of a majority of the sitting Commissioners authorized to vote and not counting abstentions or disqualifications is required to make any determination on behalf of the Commission as allowed under this Agreement.

16.4.5. Action shall only be taken by the Commission on a matter at a meeting if a quorum exists. A majority of the Commissioners shall constitute a quorum.

16.4.6. Any action required or permitted by this Agreement may be taken without a meeting if the action is taken with the written consent of all Commissioners.

16.4.7. The Commission may adopt and amend rules of procedure not inconsistent with the Agreement by majority vote of all Commissioners. Such rules may include, without limitation, provisions related to agendas, virtual meetings of the Commission, telephonic participation in Commission meetings, and the use of electronic means to provide notifications.

16.5. Loss of Voting Rights.

16.5.1. Upon any Party agreeing to be acquired or operated by any entity other than a governmental entity established under the laws of North

Carolina or South Carolina, that Party shall lose its voting rights of its two representatives on the Commission and its rights in the Future Water Supply Assets, New Water Supply Facilities, and the Polk County Line.

16.5.2. Should a Party be acquired or operated by any entity other than a governmental entity established under the laws of North Carolina or South Carolina, the only right or compensation that this Party would be entitled to receive would be the repayment of the lesser of: (a) the original cost of its investment in those assets remaining with the other Parties for which it paid, less depreciation based on an engineering evaluation of the useful life of the assets in question; or (b) the replacement cost or fair market value of such assets, less depreciation. The amount of compensation shall be determined in the sole discretion of the remaining voting Commissioners, who shall determine a schedule for the repayment of this amount over a period commencing no more than eighteen (18) months after the closing of the sale or acquisition of operating control of the departing Party and to be concluded no more than five (5) years after the date of the initial payment.

2. By adding a new Paragraph 17:

17. Future Water Supply Options and Facilities.

17.1. Securing Access to Raw Water Supplies. The Parties intend to cooperate in jointly securing access to raw water supplies for their future use either from the Green River or other additional or alternative sources. The Parties may do so by jointly purchasing and holding property where intake facilities or other facilities can be located, securing raw water withdrawal rights at those locations, establishing and operating gauging and testing facilities on the relevant water sources to collect required engineering and permitting data, and obtaining rights of way, permits and other necessary entitlements. The future water supply sites, rights of way, permits, entitlements, and gauging station are collectively referred to as the “Future Water Supply Assets.” The Parties will act through the Commission to make collective decisions concerning the acquisition, operation and maintenance of the Future Water Supply Assets.

17.1.1. Within one-hundred and eighty (180) days of its first meeting, the Commission shall establish the process for jointly securing Future Water Supply Assets.

17.1.2. Polk County shall transfer to ICWD a portion of its ownership interests in the existing Polk County Line equal to ICWD’s current capacity utilization or capacity interest in the Polk County Line and the two shall own the line as joint tenants.

17.2. Construction of New Water Supply Facilities. The process for determining the size and configuration of New Water Supply Facilities will be as follows:

17.2.1. Any Party may request the Commission to study and approve the provision of additional water supply capacity, either through construction of raw water intakes, pumps and lines, or through the construction of a jointly-owned and operated water treatment plant (the “Initial Request”). Within ninety (90) days of the Initial Request and in response to such request, the other Parties must indicate their respective capacity needs or requests, whether for raw water or treated water, and their willingness to participate in a joint construction project related to any of the New Water Supply Facilities. The Commission shall consider the demonstrated need and similar objective criteria to determine whether to approve the Initial Request, provided that such approval may not unreasonably withheld. The Commission shall grant or deny the Initial Request within one hundred and eighty (180) days of the Initial Request.

17.2.2. Each Party may elect either to participate in the construction of intakes and raw water transmission lines only or the construction of a jointly-owned water treatment site and finished water lines from it to relevant points of connection. If only one Party elects to construct a water treatment facility at the jointly-owned treatment plant site, then that site shall be transferred to that Party at cost; otherwise, ownership of any New Water Supply Facilities shall be titled directly in the name of the participating Parties as tenants in common with ownership interests reflecting their pro rata capital cost percentages.

17.2.3. As overseen by the Commission, raw water intakes and raw water transmission lines shall be sized and constructed to serve the needs of any Party whether it elected to construct its own water treatment facility or to construct a treatment plant on the jointly-owned site. In all circumstances and to the extent doing so would be consistent with sound engineering practices, the existing rights of way associated with Polk County Line shall be made available for construction or placement of any new lines forming part of the New Water Supply Facilities. The participating Parties shall use reasonable best efforts to assist in obtaining rights of way, permits, zoning approvals and authorizations necessary to construct the New Water Supply Facilities.

17.2.4. The participating Parties shall share in the capital cost and operation and maintenance cost of New Water Supply Facilities pro rata based on the amount of capacity committed to each participating Party. The Commission shall determine the allocation of these costs based on

commercially reasonable terms and on an asset-by-asset basis with specific cost allocations for water intakes, raw water lines, finished water lines and the treatment plant.

17.2.5. Upon construction of any New Water Supply Facilities, the Parties shall have the right to exchange among themselves or lease to others their capacity rights in the New Water Supply Facilities, subject to rights of first refusal of the other Parties and other commercially reasonable terms as set forth by the Commission.

17.3. The Commission's Responsibilities Concerning Future Water Supply Assets and New Water Supply Facilities. In the context of this section of the Agreement, the Commission shall be responsible for, among other things:

17.3.1. Identifying potential sites for Future Water Supply Assets and New Water Supply Facilities;

17.3.2. Overseeing the Parties efforts to secure and preserve withdrawal rights and associated permits, rights of way and other entitlements for the construction of any Future Water Supply Assets;

17.3.3. Overseeing construction and operation of Future Water Supply Assets and New Water Supply Facilities on the Green River or any other source; and

17.3.4. Determining reasonable allocations of capital costs and other costs among the Parties consistent with this Agreement.

3. By adding Paragraph 18.

18. Creation of a Future Interstate Authority. The Parties agree to use reasonable efforts to create a statutory path to the create an interstate regional water authority under the North Carolina General Statutes and for membership in such an authority for South Carolina special purpose districts. The Parties acknowledge that it is each Party's intention to transfer the operating and governance terms and principles of this Agreement, as appropriate, to such an entity when created.

4. By adding Paragraph 19.

19. No Pledge or Obligation of Taxing Authority. Nothing in this Agreement shall be construed to obligate any Party, expressly or by implication, to exercise its power to levy taxes either to make payments falling due under the Agreement, or to pay any judgment entered against a Party as a result of a Party's breach of the Agreement.

5. By adding Paragraph 20.

20. Severability. Any provision of this Agreement which is found to be prohibited or unenforceable under North Carolina, South Carolina, or federal law shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Every effort shall be made to interpret this Agreement in a manner that supports its enforceability.

6. By deleting and replacing Exhibit A.

The rate schedule included as Exhibit A to the Second Amendment is deleted in its entirety and the attached Exhibit A to this Third Amendment is substituted in its place.

7. By adding the following Paragraph 15.2.

15.2. Paragraphs 16, 17, and 18 of this Agreement shall remain in force so long as at least two of the Parties operate the Polk County Line, own Future Water Supply Assets, or operate the New Water Supply Facilities. Any Party can withdraw from future obligations under the Agreement at any time by deeding over its interest in the Polk County Line, the Future Water Supply Assets, or the New Water Supply Facilities to the remaining Parties without compensation, or for such compensation as the Commission may reasonably determine based on the depreciated original cost of the property.

8. By deleting Paragraph 6 in its entirety and inserting in lieu thereof, the following Paragraph 6.

6.1. As a part of the consideration of this Agreement, Polk County and ICWD have agreed that ICWD will operate and maintain all of the Polk County Line, and any distribution lines running therefrom, for as long as both Parties maintain representation on the Commission. Except as provided by Paragraph 7 of the Agreement, ICWD or Polk County may at any time, upon sixty (60) months' written notice to the other Party, terminate the provisions of the Agreement that require ICWD to provide operations, maintenance, customer service, billing, collection and other services to Polk County customers. Upon termination of ICWD's operation of the Polk County water distribution system, Polk County will pay to ICWD an amount equal to the original cost less depreciation of all assets installed by ICWD on the Polk County's water system and not fully depreciated at the time of the termination, but only to the extent that those assets were paid for out of ICWD's funds.

6.2. During the term of this operation and maintenance agreement, ICWD will collect and retain all fees for sales of water and tap fees on the Polk County Line and on any distribution lines running therefrom. ICWD's current schedule of rates and charges and its currently schedule of future rate increases are set forth in ***Revised Exhibit D*** of the Agreement.

6.3. ICWD will design and construct all distribution lines connected to the Polk County Line. ICWD shall have no right to construct distribution lines within Polk County except with the written consent of Polk County. The plans and specifications will be consistent with American Water Works Association standards or generally accepted practices in the water distribution industry, and will comply with ICWD's operating and maintenance standards. Construction of such lines shall not commence until receipt of written approval from Polk County.

6.4. Rates for Polk County Water Customers. ICWD and Polk County acknowledge that because of the size of ICWD's customer base, its existing systems, personnel and assets and its economies of scale, ICWD's rates and charges for retail water service are significantly less than those that Polk County would be required to charge to customers as a stand-alone utility. Furthermore, maintaining consistency in the rates, charges and terms and conditions of service (the "Rates") between the Polk County water system and ICWD increases efficiency, minimizes customer confusion, and reduces the cost of the billing, accounting and customer service functions provided by ICWD to Polk County customers.

6.4.1. Presently, the only compensation that ICWD receives for operating the Polk County water distribution system is the revenue it receives from billing Polk County customers at ICWD's rates.

- a. Polk County agrees that so long as it intends for ICWD to be compensated in this manner, Polk County shall take all reasonable and lawful steps necessary to maintain Rates consistent with those of ICWD. This commitment to consistency in the terms and Rates shall include all rate structures; rates; charges; terms and conditions of service; operating policies; billing and collection policies; customer credit policies; deposit, disconnection and reconnection policies; line extension policies and all other customer and operations related policies. ICWD's Rates and five-year Rate Plan are attached as Exhibit B to this Third Amendment.
- b. To the extent that Polk County does not correct any variation in the Rates within 120 days of notice by ICWD of the need for a change, Polk County will compensate ICWD for of the resulting increase in the cost of billing or customer service provided to Polk County customers and any loss of revenue as

a result of the Rate differential, all as reasonably determined in the first instance by ICWD and subject to review by the Commission for errors or inaccuracies.

- c. Polk County's commitment to charge rates consistent with those charged by ICWD is contingent on those rates remaining less than what Polk County could charge its customers if operating as a stand-alone system. Polk County may require the Commission to retain an independent rate consultant to report to the Commission and conduct a fully allocated cost of service study at Polk County's expense estimating Polk County's cost of operations and revenue requirements if it were operated as a stand-alone utility. If this study shows that the rates charged by ICWD exceed the rates charges that Polk County could charge on a stand-alone basis, Polk County may reduce rates to its customers accordingly without payment or other liability to ICWD.
- d. In all circumstances, consistency with terms and conditions of service and other aspects of the Rates will be maintained for so long as ICWD operates the system.
- e. ICWD's water line extension policies shall apply to all requests for the extension of new lines or service to customers of the Polk County water distribution system. Those policies shall provide an opportunity for Polk County or others to provide contributions in aid of construction to support extension of service where reasonable projections of customer usage and operating and maintenance costs do not allow the full and prompt recovery of costs through standard rates.

6.4.2. Each year, ICWD will present for approval by Polk County its annual capital budget for the Polk County water distribution system. ICWD may request mid-year amendments to that capital budget as required, and such approval shall not be unreasonably withheld.

Except as specifically amended herein, the remaining terms and conditions of the Agreement shall remain in full force and effect.

In Witness whereof, the parties hereto have executed this Amendment, by authority duly given as of the last day hereof.

Signatures on next page

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