

AGREEMENT FOR WATER SYSTEM SERVICES
BY AND BETWEEN
INMAN-CAMPOBELLO WATER DISTRICT, SOUTH CAROLINA
AND
POLK COUNTY, NORTH CAROLINA

Dated: _____, 2015

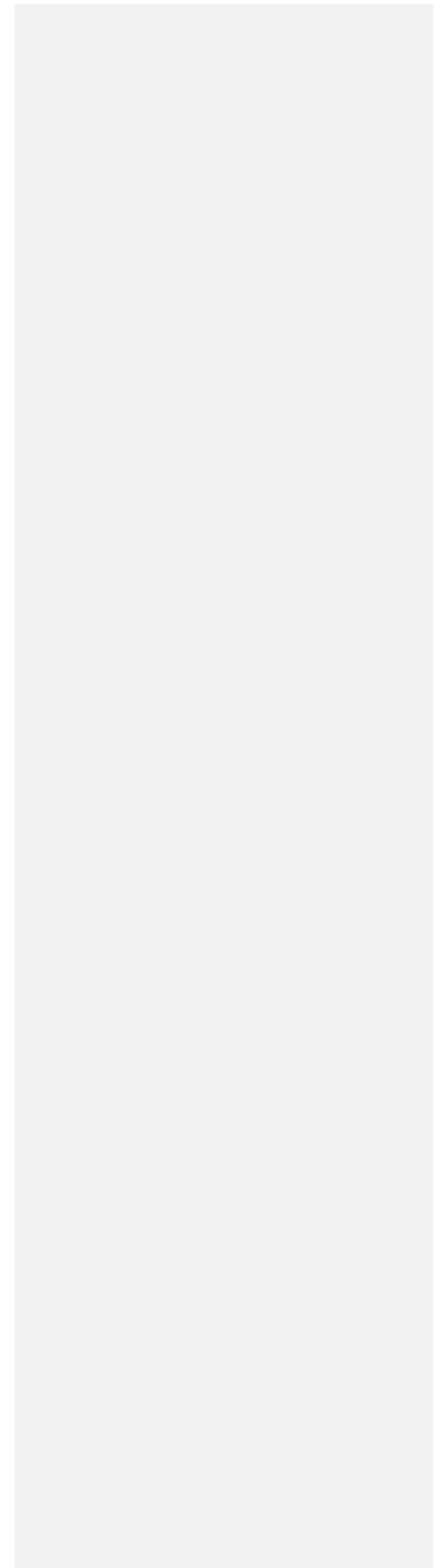


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**AGREEMENT FOR WATER SYSTEM SERVICES BY AND BETWEEN
INMAN-CAMPOBELLO WATER DISTRICT, SOUTH CAROLINA AND
POLK COUNTY, NORTH CAROLINA**

This **AGREEMENT FOR WATER SYSTEM SERVICES** (the “*Agreement*”) is entered into this ___ day of _____, 2015 by and between the Inman-Campobello Water District, South Carolina (“*ICWD*”) and Polk County, North Carolina (“*Polk County*”), each a “Party” and together the “Parties.”

WHEREAS, Polk County is a body politic and corporate organized under the laws of the State of North Carolina (“*North Carolina*”).

WHEREAS, sustainable communities cannot exist without sustainable water systems and clean, accessible water sources are essential to the health of communities, Polk County purchased from Northbrook Carolina Hydro, LLC, Lake Adger, a freshwater impoundment reservoir consisting of approximately 34.302 acres and approximately 14.5 miles of shoreline located within Polk County, to ensure a long-term source of clean, accessible water and to provide recreational opportunities to Polk County and its visitors.

WHEREAS, Polk County has a special interest in maintaining Lake Adger as a valuable water resource and is committed to the responsible stewardship, management and maintenance of Lake Adger and the Turner Shoals Dam (“*Lake Adger Dam*”).

WHEREAS, Section 153A-275 of the North Carolina General Statutes authorizes Polk County to construct, establish, enlarge, improve, extend, maintain, own and operate a water supply and distribution system (collectively, “*Water Service*”), and to contract with third parties to furnish Water Service to Polk County and its citizens.

WHEREAS, Chapter 160A, Article 20, Part 1 of the North Carolina General Statutes (the “*Joint Exercise of Powers Statutes*”), authorizes Polk County to cooperate with any other unit of local government in the exercise of any of its authorized powers, including furnishing Water Service to its citizens.

WHEREAS, Section 160A-461 of the Joint Exercise of Powers Statutes provides that Polk County may enter into contracts of reasonable duration with units of local governments of North Carolina or any other state for the joint exercise of such powers.

WHEREAS, ICWD is a public service district of the State of South Carolina (“*South Carolina*”) created pursuant to Act No. 939 of 1954 of the Acts and Joint Resolutions of the General Assembly of South Carolina as amended by Act No. 579 of 1955 (“*Act 579*”) and other acts (collectively, the “*Enabling Legislation*”).

WHEREAS, ICWD is a “unit of local government” as defined by the Joint Exercise of Powers Statutes.

WHEREAS, Sections 3(10) and 3(11) of Act 579 authorize ICWD to purchase, or otherwise acquire, a supply of water for its water distribution system, and to that end, to build, construct, maintain and operate water tanks, reservoirs, pumps and such other apparatus as may

be necessary to obtain and distribute water beyond the limits of the district, on such terms as it shall approve, wherever it shall be economically feasible to do so.

WHEREAS, ICWD operates a water system that serves approximately 12,000 customers. ICWD has an established record of low rates, efficient operations and excellent customer service.

WHEREAS, pursuant to an agreement for the construction of a water transmission line and the sale of finished water, by and between the Broad River Water Authority, Polk County, and ICWD, dated July 7, 2008 and amended February 6, 2012 (the "**Broad River Line Agreement**"), ICWD currently receives bulk water from the Broad River Water Authority, located in Rutherford County, North Carolina, through a high-capacity line that crosses Polk County.

WHEREAS, ICWD donated those portions of that line and appurtenances that are located in North Carolina (the "**Broad River Line**") to Polk County which were installed at a cost of \$4.03 million in 2008.

WHEREAS, Polk County provides water service to approximately 142 customers who use the Broad River Line and lateral lines that have been installed by Polk County or by developers.

WHEREAS, also pursuant to the Broad River Line Agreement, ICWD provides all customer services and operational services for the Polk County water system and assets.

WHEREAS, the Polk County Board of Commissioners, the governing body of Polk County (the "**Polk Commission**"), has determined that for reasons of public health and the welfare of its citizens, it is advantageous to provide for the continued expansion of public water service in unserved areas of the County.

WHEREAS, establishing its own water system would require Polk County to invest in the personnel, equipment, facilities, water supply resources, customer service and billing systems, financial resources and the other assets and technical skills required to efficiently operate such a system.

WHEREAS, current customer growth forecasts for Polk County's water service indicate that even if such service expands in a sustained and effective way in the areas in which the County provides water service, Polk County will serve less than 1,000 customers by 2030, resulting in water needs that are anticipated to be significantly less than two million gallons per day (MGD).

WHEREAS, such a water system standing alone would lack economies of scale and would be challenged to meet increasingly stringent environmental and public health regulations.

WHEREAS, ICWD has a proven track record of efficient and low-cost operations and is one of the lowest cost providers of water in the area.

WHEREAS, ICWD will make reasonable efforts to ensure that during the term of this Agreement, it will continue to provide efficient and low-cost operations and will remain one of the lowest cost providers of water in the area

WHEREAS, ICWD's rates are much lower than the rates Polk County would have to charge were it to operate a water system on a stand-alone basis.

WHEREAS, Polk County has determined that it constitutes better stewardship of public funds and will be more economical to contract with ICWD to construct and operate its water system than to attempt to construct and operate a water system on a stand-alone basis.

WHEREAS, ICWD is willing to make available to Polk County ICWD's existing personnel, equipment, expertise, customer service culture, economies of scale, capital resources and other resources, and is willing to make capital investments in the Polk System and improvements to Lake Adger and the Lake Adger Dam for seventy-five years.

WHEREAS, in exchange, Polk County is willing to permit ICWD to retain revenues generated by the Polk System; assign to ICWD Polk County's statutory right to withdraw up to six million gallons per day (MGD) of impounded raw water from Lake Adger (with 2 million gallons reserved for Polk County) and make available to ICWD, upon request, up to 2 million gallons per day (MGD) of additional raw water from the Green River, for a total term of seventy-five years.

WHEREAS, the Parties have agreed that this seventy-five-year term is reasonable in light of the following: (1) ICWD will locate the Plant (as defined herein) and determine the appropriate treatment capacity of the Plant in reliance upon its ability to acquire water from within Polk County; (2) ICWD does not intend to construct the Plant until such time as it is in need of additional capacity in order to avoid placing the additional capital cost of the Plant onto customers before it is necessary; and (3) ICWD's investment in the Plant will be substantial and will be based upon the Plant's planned treatment capacity, and ICWD's ability to operate at such treatment capacity will be predicated on its being able to acquire raw water from Polk County.

NOW, THEREFORE, and in consideration of the premises and the mutual covenants and obligations contained herein, the receipt and sufficiency of which are hereby acknowledged, ICWD and Polk County agree as follows:

Article I. Definitions

As used in this Agreement, unless the context shall otherwise require, the following terms shall have the following respective meanings:

- (a) **"Agreement"** shall mean this Agreement For Water System Services, as the same may be modified or amended from time to time.
- (b) **"Actual Cost"** shall mean funds expended for Capital Projects exclusive of ICWD in-house labor and equipment costs.

(c) “**Capital Projects**” shall mean those projects undertaken by ICWD to construct Transmission Line Expansions, Distribution Line Expansions, maintenance and improvements to Lake Adger and the Lake Adger Dam required pursuant to the Dam Report (as defined herein) and other capital projects in Polk County to benefit the customers of the Polk County System to include any intake facilities or transmission lines associated with the construction of any water treatment facilities located in Polk County, but shall not include the future construction of any water treatment facilities.

(d) “**Distribution Expansion Projects**” shall mean those projects undertaken to construct water lines from transmission lines to provide water service directly to residential, commercial or industrial water customers within Polk County.

(e) “**Excess Volumes of Water**” shall mean, the volume of water that may be withdrawn from an impoundment, or from a watercourse below an impoundment, pursuant to N.C. Gen. Stat. §§ 143-215.44 through 143-215.50.

(f) “**Fiscal Year**” shall mean the year that begins July 1st of each year and ends June 30th, but which may be changed from time to time by the ICWD Commission.

(g) “**Force Majeure**” shall mean acts of God or nature, strikes, lockouts, or other industrial disturbances; acts of a public enemy, orders of any kind of the government of the United States, South Carolina or North Carolina, or the courts thereof, or any civil or military authority; insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, arrests, restraint of government and people, civil disturbances and explosions. Force Majeure shall also any other causes not reasonably within the control of the party claiming such inability.

(h) “**Generally Accepted Accounting Principles**” shall mean generally accepted accounting principles and accounting practices that are applicable to governmentally owned and operated water utility systems such as the ICWD System.

(i) “**Good Utility Practices**” shall mean practices, methods, and acts engaged in or approved by a significant portion of the potable water utility industry during the relevant time period, or practices, methods, and acts which, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could have been expected to accomplish the desired results at a reasonable cost and within a reasonable time consistent with good business practices, reliability, safety, and expedition. Good Utility Practice does not require use of the optimum practice, method, or act.

(j) “**ICWD Customers**” shall mean customers of the ICWD System located in South Carolina.

(k) “**ICWD Reimbursement**” shall mean the reimbursement earned by ICWD for its costs and expenses in providing the Water System Services required for operating the Polk County System. The ICWD Reimbursement amount shall equal the amount of the total revenue, less credits and refunds, that is collected from ICWD’s operation of the Polk County System including, without limitation,

- (i) fixed and volumetric water service charges, including meter charges and standby charges,
- (ii) tap fees, impact fees and similar charges,
- (iii) charges for connections, disconnections, reconnections, inspections, service calls, repairs or testing,
- (iv) late fees, interest, or similar charges,
- (v) fines, payments or compensation granted for misuse of the system or assets, or damage to the system,
- (vi) charges for unauthorized use of water,
- (vii) payments resulting from condemnation of system assets,
- (viii) governmental assistance for disaster recovery associated with the Polk County System, not otherwise prohibited by law, rule or regulation, and
- (ix) all other charges or revenues associated with ICWD’s operation of the Polk County System.

It is the intent of the Parties that all revenue associated with ICWD’s operation of Polk County System be included in computing the ICWD Reimbursement.

(l) “**ICWD System**” shall mean those transmission and distribution lines, water treatment facilities and any other facilities or systems that are owned by ICWD and are not part of the Polk County System.

(m) “**Initial Term**” shall mean the period of time commencing upon the date first entered above and extending for a term of 20 years thereafter.

Jana Berg 8/11/15 2:21 PM

Deleted: . It is also the intent of the Parties that the ICWD Reimbursement shall not include audit fees, fines or penalties imposed on ICWD for its noncompliance with any local, state or federal law, rule, ordinance, order or regulation.

(n) “**Joint Coordinating Committee**” shall mean the Joint Coordinating Committee created pursuant to Article V of this Agreement to oversee the on-going implementation of this Agreement.

(o) “**Minimum Rates**” shall mean rates which are precisely equivalent to the rates, fees and charges charged to ICWD Customers, and reflect the same rate structures and classifications as ICWD uses in billing ICWD Customers. Minimum Rates will be adjusted as ICWD’s rates, charges, fees and rate classifications for ICWD Customers are amended from time to time; provided, ICWD provides prior written notification of a rate change to Polk County. Until such time as ICWD equalizes its rates between customers located within and outside of ICWD’s corporate boundaries (the former having historically been subsidized by property tax millage) Minimum Rates shall be based on ICWD’s rates to customers located outside of its corporate boundaries.

(p) “**Polk County Customers**” shall mean those customers located within Polk County and who receive potable water from water lines owned by Polk County and connected to the Polk County System and those customers served by municipalities located in Polk County.

(q) “**Polk County System**” shall mean those transmission and distribution lines and other facilities or systems that are located within Polk County and provide water service to Polk County Customers. The Polk County System shall not include any water treatment facility and associated assets but shall include the Broad River Line.

(r) “**Raw Water Withdrawal**” shall mean the combined withdrawals of raw water that may be made, either by Polk County or by ICWD to include the following: (1) the Lake Adger Withdrawal (as defined herein), whether withdrawn directly from Lake Adger or from the Green River below Lake Adger as supported by the release of impounded water; (2) the Green River Withdrawal (as defined herein), and (3) the North Pacolet Capacity (as provided in Section 3.01(b)).

(s) “**Subsequent Term**” shall mean the period of time commencing upon the expiration of the Initial Term or any Subsequent Term and extending for a period of ten years thereafter, except upon (1) the expiration of the final Subsequent Term or (2) upon proper notification of a Party, as each are provided for more fully herein.

(t) “**Water System Services**” shall mean, collectively, those O&M Services, Customers Services, Accounting Services, Capital Projects Services and Expansion Services, as further provided for in Sections 2.02 through 2.06, herein.

(u) “**Transmission Expansion Projects**” shall mean those projects undertaken to construct “backbone” water transmission lines to expand water service into areas of Polk County that are not presently receiving water service.

Article II. Operating and Expanding the Polk County Water System

Section 2.01 Standard of Service. ICWD shall, at all times, furnish Polk County Customers, on Polk County’s behalf, with Water Service that is safe, reliable, adequate, efficient and reasonably priced. ICWD warrants that the water provided hereunder shall at all times meet the drinking water quality standards set forth by South Carolina, North Carolina and the Environmental Protection Agency.

Section 2.02 Operation and Maintenance. ICWD shall provide all services related to the operation and maintenance and regulatory compliance of the Polk County System (the “**O&M Services**”). O&M Services shall include, without limitation, operation, maintenance, repair and replacement of water lines and other facilities comprising the Polk County System, in accordance with Good Utility Practices, to ensure that the Polk County System is able to provide safe and reliable service to the Polk County Customers.

Section 2.03 Customer Service. ICWD shall provide all customer service functions necessary to serve Polk County Customers efficiently (“**Customer Services**”). Customer Service shall include, without limitation, the opening of new customer accounts, account transfers, meter-reading, billing, credit and collections, installation of new taps and connections, termination of accounts, connection and disconnection services, response to customer complaints and inquiries, account adjustments and error resolution, final billing, record keeping and all other customer accounting and customer service functions required to serve Polk County Customers in keeping with Good Utility Practices. Customer Service shall be provided by ICWD in accordance with the rates, regulations, and terms and conditions of service as established by Polk County. ICWD shall be solely responsible for any and all claims, actions or causes of action arising out of the provision of customer service functions.

Section 2.04 Capital Projects. ICWD shall undertake all maintenance, capital improvements and renewal and replacement investment (“**Capital Project Services**”) necessary to keep the Polk County System and the Lake Adger Dam in good operating condition and to provide safe, reliable service. Such Capital Project Services shall be provided by ICWD in keeping with Good Utility Practices and in accordance with the rates, regulations and terms and conditions of service as established and adopted by the Polk Commission, subject to Section 4.02 herein.

Section 2.05 Accounting Services. ICWD shall provide all record keeping and financial accounting for the Polk County System (“**Accounting Services**”). The Accounting Services will be provided according to consistently applied Generally Accepted Accounting Principles. ICWD shall provide to Polk County the annually audited financial statements of ICWD that are prepared in compliance with North Carolina and South Carolina law.

Section 2.06 Expansion Projects.

Jana Berg 7/28/15 12:01 PM

Comment [1]: Shall we insert a date by which the financial statements are to be provided? Also, is it our intent to get the audited financial of the whole ICWD system or just that part involving Polk County operations? Perhaps they could set up a separate ledger of the Polk County System and have those audited per NC law and provided to Polk County by a certain date each year.

Jana Berg 6/17/15 12:37 PM

Comment [2]: Check into whether SC law differs in comparison to NC law regarding audits. If NC law creates additional requirements beyond SC law, what is the associated additional cost and who should bear the cost of the additional reporting requirements.

Jana Berg 7/28/15 12:00 PM

Comment [3R2]: Per County Auditors, SC and NC law differ significantly with respect to audit requirements. Polk must have audits performed per NC law.

(a) ICWD shall undertake all system expansion projects for the Polk County System (“*Expansion Services*”) including the design, engineering and construction of Transmission Expansion Projects and Distribution Expansion Projects. Such Expansion Services shall be undertaken by ICWD under the oversight of the Joint Coordinating Committee in keeping with Good Utility Practices and in accordance with the rates, regulations and terms and conditions of service as established and adopted by Polk County.

(b) When developers or other third parties undertake to design and construct lines or other facilities to connect with the Polk County System, ICWD shall, on Polk County’s behalf, exercise all rights and powers of Polk County related to the review, inspection, permitting and approval of such projects. ICWD shall exercise these powers under the oversight of the Joint Coordinating Committee in keeping with Good Utility Practices.

(c) On occasion, economic development activities may require Polk County to seek the Expansion Services, including the design, engineering and construction of lines or other facilities to connect with the Polk County System. Upon the request of Polk County, ICWD shall undertake the design and construction of the project, provided that Polk County, or third-parties, pay the full cost of the design, engineering and construction of any such projects pursuant to the provisions of Section 7.04 to the extent that the costs of such projects exceed the amount that ICWD must invest in Transmission Expansion Projects pursuant to Section 7.02.

(d) ICWD shall undertake Expansion Services, pursuant to the terms of this Section, for so long as they have the rights to the Lake Adger Withdrawal and the Green River Withdrawal (as herein defined). ICWD shall continue to all other Water System Services for the duration of the Initial Term and any Subsequent Term. (Define backbone waterlines and have ICWD be responsible for paying for installation of those lines. Hire an engineer to determine these lines.) As long as ICWD has the ability to withdraw water they will invest \$100,000 per year, adjusted for inflation.

Section 2.07 Regulatory Compliance and Permitting; Acquisition of Rights of Way.

(a) As an agent for Polk County, ICWD shall be responsible for all regulatory compliance and permitting for the Polk County System, and shall acquire and maintain all necessary crossing or encroachment permits or other regulatory approvals, permits and licenses as necessary for the provision of the Services provided for herein. Any fees related to such approvals as they relate to Capital Projects shall be included within the amounts invested in such Capital Projects. ICWD shall be responsible for any civil penalties or fines related to any non-compliance with or failure to obtain any such permits, licenses or approvals, including any legal fees and costs related to the same.

(b) Polk County shall assist ICWD in the acquisition of all necessary crossing or encroachment permits or other regulatory approvals necessary for the provision of the Services provided for herein, and at ICWD's reasonable request shall make use of its power of eminent domain to support ICWD in the construction of expansion and transmission lines, appurtenances or other water system assets or treatment facilities within Polk County. However, prior to the use of eminent domain powers, ICWD shall exhaust all reasonable efforts to acquire the desired interests on behalf of Polk County. All costs incurred by Polk County from the use of eminent domain shall be borne by ICWD and included in the costs of any related projects to the extent that they may be considered Capital Projects as defined herein.

Section 2.08 Drought Response Plan. ICWD will prepare and update from time to time a drought response plan for the Polk County System that conforms in all respects to North Carolina law. The plan and revisions to it will be provided to Polk County for adoption as a regulation of the Polk County System.

Article III. Water Supplies; Future Water Treatment Facilities

Section 3.01 Water Resource During Initial and Subsequent Term of Agreement.

During the seventy-five years of this Agreement, the water resources of ICWD and Polk County shall remain pooled so that ICWD may have access to sufficient water resources to provide long-term, safe and reliable water service, on an equal basis, to Polk County Customers and ICWD Customers on the same terms and conditions. To that end, for seventy-five years:

(a) ICWD shall make available to Polk County Customers the capacity that ICWD has obtained from the Broad River Water Authority and any future capacity it may obtain from Broad River Water Authority (the "**ICWD Broad River Capacity**"). Likewise, Polk County shall make available to ICWD any capacity that Polk County has obtained, or may obtain in the future, from the Broad River Water Authority (the "**Polk Broad River Capacity**")

(b) ICWD shall make available to Polk County Customers the capacity that ICWD may, in the future, withdraw from its permitted withdrawal site on the North Pacolet River in Fingerville, South Carolina for which ICWD has a South Carolina Surface Water Withdrawal Permit for 8 MGD (the "**North Pacolet Capacity**").

(c) For the seventy-five years, ICWD will reserve for Polk County any amount of raw water from the Raw Water Withdrawal that is necessary to meet the actual water capacity requirements of Polk County to provide Water Service to Polk County Customers [and for municipalities located in Polk County to provide Water Service to their customers located in Polk County.](#)

Section 3.02 Future Water Treatment Facilities.

(a) Any water treatment plant built by ICWD, withdrawing or relying upon raw water from any water resource provided for herein shall not be built in Polk County. The capital cost to construct the Plant shall not be treated as a Capital Project of the Polk County System; but such amounts shall be treated solely as a capital cost of the ICWD System.

(b) Nothing in this Agreement shall require ICWD to construct nor shall it prevent ICWD from constructing any such water treatment facilities it determines to be required to serve ICWD Customers, Polk County Customers, or any other water customers.

Section 3.03 Prioritization of Water Resources. In the course of ICWD's operation of the Plant, ICWD shall make maximum permitted use, based upon applicable permits and other regulatory restrictions, environmental restrictions in place at any given time and Good Utility Practices, of the water resources to provide for the water needs of ICWD Customers and Polk County Customers, on an equal basis, in the following priority based upon the listed-order of water resources below:

- (a) Such capacity as is available at that time from the Broad River Line, regardless of whether such capacity is owned by ICWD or Polk County;
- (b) Any withdrawal available from the North Pacolet Capacity;
- (c) Any withdrawal, as may be permitted or available at that time, from the Green River Withdrawal; and
- (d) The Lake Adger Withdrawal.

Article IV. System Operation and Revenue

Section 4.01 Customers of the Polk County System. All customers served by the Polk County System shall remain, at all times, customers of Polk County and shall, in all cases, be in an exclusive contractual and customer relationship with Polk County for the provision of Water Service. ICWD shall serve as Polk County's exclusive agent for providing Customer Services to Polk County Customers and managing the Polk County System. Upon the request of Polk County, ICWD shall provide Polk County with the names and addresses of all Polk County customers to permit Polk County to mail notices and other information.

Section 4.02 Rates. The rates, charges, classifications and categories of service for Polk County Customers shall, at all times, be those established by Polk County. The rates charges shall include a Minimum Rate, which shall provide ICWD with compensation for its provision of services to Polk County Customers, and any Additional Charges (as defined herein) that Polk County determines to impose.

Section 4.03 Minimum Rates. To ensure sufficient revenue to compensate ICWD for provision of the Water System Services to Polk County and Polk County Customers, Polk

County covenants to establish rates and charges for each classification of service that are at minimum equal to those established by ICWD for ICWD Customers residing outside of the corporate boundaries of ICWD, as described in the ICWD schedule of rates as “New District” rates (the “**Minimum Rates**”). In the event that ICWD finds it necessary to make adjustments to its Minimum Rates, or other charges, classifications or categories of service, ICWD shall conduct a public hearing at which all ICWD customers and Polk Customers shall be permitted to speak in favor of, and in opposition to, any such action. ICWD shall advertise any such public hearing in a newspaper of general circulation in Polk County in the same manner and under the same terms as such public notices are required under South Carolina law. Polk County shall, within thirty (30) days of such amendment, make a similar adjustment to its rates, charges and classifications of service to be effective simultaneously with ICWD’s adjustments.

Section 4.04 Additional Charges. At Polk County’s request, ICWD will assist Polk County with the calculation of an additional percentage-based rider or per-unit charge (the “**Additional Charges**”) that Polk County wishes to impose upon Polk County Customers in addition to the Minimum Rates. Such Additional Charges may be imposed (i) to generate funds to pay the cost of Expansion Projects not otherwise funded under this Agreement, (ii) as a payment to Polk County in the nature of a utility franchise fee or inter-fund transfer to be used as Polk County sees fit, or (iii) for any other purpose authorized by law for Polk County. Any Additional Charges imposed by Polk County shall be separately billed to Polk Customers by ICWD and shall be paid directly to Polk County.

Section 4.05 Terms and Conditions, and Classification of Service. The terms and conditions and classification of service under which the Water System Services are provided to Polk County Customers shall, at all times, be those terms and conditions of service adopted by Polk County. For ease of billing and customer service administration, Polk County shall adopt, through the Resolution of the Polk Commission approving the execution of this Agreement, those terms and conditions and classification of service that are substantially identical to those adopted by ICWD, as shown in **Exhibit A** attached hereto (the “**Terms and Conditions**”). In the event that the Terms and Conditions adopted thereunder are determined to violate North Carolina law or regulations, ICWD shall endeavor to amend its terms and conditions to satisfy North Carolina requirements. In the event that ICWD amends its terms and conditions of service for any reason, Polk County covenants to, within thirty (30) days of any such amendment, adopt substantially identical amendments unless prevented from doing so by North Carolina law or regulation.

Section 4.06 Service to be Substantially Consistent Across the System. ICWD shall provide the Services to the Polk County Customers in accordance with Good Utility Practice and at substantially the same quality and level of service as such services are provided to ICWD Customers. At a minimum, the level of service shall meet industry standards.

Article V. Governance and Oversight

Section 5.01 Joint Coordinating Committee. Through the execution of this Agreement, there is hereby created a Joint Coordinating Committee (the “**Joint Coordinating Committee**”) to oversee the administration of this Agreement and the provision of Water System Services by ICWD to Polk County Customers and Polk County (“**Oversight**”). The membership

of the committee will be comprised of the following individuals or their appointee: (1) the General Manager of ICWD; (2) the County Manager of Polk County or his designee; (3) two members appointed by the Polk Commission (who may or may not be members of the Polk County Commission and one of which is preferred to be a member of the Board of the Lake Adger Property Owners Association); and (4) one member to be appointed by the ICWD Commission. The County Manager of Polk County shall also be permitted to sit on the ICWD Commission; serving in an advisory role, with seat and voice but no vote.

Section 5.02 Powers of the Joint Coordinating Committee. The Joint Coordinating Committee shall monitor and oversee the implementation of this Agreement and the quality of customer service provided by ICWD and shall provide guidance to ICWD on all issues related to the joint administration of this Agreement and service to the Polk County System. In addition, the Joint Commission shall exercise the following powers under this Agreement:

- (a) It shall adopt the annual Capital Improvement Plan for the Polk County System;
- (b) It shall review, approve, and amend as necessary, plans for capital improvements and maintenance to the Lake Adger dam;
- (c) It shall coordinate customer service policies and terms and conditions of service related to the Polk County System to ensure that they are consistent across both the Polk County System and the ICWD System;
- (d) It shall have the right to inspect, copy and audit all financial records and customer service records related to service to the Polk County System by ICWD and may hire auditors to independently review such financial records;
- (e) It may hire experts to conduct analyses of rates, service-related issues, or other issues related to the operation of the Polk System with funds to be provided by Polk County;
- (f) If so authorized in the regulations of the Polk County System, it may act as the final arbiter of disputes between Polk County Customers and ICWD.
- (g) It shall ensure compliance with all applicable local, State and federal laws and regulations and specifically with all North Carolina Department of Environment and Natural Resources laws and regulations.

Section 5.03 Meetings of the Joint Coordinating Committee. The Joint Coordinating Committee shall meet initially within 45 days of the date first entered above and shall then meet thereafter so often as is necessary to adequately provide Oversight, but no less than twice annually to (1) approve the Capital Improvement Plan for the upcoming fiscal year and (2) to receive the Annual Report. At the initial meeting, the Joint Coordinating Committee shall adopt bylaws that further set forth the policies and procedures for the governance of the Joint Coordinating Committee and that set forth a means by which a special meeting of the Joint

[Coordinating Committee may be called by a majority vote of the governing board of either the ICWD or the Polk County Commission.](#)

Section 5.04 Compliance with Open Meetings and Records Laws.

(a) Meetings of the Joint Coordinating Committee shall be conducted in compliance with the laws of both North Carolina and South Carolina regarding meetings of public bodies.

(b) ICWD shall comply with the requirements of the South Carolina Freedom of Information Act as they pertain to open meetings, and all other public notifications required under South Carolina law, by publishing all notices required thereunder within Polk County in the same manner as is required for publishing such notices within South Carolina.

Section 5.05 Reporting Requirements. Annually, upon the later of thirty (30) days after the issuance of the audited financial statements of ICWD or ten days before the first meeting of the Joint Coordinating Committee held thereafter, ICWD shall provide to the Joint Coordinating Committee and to the Polk Commission an annual report (the “*Annual Report*”) containing the following information for the prior year:

(a) ICWD’s costs of providing service to the ICWD System and the Polk County System together, and the cost of providing service to the Polk County System individually;

(b) Revenues generated from the ICWD System and the Polk County System together, and the revenue generated from the Polk County System individually;

(c) A description of the nature, location, cost and status of capital projects and Transmission Expansion Projects undertaken by ICWD in the preceding fiscal year both for the ICWD System and the Polk County System;

(d) Information concerning droughts, service interruptions and boil-water notices that occurred in the preceding fiscal year; providing the date, cause, location and number of customers affected, and time for restoration of service for the Polk County System;

(e) Other financial, operational and customer service metrics as are necessary to ascertain the quality of service provided to Polk County Customers.

(f) Upon the completion of the Annual Report, at the request of Polk County, the General Manager of ICWD, or his designee, shall, as soon as is practicable thereafter, present the Annual Report to the Polk Commission and address any issues or answer any questions of the Polk Commission.

Section 5.06 Approval of Wholesale Water Sales. For the duration of the Initial Term, or any Subsequent Term of this Agreement, any proposed new agreement, by either Party, to sell water on a wholesale basis to any customer that is not located either within the ICWD service area or Polk County, shall, prior to execution, be submitted for approval by the ICWD Commission if the wholesale agreement is to be entered into by Polk County, or by the Joint Coordinating Committee if the wholesale agreement is to be entered into by ICWD. The approval or disapproval of such wholesale agreement by either body, as applicable, shall be binding upon the party requesting approval. Provided that sufficient water resources are available at the time the request is made, and are reasonably projected to be available for the entirety of the term of any such wholesale agreement, the approval of the applicable body shall not be unreasonably withheld.

Article VI. Compensation and Accounting for Revenues

Section 6.01 ICWD's Compensation; ICWD Reimbursement. ICWD shall be reimbursed for its costs and expenses in providing the Water System Services through the retention of the ICWD Reimbursement, less any additional charges imposed per Section 4.04.

Section 6.02 Disposition of Polk County System Revenues. ICWD shall create, pursuant to the requirements of this Agreement, the Polk County System Enterprise Fund (the "*Polk County Enterprise Fund*") which shall remain separately stated in the accounts of ICWD. Within this Fund, ICWD shall record all revenue generated by the Polk County System and included within the ICWD Reimbursement, with the exception of revenue generated by Additional Charges. ICWD may recover its ICWD Reimbursement by transferring amounts listed in the Polk County Enterprise Fund from time to time to other accounts.

Article VII. System Capital Investments

Section 7.01 Ownership of Polk County System Assets, Lease and Maintenance of Polk County Assets by ICWD. With the exception of any future water treatment facility, Polk County shall own all water system assets that are hereafter constructed by ICWD within Polk County to include any water intake facilities or associated facilities built within Polk County, along with any improvements to Lake Adger, pursuant to the terms of this Agreement. ICWD will provide Polk County with all documents necessary to reflect ownership of these assets in the records of Polk County. Any raw water intake facilities or transmission lines associated with such intake facilities constructed by ICWD located in Polk County to connect a water treatment plant or facilities located outside Polk County to a water resource located in Polk County shall be leased by Polk County to ICWD [for a period of seventy-five years from the effective date of this agreement](#) for the sum of one dollar per year. ICWD shall be responsible for all repairs and maintenance of any Polk County System Capital Assets leased by ICWD.

Section 7.02 Transmission Expansion Projects. ICWD will fund at Actual Cost expansion of the main trunk lines of the Polk County System through Transmission Expansion Projects at the greater of one hundred thousand dollars (\$100,000) per year (annually adjusted for inflation in accordance with percentage increases in the Consumer Price Index ("CPI")) or 5% of the gross revenue received from the ICWD Reimbursement, whichever is greater. Priority

Jana Berg 8/11/15 2:45 PM

Deleted: for so long as ICWD retains water withdrawal rights as provided in Articles VIII and IX of the agreement

for Transmission Expansion Projects shall be for “Backbone” lines as identified at Exhibit “___”, attached hereto and incorporated herein by reference. In the event that the amount spent on Transmission Expansion Projects in any year is greater or less than the amount provided for herein, the difference will be carried over into the next year to increase or reduce the investment required for Transmission Expansion Projects in that year; provided that no amount shall be carried over for more than three years. It is the intent of this Agreement for ICWD to utilize in-house personnel and equipment for such projects unless it demonstrates that a project is beyond its own in-house capabilities.

Section 7.03 Distribution Expansion Investment. ICWD shall make capital available for defraying the Actual Cost of Distribution Expansion Projects according to the distribution expansion policy contained in Polk County’s terms and conditions of service which, pursuant to the terms of this Agreement, shall be identical to the ICWD Water Line Extension Policy, as shown in its current form in **Exhibit B** attached hereto, as it may be amended from time to time (the “*Distribution Expansion Policies*”). Under the ICWD Water Line Extension Policy existing at the time of the execution of this Agreement, ICWD provides 55% of the cost of a Distribution Expansion Projects at the request of a customer, provided that such customer or other third-party provides the remaining 45%. The Distribution Expansion Policies of ICWD are subject to change in the same manner as ICWD may amend other terms and conditions of service. It is the intent of this Agreement for ICWD to utilize in-house personnel and equipment for such projects unless it demonstrates that a project is beyond its own in-house capabilities.

Section 7.04 Supplemental Funding of Expansion Projects. Polk County may provide supplemental funding for Transmission and Distribution Expansion Projects at its discretion. Such supplemental funding may be provided directly by Polk County or may be generated from Additional Charges (as provided for in Section 3.03). Unless prevented from doing so by engineering, permitting, right-of-way or other binding constraints imposed by third parties, ICWD shall publicly bid and have a contractor construct any lines requested by Polk County so long as Polk County pays any costs above those which ICWD is obligated to pay under this Agreement. It is the intent of this Agreement for ICWD to utilize in-house personnel and equipment for such projects unless it demonstrates that a project is beyond its own in-house capabilities.

Section 7.05 Transmission Expansion Project Approval. Prior to annual submission of the Capital Improvement Plan (as provided for in Section 7.06), ICWD shall provide the Polk Commission with information concerning Transmission Expansion Projects that ICWD anticipates undertaking for the coming year; including the size and location of lines to be constructed in such project. ICWD and Polk County shall each agree to the size and location of lines included in Transmission Expansion Projects.

Section 7.06 Capital Improvement Plan. Prior to the beginning of each Fiscal Year, ICWD shall submit to the Joint Coordinating Committee and the Polk Commission a Capital Improvement Plan that shall include the size and location of Transmission Expansion Lines as well as any other Capital Projects that ICWD anticipates it will undertake in the upcoming Fiscal

Year (the “*Capital Improvement Plan*”). The Polk Commission shall have the right to suggest Capital Projects to be undertaken in the coming year and the Joint Coordinating Committee shall review and evaluate the recommendations for inclusion in the Capital Improvement Plan for the upcoming year. The Capital Improvement Plan shall include the budget for each such Capital Project. The Capital Improvement Plan shall also indicate the amount of capital investment that ICWD anticipates will be required for the upcoming Fiscal Year, pursuant to the requirements of Section 6.02, as well as any amounts necessary to true-up any under or over-expenditures from the prior period. Based upon this information, the Joint Coordinating Committee shall formulate and approve the annual Capital Improvement Plan for the Polk County System. In the event that ICWD determines that mid-period changes to the Capital Improvement Plan are necessary, such changes shall be submitted in a like manner to the Joint Coordinating Committee for approval.

Section 7.07 Lake Adger Investments and Maintenance.

(a) ICWD shall undertake and bear the cost of any maintenance and improvements to the Lake Adger dam that are required in order to correct the current deficiencies in the Lake Adger dam structure that are identified by the North Carolina Division of Energy, Mineral and Land Resources in the Dam Safety Inspection Report: Turner Shoals Dam, prepared by AECOM and dated January 9, 2014 (the “*Dam Report*”). All such maintenance and improvements to the Lake Adger dam shall be considered Capital Projects. It is the expectation of the parties that repairs to correct the current deficiencies will be completed in accordance with the requirements imposed by the North Carolina Division of Energy Mineral and Land Resources. All such maintenance and improvements to the Lake Adger dam shall be completed by January 1, 2019.

(b) At such time as it is determined the deficiencies in the Lake Adger Dam structure that are identified in the Dam Report have been rectified, ICWD shall for seventy-five years invest amounts necessary to maintain the dam as a source of raw water consistent with Good Utility Practice and in accordance with the requirements imposed by the North Carolina Division of Energy Mineral and Land Resources. Polk County shall contribute to the dam maintenance in amounts equal to their pro-rata share of water withdrawal.

Article VIII. Transfer and Assignment of Lake Adger

Withdrawal

Section 8.01 Assignment of Right of Withdrawal from Lake Adger.

(a) Pursuant to the authorization of N.C. Gen. Stat. §§ 143-215.44 through 143.215.50, and in consideration for the provision of the Water System Services for the duration of the Initial Term and any Subsequent term of this Agreement, and for the cost to ICWD of all Capital Projects, including, but not limited to, the

construction of all Expansion Projects and investments in the Lake Adger dam, Polk County hereby assigns and transfers to ICWD the right to withdraw Excess Volumes of Water from Lake Adger, or from a point on the Green River below Lake Adger (the “**Lake Adger Withdrawal**”), for a total amount (including the Green River Withdrawal) of eight million gallons per day (MGD), provided, however, ICWD shall make available to Polk County upon demand up to two million gallons per day (MGD) of the Lake Adger Withdrawal.

(b) The use of water from the Lake Adger Withdrawal shall be subject, in all instances and at all times, to the limitations on lowering the level of Lake Adger contained in Section 8.02 herein.

(c) The term of Polk County’s assignment and transfer of the rights to the Lake Adger Withdrawal shall extend for a period of seventy-five years from the effective date of this agreement.

(d) The terms, conditions, and other provisions related to the Lake Adger Withdrawal are more fully provided for in the Memorandum of Recording, attached hereto as **Exhibit C**, and incorporated, in their entirety, into this Agreement by reference.

Section 8.02 Lake Adger Water Levels. In the event that ICWD makes use of the Lake Adger Withdrawal, ICWD shall, at all times first make maximum use of all other water resources reasonably available, based upon applicable permits and other regulatory restrictions, environmental restrictions in place at any given time and Good Utility Practices, in order to minimize the impact that the use of Lake Adger as a raw water resource may have on Lake Adger water levels. Except in emergency situations, or in the event that drought conditions are declared, by the applicable state agencies, in the ICWD service area, the Polk County area, or an area having an effect on the watershed in Polk County, no raw water withdrawal from the Lake Adger Withdrawal shall occur that will reduce the lake water surface elevation.

Section 8.03 Payment of Costs. ICWD shall pay for all costs related to the (1) acquisition, maintenance, and upkeep of the necessary permits, registrations, or other regulatory approvals; (2) the engineering and construction of any lines or other facilities necessary withdrawal of the Lake Adger Withdrawal; (3) the maintenance, improvement, renewal or replacement of any lines or other facilities necessary for the transmission of the Lake Adger Withdrawal to ICWD; and (4) and fines or penalties associated with permitting and regulatory compliance..

Section 8.04 Regulation of Lake Adger. For so long as ICWD makes use of raw water supplies from the Lake Adger Withdrawal, Polk County shall cooperate with ICWD to take such regulatory action that is reasonable and necessary in order to manage Lake Adger as a viable source of raw water that meets ICWD’s needs and requirements and as a recreational resource for Polk County. ICWD shall within a reasonable time reimburse Polk County for costs

Polk County reasonably incurs in regulating Lake Adger so as to maintain its status as a viable source of raw water.

Section 8.05 Survival of this Article. It is the express intent of the Parties that the obligations contained in this Article survive the expiration or termination of the remaining obligations of this Agreement pursuant to the provisions of Article X, without regard for whether ICWD has made a demand upon Polk County prior to the expiration or termination of this Agreement for the delivery of the Raw Water Withdrawal. The Parties acknowledge and stipulate that the provisions of this Article shall be a reasonable measure of part of the benefit received by Polk County for ICWD's performance under this Agreement, *quantum meruit*. This stipulation is severable from any other terms of this Agreement.

Article IX. Green River Withdrawal

Section 9.01 Request for Green River Withdrawal. In further consideration for the provision of the Water System Services for the duration of the Initial Term and any Subsequent term of this Agreement, and for the cost to ICWD of all Capital Projects, including the construction of all Expansion Projects and investments in the Lake Adger dam, Polk County shall, upon request of ICWD, and subject to the additional terms of this Article, make available to ICWD raw water up to the amount of two MGD, sourced from the Green River (the "**Green River Withdrawal**"). All volumes of the Green River Withdrawal shall be included in any portion of the withdrawal capacity of the Green River that is designated as the Excess Volumes of Water of the Lake Adger Withdrawal. In the event that, due to the enactment of any law, rule, regulation, regulatory decision, opinion or order, or due to the prior riparian rights of other parties to the withdrawal capacity of the Green River, Polk County is unable to make available to ICWD the maximum amount of the Green River Withdrawal, Polk County shall make available to ICWD the maximum amount of raw water available under such law, rule, regulation, regulatory decision, opinion or order, or then available subject to the riparian rights of other entities.

Section 9.02 Term. The term of ICWD's rights to the Green River Withdrawal shall extend for a period of seventy-five years from the effective date of this agreement.

Section 9.03 Priority. Upon such time as ICWD requires Polk County to make available the Green River Withdrawal, the permitted withdrawal capacity shall be allocated in accordance with need in the following priority: (1) Polk County Customers, (2) ICWD Customers, and (3) customers located outside of Polk County or ICWD's service district. In the event that Polk County determines that it is necessary to commence any surface water withdrawal, on its own behalf, from either Lake Adger or the Green River such withdrawal shall not impair ICWD's right to the Green River Withdrawal to ICWD on some future date. Any permit, authorization or registration for surface water withdrawals from Lake Adger or the Green River shall, in all instances, take into account the right of ICWD to the maximum amount of the Green River Withdrawal. However, ICWD's right to the Green River Withdrawal shall be subject to ICWD's reservation of raw water for Polk County to meet the actual water requirements of Polk County to provide Water Service to Polk County Customers.

Section 9.04 Permitting the Green River Withdrawal.

(a) Upon request of ICWD, Polk County shall take all actions necessary to permit, register, or otherwise acquire the regulatory approvals required at such time, in order to permit Polk County to withdraw the Green River Withdrawal. In the event that ICWD initially requires less than the maximum amount of the Green River Withdrawal, ICWD may make additional requests upon the Green River Withdrawal in the future, up to the maximum amount, and Polk County shall then take all actions necessary to amend the necessary permit, registration, or other regulatory approvals to increase the amount of raw water withdrawn thereunder. Polk County shall take all action required under this Section in good faith and with reasonable expediency.

(b) Polk County shall provide such assistance, approvals or support as is reasonably necessary for ICWD to obtain the appropriate watershed classification from the North Carolina Department of Environment and Natural Resources. ICWD shall pay Polk County's out-of-pocket costs for such assistance.

Section 9.05 Location of Green River Withdrawal.

(a) The point along the Green River at which ICWD shall locate any water intakes or other facilities necessary to withdraw the volumes of water provided for hereunder shall be determined by ICWD, subject to the approval of Polk County, which approval shall not be unreasonably withheld.

(b) At the discretion of ICWD, the Lake Adger Withdrawal may be withdrawn from the Green River at the same location and using the same facilities as the Green River Withdrawal, but in all cases the volumes of water of the Green River Withdrawal and the Lake Adger Withdrawal shall be considered separate and distinct from each other.

(c) Polk County shall assist ICWD in the acquisition of all necessary crossing or encroachment permits or other regulatory approvals necessary for the construction of the facilities necessary to withdraw the volumes of raw water provided for herein. Furthermore, at ICWD's reasonable request, Polk County shall make use of its power of eminent domain to support ICWD in the construction of intake facilities, transmission lines, appurtenances or other water system assets within Polk County necessary to permit the withdrawal of raw water from the Green River. However, prior to the use of eminent domain powers, ICWD shall exhaust all reasonable efforts to acquire the desired interests on behalf of Polk County. All costs incurred by Polk County from the use of eminent domain shall be borne by ICWD.

Section 9.06 Payment of Costs. ICWD shall pay for all costs related to Polk County's (1) acquisition, maintenance, and upkeep of the necessary permits, registrations, or other regulatory approvals for the Green River Withdrawal; (2) the engineering and construction of any lines or other facilities necessary for the delivery of the Green River Withdrawal; and (3) the

maintenance, improvement, renewal or replacement of any lines or other facilities necessary for the delivery of the Green River Withdrawal.

Section 9.07 Survival of this Article. It is the express intent of the Parties that the obligations contained in this Article survive the expiration or termination of the remaining obligations of this Agreement pursuant to the provisions of Article X, without regard for whether ICWD has made a demand upon Polk County prior to the expiration or termination of this Agreement for the delivery of the Green River Withdrawal. The Parties acknowledge and stipulate that the provisions of this Article shall be a reasonable measure of part of the benefit received by Polk County for ICWD's performance under this Agreement, *quantum meruit*. This stipulation is severable from any other terms of this Agreement.

Article X. Term and Termination

Section 10.01 Term. This Agreement shall be effective upon the date first entered above and shall extend for the Initial Term. This Agreement shall automatically renew for three successive ten-year Subsequent Terms upon the end of the Initial Term and the expiration of any successive term unless a Party to this Agreement notifies the other Party, in writing, no later than one year prior to the end of the then-current term of that Party's intent to terminate this Agreement at the next expiration date.

Section 10.02 Breach; Termination.

(a) Upon the failure of either party to satisfy a material provision of this Agreement, the other party may declare that such violating party is in default. Such non-defaulting party shall issue a written notice of default to the defaulting party identifying the breach. The defaulting party shall have thirty (30) days following the receipt of the notice of default to cure the default. If the default cannot be cured within thirty days, the defaulting party may request an extension of time to cure the default. Any extension must be in writing. If the default is not cured within the thirty days or within the extension period, the non-defaulting party may terminate this Agreement pursuant to the terms provided for herein. Either party, if a non-defaulting party, may pursue an action to require the defaulting party to specifically perform its obligations under this Agreement. A material breach of this Agreement shall include, but not be limited to, (i) the failure of ICWD to correct the deficiencies in the Lake Adger Dam; (ii) the failure of ICWD to maintain and operate the water system consistent with Good Utility Practices; (iii) the failure of Polk County to maintain fees, rates, charges, and terms and conditions of service substantially identical to those of ICWD as required herein; (iv) the filing of a petition against either party under the provisions of any state insolvency law or under the provisions of the Federal Bankruptcy Act; or (v) the appointment by a court of competent jurisdiction of a receiver for the water system of either Party. In the event that either party materially breaches this Agreement within two (2) years of the date first written

above, the breaching party shall compensate the non-breaching party for legal fees actually incurred in the drafting and negotiation of this Agreement.

(b) Upon termination or expiration of this Agreement for any other reason, including but not limited to a determination by a court of competent jurisdiction that the obligations of either Party to this Agreement are invalid under the laws of South Carolina, North Carolina or federal law, ICWD and Polk County shall be responsible for any reasonable and necessary costs of segregating the ICWD System from the Polk County System to allow each system to adequately serve its respective customers.

(c) The Parties acknowledge and stipulate that the consideration provided for in Section 6.01, along with Articles VIII and IX, shall be a reasonable measure of the benefit received by Polk County for ICWD's performance under this Agreement, *quantum meruit*. This stipulation is severable from any other terms of this Agreement.

Section 10.03 Assistance Upon Termination. Upon termination, ICWD shall provide, at no cost to Polk County, any assistance necessary to transfer to Polk County all billing, accounting and customer service information, system design and operations data, warranty information and contractual rights necessary for a smooth transition of the Water System Services to Polk County.

Section 10.04 Allocation of Plant Capacity Upon Expiration or Termination. In the event that ICWD constructs the Plant, at such time as this Agreement expires or terminates, ICWD shall make available to Polk County capacity in the Plant for the duration of seventy-five years. The rate at which ICWD shall make such capacity available shall be ICWD's Actual Cost of delivering treated water to Polk County, as determined by the application of Generally Accepted Accounting Practices and Good Utility Practices to rate-making. Other terms and conditions upon which ICWD makes capacity available to Polk County shall be determined by the Parties at that time.

Section 10.05 Survival of Rights Upon Termination. The rights set forth in this Article III, Section 5.06 of Article V, Section 7.07 of Article VII, Article VIII, Article IX and Article XI shall remain in force and effect pursuant to the respective terms therein. It is the express intent of the parties that the provisions of Article III, Section 5.06 of Article V, Section 7.07 of Article VII, Article VIII, Article IX, Article X, Sections 10.03 and 10.04 and Article XI shall be severable from the other terms of the Agreement and shall survive expiration or termination of the Agreement for any reason.

Section 10.06 Reservation of Remedies. No provision of this Agreement shall be construed as a waiver by the Parties hereto of any legal or equitable remedies that the Parties may have for a claim for damages in the event that either Party is unable to perform with its obligations hereunder for any reason, including but not limited to, any change in applicable law, the denial of any applicable permits or the unavailability of surface water capacity upon demand.

Section 10.07 Formation of Joint Authority. The intent of the Parties is to create a joint water authority at such time as such entity is permitted by the laws of both South Carolina and North Carolina. In the event that such a joint authority may be formed, the Parties may, upon mutual agreement, determine to terminate or assign, transfer or convey the rights, obligations and duties arising hereunder to such entity at that time.

Article XI. Miscellaneous

Section 11.01 Effect on the Broad River Line Agreement. The Parties hereby incorporate the provisions of the Broad River Water Line Agreement, in their entirety, by reference. The provisions of the Broad River Water Line Agreement shall, in all cases, control any and all dealings between Polk County and BRWA or ICWD and BRWA. By the execution of this Agreement, the Parties hereby agree that the provisions of this Agreement shall supersede the provisions of the Broad River Line Agreement for the duration of the Initial Term or any Subsequent Term of this Agreement, as to the dealings between ICWD and Polk County, in the following instances:

- (a) The entirety of Section 6 of the Broad River Line Agreement, as amended (“**Section 6**”), shall be of no further effect as between ICWD and Polk County, such that the terms of this Agreement shall supplant entirely the thirteen (13) year term of Section 6 and the terms of Section 6 by which ICWD (i) operates and maintains the Broad River Line and any distribution lines pursuant to Section 6.1; (ii) collects and retains fees, along with provisions as to how such fees are set, pursuant to Section 6.2; and (iii) has responsibility, with the approval of Polk County, for the design and construction of distribution lines pursuant to Section 6.3.
- (b) The following provisions shall supplant those of Section 7 of the Broad River Line Agreement (“**Section 7**”) as to the relationship between Polk County and ICWD:
 - (i) As to Section 7.1, ICWD shall have the right to transport water through the Broad River Line (referred to in the Broad River Water Line Agreement as the Polk County Line) for the later of the duration of the term of the Broad River Agreement, as it may be extended upon the Agreement of the Parties from time-to-time, or the duration of the Initial Term or any Subsequent Term of this Agreement.
 - (ii) As to Section 7.2, ICWD shall remain responsible for, and pay the costs of, maintenance to the Broad River Line, as being incidental to ICWD’s obligations hereunder to provide O&M Services for the later of the duration of the term of the Broad River Agreement, as it may be extended upon the Agreement of

the Parties from time-to-time, or the duration of the Initial Term or any Subsequent Term of this Agreement.

- (iii) As to Section 7.3, ICWD shall retain the right to recover from responsible third parties the costs of repair, both material and labor, to the Broad River Line resulting from negligent acts or omissions. ICWD shall, however, be responsible for any repairs to the Broad River Line required by or resulting from any taps or connections made by Polk County or on behalf of Polk County by ICWD.

(c) Upon the expiration of the Broad River Line Agreement, in the event that the Initial Term or any Subsequent Term has been allowed to expire without renewal as provided in Section 10.01, Sections 3.01(a) and 3.03(a) shall be of no further affect. The remaining terms of this Agreement, including but not limited to the pooling of other water resources of the Parties, the prioritization of water resources, and the water rights provided hereunder, shall remain in effect and shall otherwise remain unaffected.

(d) The provisions of this Section 11.01 shall continue to supersede those of the Broad River Line Agreement for such time as both this Agreement and the Broad River Line Agreement have not expired or been terminated. Upon the expiration or termination of either of this Agreement or the Broad River Line Agreement, the provisions of the remaining agreement shall remain unaffected.

Section 11.02 Representations of the Parties. Each of the Parties hereby represents that it is a validly created governmental entity that it has taken all action required of it to authorize the execution and delivery of this Agreement and to authorize the performance its obligations contained herein.

Section 11.03 No Pledge of System Assets. ICWD and Polk County agree that neither party shall pledge or encumber the assets of the Polk County System without the express written approval of the other party.

Section 11.04 Accounting Principles. Matters of expense, revenue, capital cost, depreciation and amortization will be recognized and allocated according to consistently applied Generally Accepted Accounting Principles.

Section 11.05 Compliance with North Carolina Statutes; Public Bidding Laws. ICWD and Polk County agree to comply with all North Carolina statutes, laws and regulations applicable to the actions required by this Agreement. At a minimum, ICWD and Polk County shall comply with North Carolina Public Bidding requirements for any Capital Projects undertaken for the Polk County System.

Section 11.06 Additional Members. Upon the approval of both Parties, this Agreement may be amended to include additional North Carolina or South Carolina municipalities, public water systems or other governmental entities.

Section 11.07 Effects of Force Majeure. If by reason of Force Majeure either Party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then such Party shall give notice and full particulars of such Force Majeure in writing to the other Party within a reasonable time after occurrence of the event or cause relied on, the obligation of such Party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such Party shall endeavor to remove or overcome such inability with all reasonable dispatch.

Section 11.08 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by certified or registered mail, postage prepaid, and addressed as follows:

As to ICWD:
Attn: General Manager
Inman Campobello Water District
5 Prospect Street
Inman, SC 29349

As to Polk County:
Attn: County Manager
Polk County
P.O. Box 308
Columbus, NC 28722

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

Section 11.09 Beneficiaries. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors. or assigns only There are no third-party beneficiaries to this Agreement nor are any rights created in third parties as a result of this Agreement. No person may bring a claim under the terms of this Agreement except Polk County and ICWD.

Section 11.10 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless ICWD determines in its sole discretion that the provision invalidated a) makes it impossible for ICWD to collect the ICWD Reimbursement, or b) prevents ICWD from effectively using the Raw Water Withdrawal, as a future source of raw water.

Section 11.11 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.12 Governing Law. This Agreement is prepared and entered into with the intention that, wherever possible, the law of the State of South Carolina shall govern its construction.

Section 11.13 Jury Trial. The Parties waive the right to jury trial in any action arising under this Agreement.

Section 11.14 Time. Time is of the essence of this Agreement.

Section 11.15 Claims and Damages. Neither Party shall be liable to the other for special or punitive damages, or lost profits. The Parties acknowledge that there are many uncertainties in the provision of water service, and that interruptions of service are possible due to line breaks, equipment failures, pollution of water supplies, and other reasons. The service rendered hereunder is not warranted to be free of interruption and no party shall have any claim for interruption or limitations of service or contamination of water supplies apart from actions for injunctive relief to correct the problems. In all cases, the parties may rely on Good Utility Practices in responding to emergencies and events.

Section 11.16 Indemnification and Hold Harmless. To the extent provided by law and without waiving governmental immunity or the limitations as to damages in the North Carolina State Tort Act, ICWD agrees to indemnify Polk County and hold it harmless from, without limitation, all claims, demands, suits, causes of action, losses damages, injuries, costs (including attorneys' fees), expenses, judgments and liabilities of every kind or character arising from or in any way related to the matters at issue in this Agreement or the use or the water described herein, including but not limited to matters sounding in contract, tort or otherwise and the negligence and strict liability of the parties hereto and their respective agents, directors, employees, representative and contractors, even in the event of Polk County's fault or negligence but excluding Polk County's willful misconduct or gross negligence, it is expressly understood and agreed that, in the execution of this contract, no party waives nor shall be deemed hereby to waive any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. ICWD specifically agrees to indemnify Polk County and hold it harmless from, without limitation, any claims, demands, suits, causes of action, losses damages, injuries, costs (including attorneys' fees), expenses, judgments and liabilities of every kind or character arising from or in any way related to the Broad River Line Agreement.

Section 11.17 No Assignment. This contract shall not be assigned or transferred by any party without the express written consent of the other party.

Section 11.18 Insurance. ICWD shall maintain comprehensive general liability insurance with coverage limits of at least \$1,000,000 each occurrence and \$2,000,000 aggregate. In addition, ICWD shall maintain automobile liability and workers' compensation coverage for its employees. Automobile liability limits shall be \$1,000,000 each occurrence and workers' compensation coverage must provide for workers'

compensation statutory limits and employer liability limits of \$1,000,000. ICWD shall annually provide Polk County with evidence of coverage in the form of a Certificate of Insurance naming Polk County as an Additional Named Insured and providing further that such coverage may not be terminated or cancelled without thirty (30) days written notice to Polk County as an Additional Named Insured.

Section 11.19 No Warranties. EXCEPT AS PROVIDED FOR IN SECTION 2.01 HEREIN, NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE GIVEN FOR THE WATER SUPPLIED HEREUNDER

Section 11.20 Amendments. This Agreement may not be amended, changed, modified or terminated without in each instance the prior written consent of the Parties hereto.

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DRAFT

SIGNATURE PAGE OF
INMAN-CAMPOBELLO WATER DISTRICT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement for Water System Services to be signed in their names by their duly authorized officers as of the date first written above.

**INMAN-CAMPOBELLO WATER DISTRICT,
SOUTH CAROLINA**

By: _____ [Seal]

Print Name: _____

Title: _____

Witness:

Secretary

SIGNATURE PAGE OF
POLK COUNTY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement for Water System Services to be signed in their names by their duly authorized officers as of the date first written above.

POLK COUNTY, NORTH CAROLINA

By: _____ [Seal]

Print Name: _____

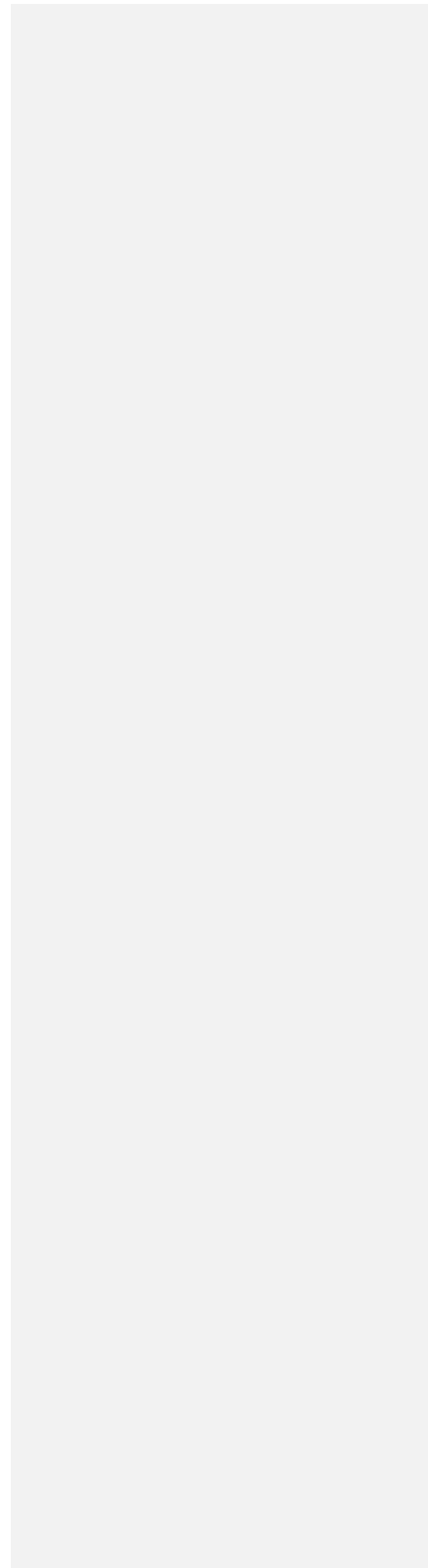
Title: _____

Witness:

Clerk

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Summary report: Litéra® Change-Pro TDC 7.5.0.112 Document comparison done on 10/23/2014 2:26:06 PM	
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Intelligent Table Comparison: Active	
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Modified filename: Polk County Agreement - Anthony Fox Original Revisions.docx	
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Delete	137
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Move To	4
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	384