

AMENDED AND RESTATED JOINT GOVERNMENTAL AGREEMENT

This Agreement is entered into this ____ day of _____, 2016 and is among **PIEDMONT TRIAD REGIONAL WATER AUTHORITY** (the “Authority”), an authority created under N.C.G.S. § 162A-3.1, and the following: **CITY OF ARCHDALE, CITY OF GREENSBORO, CITY OF HIGH POINT, TOWN OF JAMESTOWN, CITY OF RANDLEMAN, and COUNTY OF RANDOLPH** (collectively, the “Members”).

Background Statement

The parties hereto entered into a Joint Governmental Agreement dated September 18, 1987 (the “1987 Agreement”), pursuant to which the Members agreed, among other things, to provide funds to the Authority to acquire land and construct Randleman Dam, a reservoir and related facilities. The 1987 Agreement also provided that financing of the first phase (12 MGD capacity) of a water treatment plant (the “Water Treatment Plant”) and related facilities would be financed with revenue bonds (together with future Authority revenue bonds, the “Revenue Bonds”) of the Authority and contemplated that debt service on the Revenue Bonds, as well as the Authority’s operating costs, would be funded through payments from the Members to the Authority. To that end, the parties entered into a Joint Governmental Agreement in 2007 (the “2007 Agreement”) that supplemented and amended the 1987 Agreement. In connection with an expansion of the treated water production capacity of the Water Treatment Plant (the “Expansion”), the parties are entering into this Agreement, which amends and restates the 2007 Agreement. Also, the City of Archdale has by separate agreement purchased a portion of Randolph County’s ultimate ownership allocation, which requires changing the percentages for those Members on Exhibit C.

The Agreement

The parties agree as follows:

1. **Members’ Rights Concerning Treated Water.** Upon completion of the Expansion, each Member shall have the right to receive monthly from the Authority, and the Authority shall make available monthly to each Member at the connection between its pipelines and those of the Members, the percentage of the Authority’s initial 12 MGD of treated water corresponding to the percentage indicated for that Member as a Firm Allocation on Exhibit A plus the percentage of the Authority’s additional treated water resulting from the Expansion corresponding to the percentage indicated for that Member as a Expansion Firm Allocation on Exhibit D. Members shall have the right to produce their own treated water and to buy treated water from parties other than the Authority, including other Members. Members shall also have the right to sell to other parties (including other Members) (i) treated water (regardless of its source) and (ii) rights to receive treated water from the Authority, but in neither event shall the obligations hereunder be altered, except to the extent the selling Member’s obligations hereunder have been actually discharged by the buyer. Upon request of any Member, the Authority shall increase production of treated water by the Water Treatment Plant if (i) the Authority determines

that such expansion is technically and economically feasible applying prudent utility practice standards and (ii) the Members wanting to receive a portion of the increased production agree to their respective percentages thereof.

2. **Payments by Members to the Authority.** In connection with the Expansion, Exhibit B is being revised (to reflect that Greensboro and High Point provided funds under the second paragraph of Section 2(b) for the Revenue Bond-financed first phase of the Water Treatment Plant) and Exhibits D and E are being added to this Agreement. Such Exhibits shall take effect under this Section 2 on and after the date treated water is first delivered pursuant to the Expansion and shall also apply prior to that date with respect to any expenditures incurred by the Authority as a result of the Expansion.

As payment for treated water delivered or made available by the Authority or expected to be delivered or made available by the Authority, the Members shall pay the Authority as follows (regardless of whether treated water is actually available or taken):

(a) By the 15th day of each month each Member shall pay to the Authority its share, as indicated below, of the Authority's total expenditures ("Water Treatment Expenditures") for the previous month, other than Authority expenditures described elsewhere in this Section 2 (such shares being Member "Water Treatment Obligations"). The Members shall be obligated to pay the Authority for its Water Treatment Expenditures relating to their respective Firm Allocations on Exhibit A and their respective Expansion Firm Allocations on Exhibit D regardless of whether those allocations are actually taken. The Expansion Firm Allocations are 25% of the Total Expansion Allocations, as indicated on Exhibit D. The Members shall be obligated to pay the Authority for its Water Treatment Expenditures relating to their respective Excess Allocations on Exhibit D only to the extent they actually take those allocations. The Members shall be billed by the Authority for Water Treatment Expenditures at the prevailing per 1,000 gallon rate, as determined by the Authority on an annual basis. The calculation of the billed volume of water a Member has taken per day shall be made each calendar month, based on the average amount of water taken per day during that month.

In August of each year each Member shall pay to the Authority its share of the Authority's total administration expenditures for that fiscal year (the "Administration Obligations"). The Members' shares of the Authority's administration expenditures shall be the percentages on Exhibit C.

Subject to the provisions of Section 6, upon notice from the Authority that a Member has not made its Administration Obligation or Water Treatment Obligation payment in full, each other Member shall promptly pay to the Authority as additional Administration Obligation or Water Treatment Obligation payments its pro rata share (based on its percentage of the total amount due from Members (other than the defaulting Member) under the first paragraph of this subsection (a)) of the defaulted amount, except that no Member shall be obligated to pay more than 150% of the amount due from it under the first paragraph of this subsection (a). Such payments shall not affect the obligations of the defaulting Member; and if defaulted amounts are subsequently received or collected from the defaulting Member, such amounts (including interest thereon) shall be paid to the Members making up the defaulted amounts based on their respective percentages thereof.

(b) (i) Except as provided in the following paragraph, each Member shall pay, by 10:00 a.m. two business days before due from the Authority, its percentage as indicated on Exhibit B of any amounts due from the Authority to the trustee for the holders of the Revenue Bonds, including, without limitation, amounts due for debt service and debt service reserve fund maintenance with respect to the Revenue Bonds; and (ii) if any Member fails to pay in full the amount owed by it under clause (i), each Member shall pay, subject to the provisions of Section 6, by 10:00 a.m. on the day due from the Authority, each Member's pro rata share (based on the percentages in Exhibit B, excluding the percentage for the defaulting Member) of the defaulted amount, except that no Member shall be obligated to pay more than 150% of the amount due from it under clause (i) (collectively, the "Debt Service Obligations").

Any Member shall be excused in whole or in part from the Debt Service Obligations described in clause (i) above with respect to any series of Revenue Bonds to the extent that it provides to the Authority an amount equal to its share (based on the percentages in Exhibit B) of the costs (other than expected issuance costs and debt service reserve fund and capitalized interest funding) otherwise to be financed by that series of Revenue Bonds, and does so at least two months before the scheduled issuance of those Revenue Bonds. In that case, the other Members' Exhibit B percentages shall be adjusted accordingly. It is anticipated that Exhibit B will be revised with each issuance of Revenue Bonds after the initial issuance of Revenue Bonds.

(c) Each Member shall pay its share of the capital costs of the Expansion based on the percentages indicated on Exhibit E. The Authority shall bill for such costs annually and upon completion of the Expansion.

(d) Exhibits A, B, C, D and E represent (and any future amendments thereto will represent) a good faith effort by the parties to allocate the Water Treatment Obligations, Administration Obligations and Debt Service Obligations (collectively, the "Payment Obligations") fairly among the Members based on their present and expected future requirements for treated water from the Authority and their long-term benefits from the improvements financed with the Revenue Bonds. The Authority shall determine all amounts referred to above in this Section 2 and shall give timely notice thereof to the Members.

(e) Each Member shall budget for and appropriate amounts sufficient to satisfy its Payment Obligations (subject to the limitations imposed by Section 3). Except as provided in Section 3, the Payment Obligations shall be absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms hereof and without abatement or reduction under all circumstances whatsoever, including whether or not any facility of the Authority is completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of any such facility or the treated water contracted for, and that such obligations shall not be subject to any reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the Authority or any Member under this Agreement or any other instrument. Amounts not paid when due shall bear interest until paid at any interest rate to be determined from time to time by the Authority. The second sentence of Section 3 of the 1987 Agreement is deleted therefrom.

3. Limited Nature of Payment Obligations. Each Member shall satisfy its Payment Obligations from its revenues (the "Water and Sewer Revenues") from the operation of

its water system and its sanitary sewer system (“Water and Sewer System”), if it has one; or if such revenues are not sufficient therefor may satisfy its Payment Obligations from any moneys except moneys derived from any exercise by the Member of its taxing powers. The Payment Obligations are unsecured and do not constitute or result in any direct or indirect pledge of the taxing power of the Members.

4. **Generation and Protection of Member Water and Sewer Revenues.** Each Member has not pledged or encumbered and will not pledge or encumber its Water and Sewer Revenues or if it has or does, any such pledge or encumbrance will apply only to Water and Sewer Revenues remaining after payment of its Water and Sewer System current expenses, expressly including its Payment Obligations. Each Member (other than the County of Randolph, so long as it does not have a Water and Sewer System) shall operate its Water and Sewer System as one or more enterprise funds and charge rates and fees such that sufficient Water and Sewer Revenues are generated to pay all costs of operating and financing its Water and Sewer System and satisfying its Payment Obligations. So long as it does not have a Water and Sewer System, the County of Randolph shall maintain unencumbered revenues derived from sources other than exercise of its taxing powers sufficient to satisfy its Payment Obligations.

5. **Other Covenants.** The parties will not take any action, fail to take any action or permit any action to be taken that would jeopardize the exemption of interest on the Revenue Bonds from gross income for federal income tax purposes (unless such Revenue Bonds were not intended to be federally tax-exempt when issued). The Authority shall:

(a) comply with the provisions of the documents pursuant to which the Revenue Bonds are issued;

(b) make all its records, documents and facilities available to the Members for inspection; and

(c) use its best reasonable efforts to deliver treated water to the Members at the times and in the amounts requested by the Members, subject to the limits described in Section 1.

(d) provide each Member with sufficient opportunity to review and comment on any Water Treatment Plant expansion or related capital improvement project undertaken by the Authority, and that the cost of any of such capital project will be allocated among the Members in an equitable manner based on the respective benefits received by each Member in the manner provided in Section 2(d) hereof; and

(e) provide each Member with sufficient opportunity to review and comment on the Authority’s annual operating and capital improvements budgets prior to adoption by the Authority.

6. **Remedies; Assuming Rights of Defaulting Members; Third Party Beneficiaries.** The parties acknowledge that they may have no adequate means to protect their rights under this Agreement other than by securing an injunction (i.e., a court order prohibiting a Member from violating this Agreement). The parties may enforce this Agreement by obtaining a preliminary and permanent injunction and any other appropriate equitable relief in any court of competent jurisdiction. The parties acknowledge that termination of rights of a defaulting

Member hereunder and the recovery of damages will not be an adequate means to redress a breach of this Agreement, but nothing in this Section shall prohibit the parties from pursuing any remedies in addition to injunctive relief, including termination of rights hereunder and recovery of damages. Section 7 of the 1987 Agreement is deleted therefrom. If a Member's rights hereunder are terminated due to default, other Members may assume all or any portion of the defaulting Member's rights to receive treated water by assuming its Payment Obligations hereunder with respect thereto; but the defaulting Member's obligations hereunder shall not be altered thereby, except to the extent that the defaulting Member's obligations have been actually discharged by other Members. If demand from Members exceeds the amount made available by the default, requesting Members' rights shall be pro rata based on their respective Firm Allocations on Exhibit A plus their respective Expansion Firm Allocations on Exhibit D. The holders of the Revenue Bonds, credit enhancers with respect to the Revenue Bonds, and the trustee for such holders shall be third party beneficiaries of this Agreement.

7. **Amendments.** This Agreement may be amended or terminated only by a writing signed by all parties, and may not be amended (except as contemplated herein) in any way that would have a material adverse effect on the interests of the holders of the Revenue Bonds. The parties anticipate amending this Agreement from time to time as described herein.

8. **Relation to 1987 Agreement and 2007 Agreement.** To the extent the provisions of this Agreement are inconsistent with the provisions of the 1987 Agreement or the 2007 Agreement, the provisions of this Agreement shall apply, and the 1987 Agreement and the 2007 Agreement shall be deemed amended to that extent. Except to that extent, the 1987 Agreement and the 2007 Agreement remain in effect and are reaffirmed.

9. **Term. Rights of Members Upon Termination.**

(a) This Agreement shall terminate and all rights and obligations hereunder shall cease 50 years after the date hereof.

(b) It is hereby acknowledged by the parties that the assets of the Authority, including, without limitation, the Randleman Dam, Water Treatment Plant and related distribution facilities, and the land associated therewith, have been funded by contributions and payments made by the Members pursuant to this Agreement, the 2007 Agreement and the 1987 Agreement. As such, the Members of the Authority are entitled to, and are deemed to own, an equitable interest in such assets and revenues of the Authority pro rata based on each Member's overall percentage allocation of the cost of such assets. Upon expiration or termination of this Agreement, the Authority shall not sell, lease, encumber, or otherwise transfer any rights or interests in or to any of the Authority's assets, including, without limitation, the Randleman Dam, the Water Treatment Plant and related distribution facilities, or any rights in or to the output or capacity of the same, without the prior written consent of at least two-thirds of the Members. The provisions of this Section shall survive the expiration and termination of this Agreement. Nothing in this Section shall be construed as limiting the right of the Authority to convey or encumber its assets prior to the termination of this Agreement.

10. **Miscellaneous.** This Agreement (together with the 1987 Agreement and the 2007 Agreement) constitutes the entire agreement among the parties as to the matters addressed herein

and therein and binds each of their successors and assigns. Neither this Agreement, nor any rights hereunder, may be assigned to any party hereto without the prior written consent of each of the other parties hereto; provided, however, that the Authority may assign its rights under this Agreement to any trustee for the Revenue Bonds as security therefor without consent of the Members. No waiver of any breach of this Agreement shall be construed as a waiver of any subsequent breach. This Agreement shall be construed and interpreted according to the laws of the State of North Carolina. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof or of the 1987 Agreement or the 2007 Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and attested by their properly authorized officials and their seals affixed, all on the ____ day of _____, 2016.

**PIEDMONT TRIAD REGIONAL WATER
AUTHORITY**

ATTEST:

Secretary

By: _____
Chairman

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Officer, Piedmont Triad Regional Water Authority

[Signature page – Amended and Restated Joint Governmental Agreement]

CITY OF ARCHDALE

ATTEST:

Clerk

By: _____
Mayor

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Officer, City of Archdale

[Signature page – Amended and Restated Joint Governmental Agreement]

CITY OF GREENSBORO

ATTEST:

Clerk

By: _____
Mayor

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Officer, City of Greensboro

[Signature page – Amended and Restated Joint Governmental Agreement]

CITY OF HIGH POINT

ATTEST:

Clerk

By: _____
Mayor

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Officer, City of High Point

[Signature page – Amended and Restated Joint Governmental Agreement]

TOWN OF JAMESTOWN

ATTEST:

Clerk

By: _____
Mayor

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Officer, Town of Jamestown

[Signature page – Amended and Restated Joint Governmental Agreement]

CITY OF RANDLEMAN

ATTEST:

Clerk

By: _____
Mayor

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Officer, City of Randleman

[Signature page – Amended and Restated Joint Governmental Agreement]

COUNTY OF RANDOLPH

ATTEST:

Clerk to the Board

By: _____
Chairman

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Officer, County of Randolph

[Signature page – Amended and Restated Joint Governmental Agreement]

EXHIBIT A

Percentages and amounts of treated water allocated to each Member from the first phase 12 MGD from the Water Treatment Plant

		<u>Firm</u> <u>Allocation</u>
Greensboro	53.08%	6.37 MGD
High Point	19.00%	2.28 MGD
Randleman	8.33%	1.00 MGD
Randolph County	10.42%	1.25 MGD
Jamestown	3.33%	0.40 MGD
Archdale	<u>5.83%</u>	<u>0.70 MGD</u>
	100.00%	12.00 MGD

EXHIBIT B

Revenue Bond Debt Service Percentages

Greensboro	0.0%
High Point	0.0%
Randolph County	64.21%
Randleman	6.72%
Jamestown	7.64%
Archdale	<u>21.43%</u>
	100.00%

EXHIBIT C

Ultimate Percentages of Ownership

	<u>Ownership</u>	<u>Total</u> <u>Allocation</u>
Greensboro	53.1%	25.50 MGD
High Point	19.0%	9.10 MGD
Randolph County	18.2%	8.75 MGD
Archdale	5.1%	2.45 MGD
Jamestown	2.5%	1.20 MGD
Randleman	<u>2.1%</u>	<u>1.00</u> MGD
	100.00%	48.00 MGD

EXHIBIT D

Amounts of treated water allocated to each Member from the Expansion

	Total Expansion <u>Allocation</u>	Expansion Firm Allocation <u>(25%)</u>	Excess <u>Allocation</u>
	<u>MGD</u>	<u>MGD</u>	<u>MGD</u>
Greensboro	1.46	0.366	1.1
High Point	0	0	0
Randleman	0	0	0
Randolph County	0	0	0
Jamestown	0.375	0.094	0.281
Archdale	0.859	0.215	0.644
Total	2.7	0.675	2.025

EXHIBIT E

Capital cost percentage responsibilities for Members with respect to the Expansion

	Expansion Capital Expense <u>Responsibility</u>
Greensboro	54.30%
High Point	0%
Randleman	0%
Randolph County	0%
Jamestown	13.89%
Archdale	31.81%
Total	100%