



**AGENDA
POLK REGIONAL WATER COOPERATIVE**

March 17, 2021 – 2:00 PM
Nora Mayo Hall
500 3rd Street NW
Winter Haven, FL 33881

ZOOM Virtual Meeting
<https://us02web.zoom.us/j/89297919384?pwd=ZGxKTEZzMjMvOVV2KzRmZnprTS85Zz09>
Call In: +1 (646)558-8656
Meeting ID: 892 9791 9384
Password: 909650

- A. Call to Order
- B. Recognition of new primary/alternate appointees of members
- C. Agenda Revisions
- D. Public Comments
- E. Consent Items
 - 1. Board of Directors Meeting Minutes
- F. Regular BOD Agenda
 - 2. City of Davenport - Alternative Water Supply (ACTION ITEM)

RECESS REGULAR BOD/COMMENCE PROJECTS BOD:

- G. Project BOD Agenda
 - 3. Combined Projects Update a. West Polk and Southeast PDRs (INFORMATION) b. Upper Peace WUP application (ACTION ITEM) b1. TeamOne Presentation b2. Fort Meade Letter of Objection c. Two Access Agreements (ACTION ITEM)
 - 4. Project Implementation Agreement Update - Nason Yeager

RECESS PROJECTS BOD/COMMENCE REGULAR BOD:

- H. Open Discussion
- I. Chairman / Executive Director Report
- J. Adjournment

In accordance with the American with Disabilities Act, persons with disabilities needing special accommodations to participate in this proceeding should contact the Polk County Communications Office not later than forty eight hours prior to the proceeding. Their offices are located in the Neil Combee Administration Building, 330 West Church Street in Bartow. Telephone (863) 534-6090, TDD (863) 534-7777 or 1-800-955-8771, Voice Impaired 1-800-955-8770 via Florida Relay Service.

If a person decides to appeal any decision made by the board with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

March 17, 2021 Polk Regional Water Cooperative Regular Meeting
Agenda Item #1

SUBJECT

Board of Directors Meeting Minutes

DESCRIPTION

The Board of Directors (BOD) will consider approval of the minutes for:

- Regular PRWC BOD meeting – January 20, 2021

RECOMMENDATION

Consent Agenda - Recommend approval of minutes for referenced meetings.

FISCAL IMPACT

N/A



**MINUTES
POLK REGIONAL WATER COOPERATIVE**

January 20, 2021 – 2:00 PM
Advent Health Fieldhouse and Conference Center
210 Cypress Gardens Blvd.
Winter Haven, FL 33880

ZOOM Virtual Meeting
<https://us02web.zoom.us/j/85089279139?pwd=Z2huU0VzZXRqM0pwRVpydk9qaGtWZz09>
Call In: +1 (646) 558-8656
Meeting ID: 850 8927 9139
Password: 714836

Member Governments in Attendance:

Member Government	Representative
City of Auburndale	Mayor Tim Pospichal, Primary
City of Bartow	Commissioner Bill Simpson, Primary
City of Davenport	Commissioner Tom Fellows, Primary
City of Dundee	Commissioner Bert Goddard, Primary
City of Eagle Lake	In Absence, Commissioner Randy Billings, Primary
City of Fort Meade	Commissioner James Watts, Primary
City of Frostproof	In Absence, Vice Mayor Austin Gravley, Primary
City of Haines City	In Absence, Mayor Morris West, Primary
City of Lake Alfred	Attending Virtually, Commissioner Charles Lake, Primary
Town of Lake Hamilton	Mayor Mike Kehoe, Primary
City of Lake Wales	Commissioner Al Goldstein, Alternate
City of Lakeland	Mayor Bill Mutz, Primary (Secretary/Treasurer)
City of Mulberry	In Absence, Commissioner Collins Smith, Primary
City of Polk City	In Absence, Commissioner Joe LaCascia, Primary
Polk County	Commissioner George Lindsey, Primary (Vice Chair)
City of Winter Haven	Mayor Pro-Tem Nathaniel Birdsong, Primary

A. Call to Order

Meeting called to order by Vice Chair Lindsey at 2:06 PM and guidelines provided for the virtual and live meeting format.

Attachment: PRWC-Minutes 01-20-21 Draft v1.3 (9024 : Board of Directors Meeting Minutes)

B. Recognition of new primary/alternate appointees of members

No notices of new primary or alternate appointees were presented.

C. Agenda Revisions

No agenda revisions were presented.

D. Public Comments

No public comments were presented.

E. Regular BOD Consent Items

1. Board of Directors Minutes

a. September 16, 2020 Meeting Minutes

b. November 18, 2020 Workshop Minutes

2. Polk Regional Water Cooperative Meeting Schedule 2021

3. Auditing Services Engagement Letter (FY-20) – Brynjulfson CPA

4. Heartland Headwaters Protection & Sustainability Act Report – FY 2022

Motion made by Commissioner Pospichal and seconded by Commissioner Goddard to approve the consent agenda as presented. Motion approved unanimously.

F. Regular BOD Discussion Items

Recess Regular Board of Directors Meeting / Commence Projects Board of Directors Meeting at 2:09 P.M.

G. Projects BOD Consent Items

5. Conservation Demand Management Plan Strategic Implementation – UF/IFAS contract

6. Line of Credit Short Term Extension

Motion made by Commissioner Fellows and seconded by Commissioner Pospichal to approve the consent agenda as presented. Motion approved unanimously.

H. Project BOD Discussion Items

7. DEP Standard Grant Agreements – Heartland Program (ACTION ITEM)

Executive Director Taylor presented the Heartland Headwaters DEP standard grant agreements. Grant funding was awarded through the 2018 Heartland Headwaters Protection and Sustainability Act Annual Comprehensive Report with the support of the Polk Legislative Delegation for three projects. The Peace Creek Integrated Water

Supply Plan was awarded \$188,771 (LPA0039), the West Polk LFA was awarded \$22,052 (LPA0131), and the Southeast Wellfield was awarded \$452,052 (LPA0132) for a grand total of \$762,875 to be applied to Phase 1 of the Combined Projects Implementation Agreement.

Motion made to ratify the Executive Director's execution of the DEP Standard Grant Agreements LPA0039, LPA0131 and LPA0132 made by Commissioner Pospichal and seconded by Mayor Kehoe. Motion approved unanimously.

8. Resolution 21-1 – Second Amendment to the Line of Credit (ACTION ITEM)

Executive Director presented a brief background of the PRWC line of credit and second amendment to extend the maturation date to May 16, 2022 and decreases the amount available for withdrawal from \$6M to \$2.5M.

Motion to approve Resolution 21-1, the Second Amendment to Loan Agreement and authorization for the Vice Chair to execute all Closing documents made by Mayor Mutz and second by Mayor Kehoe. Motion approved unanimously.

9. Mediator/Facilitator Progress Update

Mr. John Fumero, Nason Yeager, provided an update with the ongoing mediation efforts highlighting the following:

- Introduction
 - This process was initiated in August of 2020 at the direction of the Board of Directors.
 - There have been several interactions with staff of individual member governments and groups of member representatives.
 - As the mediator, Mr. Fumero is serving as a neutral party, whose job is to manage the discussions, keep everyone focused, help identify and frame the key issues, and make sure that we come to closure on all of those key issues.
 - This process is member driven. The Cooperative is a vessel that incorporates and furthers the individual needs and project objectives of the members.
 - A two-day mediation workshop was held December 9th and 10th.
 - There is an enormous amount of information that has been presented to the Board over the last few years; highly technical information and complicated information. Many of the Board members have day jobs and it has been a task to stay on top of this information.
 - One of the things that has been done in concert with Team One is to take a step back and look at each of the projects, project by project, and reexamine the key elements of the projects and go through a process that has been referred to as "right sizing." Right sizing means, among other things, making sure the type of project the PRWC plans, designs and builds is appropriate for the water demands and planning horizon.
 - Updated demand information has recently been requested to make sure the projects are meeting the needs based on most current available information today.
 - Project summaries for each of the projects have been provided to refresh everyone's recollection.

- In having the one on one member interactions it has become apparent that some members have been very engaged and other have not been as engaged. Some members have consultant teams that have been working with them, others do not. We want to make sure everyone is working off a common understanding and facts.
- Project Specific Information:
 - Peace Creek and Peace River:
 - Recent meetings have been held with the Southwest Florida Water Management District (SWFWMD) regarding the Peace Creek project. A water use permit (WUP) application is being prepared for this project.
 - One of the important exercises that have been undertaken with regard to Peace Creek is to define what part of this plan or concept is alternative water supply versus some of the other uses. That is an ongoing process that is occurring hand in hand with Winter Haven and with SWFWMD.
 - PRWC is looking at an up to 8 MGD average daily flow projected from Peace Creek.
 - The Peace River project contemplates water withdrawals from the Peace River when stream flows exceed the minimum flows and levels that have been set for the river.
 - Southeast Wellfield:
 - The project already has a WUP from South Florida Water Management District (SFWMD). That WUP is for 37.5 MGD.
 - The projected initial phase for the Southeast Wellfield was 7.5 MGD, as part of the right sizing effort based on potential subscribers (those who will taking water from the project), the first phase may potentially be in the 4 to 4.5 MGD level based on updated demand information.
 - West Polk:
 - The project initial phase is projected to be 5 MGD with a final buildout of 15 MGD.
 - A Water Use Permit application is under development.
- Right Sizing:
 - One of the key issues identified for these projects is the appropriate Planning Horizon. Many of the project components have also been considered including the transmission infrastructure (which is a large part of total costs).
 - The PRWC has been looking at a 50-year planning horizon; projecting what the needed capacity will be in 50 years. In the planning realm, looking at the 20-year horizon is a fairly well-defined predictable horizon; and it may be better in this first initial phase.
 - A few years ago, the initial objective was 30 MGD by 2035. Now, based on updated demand information, we are looking at 22 MGD by 2040. That is part of the right sizing effort that is being undertaken in concert with Team One.
 - As part of that right sizing effort we are taking another look at what some people have called “sticker shock.” There are some large amounts involved here by any measure. These are big, daunting numbers; so we are looking again if it is really better to approach this from a 20 year versus a 50 year lens.
 - As a couple of examples, the mediation team has been looking at financial feasibility and technical feasibility with each project We have been evaluating the transmission infrastructure which is almost 50% of the price tag for these projects. From the transmission infrastructure standpoint, if you look at this from a 20-year horizon, we might need a 36-inch pipe initially from the

Southeast Wellfield. It could be that the PRWC acquires all of the real-estate now but constructs a pipe for the 2045 planning horizon, which may require a second pipe to be installed sometime in the future. That is one option that might have a significant implication for the ultimate price tag.

- Developed Tools
 - One of the developed tools is called the Cost Comparison tool.
 - Developed based on a number of scenarios.
 - The tool estimated total capital cost including construction, engineering, and contingencies for a 2045 buildout.
 - Facility size for each project was based on the member-provided 2045 demands.
 - Does not estimate unitary or functional rates nor does it provide individual member rates.
 - Can be modified to include additional scenarios.
 - Initially four scenarios were considered:
 - First scenario involved moving forward with the Southeast Wellfield and West Polk LFA projects, based on the information contained in the Conceptual Design Report for each project.
 - Second scenario involved moving forward with the Southeast Wellfield, West Polk LFA, and Peace Creek Integrated Water Supply, based on the information contained in the Conceptual Design Reports.
 - The third scenario involved moving forward with the Southeast Wellfield and Peace Creek.
 - The fourth scenario involved moving forward with the West Polk and Peace Creek.
 - Looking to assist members in future decision-making processes to look at the various scenarios and the tradeoffs involved from a cost standpoint.
 - Scaled Facility Costs Tool
 - This tool utilizes facility and transmission capital costs from the Southeast and West Polk projects and previously developed cost information and hydraulic modeling to develop uniform facility and transmission costs.
 - We have also looked at capacities, considering the minimum possible capacity for a project based on engineering considerations (which was 2.5 mgd as the smallest water supply facility that could be built). That amount was increased in increments up to 15 MGD.
 - A 2.5 MGD Southeast facility was considered in correspondence with a 2.5 MGD pipeline which of course could only serve certain subscribers to the project.
 - This tool provides the members with a range of treatment and facility cost which looks at the range of costs from the “Chevy to the Cadillac” of options.
 - Also considering different scenarios for each project. For example, what would be the cost of the Southeast Wellfield in \$/1,000 gallons? It would depend on the initial capacity of the facility and the number of subscribers to the facility. That is why the tools are being prepared, so the Members can look at the different options that are available.
 - We are also looking at maximizing the existing interconnects. In some cases, we can utilize the existing interconnects at least for the first 20-year planning horizon.

- Considering potential off-sets, that could make a difference, especially for some of the smaller members in terms of projected demand. Offsets could be a potential cost-effective option.
- Each of the developed tools is based on a set of assumptions including the number of participants associated with each project. We will get to a point where we are going to be asking members for their input in making some decisions on whether to proceed “through Door A or Door B.”
- From an engineering standpoint we can project which members are best suited to which project based on their physical proximity. But ultimately, that decision is going to be up to each of the members.
- Those decisions have impacts on the transmission infrastructure. The extent of that infrastructure and the capacity needed. Looking at next steps, we are in the process of finalizing the design reports.
- Schedule
 - For the Southeast Wellfield, West Polk LFA, and Peace Creek IWS preliminary design reports (PDR) need to be finalized.
 - Southeast
 - The PDR is essentially completed.
 - West Polk
 - Team One is fairly far along in the development of the PDR
 - Peace Creek
 - Team One is just starting on the PDR for Peace Creek, conducting a meeting with SWFWMD just a few weeks ago.
 - Keep in mind that these projects are at significantly different points in their development. We are trying to let the other two projects, Peace Creek and West Polk, catch up to where Southeast Wellfield is so we can truly do an “apples to apples” comparison.
 - That also involves making sure we go forward with the water use permit application process for West Polk LFA, Peace Creek, and the Peace River projects.
 - One thing important to note is the SWFWMD funding contracts. PRWC has a very busy first half to 2021. This is a proforma pulled together based on some assumptions, there is nothing set in stone. A lot of it is driven by the SWFWMD contractual May 15, 2021 requirement for the Southeast Wellfield and West Polk PDRs and the Peace Creek Conceptual Plan to be submitted for third party review. There might be some flexibility in those dates, but that is the working framework.
 - Bottom line is there are going to be key decision points before us in the next 6 months.
 - Looking ahead, we are continuing the mediation process, we are looking to schedule a mediation workshop in February.
- Several members have raised the issue and requested information on the price tags for all of these projects. We have looked at costs when you factor in SWFWMD funding, but we need to now look at what the debt service will look like and factor in the potential for the WIFIA loans.
- There is a great deal of additional analysis that is being undertaken by Team One. All the members should have received a series of e-mails from Mr. Fumero or his colleague Carlyn Kowalski sending this information, including the Cost Comparison tool. Katie Gierok prepared a YouTube video presentation that went along with the Cost Comparison tool. The video allows anyone to pause the video at any point to review information, to rewind, and replay as needed. We are

hopeful that is a useful exercise for you, and Katie remains open to doing additional videos in the future. If you have not received this information, please let me or someone at Team One know.

- All this information is intended to assist the Members in their decision making, and to provide materials with which to brief their respective bodies.
- There is no right or wrong approach *per se*, each option has its own pro and cons which we will get into momentarily. A key role of the mediator in working with Team One is to make sure that each of the Members have the data and the analysis that is needed to make decisions. In 2021 there are going to be some key decision points that members are going to be faced with.
- The project implementation agreement is where the rubber meets the road. We have been talking about doing stand-alone project implementation agreements and we are now working on a template for a project implementation agreement on a project by project basis. That is something that will be developed in the coming weeks.
- There have been a lot of comments about the prior versions of the project implementation agreement, and the fact that they did not provide an exit if a member was not longer interested. We are trying to work into the new draft some “off ramps” at certain key junctures. There is some risk when you take the off ramp in terms of commitment of design and engineering dollars, but there should be opportunities for these offramps as we gain more information for each of these projects.

Ms. Mary Thomas, Team One, stated that John did a good job describing where the PRWC is at with the mediation process. Team One has been working very hard to create these work products that he described that will provide you the information you need to make these important decisions. But of course, Team One is working to comply with contractual obligations as well. The contract contains a number of conceptual and preliminary designs and water use permit applications. What we are doing now is really balancing the additional work being done under mediation with these work products already commenced and planned, and we are extremely sensitive to the May 15th deadline John described. That is the date by which the water management district needs the deliverables so they can perform their third party review, accept the documents, and the PRWC fulfills the requirements of the co-funding agreement. That is first and foremost at the front of Team One’s mind.

- Project Specific
 - Southeast Wellfield.
 - Team One had delivered the conceptual design at the 30 MGD capacity back in 2019 and had all but finished the preliminary design at a 30 MGD level when mediation got up and running.
 - So we now need to balance the work completed to date with the updated information we are receiving.
 - Team One now has updated demands that support a smaller than 30 MGD facility in conjunction with a shorter planning horizon.
 - As stated earlier, Team One had all but finished the PDR and are due to deliver this document to the District. So the plan for this particular deliverable is to address the smaller capacity. This has always been a phased capacity plan. The Southeast Wellfield was never envisioned to be 30 MGD at the outset. There are components and elements of the design that speak to smaller capacities and so we’ve consulted with the

- District and will be submitting a revised PDR so the District can perform their third-party review. We may augment this document with additional cost information and elements that are important to the members, things that will need to be addressed should the PRWC decide to move forward with final design of a smaller capacity facility.
- West Polk LFA
 - Conceptual design has already been submitted. The District has performed its third-party review and the design has been accepted.
 - Team One is currently working to prepare the West Polk facility design, we are little earlier on in the process and so, just as with the Southeast Wellfield, we will address the full build out capacity of 15 MGD but we are going to take extra care to prepare the phased approach and the phased cost so that should the PRWC decide to move forward with the smaller capacity, the PRWC will be able to proceed timely.
 - Team One is also preparing a water use permit for the West Polk project.
 - Peace Creek
 - The Peace Creek project is a water supply project, but also includes environmental and natural systems restoration elements. As with the other projects, we are striking a balance between moving forward with our contract and incorporating the elements and information that we receive from the members.
 - That means in order for us to meet the May 15th deadline, we will be submitting a preliminary design report (PDR) that focuses on the alternative water supply aspects of the program.
 - In parallel to that effort, we will continue to collaborate with the stakeholders, especially Winter Haven and Polk County, who have natural systems restoration projects immediately adjacent to and very much related to our project. That will be an ongoing effort, so that when the time comes for you all to decide if that is a single regional project or several individual projects, you will have the additional information you need to make those decisions.
 - Peace River
 - Team One is working on a concept plan and do plan on delivering that intime to meet funding contract elements. Admittedly, because Team One has been focusing a lot of time on mediation, this project schedule has slipped a bit, but nevertheless we are committed to meeting the co-funding deadlines on the Peace River project.
 - With respect to the water use permit for the Upper Peace, you may have heard us talk about a Peace Creek and a Peace River water use permit. These are both parts of the same water system. What we are finding from an operation standpoint and from coordination with Peace River Manasota Regional Water Supply Authority (PRMRWSA) - which is a requirement of the settlement agreement – is that it makes a lot of sense to apply for a single water use permit for the entire system.
 - As a reminder, the PRWC does have a settlement agreement with PRMRWSA which requires the PRWC to secure a water use permit by February of 2029 or risk losing that supply to PRMRWSA.
 - Team One is moving forward with the deliverables in their contract but also incorporating the new information and the new decisions that are being made in the mediation process, and remain committed to meeting the co-funding deadlines.

Recess Projects Board of Directors Meeting/Commence Regular Board of Directors Meeting at 2:47 P.M.

I. Open Discussion

No open discussion presented.

J. Chair / Executive Director Report

Executive Director presented two items.

Item number one regards a conference call with the Southwest Florida Water Management District about cooperative funding applications that are being submitted for fiscal year 2022. As part of that application, Executive Director Taylor wanted to make the Board aware that when it is taken to the Heartland Subcommittee on February 12 for consideration, although our "projects" rank high, the priority of this funding request is being ranked low because of the uncertainty of our schedule and the progress being delayed during the mediation process. The District staff has been great in adding verbiage to the application itself, such that if the PRWC is able to get through mediation (after the February 10th Heartland Region subcommittee meeting) and can establish a schedule and expense commitment for the project, the District will re-evaluate and amend their recommendation for consideration by the Heartland Subcommittee and the Governing Board itself.

E.D. Taylor wanted to give a heads up, so to speak, that if you notice that the PRWC application through the Polk Regional Water Cooperative for funding in Fiscal Year 22 of the Water Management District, the ranking is going to be low, but if we are able to come together and get a schedule, expenses are identified, and a funding amount can be applied for, they are willing to review that application and update that ranking before it goes to the Governing Board.

Item number two is the recognition of Tom Mattiacci's retirement in the beginning of February and extended a heartfelt thanks for all of the work provided to the cooperative and the Cities.

Chair requested an update from Mr. de la Parte on communication received in the prior week.

46:54 Mr. de la Parte stated around January 11th, the PRWC received a letter from the City of Davenport dated January 7th proposing an individual City project. Pursuant to the founding agreement, this triggers a 90-day review to determine if the Board would like to make the project a PRWC project.

Chair requested an update on the CFWI rule making.

Mr. de la Parte stated the rulemaking has been delayed. A number of entities have submitted Lower Cost Regulatory Alternatives that DEP staff will need to address, looking to complete this month. There is a

Vice Chair asked whether there an ability to waive the deadline.

Mr. de la Parte answered in the affirmative. The DEP in a MFL in northwest FL were able to create _____.

Vice Chair Lindsey closed the meeting with a brief statement:

Before I knew I would be chairing this meeting, I jotted down a few observations and comments I would like to share.

While we rely on appointed professionals for their expertise and guidance, as elected officials it is our exclusive responsibility to ensure our communities a dependable, long term water supply, at a reasonable cost, while recognizing there is NO MORE CHEAP WATER.

I firmly believe the Polk Regional Water Cooperative, in concert with the Water Management District, is the right vehicle at the right time to achieve our individual and collective goal.

Every water utility represented here today, if you have not already, should file its own motion to intervene in the DEP rule-making process. To do so would firmly stake out its position and earn a seat at the table.

Many of you have heard me say this before, "If you do not have a seat at the table...you are on the menu!"

However, once seated at the table ask yourself, are you at the table to seek EQUITY? Or are you at the table to seek...ADVANTAGE?

If you buy into the proposition...that ALL existing permitted quantities...and durations are sacrosanct, then you have to also take the position that the Water Management district is wrong...and the upper Floridan Aquifer is NOT over subscribed. That the environment and surface waters are NOT stressed...AND you have to take the position that those in line first have a superior right to the limited supply...whatever that limited supply happens to be.

I am certainly not an engineer...hydrologist...or geologist...But my instincts tell me...the Water Management District is more likely to have OVERESTIMATED aquifer capacity than underestimated capacity.

Whatever the true volume is...it is limited!

While we contemplate crossing swords with the regulators...spend hundreds of thousands of dollars...and years in litigation...and fund the battle of competing experts...we will have not created one more drop of water...we will not have restored one square foot of wetlands. We will have simply kicked the can down the road a few years for our successors to deal with...

I think it is time for PRWC to make a mid-course correction. Before there was a PRWC...THE three major projects...NW...SE...and Peace Creek...were already on the drawing boards of their respective utilities. The geology, the testing, the preliminary engineering, the economics and rate consequences were already in play.

Under the UMBRELLA of PRWC, I believe each of these projects should move forward...based on its own merits...with its own project board. Any

utility system that wants a piece of any of these projects should work with the lead project sponsor...and participate at your comfort level.

Certainly, as part of that collaborative effort there should be some joint planning and interconnections that make sense.

To follow this approach will require significant modifications to the Operating Agreement between PRWC and the Water Management District...however, the underlying principals will remain intact...

- The funding assistance from the Water Management District MUST be preserved.
- The urgency to reduce reliance on the Upper Floridan Aquifer is clearly recognized
- And the overriding objective to access an alternative water supply will still be realized...

The lynchpin of all this effort...on all these fronts...over the years to come...will be the equitable assignment of a limited resource.

It is no more complicated than that...

I think this group is up to the task...And we will not kick the can down the road.

K. Adjournment

Board meeting adjourned by Vice Chair Lindsey at 2:59 P.M.

Next meeting March 17, 2021

March 17, 2021 Polk Regional Water Cooperative Regular Meeting
Agenda Item #2

SUBJECT

City of Davenport - Alternative Water Supply (ACTION ITEM)

DESCRIPTION

RECOMMENDATION

FISCAL IMPACT

CONTACT INFORMATION

March 17, 2021 Polk Regional Water Cooperative Regular Meeting
Agenda Item #3

SUBJECT

Combined Projects Update a. West Polk and Southeast PDRs (INFORMATION) b. Upper Peace WUP application (ACTION ITEM) b1. TeamOne Presentation b2. Fort Meade Letter of Objection c. Two Access Agreements (ACTION ITEM)

DESCRIPTION

This agenda item consists of 3 parts:

- a. **West Polk and Southeast PDRs (INFORMATION):** TeamOne will provide an update on the planned review process and planned delivery to SWFWMD of the 12.5 MGD Southeast Wellfield PDR and the 10 MGD West Polk Wellfield PDR.

- b. **Upper Peace WUP application (ACTION ITEM):**
 - 1. TeamOne will provide an update on the water use permit application currently being prepared for the Upper Peace River system. This application would serve to secure a long-term water supply for the PRWC members.

 - 2. Fort Meade will present information regarding a letter dated March 9, 2021, Notice of Member Government Objection to Proposed Peace River Surface Water Treatment Plant

- c. **Two Access Agreements (ACTION ITEM):** during the course of developing a project concept/alternatives plan for a future Peace River water supply project, geotechnical data must be collected and environmental investigations conducted to evaluate various project options. This Action Item requests Board Authorization for the Executive Director to enter into two access agreements: one with Mosaic and one with Clear Springs, for the purposes of conducting these preliminary information-gathering investigations.

Included in the agenda packet is the presentation and the Fort Meade letter noted in item 2.

RECOMMENDATION

Upper Peace WUP Application – Staff recommends Board authorizes the permit application submittal in April of 2021, pending technical advisory committee and Executive Director concurrence.

Two Access Agreements – Staff recommends Board authorizes the PRWC Executive Director to enter into two access agreements: one with Mosaic and one with Clear Springs, for the purposes of conducting preliminary information-gathering investigations.



Attachment: 20210317_BOD_TeamOneUpdate (9022 :

PRWC Board of Directors Combined Projects Update

- Southeast and West Polk PDRs
- Upper Peace WUP application (ACTION ITEM)
- Peace River access agreements (ACTION ITEM)

- Mary Thomas, Carollo

- Demands and capacity
- Schedule

- Mediation resulted in 20-year planning “right-sized” approach.
- Proposed list of member participants total 12.38 MGD in 2045 demands.
- 12.5 MGD facility planned.

Utility	Water Delivered 2045 (MGD)
Bartow	0.72
Eagle Lake	0.86
Mulberry	0.29
Davenport	1.06
Lake Hamilton	0.5
Dundee	0.47
Lake Alfred	0.43
Haines City	2.42
Winter Haven	1.52
Lake Wales	0.73
Polk County (CR, SW, NE, SE, ERUSAs)	3.38
Total	12.38

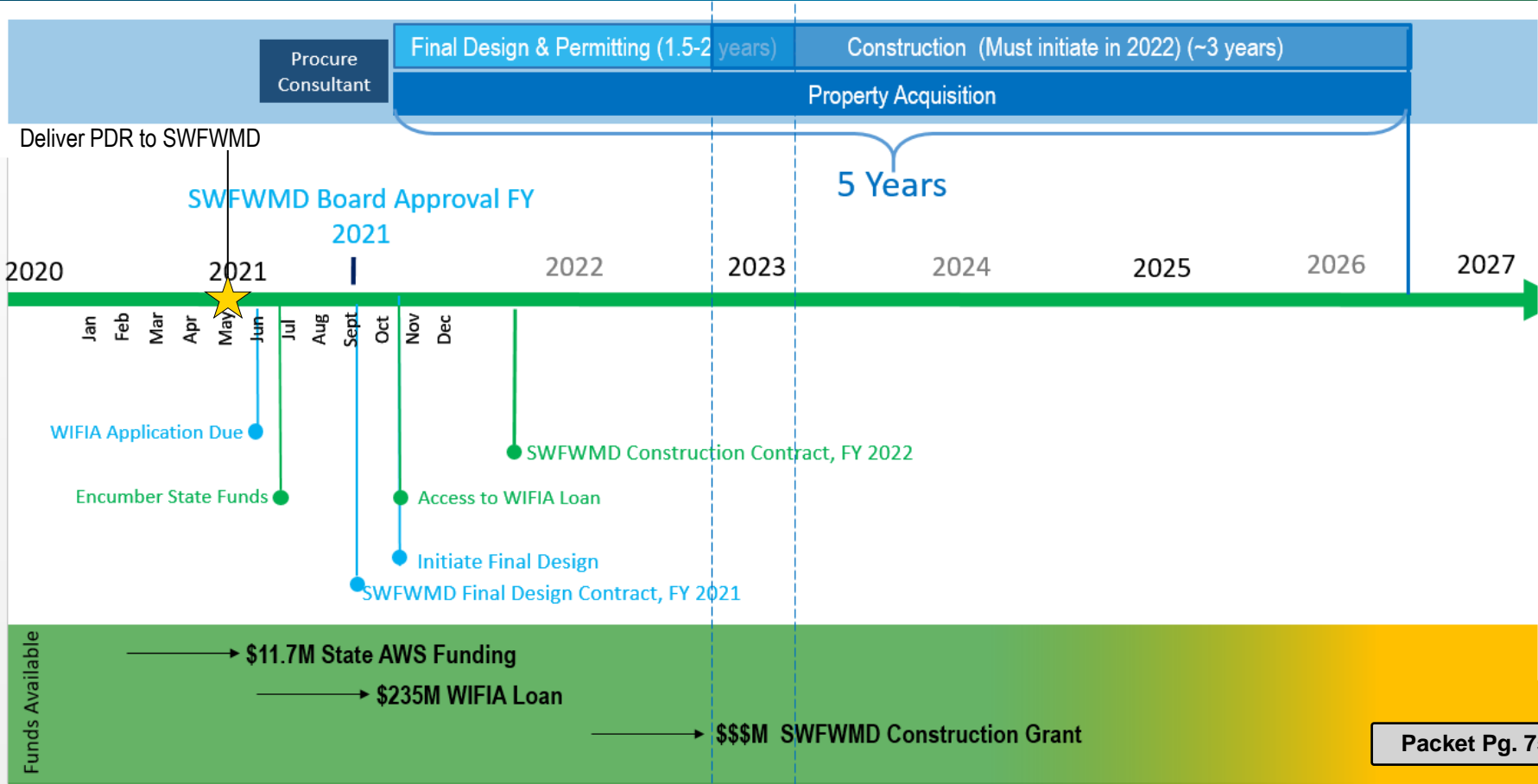
Attachment: 20210317_BOD_TeamOneUpdate (9022 :



- Mediation resulted in 20-year planning “right-sized” approach.
- Proposed list of member participants total 9.05 MGD in 2045 demands.
- 10 MGD facility planned.

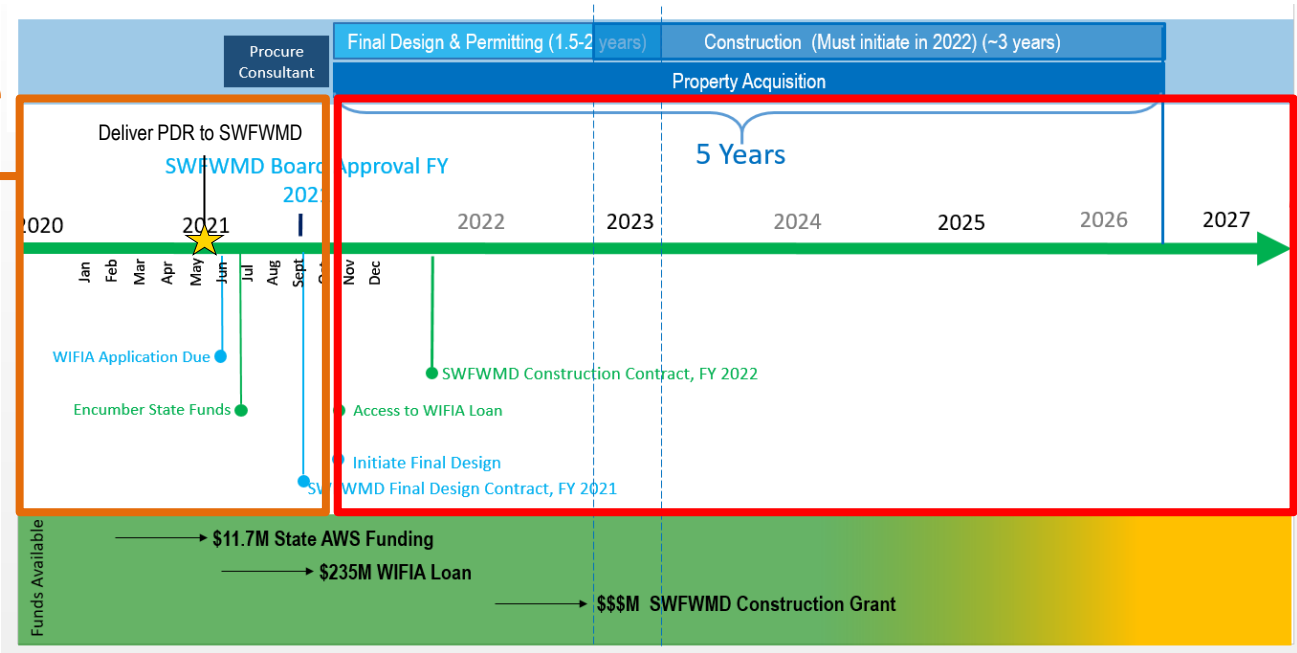
Utility	Water Delivered in 2045 (MGD)
Auburndale	1.75
Lakeland	6.31
Polk City	0.01
Polk County - NWRUSA	0.98
Total	9.05

Attachment: 20210317_BOD_TeamOneUpdate (9022 :



Attachment: 20210317_BOD_TeamOneUpdate (9022 :

Preliminary Design Schedule same as SEWF



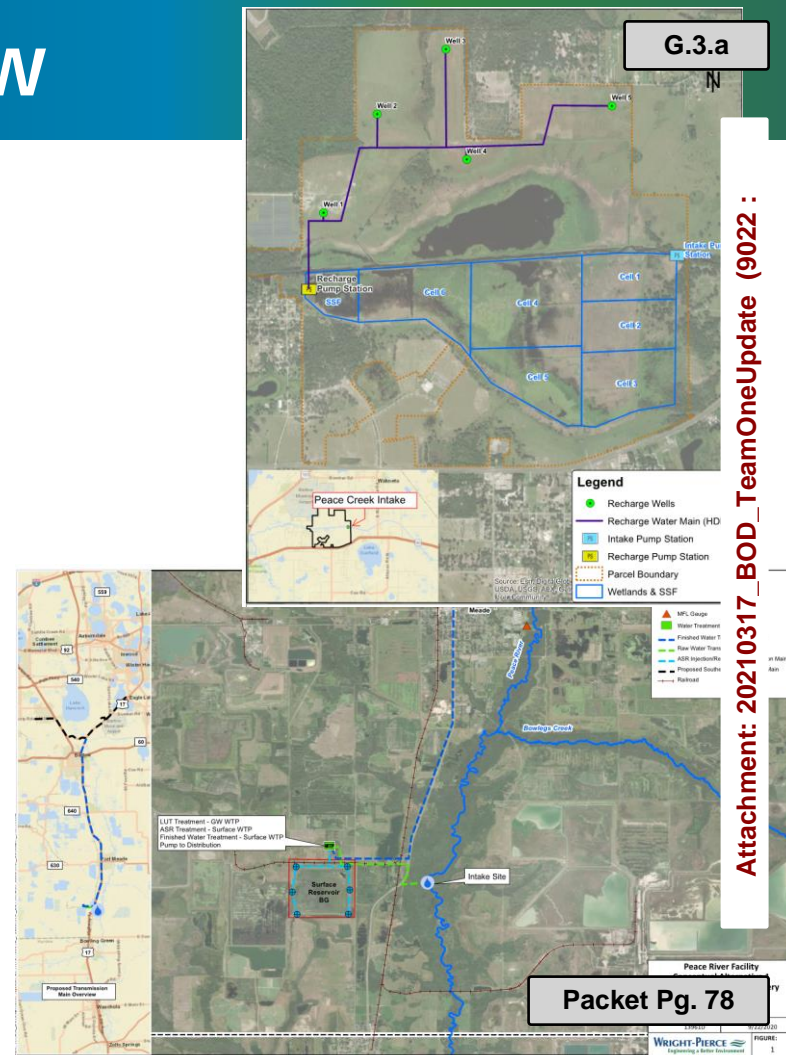
Funding, final design, bidding and construction schedule to be developed.

Attachment: 20210317_BOD_TeamOneUpdate (9022 :

- Dale Helms, Carollo
- Katie Gierok, Wright Pierce

Overview

- Upper Peace River WUP would secure 50-year supplies for PRWC members.
- February 2019 PRWC/PRMRWSA/SWFWMMD settlement agreement indicates that PRMRWSA will reduce its allocation if PRWC WUP application process successful.
- Current total allocation request: 165 mgd max day.



- SWFWMD has re-evaluated lower Peace River MFL
 - Would result in additional water supply available to PRMRWSA and PRWC.
 - Likely effective April-May 2021
- PRMRWSA planning to submit a WUP app to increase system reliability k up to 0.2%
- PRMRWSA WUP revision could reduce PRWC allocation by about 6 MGD
- PRMRWSA cannot get reallocation until MFL in effect.

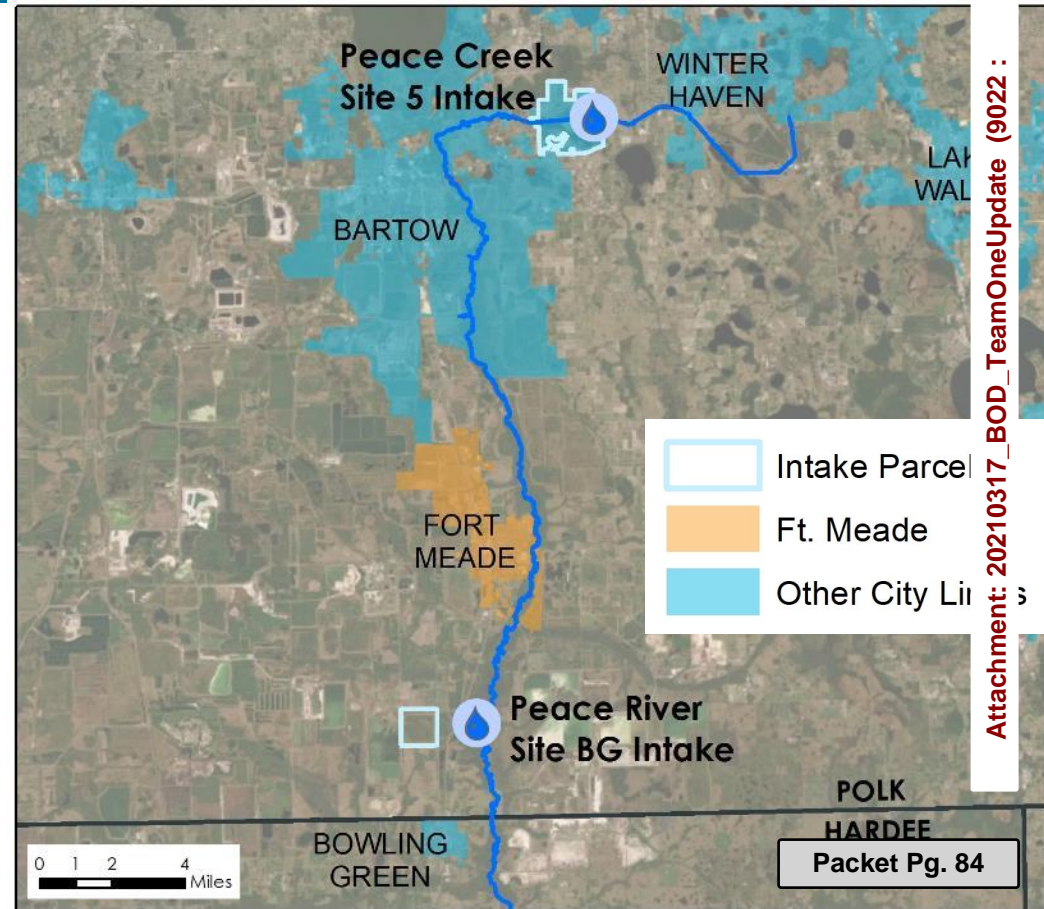
- PRWC must submit the PRWC upper Peace River (UPR) WUP application soon to be considered a competing application, and on equal footing.
- TeamOne developing consolidated WUP application and supporting information.
- PRWC looking to secure water supplies for its members.
- PRWC has invited co-applicants from interested members.

- Receive co-applicant information by 3/8
- Incorporate additional projects into hydrologic model - March
- Update WUP application and supporting info – early April
- PRWC Review – Mid April
- Submit application by 4/30

Staff recommends that the Board ratify the submittal of the Upper Peace Water Use Permit application, pending technical advisory committee and Executive Director concurrence.

- Katie Gierok, Wright Pierce

- Concept plan underway.
- Water use permit application underway.
- Design and construction are future tasks.



- Geotechnical and environmental investigations are part of due diligence investigations.
- Investigations are included in SWFWMD funding scope.
- Two potential locations identified so far for project facilities – Mosaic and Clear Springs
- Need signed access agreements to perform investigations
 - Clear Springs similar to previous agreement for Peace Creek
 - Mosaic has a standard agreement that includes indemnification and insurance clauses

Staff recommends that the Board authorize the Executive Director to sign access agreements with Mosaic and Clear Springs



City of Fort Meade

8 West Broadway Avenue • P.O. Box 856
Fort Meade, Florida 33841-0856
863.285.1100 • 863.285.1124
www.cityoffortmeade.com

March 9, 2020

Mr. Ryan Taylor, Executive Director
Deputy County Manager
Polk County Commission
Polk Regional Water Cooperative
330 W. Church Street
Bartow, FL 33830

Re: Notice of Member Government Objection to Proposed Peace River Surface Water Treatment Plant

Dear Mr. Taylor:

The City Commission of the City of Fort Meade, Florida ("City Commission") hereby notifies the Polk Regional Water Cooperative (the "Water Cooperative") and its Member Governments of its objection to the proposed permitting and construction of a surface water treatment plant and reservoir proposed to be located within the City Commission's exclusive water service area. This notice of objection is sent pursuant to § 4.03 of that INTERLOCAL AGREEMENT RELATING TO THE ESTABLISHMENT OF THE POLK REGIONAL WATER COOPERATIVE dated February 24, 2016 ("Interlocal Agreement").

The City Commission has only recently and indirectly been notified of Water Cooperative plans to file for a water use permit associated with the proposed surface water plant and reservoir via emails from a consultant employed by the Water Cooperative dated February 25, 2021. At no time has notice of this proposed application been sent directly to members of the City Commission, the City Manager, the Deputy City Clerk, or the City Attorney. The City spent over a week in finally securing the cooperation of the consultant in sending a copy of future correspondence regarding this matter to the City Attorney. At no time was notice of this proposal sent in the method prescribed for formal communications under § 4.03 of the Interlocal Agreement.

Enclosed with this letter you will find a copy of Fort Meade Ordinance No. 00-26 ("Ordinance No. 00-26"), codified as §§ 24-3 and 24-4 of Article I, Chapter 24, the Code of Ordinances, City of Fort Meade, Florida ("City Code"). Adopted pursuant to Chapter 180, Florida Statutes, on January 9, 2001, Ordinance No. 00-26 created the City's exclusive Utility Service Area for all water-related utilities. The Utility Service Area is attached for your ready reference. Our water service territory runs all the way to the Polk/Hardee County line, including both sides of the Peace River. The City has borrowed significant debt based upon the assumption and representation that its exclusive Utility Service Area shall remain free of other utilities.

When Polk County solicited the City's participation in the Water Cooperative, certain commitments were made to protect small cities like Fort Meade. Central to these commitments was the contractual obligation set forth in § 1,04(K) of the Interlocal Agreement, which provides:

"the Cooperative may not exercise any power granted under this Interlocal Agreement within the water service territory of a Member Government so as to interfere with said Member Government's existing water distribution and treatment facilities, existing consumptive use permits or existing water supplies, except with the consent of the Member Government. This provision is supplemental to and shall not be interpreted as

Attachment: PRWC Letter 3-9-21-03102021085727 (9022 : Combined Projects Update - Team One (ACTION ITEM))

limiting the restrictions placed on the Cooperative's exercise of power by Sections 1.04(J), 2.07(D), 2.11(E) and 2.11(F) of the Interlocal Agreement." (Emphasis supplied.)

This obligation to refrain from entering the water service territories or interfere with existing water distribution and treatment facilities, existing consumptive use permits, or existing water supplies was and is central to Fort Meade's participation in the Water Cooperative. This obligation is restated in several other provisions of the Interlocal Agreement, including the Preamble and §§ 1.04(J), 1.04(K), 2.01(B), 2.06(A)(35), and 2.06(D). This obligation imposes a clear duty on the Water Cooperative to advocate and support:

"on behalf of the Member Governments with federal, state, regional or local authorities, **including, but not limited to legislative bodies and executive agencies** regarding matters within the scope of the responsibilities assigned to the Cooperative under this Interlocal Agreement, **including, but not limited to supporting the right of the Member Governments to keep their existing permitted allocations.**"

Yet, despite the Water Cooperative's clear obligation to support and advocate the retention of existing permitted allocations, the Member Governments have been treated to a steady stream of communications emanating from the Water Cooperative and its consultants advocating and supporting the exchange a significant portion of these existing allocations for AWS sources to be owned and operated by the Water Cooperative. This is contrary to both the letter and spirit of the Interlocal Agreement. During the Water Cooperative's the February meeting, the Chairman of the Water Cooperative asked a representative of the Southwest Florida Water Management District to confirm that the District would permit no project of a Member Government that was not sponsored by the Water Cooperative.

Thus, Fort Meade is gravely concerned that the proposed location of a surface water plant and reservoir within its water service territory, particularly when there is no executed Implementation Agreement or even requests to participate in usage or funding, will be used as a basis for reducing our existing water allocation. There has already been at least one attempt at this type of condition by the District involving the City of Davenport, to say nothing of the proposed CFWI rule which proposes to arbitrarily cut off almost 40% of Fort Meade's existing water allocation. Yet, the Water Cooperative remains strangely quiescent regarding filing a challenge to this proposed rule, despite its express obligation to "advocate and support" Member Government's existing water allocations.

The permitting and construction of a non-city water plant and reservoir will further interfere with our water facilities and services by violating our existing debt covenants that prohibit competing facilities within our water service territory. Fort Meade has already been solicited to enter an implementation agreement that resulted in the expenditure of tens of thousands of dollars for planning for water facilities that the Water Cooperative never intended to use to serve Fort Meade. Fort Meade has no present need or intention to financially participate in the development of yet another Water Cooperative plant for which it has no need.

We have reviewed the Peace River litigation settlement agreement and subsequent actions of the Water Cooperative. At no time has the Water Cooperative, Polk County or any other entity requested Fort Meade's consent to construct a water supply facility or otherwise exercise its powers under the Interlocal Agreement. Nor is there any record in Fort Meade's minutes in which the City Commission has considered, let alone granted, the consent required to exercise any of its powers within our exclusive water service territory. At no time have the mediators, Team One, Polk County, or the Water Cooperative raised or addressed this issue, although they now seek co-applicants to obtain a water use permit when there is no Implementation Agreement, no contractual commitments from property owners, developers, or other users for the use of the water this surface water plant would produce.

Thus, the City Commission must object to the proposed permitting and construction of the proposed Water Cooperative surface water plant and reservoir. The City Commission is not, however, unsympathetic if Member Governments truly need these water supplies. Were we to receive a duly

authorized request for consent with appropriate supporting materials and the offer of indemnification of any costs to which Fort Meade might be subjected as a result of the location of this water facility within our water service territory, we would certainly entertain and give due consideration to such a request.

What we find troubling is the suggestion by the Water Cooperative's consultants in recent emails that Fort Meade will be excluded from discussions about the proposed water plant and reservoir unless we consent to the location of the plant and to act as a "co-applicant." This is not only contrary to the Interlocal Agreement's requirement that implementation agreements be signed before applying for a permit, but is contrary to the "cooperative spirit" that is supposed to be the goal of the agreement. While we cannot at this time agree or consent to act as a co-applicant for the many reasons outlined in this letter, we trust Fort Meade will not be excluded from discussions or meetings regarding this matter.

The City Commission has intentionally refrained from sending this letter as a notice of breach of contract in the hopes that the other Member Governments and the Water Cooperative will refrain from trying to force the permitting and construction of this facility without honoring the provisions of the Interlocal Agreement. We believe this would be preferable to forcing Fort Meade to pursue some other course of action to protect its rights. The City Commission remains open to further communications regarding this matter.

Sincerely Yours,

City Commission of the City of Fort Meade



Samuel Berrien, Mayor



Robert Elliott, Vice Mayor



James Watts, Commissioner



Richard Cochrane, Commissioner



Petrina McCutchen, Commissioner

- cc: Member Governments
- City Managers
- County Manager
- City and County Attorneys
- Water Cooperative General Counsel

Attachment: PRWC Letter 3-9-21-03102021085727 (9022 : Combined Projects Update - Team One (ACTION ITEM))

ORDINANCE NO.: 00-26

**AN ORDINANCE OF THE CITY OF FORT MEADE,
POLK COUNTY, FLORIDA, TO AMEND CHAPTER
24, UTILITIES, FORT MEADE CODE OF
ORDINANCES, BY DEFINING THE CITY OF FORT
MEADE UTILITY SERVICE AREA IN
ACCORDANCE WITH CHAPTER 180, FLORIDA
STATUTES; PROVIDING FOR SEVERABILITY
AND FOR AN EFFECTIVE DATE.**

BE IT ENACTED by the City Commission of the City of Fort Meade, Polk County, Florida:

Section 1. Chapter 24, Utilities, Fort Meade Code of Ordinances is hereby amended to read as follows:

ARTICLE I. IN GENERAL

Section 24-3. Definitions and rules of construction.

Utility service area shall mean the area defined in Section 24-4 as the area within which the city shall have the first right to provide water and/or sewer services to any customer residing or doing business within the area and to deliver said service in accordance with the city's general practice and procedures.

Utility system shall mean the water system, the sewer system, the reclaimed water system (treatment effluent reuse/disposal), and the storm water of the City of Fort Meade, Florida.

Section 24-4. Extension of services-generally.

(a) In accordance with the powers granted to municipalities by Chapter 180, Florida Statutes, the City of Fort Meade Utility Service Area shall be all that area which lies within five (5) miles of the corporate limits provided said area shall not include any area with the corporate limits of any other incorporated city or village and any area which is currently served by a private utility system. The City of Fort Meade Utility Service Area may expand from time to time upon the annexation of additional properties by the City or upon cessation of service by a private utility system within five (5) miles of the corporate limits of the City, provided such area shall not include any area within the corporate limits of any other incorporated city or village. The initial utility service area is designated on Exhibit "A" attached hereto and made a part hereof.

(b) Utility services shall be extended within the utility service area at the sole discretion of the City. Whenever economically feasible and deemed to be in the best interest of the utility system, such extension of services shall be accomplished and financed as more fully set forth in the Code of Ordinances and the Land Development Regulations of the City of Fort Meade, Florida.

(c) The City shall reserve the right at all times to refuse extension of the utility system when such extension is not economically feasible, for noncompliance with the policies, rules and regulations established by this chapter or with any duly adopted city resolution or ordinance, or for any other cause whereby such extension will not benefit or may be detrimental to the best interest of the utility system.

(d) In accordance with Chapter 180, Florida Statutes, all persons or corporations living or doing business within the City of Fort Meade Utility Service Area shall be required to connect, when available, with the city utility system and shall be subject to all rules, regulations and rates provided by this chapter, the Code of Ordinances, and the Land Development Regulations of the City of Fort Meade, Florida.

Section 2. If any clause, section or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein.

Section 3. Any part of the City Code and/or Land Development Regulations of the City of Fort Meade, Florida not specifically amended herein, shall remain in full force and effect.

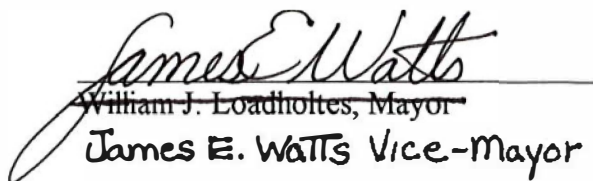
Section 4. This ordinance shall become effective immediately upon its passage by the City Council.

PASSED ON FIRST READING this 12th day of DEC, 2000.

PASSED AND ENACTED ON SECOND READING this 9th day of

January, 2001e

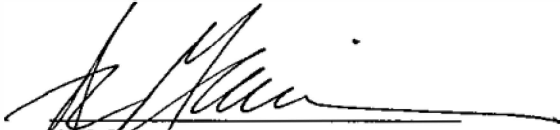
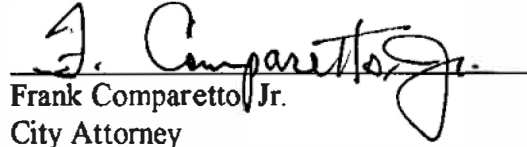
CITY OF FORT MEADE, FLORIDA


~~William J. Loadholtes, Mayor~~
James E. WATTS Vice-Mayor

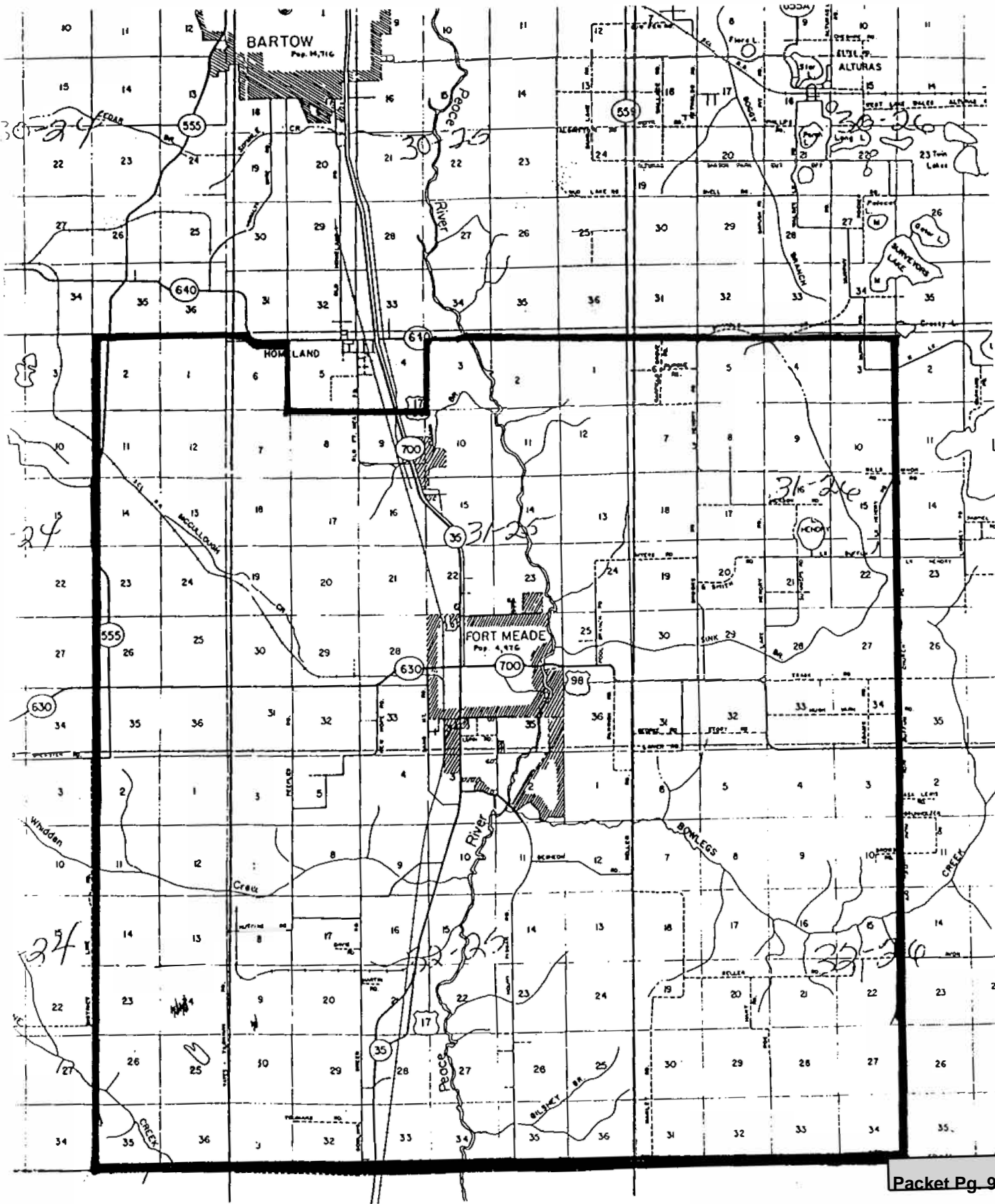
Attachment: Fort Meade Exclusive Utility Service Area Ordinance 2001 (9022 : Combined Projects Update - Team One (ACTION ITEM))

ATTEST WITH SEAL:

APPROVED AS TO CORRECTNESS:


Al Minner
City Manager
Frank Comparetto Jr.
City Attorney

ATTACHMENT "A" CITY OF FORT MEADE WATER/SEWER SERVICE TERRITORIAL MAP



Attachment: Fort Meade Exclusive Utility Service Area Ordinance 2001 (9022 : Combined Projects Update - Team One (ACTION ITEM))

March 17, 2021 Polk Regional Water Cooperative Regular Meeting
Agenda Item #4

SUBJECT

Project Implementation Agreement Update - Nason Yeager

DESCRIPTION

John Fumero and Carlyn Kowalsky with Nason Yeager will provide an update to the Board on mediation efforts and draft implementation agreement.

**As of the publish date, Nason Yeager is working on information to be provided the meeting.*

RECOMMENDATION

FISCAL IMPACT

N/A

~~03/06/2020 Draft~~ *Draft - February 26, 2021*

Formatted: Font: Italic

Comments shown in [brackets]

Formatted: Font: 12 pt, Italic

Formatted: Left

PHASE 2A (Single project) IMPLEMENTATION AGREEMENT

THIS PROJECT IMPLEMENTATION AGREEMENT (the “Agreement”) is made and entered into as of the Effective Date as hereinafter defined, by and among the Polk Regional Water Cooperative (“Cooperative”), whose address is 330 W. Church Street, Bartow, FL 33830 and the City of Auburndale whose address is P.O. Box 186, Auburndale, FL 33823, the City of Bartow whose address is P.O. Box 1069, Bartow, FL 33831, the City of Davenport whose address is P.O. Box 125, Davenport, FL 33836, the City of Eagle Lake whose address is P.O. Box 129, Eagle Lake, FL 33839, the City of Fort Meade whose address is P.O. Box 856, Fort Meade, FL 33841, the City of Haines City whose address is 620 E. Main Street, Haines City, FL 33844, the City of Lake Alfred whose address is 120 E Pomelo Street, Lake Alfred, FL 33850, the City of Lakeland whose address is 228 S Massachusetts Ave., Lakeland, FL 33801, the City of Lake Wales whose address is P.O. Box 1320, Lake Wales, FL 33859, the City of Mulberry whose address is P.O. Box 707, Mulberry, FL 33860, the City of Polk City whose address is 123 Broadway Blvd SE, Polk City, FL 33868, the City of Winter Haven whose address is P.O. Box 2277, Winter Haven, FL 33883, the Town of Dundee whose address is P.O. Box 1000, Dundee, FL 33838, the Town of Lake Hamilton whose address is P.O. Box 126, Lake Hamilton, FL 33851 and Polk County (“Polk County”), a charter county and political subdivision of the State of Florida, whose address is P.O. Box 9005, Bartow, Florida 33831, individually also referred to as a “Party” and collectively referred to as the “Parties.”

THE PURPOSE of this Agreement is to implement Phase 2 of the Combined Projects Implementation Agreement through construction, operation, maintenance and funding of the _____ Project.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, each to the other, receipt of which is hereby acknowledged and the Parties hereby agree, stipulate and covenant as follows:

1. EXHIBITS. The following exhibits are attached and are part of this Agreement:

Exhibit A – Southeast Wellfield Refund Cost

Exhibit B – Map of Project facilities to be owned by the Cooperative

1. DEFINITIONS. As used in this Agreement, the following terms shall have the following meanings, unless the context clearly requires otherwise:

1.1 “Agreement” means this _____ Project Implementation Agreement, as may be amended or restated from time to time.

1.2 “Alternative Procurement Methods” means alternatives to the separate design and construction mechanisms specified in Sections 7.3.7 and 8.2.5 such as “design build,” “construction management at risk” or “public-private partnership.”

1.3 “Base Rate Charge” means for any Fiscal Year, that component of the Water Charge computed according to Section 13.

1.4 “Bidding Budget” means the approved maximum cost for the award of construction contracts. A Bidding Budget is set at the completion of the final design for the Project infrastructure.

1.5 “**Capital Cost**” means fixed, one-time expenses incurred for the acquisition of real property, tangible property and intangible property, the construction of tangible personal property and other expenditures required for the production of water and other goods or the rendering of services in connection with the Project, including the Southeast Wellfield Refund Cost. per Bartow – could eliminate this text if “Southeast Wellfield Refund Costs is detailed in Exhibit A.

1.6 “**Capital Replacement and Renewal Cost**” means all costs incurred by the Cooperative for the ordinary renewal, replacement, upgrade and improvement of the Project, including, but not limited to filter/membrane replacements, which are not paid from the proceeds of any Obligation.

1.7 “**Combined Projects Implementation Agreement**” means the Combined Projects Implementation Agreement with an effective date of May 1, 2017, including any amendments thereto.

1.8 “**Cooperative**” shall have the same meaning as in the Interlocal Agreement.

1.9 “**Construction Budget**” means the approved maximum cost for the actual construction of the Project infrastructure, including any contingency. The Construction Budget is set after Project bidding and selection of a contractor or contractors.

1.10 “**Debt Service Cost**” means the principal, redemption premium, if any, and interest due on Obligations and any recurring costs and expenses relating to Obligations, including but not limited to paying agent, registrar and escrow agent fees, credit enhancement fees and other charges, but only to the extent such cost and expenses are not otherwise reflected in the Capital

Replacement and Renewal Cost, Fixed Operation and Maintenance Cost and Variable Operation and Maintenance Cost.

1.11 “Design Budget” means the preliminary estimated design and construction cost developed for the Project, which is established after completion of the Preliminary Design Report and before work on the final design.

1.12 “Director” shall have the same meaning as in the Interlocal Agreement.

1.13 “District” means the Southwest Florida Water Management District.

1.14 “Effective Date” means the date the Agreement takes legal effect as specified in Section 5.

1.15 “Excess Water” means Project Water that remains unallocated after completion of the process set forth in Sections 11.1.2.1 through 11.1.2.4.

1.16 “Fiscal Year” means a twelve (12) month period which commences on October 1 of each year and ends on the next succeeding September 30, or such other period as may be prescribed by law as the fiscal year of the Cooperative.

1.17 “Fixed Operation and Maintenance Cost” means all Operation and Maintenance Cost other than Variable Operation and Maintenance Cost.

1.18 “Force Majeure Event” means an event not the fault of, and beyond the reasonable control of, the Party claiming excuse which makes it impossible or extremely impracticable for such Party to perform the obligations imposed on it by this Agreement, by virtue of its effect on physical facilities and their operation or employees essential to such performance. Force Majeure Events include (a) an “act of God” such as an earthquake, flood, earth movement, or similar catastrophic event; (b) an act of public enemy, terrorism, sabotage, civil disturbance or similar event; (c) a strike, work stoppage, picketing or similar concerted labor action; (d) delays in

construction caused by unanticipated negligence or breach of contract by a third party or inability to obtain Project Permits or essential materials after diligent and timely efforts; or (e) an order or regulation issued by a federal, state, regional or local regulatory agency after the Effective Date or a judgment or order entered by a federal or state court after the Effective Date.

1.19 “Interlocal Agreement” means that Interlocal Agreement creating the Cooperative, with an effective date of June 1, 2016, including any amendments and supplements thereto.

1.20 “Meters” mean those certain water meters and appurtenant recording and transmitting devices to be installed and owned by the Cooperative, as required by Section 11, which are used to measure and bill the quantity of Project Water delivered to each Project Participant or the quantity of Virtual Water withdrawn by a Project Participant.

1.21 “MGD” means million gallons a day.

1.22 “Obligation” shall have the same meaning as in the Interlocal Agreement.

1.23 “Operation and Maintenance Cost” means any and all costs incurred by the Cooperative in operating, maintaining and administering the Project, related operation, maintenance, management, security and development of the Project; labor and labor overhead cost; cost associated with tools, equipment, vehicles, supplies, materials, services and support for the operation, maintenance, management, security and development of the Project; any cost of litigation or legal judgment against the Cooperative relating to the Project; cost of purchasing any water related to the Project; development expenses relating to expansion of the Project; all costs incurred in planning or applying for, obtaining, maintaining and defending Project Permits, which are not paid under Phase 1 of the Combined Projects Implementation Agreement, do not constitute a Capital

Cost, Capital Replacement and Renewal Cost and are not payable from the proceeds of any Obligation; administrative, accounting, legal and engineering expenses related to the Project; ordinary and current rentals of equipment or other property related to the Project; refunds of moneys lawfully due to others, pension, retirement, health and hospitalization funds related to the Project; payments in lieu of taxes and impact fees, if applicable; moneys to be deposited to a Rate Stabilization Fund; and administrative costs incurred by the Cooperative for management of the Project.

1.24 “Parties” mean the Cooperative, the City of Auburndale, the City of Bartow, the City of Davenport, the Town of Dundee, the City of Eagle Lake, the City of Fort Meade, the City of Haines City, the City of Lake Alfred, the Town of Lake Hamilton, the City of Lake Wales, the City of Lakeland, the City of Mulberry, the City of Polk City, the City of Winter Haven and Polk County.

1.25

1.26 “Points of Connection” means points where the Project connects to the water supply system of a Project Participant or the point of connection where the Project Participant takes Virtual Water.

1.27 “Project” means the Southeast Wellfield Project with a Project Yield of 12.38 MGD at buildout. “Project” means the West Polk Wellfield Project with a Project Yield of 9.05 MGD at buildout. [There will be a separate statement for each Agreement].

Formatted: Font: Bold

Formatted: Font: Italic

1.28 “Project Administrator” means the person or persons and/or alternate or alternates designated by the Cooperative Executive Director pursuant to Section 7.2 to manage the Cooperative’s responsibilities under this Agreement.

“Project Board” shall have the same meaning as in the Interlocal Agreement. The Project Board for this Project will consist of Directors and/or alternates appointed by the Project Participants.

1.30 “Project Participants” means those Parties, other than the Cooperative, who have executed this Agreement for the purpose of implementing this Project, which includes construction, operation, maintenance and funding of the Project and receipt of Project Water Service from the Cooperative.

1.31 “Project Permits” means all permits, licenses or other third party approvals necessary or convenient for the acquisition, construction, management or operation of the Project, including all permits, licenses or other third party approvals required so that a Project Participant may use Virtual Water.

1.32 “Project Water” means the finished water produced by the Project to help serve the potable water demands of the Project Participants and the Virtual Water used by a Project Participant, who pursuant to the Project plan will not physically take finished water produced by the Project.

1.33 “Project Water Estimate” means the document submitted by each Project Participant to the Cooperative detailing the quantity of Project Water on an annual average daily flow basis, it requests to receive during the upcoming Fiscal Year, as specified in Section 11.1.1.

1.34 “Project Water Service” means the delivery of Project Water by the Cooperative to the Points of Connection for use by the Project Participants.

1.35 “Project Yield” means the total quantity of Project Water that the Project can reasonably be expected to produce for Project Water Service to the Project Participants, which is expressed as an annual average rate or base production rate.

1.36 “Prudent Utility Practices” means any of the practices, methods and acts engaged in, or approved by, a significant portion of the public water supply utility industry in the United States of America during the relevant time period or any of the practices, methods and acts, which in the exercise of reasonable judgement in light of facts known, or that should have been known, at the time the decision was made, could have only been expected to accomplish the desired results at a reasonable cost consistent with applicable legal, engineering, reliability, safety and time requirements.

1.37 “PSI” means pounds per square inch.

1.38 “Rate Stabilization Fund” means any fund created by the Cooperative for stabilization of the Water Charge paid by the Project Participants, as specified in Section 13.2. Operation and Maintenance Cost may be utilized by the Cooperative to fund such rate stabilization fund. ????

1.40 “Southeast Wellfield” means a new lower Floridan aquifer public water supply wellfield to be located in southeast Polk County.

1.41 “Southeast Wellfield Refund Cost” means those costs incurred by Polk County in developing and permitting the Southeast Wellfield, as detailed in **Exhibit “A”** to this Agreement.

Formatted: Pattern: Clear (Ivory)

1.42 “True-up” means the process specified in Section 10 by which the Water Cost Allocations are adjusted by redetermining for all the Project Participants their projected 2070 water demands in excess of the Safe Yield.

1.43 “Variable Operation and Maintenance Cost” means all Operation and Maintenance Cost that change in direct proportion to changes in the volume of finished water produced by the Project, including, but not limited to, power, chemical, water purchases and Water Transfer Costs.

1.44 “Virtual Water” means a quantity of upper Floridan aquifer groundwater withdrawn by a Project Participant not exceeding its Water Allocation. Virtual Water may only be used by those Project Participants who pursuant to the Project plan will not physically receive finished water produced by the Project. The quantity of Virtual Water taken by a Project Participant must be offset by the same quantity of the Virtual Water Offset used by other Project Participants. Project Participants may agree to allow Virtual Water Offsets in the Project plan when doing so would reduce the cost of transmission of Project Water. [Alternative language – “Virtual Water” means a quantity of upper Florida aquifer groundwater withdrawn by a Project Participant that will be offset by another Project Participant relinquishing its right under a SWFWMD permit to withdraw from the upper Florida aquifer as state in the Project plan.]

1.45 “Virtual Water Offset” means Project Water used by one or more Project Participants in order to exactly offset the quantity of Virtual Water used by another Project Participant. A Project Participant shall not pay a Water Charge for the use of the Virtual Water Offset

as it is intended that the Water Charge paid by a Project Participant for the use of the associated Virtual Water cover the cost of producing the Virtual Water Offset.

1.46 “Water Allocation” means the quantity of Project Water that each Project Participant is entitled to receive from the Project as set forth in the table below. In the event the Project Yield is different from the totals listed in the Water Allocation Table, the Water Allocation for each of the Project Participants will be determined based on the Water Allocation Percentages set forth in this table.

2045 Water Allocation Table*[Insert Allocation Table for each Project]*
2045 Water Allocation Table*[Insert Allocation Table for each Project]*

1.47 “Water Charge” means for any Fiscal Year, the charge established by the Cooperative pursuant to Section 12 for providing Project Water Service to the Project Participants. This charge is comprised of the Base Rate Charge and the Water Use Charge.

1.48 “Water Cost Allocation” means for any Fiscal Year, that portion of the Base Rate Charge each Project Participant is obligated to pay. The Water Cost Allocation shall be based on each Project Participant’s projected 2045 water demands , as revised every five (5) years through the True-Up process set forth in Section 10.

1.49 “Water Transfer Cost” means those costs incurred by the City of Lakeland in transmitting Project Water from the West Polk Lower Floridan Aquifer Wellfield to certain Project Participants and those costs incurred by Polk County and the City of Winter Haven in

transmitting Project Water from the Southeast Wellfield to certain Project Participants. *[Revise this paragraph as needed for each project.]*

1.50 “Water Use Charge” means for any Fiscal Year that component of the Water Charge computed according to Section 13.

1.51 “Weighted Vote Method” means that each Director is assigned a vote based on its Water Cost Allocation percentage under the Base Rate Cost Allocation Table identified in Section 1.48.

1.52 “West Polk Lower Floridan Aquifer Wellfield” means a new lower Floridan aquifer public water supply wellfield to be located in west Polk County.

2. PURPOSE OF THE AGREEMENT.

2.1 Overall Agreement. This Agreement governs the overall implementation of the Project, which includes design, construction, operation, maintenance and funding of the Project and receipt of Project Water Service from the Cooperative. It is the intent of this Agreement that Project Water be used to help serve the needs of the Project Participants.

2.2 Interlocal Agreement. The Parties have entered into the Interlocal Agreement. In the event of a conflict between the Interlocal Agreement and this Agreement, the Interlocal Agreement shall control, except to the extent such conflict is waived by the Cooperative Board of Directors according to the terms of the Interlocal Agreement.

2.3 Combined Projects Implementation Agreement. The Parties to this Agreement have decided to implement Phase 2 of the Combined Projects Implementation Agreement with regard to this Project. However, the implementation of this Project shall be governed by the terms and conditions of this Agreement rather than the provisions of the Combined Projects Implementation Agreement. The Combined Projects Implementation Agreement remains in effect

with regard to the Peace Creek Integrated Water Supply Project, Peace River/Land Use Transition Treatment Facility Project, additional phases of the Southeast Wellfield Project, additional phases of the West Polk County Lower Floridan Aquifer Wellfield Project and any other future project incorporated by the parties to that agreement. *[Revise as appropriate for each project.]*

Formatted: Font: Bold, Italic

2.4 Other Agreements Not Affected by this Agreement. Any other agreement between some or all of the Parties not specifically referenced herein is not intended to be changed or affected by this Agreement. Additionally, nothing in this Agreement is intended to change any existing agreement between the District and any Party regarding the Project.

4. CONSTRUCTION. Terms defined in a given number, tense or form shall have the corresponding meaning when used in this Agreement with initial capitals in another number, tense or form. References containing terms such as “hereof,” “herein,” “hereto,” “hereinafter” and other terms of like import are not limited applicability to the specific provision within such references are set forth, but instead refer to this Agreement taken as a whole. “Includes” or “including” shall not be deemed limited to the specific enumeration of items, but shall be deemed without limitation. The term “or” is not exclusive. The headings contained in this Agreement are solely for the convenience of the Parties. Accounting terms used but not defined herein have the meanings given to them under generally accepted accounting principles in the United States of America consistently applied throughout the specified period and in the immediately comparable period.

4. REPRESENTATION OF THE PARTIES. As of the Effective Date, each Party makes the following representations (no representation is made by any Party for another Party):

4.1 Status of the Parties. The Parties are each duly organized, validly existing and in good standing under the laws of the State of Florida and are each duly qualified and authorized to satisfy their responsibilities pursuant to this Agreement.

4.2 Authority to Enter Agreement. The Parties each have the power, authority and legal right to enter into and perform the obligations set forth in this Agreement, and the execution and delivery and performance hereof by the Parties: (1) has been duly authorized by the governing authority of each of the Parties; (2) does not require any consent or referendum of the voters; and, (3) does not constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon, the assets of the Parties under any agreement or instrument to which the Parties and their assets may be bound or affected, except as otherwise provided herein.

4.3 Validity of the Contract. This Agreement has been duly entered into and delivered by the Parties as of the Effective Date, constitutes a legal, valid and binding obligation of the Parties, fully enforceable in accordance with its terms, except to the extent that the enforceability of this Agreement may be limited by any applicable bankruptcy, moratorium, reorganization or other similar laws affecting creditor's rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

4.4 Pending Litigation. There is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending against any Party, wherein an unfavorable decision, ruling or finding would materially and adversely affect the performance by any Party of their obligations hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of the Agreement.

5. CONDITIONS PRECEDENT. The Effective Date of this Agreement shall take effect upon satisfaction of the following conditions precedent:

5.1 Execution of the Agreement. This Agreement shall be duly authorized and executed by the Parties.

5.2 SWFWMD Funding Commitment. The Cooperative and the Southwest Florida Water Management District shall execute a contract in which the District agrees to fund at least fifty (50%) percent of the eligible Capital Cost of the Project.

5.3 [CFWI rules are expected to addresses this issue]

[CFWI rules are expected to addresses this issue]

5.4 Satisfaction of Conditions Precedent. The Cooperative Project Board shall determine when these conditions precedent have been satisfied and the Effective Date of this Agreement.

6. TERM AND TERMINATION. The term of this Agreement shall begin on the Effective Date and remain in effect, unless terminated by written agreement of all the Parties. Termination shall not take place until all Obligations issued by the Cooperative have been repaid, all cooperative funding agreements or grants received by the Cooperative have been completed and any other funding mechanisms used to pay for construction, operation or maintenance of the Project have been successfully concluded.

7. PROJECT ADMINISTRATION.

7.1 Project Administration. The Cooperative shall have overall responsibility for implementing the terms of this Agreement. All the powers, privileges and duties vested in or imposed on the Cooperative with regard to implementation of the Project shall be exercised through the Project Board; provided, however, that the exercise of any and all executive, administrative and ministerial powers regarding the Project may be delegated by the Project Board. All decisions of the Project Board shall be by the Weighted Vote Method as specified in this Agreement.

7.2 Project Administrator. No later than thirty (30) days from the Effective Date, the Cooperative Executive Director shall provide in writing to the other Parties, the name, address, phone number, fax number and email address of its Project Administrator. The Projects Administrator may be changed at any time by the Cooperative Executive Director immediately upon written notice to the other Parties. The Project Administrator shall act as the Cooperative's representative with regard to implementation and management of the Project.

7.3 Performance Standards. The following performance standards shall apply to the Cooperative when implementing this Project:

7.3.1 Defend any challenge or protest filed with regard to procurement decisions made pursuant to this Agreement, including the retention of outside legal counsel to defend the action.

7.3.2 Manage the construction, operation and maintenance of the Project in accordance with the requirements of this Agreement.

7.3.3 Procure, prepare and execute contract(s) with technical consultant(s) selected pursuant to this Agreement.

7.3.4 Manage the activities of the technical consultant(s) or other professional(s) to assure that the requirements of this Agreement are met.

7.3.5 Manage the review of interim and final deliverables.

7.3.6 Prepare bids, select bidders and enter into construction contracts as required pursuant to this Agreement.

7.3.7 Approve the use of Alternative Procurement Methods, as specified in Section 8.2.5, for design and construction of the Project.

7.3.8 Manage the activities of the contractor(s) to assure that requirement of this Agreement are met.

7.3.9 Process and pay invoices from consultants, other professionals and contractors.

7.3.10 Initiate and process funding requests to the Project Participants for implementation of the Project.

7.3.11 Issue Obligations, if required to fund the construction of the Project.

7.3.12 Implement any other alternative financing mechanisms. *[Members requested to delete this]*

Formatted: Font: Italic

7.3.13 Conduct the True-Up process specified in Section 10.

7.3.14 Prepare and distribute the Water Charge each Fiscal Year to the Parties.

7.3.15 Receive and account for funds received from the Parties in connection with this Project.

7.3.16 Take legal action, if necessary, to require payment of the Water Charge by each Party.

7.3.17 Apply for, receive and account for grant funds received from federal, state, regional or local sources in connection with the Project.

7.3.18 Submit or modify applications for Project Permits. Respond to requests for additional information or clarification from regulatory agencies and provide information as needed to finalize Project Permit applications. Obtain all the Project Permits.

7.3.19 Submit applications to modify or renew Project Permits issued in connection with the Project. Respond to requests for additional information or clarification from

regulatory agencies and provide information as needed to finalize applications to modify or renew Project Permits. Obtain all modifications or renewals of Project Permits.

7.3.20 Communicate with regulatory agencies and other interested persons and attend meetings as needed to obtain all the Project Permits, including any modification or renewal.

7.3.21 Negotiate the terms of any Project Permit, including any modification or renewal or permit conditions with the regulatory agencies.

7.3.22 Maintain any Project Permit issued in connection with the Project, including, but not limited to, complying with all permit conditions.

7.3.23 Defend any challenge or protest filed with regard to any Project Permit, including the retention of outside legal counsel to defend the action.

7.3.24 Undertake legal actions as necessary to further the work authorized under this Agreement, including the retention of outside legal counsel to defend the action.

8. PROJECT IMPLEMENTATION. The following stages shall be followed to implement the Project. The Project Board shall procure a consultant or consultants to perform all or a portion of the professional services needed for each stage described below.

8.1 Final Design and Bidding Stage.

8.1.1 Upon selection of the consultant(s), the Cooperative, through its Project Administrator shall obtain a scope and fee from the consultant for the final design and Bidding Budget and shall present it to the Project Board for approval.

8.1.2 The Cooperative shall require the consultant to prepare (1) a final design in relative conformance with the Project Preliminary Design Report, and (2) a Bidding Budget based on the final design. The final design shall, at a minimum, include a 60% final design

Formatted: Pattern: Clear

and 100% final design, and shall present the 60% design as a single line item. The 60% final design shall include design specifications, design drawings, an estimated Bidding Budget, and an estimate of real estate acquisition costs. The 100% final design shall include design specifications, design drawings, the final Bidding Budget, and an estimate of real estate acquisition costs.

8.1.3 Once the consultant has completed the 60% final design, the Project Administrator will present it to the Project Board. Any member of the Project Board may withdraw from the Project as provided in Section 19 following completion of 60% final design. The consultant shall not commence the 100% final design until after the Project Board has approved the 60% final design.

8.1.4 The engineering consultant will apply for and obtain any Project Permits not obtained before the Effective Date, with the exception of those that are to be obtained by the construction contractor.

8.1.5 Project Participants will develop funding mechanisms as required to implement the Project to be approved by the Project Board.

8.1.6 The Cooperative will execute funding agreement(s) with the District to provide up to fifty (50) percent cooperative funding of the eligible Capital Costs of the Project.

8.1.7 Upon approval of the final design and Bidding Budget by the Project Board, the Project Board will procure bids from contractors to construct the Project and the Project Administrator will obtain a scope and fee from the consultant for its services for the Construction stage for construction observation and administration services for approval by the Project Board.

8.1.8 The Project Administrator shall present both the selected contractor and Construction Budget, and the engineering consultant's fee for construction administration to the Project Board for approval.

8.1.9 The Project Board may approve the use of Alternative Procurement Methods as allowed by Florida Statutes including Chapters 255 and 287, in place of the separate design and construction mechanisms described Sections 1.2 and 8.3, including the procurement of a construction manager at risk.

8.2 Real Estate Acquisition Stage. After Project Board approval of the 60% final design the Cooperative shall acquire any real property interests necessary to implement the Project, subject to the limitations of the Interlocal Agreement.

Formatted: Pattern: Clear

8.3 Project Construction Stage. The Project Construction Phase begins upon completion of the Final Design and Bidding Stage. The Project Board shall make all decisions regarding the procurement of a contractor or construction manager at risk to construct the Project. The Project Administrator shall submit all change orders to the Project Board for approval unless otherwise designated by the Project Board.

Formatted: Pattern: Clear

8.4 Project Operation and Maintenance Stage. The Cooperative shall at all times operate and maintain the Project facilities in accordance with Prudent Utility Practices.

Formatted: Pattern: Clear

9. OWNERSHIP. The Cooperative shall own the Project facilities, including the water treatment plant and transmission lines up to and including the Points of Connection. The Project facilities owned by the Cooperative are more specifically described in the map attached hereto as **Exhibit “B.”**

10. TRUE-UP. Before the beginning of each fiscal year, the Project Board will consider for approval any proposed additions, assignments and substitutions proposed under the process set forth in Section 20. At least every 5 years after the Effective Date of this Agreement and every 5 years thereafter, the Project Board will determine the size and timing of the next phase of construction. Any additions, substitutions, assignments or revisions to the size and timing of construction phases must be approved by the Project Board and reflected in an Amendment to this Agreement.

11. PROJECT WATER SERVICE.

11.1 Delivery of Project Water Service. During each Fiscal Year, starting with Fiscal Year in which the Project Water Service is scheduled to commence, the Cooperative shall provide Project Water Service to the Project Participants, as follows:

11.1.1 Delivery of Project Water Estimates. Each Project Participant desiring to take Project Water shall deliver to the Cooperative its Project Water Estimate for the upcoming Fiscal Year on or before May 1. The Project Water Estimate shall identify the quantity of Project Water, at an annual average daily rate, the Project Participant requests the Cooperative to deliver to its Point of Connection during the upcoming Fiscal Year or the quantity of Virtual Water, at an annual average daily rate that the Project Participant requests to use during the upcoming Fiscal Year. A Project Water Estimate must include all the water a Project Participant will need in excess of its Safe Yield as defined in Section 1.39. The Cooperative shall send a written reminder to the Project Participants on or before April 1, if a Project Water Estimate has not been

received from that Project Participant. If a Project Participant fails to deliver a Project Water Estimate to the Cooperative by May 1, then the Project Participant shall be deemed to have requested its full Water Allocation for the upcoming Fiscal Year. The Project Water Estimate process does not affect a Project Participant obligation to pay the Base Rate Charge portion of the Water Charge.

11.1.2 Prioritization of Project Water. In the event the total quantity of Project Water requested in the Project Water Estimates exceeds the Project Yield, the available Project Water will be allocated by the Cooperative Project Board according to the following priority schedule:

11.1.2.1 Every Project Participant with a Water Allocation shall be allowed to take up to its full Water Allocation from the Project.

11.1.2.2 Every Project Participant with a Water Allocation shall be allowed to take water in excess of its Water Allocation as long as the Project Participant has received all or a part of another Project Participant's Water Allocation for the upcoming Fiscal Year. Any transfer of Water Allocations shall be in writing and executed by both Project Participants and shall be included with the Project Estimates submitted by both Project Participants. Any transfer of Water Allocations between Project Participants must be reviewed and approved by the Cooperative Project Board as to technical feasibility.

11.1.2.3 In the event a Project Participant with a Water Allocation delivers a Project Water Estimate to the Cooperative indicating its intent to take Virtual Water during the upcoming Fiscal Year in an amount not exceeding its Water Allocation, a Project Participant may voluntarily request a Virtual Water Offset in its Project Water Estimate in order to offset the quantity of Virtual Water used by another Project Participant. The request by a Project

Participant in its Project Water Estimate to take a Virtual Water Offset must be reviewed and approved by the Cooperative Project Board as to technical feasibility.

11.1.2.4 In the event a Project Participant with a Water Allocation delivers a Project Water Estimate to the Cooperative indicating its intent to take Virtual Water during the upcoming Fiscal Year in an amount not exceeding its Water Allocation and no Project Participant voluntarily requests a Virtual Water Offset or if the Cooperative Project Board determines that a Project Participant's voluntary request of a Virtual Water Offset is technically infeasible, then the Cooperative Project Board will determine which other Project Participant(s) must take a Virtual Water Offset during the upcoming Fiscal Year.

11.1.2.5 If there is Excess Water available for use by Project Participants after the available Project Water has been allocated pursuant to Sections 11.1.2.1 through 11.1.2.4, then the Excess Water will be allocated among the Project Participants requesting Project Water on a pro rata basis.

11.2 System Operation. The Cooperative shall at all times maintain the Project in accordance with Prudent Utility Practices. The Cooperative shall adopt an adequate budget to pay for all Operation and Maintenance Costs for the Project as required to provide Project Water Service, as set forth in this Agreement. The Cooperative shall provide sufficient personnel, with appropriate experience and credentials to undertake all regulatory requirements imposed with regard to the Project, while providing for reliable operations and maintenance. If new regulatory requirements necessitate capital improvements, the Cooperative shall take all necessary actions to accomplish the same. The Cooperative shall be responsible for all regulatory violations, including compliance costs or penalties assessed for same, which arise out of or are solely created through

1) material errors or omissions by its personnel or agents in the day-to-day operations of the Project; or, 2) the failure of the Cooperative to timely proceed administratively to undertake or complete a requirement imposed by any regulatory agency in any consent order or Project Permit. The Cooperative shall maintain adequate catastrophic insurance on the Project on such terms and amounts as established by the Cooperative.

11.3 Water Quality. The Cooperative shall deliver Project Water to each Project Participant's Point of Connection: (1) that is stabilized and of good and uniform quality; (2) meets all applicable federal and state drinking water standards and regulations, including, but not limited to the standards set forth in Chapter 62-550, Florida Administrative Code, as may be amended or superseded from time to time; and, (3) meets whatever disinfection and treatment techniques under this Agreement, as well as those developed during Phase 1 of the Combined Projects Implementation Agreement. This Section 11.3 shall not apply to Virtual Water used by a Project Participant.

11.4 Water Pressure. The Cooperative shall deliver Project Water to each Project Participant's Point of Connection at a minimum pressure of 30 PSI. This Section 11.4 shall not apply to Virtual Water used by a Project Participant.

11.5 Project Permits. The Cooperative shall obtain, renew, maintain and modify, if necessary, all Project Permits required for the operation and maintenance of the Project and to ensure that Project Water Service will be provided to the Project Participants under the terms of this Agreement.

11.6 Acquisition of Real Property. The Cooperative shall use its best efforts to acquire all interest in real and personal property (if any) necessary for expansion, construction, management and operation of the Project, in a manner consistent with the Interlocal Agreement.

11.7 **Compliance with the Law.** The Cooperative shall comply with all laws, rules and regulations applicable to this Agreement and its obligations thereunder.

12. **POINTS OF CONNECTIONS AND METERING FACILITIES.**

12.1 **Points of Connection.** The Points of Connection and the location of the Meters used for the delivery of Project Water to the Project Participants will be identified by the Cooperative no later than _____ for those Project Participants with a Water Allocation under the Water Allocation Table in Section _____. This requirement applies equally to those Project Participants that will physically take Project Water. This requirement applies equally to those Project Participants that will physically take Project Water. This requirement applies equally to those Project Participants that will physically take Project Water and those Project Participants that will take Virtual Water. The Cooperative and a Project Participant may, by mutual written agreement, more specifically identify or modify the Point of Connection or the location of the corresponding Meter. Any change in the Points of Connection or the location of the Meters shall be reflected in a map prepared by the Cooperative.

12.2 **Installation and Maintenance of Meters.** The quantity of Project Water delivered by the Cooperative to each Point of Connection or the quantity of Virtual Water taken by a Project Participant shall be exclusively measured by a Meter. The Cooperative shall own, install, maintain and read each Meter. The type of Meter shall be selected at the discretion of the Cooperative, subject to compliance with industry standards for similar Meters.

12.3 **Inspection of Meters.** Each Meter shall be inspected annually and an inspection report shall be prepared at the conclusion of each inspection detailing the condition and

accuracy of each Meter. Each inspection shall be performed by a representative of the manufacturer or other certified, competent entity agreeable to the Cooperative and the Project Participants and a copy of each inspection report shall be furnished to all Project Participants. Upon request of a Project Participant, the Cooperative shall make arrangements for a test of the Meter installed at the Project Participant's Point of Connection by an independent testing entity. The Cooperative shall be responsible for selecting and engaging the independent testing entity. All costs and expenses shall be borne by the Project Participant requesting the test, unless the Meter is found to be inaccurate beyond the manufacturer's guaranteed range of accuracy, in which case, the cost and expense of the test shall be borne by the Cooperative and such cost may not be passed along to the Project Participant requesting the test, as part of the Water Charge.

12.4 Meter Inaccuracy. Should the Meter be determined to be inaccurate beyond the manufacturer's guaranteed range of accuracy, the Cooperative shall repair or replace the malfunctioning Meter at its earliest convenience, recognizing that time is of the essence. Additionally, the Meter shall be assumed to have been inaccurate since the last inspection or test and the following month's billing will be adjusted taking into account the nature of the inaccuracy to show a credit or additional charge to the Project Participant for the metered flow for the time interval between the date of the last Meter accuracy inspection or test and the date the Meter was corrected.

13. WATER CHARGE. For each Fiscal Year, the Project Participants shall pay the Cooperative the applicable Water Charge as follows:

13.1 General. The Water Charge shall be sufficient to pay the Debt Service Costs, Capital Renewal and Replacement Costs, Fixed Operation and Maintenance Costs and Variable Operation and Maintenance Costs incurred by the Cooperative in order to provide Project Water Service to the Project Participants for the upcoming Fiscal Year. The Water Charge shall

consist of a Base Rate Charge and a Water Use Charge, including any Operation and Maintenance Costs used to establish and maintain a Rate Stabilization Fund. The Water Charge shall be uniform for all Project Participants. The Water Charge shall be computed in the manner specified in Section 13.4, including any transfers of moneys out of the Rate Stabilization Fund pursuant to Section 13.2, prior to the upcoming Fiscal Year and the Project Participants shall be notified of the Water Charge for the upcoming Fiscal Year in the manner provided in Section 13.3. The Water Charge shall be just, reasonable and equitable to all Project Participants and the Cooperative may not discriminate against any Project Participant, when establishing the Water Charge. Establishment of the Water Charge shall be made by the Project Board and the Project Board's decision shall not be subject to supervision or regulation by any commission, board, bureau, agency, municipality, county or political subdivision of the State of Florida.

13.2 Transfers from the Rate Stabilization Fund. The Project Board may at its discretion transfer moneys out of the Rate Stabilization Fund to reduce the Base Rate Charge in the manner specified in Section 13.4.1.

13.3 Notification of Water Charge. On or before August 15 prior to the Fiscal Year in which the Project Water Service is scheduled to commence and on or before every August 15th thereafter, the Cooperative shall provide the Project Participants the Water Charge for the upcoming Fiscal Year. The Water Charge shall be accompanied by a report detailing the manner in which the Water Charge was computed for the upcoming Fiscal Year. In lieu of a report, the basis for the Water Charge may be detailed in the annual budget adopted by the Cooperative for this Project for the upcoming Fiscal Year.

13.4 Establishment of Water Charge. The Water Charge shall be established by the Cooperative as follows:

13.4.1 Base Rate Charge. The Base Rate Charge shall be computed as follows:

13.4.1.1 The Cooperative shall estimate the Debt Service Cost, the Capital Renewal and Replacement Cost, Fixed Operation and Maintenance Cost and Variable Operation and Maintenance Cost required to meet the cash needs of the Project for the upcoming Fiscal Year.

13.4.1.2 The Base Rate Charge shall consist of the total of the Debt Service Cost, Capital Renewal and Replacement Cost and Fixed Operation and Maintenance Cost determined pursuant to Section 13.4.1.1, minus any moneys transferred out of the Rate Stabilization Fund, as specified in Section 13.2. The Base Rate Charge shall be allocated among each Project Participant based upon each Project Participant's Water Cost Allocation Percentage identified in the then effective Base Rate Cost Allocation Table in Section 1.48, as it may be modified pursuant to Section 10, for the upcoming Fiscal Year.

13.4.1.3 The Base Rate Charge allocation computed for each Project Participant pursuant to Section 13.4.1.2 shall be increased by any underpayment or decreased by any overpayment determined pursuant to Section 13.6.

13.4.2 Water Use Charge. The Water Use Charge shall be computed as the Variable Operation and Maintenance Cost determined pursuant to Section 13.4.1.1 divided by the total of all the Project Water Estimates submitted by the Project Participants for the upcoming Fiscal Year and expressed as a cost per thousand (1,000) gallons of water.

13.5 Payment of the Water Charge. For each Fiscal Year, the Project Participants shall pay the Water Charge as follows:

13.5.1 The Project Participants shall pay their individual Base Rate Charge allocation as specified in Section 13.4.1 in twelve (12) equal monthly payments during each calendar month starting in October and ending on the following September .

13.5.2 The Project Participants shall pay their Water Use Charge on a monthly basis. Each Project Participant's monthly payment shall be determined by multiplying the actual amount of Project Water delivered by the Cooperative to the Project Participant's Point of Connection during the prior calendar month by the Water Use Charge identified in Section 13.4.2.

13.6 Accounting, Audits and Adjustments for Actual Expenses and Water Use. The Cooperative shall maintain accounts and records of actual water use by the Project Participants, all revenue received from all sources to meet the cash needs of the Project and the actual Debt Service Costs, Capital Renewal and Replacement Costs, Fixed Operation and Maintenance Costs and Variable Operation and Maintenance Costs incurred with respect to the Project. On or before each January 31, beginning on the January 31 immediately following the Fiscal Year in which Project Water Service commenced, the Cooperative shall complete an audit of the aforesaid records and accounts and determine what should have been the Water Charge for each Project Participant based on actual costs during the preceding Fiscal Year. For purposes of this audit, it shall be assumed that the Project Participants have used the quantity of water specified in their Project Water Estimates even if actual water use was less. Said audit shall be conducted by a nationally recognized certified public accounting firm. In the event the audit determines an underpayment was made by a Project Participant, then said underpayment shall be added to that Project Participant's Base Rate Charge for the upcoming Fiscal Year and paid in the manner specified in Section 13.5.1. If the audit determines that an overpayment was made to a Project Participant, then

said overpayment shall be deducted from that Project Participant's Base Rate Charge for the upcoming Fiscal Year in the manner specified in Section 13.5.1.

13.7 Prohibition Against Surcharges, Transfers to General Fund and Certain Payments. The Water Charge shall not include any surcharge, tax, payment in lieu of taxes, payment in lieu of franchise fees, transfers to the Cooperative's general administrative expenses or any charge or payment not directly related to the cost of providing Project Water Service.

13.8 Grants and Other Sources of Funding. The Cooperative may seek grants and utilize other funding sources to cover any costs that would otherwise have to be paid through the Water Charge. Any funds obtained by Cooperative from these other sources must be used to pay Project costs that would otherwise need to be paid by the Project Participants through the Water Charge.

14. BILLING, PAYMENT, SOURCE OF FUNDS AND RELATED MATTERS.

14.1 Billing and Payment. The Cooperative shall invoice each Project Participant for their Water Use Charge on regular monthly intervals. The Meters shall be read and recorded on or about the last normal work day of the calendar month during which the Project Water Service was provided. Billing to each Project Participant shall be made on the 10th day of the following calendar month. Payment of the Water Charge shall be made to the Cooperative no later than thirty (30) days after which the statement was received. If the Water Charge or any portion thereof remains unpaid following their due date, the Project Participants shall be charged with and pay to the Cooperative interest on the amount unpaid from its due date until paid at the rate of eight (8%) per annum.

14.2 Irrevocable Commitment to Pay. The Project Participants shall pay their respective Water Charge for every Fiscal Year throughout the term of the Agreement in the manner

provided in Section 14.1. Said payments shall be made without notice or demand and without set-off, counterclaim, abatement, suspension or deduction. The Cooperative is undertaking the acquisition, construction, operation and replacement and expansion of the Project on the representation, warranties and covenants of the Project Participants to pay the Water Charge in a timely manner.

14.3 Source of Payment. The source of funds for payment of the Water Charge shall be the utility enterprise fund established by each Project Participant. Each Project Participant shall maintain an operation and maintenance account as part of its utility enterprise fund throughout the term of this Agreement. At all times during the terms of this Agreement, a Project Participant shall pay the Water Charge from its utility system operation and maintenance account.

14.4 Water Utility System Charges. Each Project Participant shall fix, revise, maintain and collect such fees, rates, tariffs, rentals or other charges for the use of products, services and facilities of their respective water utility systems to the extent necessary to fund the timely payment of the Water Charge.

14.5 Prohibition Against Indebtedness and Ad Valorem Taxation. The obligation of the Project Participants to pay the Water Charge pursuant to this Agreement does not constitute general indebtedness of the Project Participants or any other municipality or county within the meaning of any constitutional, statutory or charter provision limiting the amount and nature of indebtedness that may be incurred by the Project Participants. Neither the Cooperative nor the holder of any Obligations issued by the Cooperative to finance the construction, alteration, improvement, replacement, expansion or operation of the Project nor any regional, state or federal agency providing cooperative funding to fund the construction, alteration, improvement, replacement, expansion or operation of the Project shall have the right to require the Project Participants

to exercise their ad valorem taxing power, if any, to pay their obligations and liabilities under this Agreement or to compel payment from any source, other than as indicated in Section 14.3.

15. PLEDGE OF CONTRACT REVENUES. The Cooperative is authorized to pledge all payments due, owing or received from the Project Participants, including any interest derived from monies received under this Agreement for the purpose of securing Obligations issued by the Cooperative to construct or expand the Projects.

16. FORCE MAJEURE.

16.1 Excuse from Performance. No Party shall be liable to any other Party for delay in performance of, or failure to perform, its obligations under this Agreement, if such delay or failure is caused by a Force Majeure Event.

16.2 Notice. The Party claiming excuse shall deliver to the other Parties a written notice of intent to claim excuse from performance under this Agreement by reason of a Force Majeure Event. Notice required by this section shall be given promptly in light of circumstances, and, in the case of events described in (c), (d) or (e) of the definition of Force Majeure Event only, not later than ten (10) days after the occurrence of the Force Majeure Event. Such notice shall describe the Force Majeure Event, the services impacted by the claimed event, the projected length of time that the Party expects to be prevented from performing and the steps which the Party intends to take to restore its ability to perform.

16.3 Obligation to Restore Ability to Perform. Any suspension of performance by a Party pursuant to this Section shall be only to the extent, and for a period of no longer duration than, required by the nature of the Force Majeure Event, and the Party claiming excuse shall use its best efforts to remedy its inability to perform as quickly as possible.

17. DISPUTE RESOLUTION. If there is a dispute between two or more Parties arising out of or related to this Agreement which cannot be resolved, then unless it shall be unreasonable to do so or an emergency situation or necessity dictates otherwise, before proceeding to the default and remedy provisions of this Agreement in Section 18, the affected Parties (“Mediating Parties”) shall attempt to resolve the dispute by non-binding mediation. The mediation will be conducted by a mediator mutually agreeable to all Mediating Parties who has experience in mediating disputes of a similar nature. The Mediating Parties will use a procedure agreeable to those Parties and the mediator. The Mediating Parties will mediate in good faith, but bound by a resulting mediation agreement, equally share the costs of mediation and timely pay same. Mediation will commence within thirty (30) days after the date a Party requests mediation of a dispute, or if the agreed mediator is not available within that time period, then at the first opportunity the agreed mediator is available. A Party may not commence litigation of the dispute pursuant to Section 18 until (a) the mediator has declared the Mediating Parties are at an impasse, or (ii) one or all Mediating Parties have terminated the mediation. Among other matters the Parties intend this mediation process as an alternative to the conflict resolution procedure described in the Florida Governmental Conflict Resolution Act, Chapter 164, Florida Statutes.

18. DEFAULT AND REMEDY.

18.1 Default. If any Party fails to observe, comply with, perform or maintain in any material way any term, covenant, condition, duty, obligation, representation or warranty contained or arising under this Agreement, such action shall constitute a default and the other Parties may seek remedies set forth herein, if that default is not timely cured within thirty (30) days, unless such default is capable of being cured within thirty (30) day, in which case the Party must cure the default as soon as practicable. Recognizing the Project Participants’ paramount need for a safe and

dependable water supply, the Parties agree that the exclusive remedy for default under this Agreement shall be for the non-defaulting Parties to individually or jointly seek specific performance arising from such default.

18.2 Project Participant Payment Dispute. A Project Participant that disputes a payment of the Water Charge under Section 13 shall be obligated to continue paying the disputed charge until the disagreement is resolved. If the dispute is decided in the favor of the Project Participant, the Cooperative shall elect to either pay the disputed charge as a credit against the Water Charge for the next Fiscal Year or through a direct one-time payment to the Project Participant.

18.3 Suspension of Project Water Service in the Event of Non-Payment of the Water Charge. A Project Participant that fails to pay its Water Charge or any portion thereof within ninety (90) days following its due date shall be in default of this Agreement and upon thirty (30) days written notice, the Cooperative may suspend Project Water Service to the Project Participant and prohibit a Project Participant from using Virtual Water. Suspension of Project Water Service to a Project Participant or prohibition of the use of Virtual Water by a Project Participant because of its failure to pay the Water Charge or any portion thereof shall not excuse the Project Participant from paying the Base Rate Charge, when it becomes due nor prohibit the Cooperative from continuing to charge interest on the unpaid amount. Upon payment of all outstanding Water Charges, including any interest, the Cooperative shall immediately resume Project Water Service to the Project Participant or immediately allow a Project Participant to use Virtual Water. The Cooperative's decision to suspend Project Water Service to a Project Participant or to prohibit Virtual Water use by a Project Participant under this section shall not be subject to the dispute resolution process in Section 17 and shall not be considered a default under Section 18. However, the Cooperative's failure to resume Project Water Service or to allow a Project Participant to use

Virtual Water upon payment of all outstanding Water Charges, including any interest, may constitute a default under Section 18 and shall be subject to the dispute resolution process specified in Section 17.

19. WITHDRAWAL OF A PROJECT PARTICIPANT FROM THIS AGREEMENT. 19.1 Withdrawal Before the Decision to Commence 100% Final Design. Once the 60% design is complete, the Project Administrator will present it to the Project Board. Within 45 days after the 60% design presentation to the Project Board, any Project Participant may withdraw from the Project. Any withdrawal must be in writing and provided as set forth in Section 25 of this Agreement. Within 45 days after the time set for any Member to withdraw, the Project Board shall convene and the remaining members of the Project Board shall consider approval of the 60% design and authorization to proceed with 100% final design. A Project Participant who withdraws from this Agreement before the decision to commence with 100% final design shall remain liable for payment of its share of the cost for the 60% final design described in subsection 8. , but shall not be liable for any future costs of the Cooperative.

19.2 Withdrawal After the Decision to Commence 100% Final Design. A Project Participant who withdraws from this Agreement after the decision to commence 100% final design shall remain liable for payment of its share of the cost for the Final Design and Bidding Stage under Section 8. , and shall remain liable for payment of its share of the Water Use Charge as described in this subsection 19.3. If the withdrawing Project Participant has submitted a Project Water Estimate to the Cooperative pursuant to Section 10 for the current Fiscal Year, then it shall remain liable under Section 23.4 to pay the Water Use Charge for that Fiscal Year, as if it had taken the entire quantity of Project Water specified in its Project Estimate. Additionally, unless the remaining Project Participants take all or a portion of the withdrawing

Project Participant's Water Cost Allocation, the withdrawing Project Participant shall continue to remain liable for payment of its share of the Base Rate Charge. This liability shall continue for the term of the Agreement, until such time as the withdrawing Project Participant's Water Cost Allocation is completely redistributed among the remaining Project Participants.

19.3 Duties of and effect on Withdrawing Project Participant. A withdrawing Project Participant shall no longer be considered a voting member of the Project Board with regard to that specific Project. Upon notice by the Cooperative, a withdrawing Project Participant shall apply to withdraw from any Project Permits issued in its name and shall not oppose or challenge any modification to a Project Permit necessitated by its withdrawal. A withdrawing Project Participant shall surrender its Water Allocation, if any, and immediately forfeit its right to receive Project Water Service from the Cooperative, including the use of Virtual Water.

19.4 Redistribution of Water. All of a withdrawing Project Participant's Water Allocation, if any, shall be subject to redistribution among the remaining Project Participants. Each remaining Project Participant shall be entitled to a pro-rated amount of the withdrawing Project Participant's Water Allocation, if any, based upon the then applicable Water Allocation Table in Section 1.46. Redistribution of the withdrawing Project Participant's Water Allocation to the remaining Project Participants shall take place within sixty (60) days of the Parties receiving written notice of the withdrawing Project Participant's intent to withdraw from this Agreement. During this sixty (60) day period a Project Participant will notify the Cooperative in writing of its intent to take some or all of the withdrawing Project Participant's Water Allocation. Any redistribution of the withdrawing Project Participant's Water Allocation to another Project Participant must be reviewed and approved by the Cooperative Project Board as to technical fea-

sibility. If two or more existing Project Participants exercise their right to take all of the withdrawing Project Participant's Water Allocation, then the withdrawing Project Participant's Water Allocation shall be redistributed in equal portions to the Project Participants, which requested redistribution. Any of the withdrawing Party's Water Allocation that is not redistributed as specified in this Section 19, shall become Excess Water.

19.4 Survival. The provisions of this Section 19 shall survive the termination of this Agreement.

20. SUBSTITUTION AND ADDITION OF PROJECT PARTICIPANTS AND ASSIGNMENT OF THIS AGREEMENT.

20.1 Substitution. As a matter of right, a new Project Participant or an existing Project Participant may be substituted for an existing Project Participant, if the new Project Participant or existing Project Participant agrees to fully perform all the obligations of the existing Project Participant. Any new substitute Project Participant must be a public agency. Substitution shall mean the new or existing Project Participant shall at a minimum succeed to the old Project Participant's entire Water Allocation, if any, and Water Cost Allocation. Prior to substitution taking effect, the existing Project Participant must notify the other existing Project Participants in writing of the substitution and offer the substitution on the same terms and conditions to the other

existing Project Participants, who shall be allowed at least sixty (60) days to exercise the right of first refusal. This right of first refusal shall only apply when a new Project Participant is substituted for an existing Project Participant. If one of the existing Project Participants exercises its right of first refusal during this time period, then all of the substituted Party's Water Allocation, if any, and Water Cost Allocation shall be assigned to the existing Project Participant. If two or more existing Project Participants exercise their right of first refusal during this time period, then all of the substituted Project Participant's Water Allocation, if any, and Water Cost Allocation shall be re-assigned in equal portions to the existing Project Participants. If none of the existing Project Participants commit to acquire the substituted Project Participant's entire Water Allocation, if any, and Water Cost Allocation during this sixty (60) day period, then the other existing Project Participants shall be considered to have waived their right of first refusal. Any substitution under this Section 20.1 must be reviewed and approved by the Cooperative Project Board as to technical feasibility. Once the substitution takes place, the substituted Project Participant shall withdraw from the Agreement and shall no longer be considered a voting member of the Project Board. Additionally, the substituted Project Participant shall cooperate with the Cooperative in any modifications to the Project Permits necessary to effectuate this substitution.

20.2 Addition. A new Project Participant may be added by the unanimous decision of all the current Project Participants so long as the new Project Participant is a public agency.

20.2.1 Cost to become a new Project Participant. The provisions of this section 20.2 are established to provide equity among all Project Participants and to provide an incentive for local governments to subscribe early. Any public agency that joins this Agreement after it is first executed under the process described in this Section 20 of this Agreement

shall pay its proportionate share of the costs incurred by the Project Participants before the new Project Participant joins the Agreement, design fees if applicable, and _____ % of its proportionate share of the Project Costs expended to date. This amount is in addition to the Water Charge for each upcoming fiscal year as described in section 13. When this occurs, the percentage collected shall be refunded proportionately to the initial Project Participants who joined this Agreement when it was first executed.

20.2.2 Amendment of Water Charge. When a new Project Participant is added pursuant to this Section 20.2, the existing Project Participants must amend the Agreement to reflect the reassignment of Water Allocations and Water Cost Allocations among the existing Project Participants and the new Project Participant. The Project Board will also determine how the new Base Water Charge is allocated among the new group of Project Participants taking into consideration the short and long-term costs and benefits of the new infrastructure to the new and existing Project Participants including any savings realized due to economies of scale. **20.3**

Assignment. As a matter of right, an existing Project Participant may assign a portion of its Water Allocation, if any, and its Water Cost Allocation to a new Project Participant or an existing Project Participant, if the new Project Participant or existing Project Participant agrees to fully perform all the obligations of the existing Project Participant. Any new assignee Project Participant must be a public agency. The complete assignment of an existing Project Participant's Water Allocation, if any, and Water Cost Allocation to a new Project Participant or an existing Project Participant shall be treated as a substitution under Section 20.1. Prior to the assignment taking effect, the existing Project Participant must notify the other existing Participants in writing of the assignment and offer the assignment on the same terms and conditions to the other existing Project Participants, who shall be provided at least sixty (60) days to exercise the right of first

refusal. This right of first refusal shall only apply when the assignee is a new Project Participant. If one of the existing Project Participants exercises its right of first refusal during this time period, then the portion of the assigning Project Participant's Water Allocation, if any, and Water Cost Allocation up for assignment shall be transferred to the existing Project Participant. If two or more existing Project Participants exercise their right of first refusal during this time period, then the portion of the assigning Project Participant's Water Allocation, if any, and Water Cost Allocation up for assignment shall be transferred in equal portions to the existing Project Participants. If none of the existing Project Participants commit to acquire the assigning Project Participant's Water Allocation, if any, and Water Cost Allocation up for assignment, then the other existing Project Participants shall be considered to have waived their right of first refusal. The right of first refusal shall not apply when an existing Party is the assignee. Any assignment under this Section 20.3 must be reviewed and approved by the Cooperative Project Board as to technical feasibility. Once the assignment takes place, the assigning Project Participant shall still be a Party to the Agreement, but it shall forfeit or surrender the assigned portion of its Water Allocation and Water Cost Allocation to the assignee Project Participant. Once assignment takes place, the assigning Project Participant shall cooperate with the Cooperative in any modification to the Project Permits necessary to effectuate this assignment.

21. PERMITS.

21.1 The Cooperative shall not interfere with the existing consumptive use permits or existing water, wastewater, or reclaimed water facilities of a Member Government, except as authorized under this Agreement or as may otherwise be consented to in writing by the Member Governments.

21.2 The Parties shall cooperate with each other and no Project Participant shall interfere with the Cooperative's ability to obtain, maintain and comply with any Project Permits.

21.3 No Project Participant shall purposefully submit information to a regulatory agency that conflicts with information submitted by the Cooperative in support of any application for a Project Permit in the event that an application for a Project Permit will interfere with the existing consumptive use permits or existing water, wastewater or reclaimed water facilities of that Project Participant, except as authorized under this Agreement or may otherwise be consented to in writing by the Project Participant.

21.3 No Project Participant shall legally challenge or support any legal challenge against any proposed or final agency action or any legal instrument with regard to any Project Permit sought by the Cooperative.

21.4 A Member Government of the Cooperative that is not a Party to this Agreement is not responsible, either directly or indirectly, for compliance with the terms and conditions of any Project Permits nor shall it be liable or responsible, either directly or indirectly, for compliance with the terms and conditions of any Project Permits nor shall it be liable or responsible, either directly or indirectly, for any fines, penalties or damages associated with any Project Permits.

22. DUTY TO COOPERATE. The Parties shall work together in good faith to implement the terms of this Agreement. As part of this cooperation, the Project Participants will at a minimum do the following:

22.1 Acquisition of Real Property. The Project Participants shall cooperate and assist and not interfere with the Cooperative's ability to acquire all interests in real property necessary to construct, manage and operate the Project, provided the acquisition is not inconsistent with the Interlocal Agreement.

22.2 Project Permits. The Project Participants shall cooperate and assist and not interfere with the Cooperative's ability to obtain, maintain and comply with all Project Permits necessary to construct, manage and operate the Project.

22.3 Construction, Management and Operation of the Project. The Project Participants shall cooperate and not interfere with the Cooperative's ability to construct, manage and operate the Project.

22.4 Base Production Commitment. The Project Participants commit to prepare Project Water Estimates that maximizes the use of Project Water to meet their potable water needs. If for some reason, other than a Force Majeure Event, a Project Participant uses less water during a Fiscal Year than its Project Water Estimate, then it shall be required to pay the Water Charge as if it had taken the entire quantity of water specified in its Project Water Estimate, as set forth in Section 13.5.

22.5 Obligations. The Project Participants shall cooperate with the Cooperative should the Cooperative decide in accordance with the Agreement to issue Obligations to fund any Capital Costs incurred by the Cooperative with regard to the Project. In said event, the Project Participants shall comply with the reasonable request of the Cooperative and will, upon such request, do as follows: (1) make available general material and financial information about itself; (2) consent to publication and distribution of its financial information; (3) certify that any general material and financial information is accurate, does not contain any untrue statements of material

fact and does not omit to state a material fact necessary to make the statements contained in the general material and financial information, in light of the circumstances under which they were made not misleading; (4) provide reasonable certifications to be used in a transcript of closing documents; (6) provide and pay for reasonable requested opinions of counsel as to the binding effect of this Agreement, the validity of actions taken as a result of the Agreement, title to real property, as applicable, and pending litigation which could materially affect the Party's performance under the Agreement; and, (7) provide guarantee agreements, if required in order to obtain the Obligation. In addition, each Project Participant agrees to take no action which shall adversely affect the exclusion from gross income of interest on the Obligations for purposes of federal income taxation.

22.6 Grants and Other Sources of Funding. The Project Participants shall cooperate with the Cooperative in seeking alternative sources of funding for the Project, including, but not limited to, grants.

23. SOVEREIGN IMMUNITY AND INDEMNIFICATION. The Parties intend to avail themselves of the benefits of Section 768.28, Florida Statutes, and any other statute and common law governing sovereign immunity to the fullest extent possible and nothing herein shall be construed as a waiver of sovereign immunity by these Parties. Additionally, neither the Combined Project Participants nor the Project Participants are jointly or severally liable for any torts attributable to the Cooperative and only the Cooperative shall be liable for torts attributable to it or for the torts of its officers, agents, attorneys or employees under this Agreement, and then only to the extent of the waiver of sovereign immunity or limitation specified in Section 768.28, Florida Statutes. Finally, the Cooperative agrees to indemnify and hold the Combined Project Participants and Project Participants harmless from any injury that the Cooperative or its officers, agents, attorneys,

employees or invitees sustain while carrying out the Cooperative's obligations under this Agreement.

24. APPLICABLE LAW, VENUE AND WAIVER OF JURY TRIAL. This Agreement and the rights and obligations of the Parties are to be governed by, construed and interpreted in accordance with the laws of the State of Florida. In the event of any legal proceeding arising under this Agreement, the exclusive venue for such proceeding shall be either in a State court of competent jurisdiction located in Polk County, Florida or the United States District Court in and for the Middle District of Florida, Tampa Division. In any such legal proceeding, the Parties hereby consent to trial by the court and waive the right to a jury trial as to any issues that are triable before a jury.

25. NOTICES.

25.1 All notices provided for in this Agreement must be in writing and shall be sufficient and deemed to be given when sent by certified mail or registered mail, return receipt requested. A copy shall also be sent to the Party by email. All notices shall be delivered or sent to the Parties at their respective addresses shown below or such other addresses as a Party may designate by prior notice given in accordance with this provision to the other Parties:

City of Auburndale
City Manager
P.O. Box 186
Auburndale, Florida 33823
863-965-5530

City of Bartow
City Manager
P.O. Box 1069
Bartow, Florida 33831
863-534-0100

City of Davenport
City Manager
P.O. Box 125
Davenport, Florida 33836
863-419-3300

City of Eagle Lake
City Manager
P.O. Box 129
Eagle Lake, Florida 33839
863-293-4141

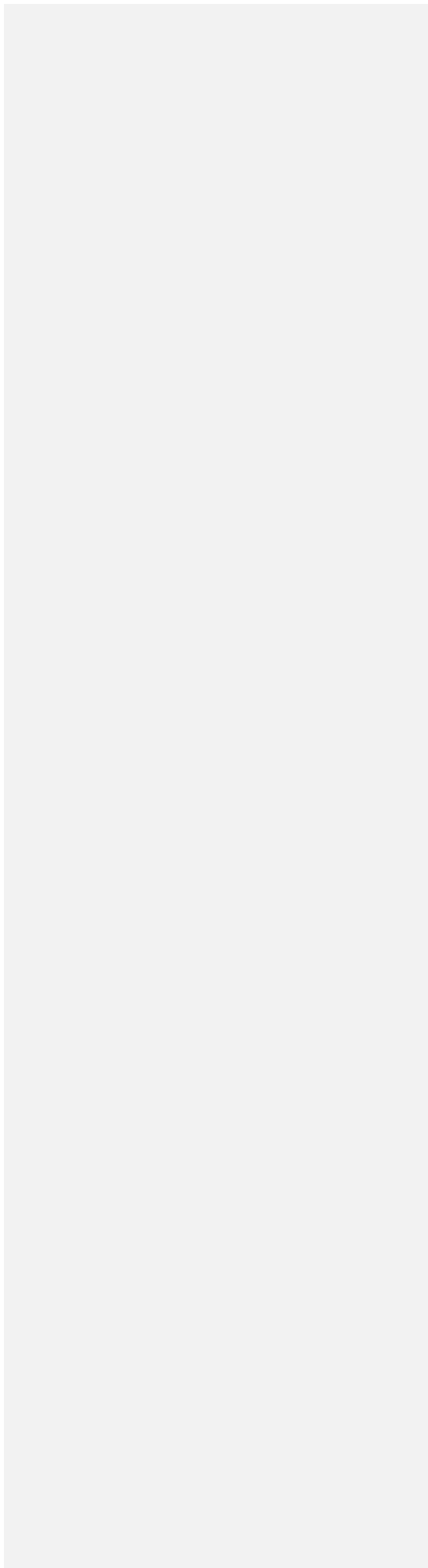
City of Fort Meade
City Manager
P. O. 856
Fort Meade, Florida 33841
863-285-1100

City of Haines City
City Manager
620 E Main Street
Haines City, Florida 33844
863-421-3600

City of Lake Alfred
City Manager
155 E Pomelo Street
Lake Alfred, Florida 33850
863-291-5270

City of Lakeland
City Manager
228 S Massachusetts Ave
Lakeland, Florida 33801
863-834-6000

City of Lake Wales
City Manager
P. O. Box 1320
Lake Wales, Florida 33859
863-678-4196



City of Mulberry
City Manager
P.O. Box 707
Mulberry, Florida 33860
863-425-1125

City of Polk City
City Manager
123 Broadway SE
Polk City, Florida 33868
863-984-1375

City of Winter Haven
City Manager
P. O. Box 2277
Winter Haven, Florida 33883
863-291-5600

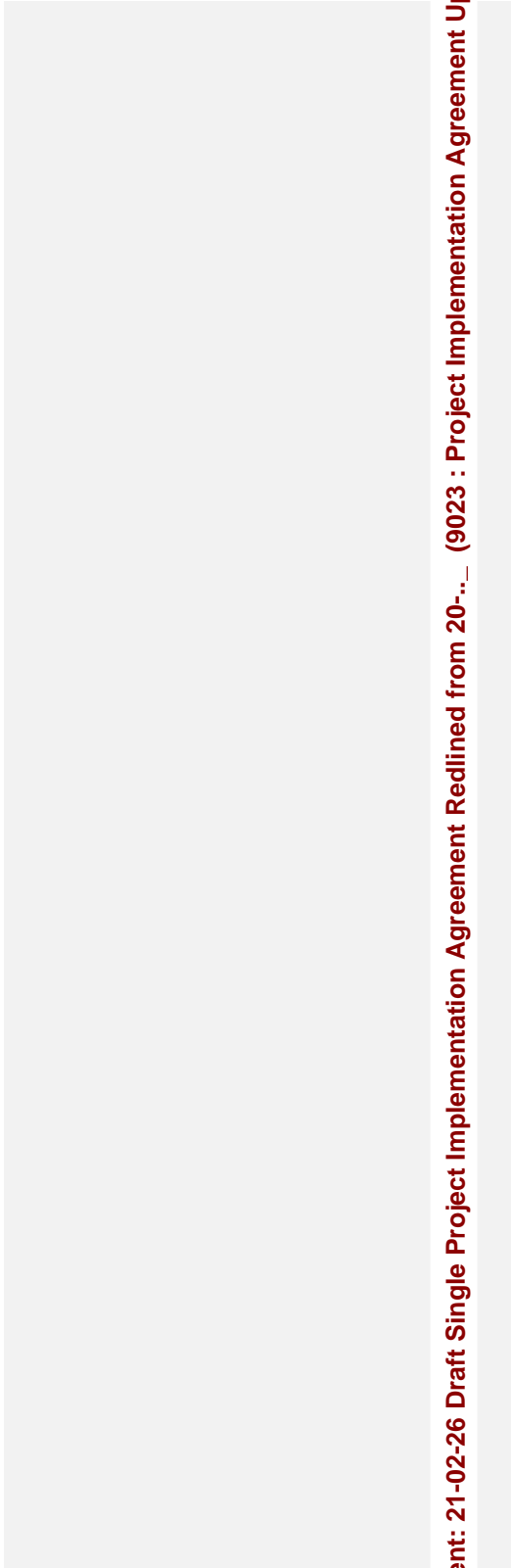
Town of Dundee
Town Manager
P.O. Box 1000
Dundee, Florida 33838
863-438-8330

Town of Lake Hamilton
Town Manager
P.O. Box 126
Lake Hamilton, Florida 33851
863-439-1910

Polk County
County Manager
Drawer CA01/P.O. Box 9005
Bartow, Florida 33831
Phone: 863-534-6444

25.2 All notices shall also be sent to the Cooperative, to the attention of its executive director, with a separate copy to its general counsel.

25.3 Any Party, may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communications shall



be sent. Any notice shall be deemed given on the date such notice is delivered by hand (or facsimile transmission) or three (3) days after the date mailed.

26. TIME EXTENSIONS. The Cooperative Project Board may extend or change any of the deadlines specified in this Agreement.

27. DISCLAIMER OF THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue to or for the benefit of anyone that is not a Party hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity, other than the Parties any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the Parties.

28. AMENDMENT. The Agreement may only be amended in writing executed by all the Parties.

29. WAIVER. No failure by a Party to exercise any right, power or privilege under this Agreement is a waiver of that or any other right, power or privilege under this Agreement, except as otherwise expressly set forth in the Agreement.

30. SEVERABILITY. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, it shall be considered deleted, and shall not invalidate the remaining provisions. However, if the deleted language is considered a key provision of the Agreement, the Parties must agree to a substitute provision that will accomplish the original intent of the Parties. If the Parties cannot agree to a substitute provision within ninety (90) days of the determination by the court, then the Agreement shall be deemed terminated.

31. ATTORNEY'S FEES AND COSTS.

31.1 Dispute Resolution or Litigation Under the Agreement. Each Party shall bear its own costs, including attorney's fees, incurred in any litigation arising under this Agreement. Notwithstanding the foregoing, any costs, including attorney's fees incurred by the Cooperative in any dispute resolution or litigation arising under this Agreement may be included in computation of the Water Charge upon approval by the Project Board.

31.2 Litigation Outside the Agreement Concerning the Project. Any damages or costs, including attorney's fees incurred by the Cooperative in any litigation concerning the Project, excluding litigation described in Section 31.1, shall be included in computation of the Water Charge. Any damages or costs, including attorney's fees awarded to the Cooperative in any litigation concerning the Project, excluding litigation described in Section 31.1, shall be deemed a credit to be considered in computation of the Water Charge.

32. ENTIRE AGREEMENT. This Agreement, including Exhibits, constitutes the entire contract among the Parties pertaining to the subject matter hereof, and there are no warranties, representations or other agreements in connection with the subject matter hereof, except as specifically set forth herein.

33. EXECUTION OF DOCUMENTS. This Agreement shall be executed in multiple duplicate originals, any of which shall be regarded for all purposes as an original and all of which shall constitute one and the same instrument.

34. AMBIGUITY. The Parties agree that each has played an equal part in negotiation and drafting of this Agreement, and in the event ambiguity should be asserted or realized in the interpretation or construction of this Agreement, the result of such ambiguity shall be equally assumed and realized by each Party.

35. **RELATIONSHIP OF THE PARTIES.** Nothing herein shall make any Party a partner or joint venturer or create any fiduciary relationship among the Parties.

36. **GOOD FAITH.** The Parties hereto agree to exercise good faith and fair dealings in respect to all matters relating to this Agreement.

37. **FURTHER ASSURANCES.** The Parties shall use all reasonable efforts to provide such information, execute such further instruments and documents and take actions as may be reasonably requested by another Party and not inconsistent with the provisions of this Agreement and not involving the assumption of obligations or liabilities different from, in excess of, or in addition to those expressly provided for in this Agreement to carry out the intent of this Agreement.

38. **PUBLIC RECORDS.** Should any Party assert any exemption to, or inapplicability of, the requirements of Chapter 119 and related statutes, the burden and cost of establishing such an assertion, by way of injunctive or other relief as provided by law, shall be upon that Party. The Parties shall allow public access to all Project documents and materials that are subject to the requirements of Chapter 119, Florida Statutes or claim that a document does not constitute a public record, the burden of establishing such an exemption or excluding a document as a public record, by way of injunctive or other relief as provided by law, shall be upon the Party asserting the exemption or the claim that a document does not constitute a public record. Additionally, nothing in this Agreement shall be construed nor is intended to, expand the scope of Chapter 119, Florida Statutes or make into a public record a document that is not a public record under the applicable law.

39. **NON-PARTICIPATING MEMBER GOVERNMENTS.** This Agreement is not binding upon and cannot negatively affect a Member Government, who is not a Party to the

Agreement either directly or indirectly nor shall a Member Government, who is not a Party to the Agreement, incur any liability under this Agreement solely by virtue of being a Member Government of the Cooperative.

[Signatures begin on the following pages]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed and entered into by the Cooperative.

CITY COMMISSION OF THE
CITY OF AUBURNDALE, FLORIDA

By: _____
Timothy J. Pospichal, Mayor

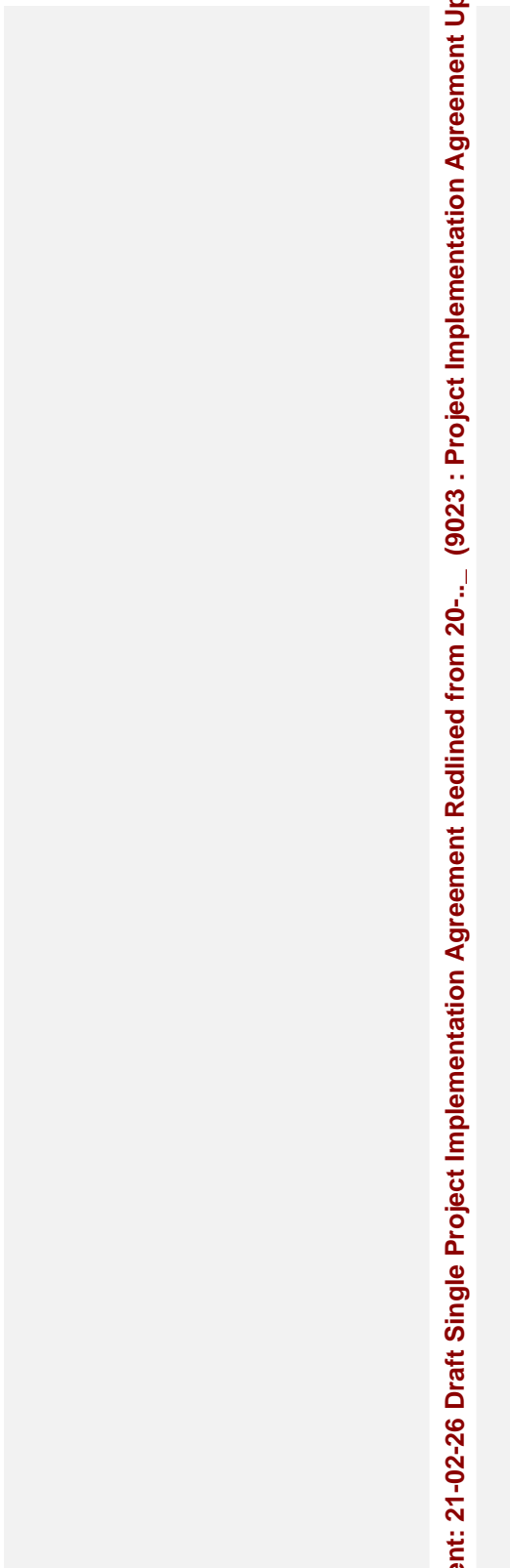
Date: _____

ATTEST:

By: _____
Shirley Lowrance, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

V. Patton Kee, City Attorney



IN WITNESS WHEREOF, the undersigned has caused this Combined Projects Implementation Agreement to be duly executed and entered into as of the Effective Date.

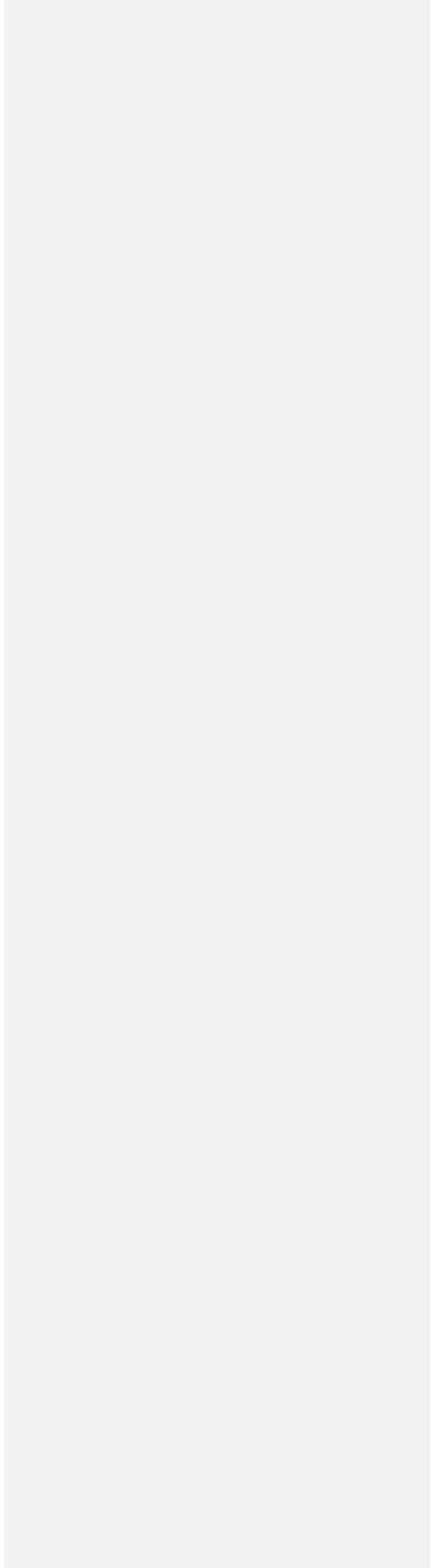
CITY COMMISSION OF THE
CITY OF BARTOW, FLORIDA

By: _____
William "Billy" Simpson, Mayor

Date: _____

ATTEST:

By: _____
Jacqueline Poole, City Clerk



Attachment: 21-02-26 Draft Single Project Implementation Agreement Redlined from 20-... (9023 : Project Implementation Agreement Update -

IN WITNESS WHEREOF, the undersigned has caused this Combined Projects Implementation Agreement to be duly executed and entered into as of the Effective Date.

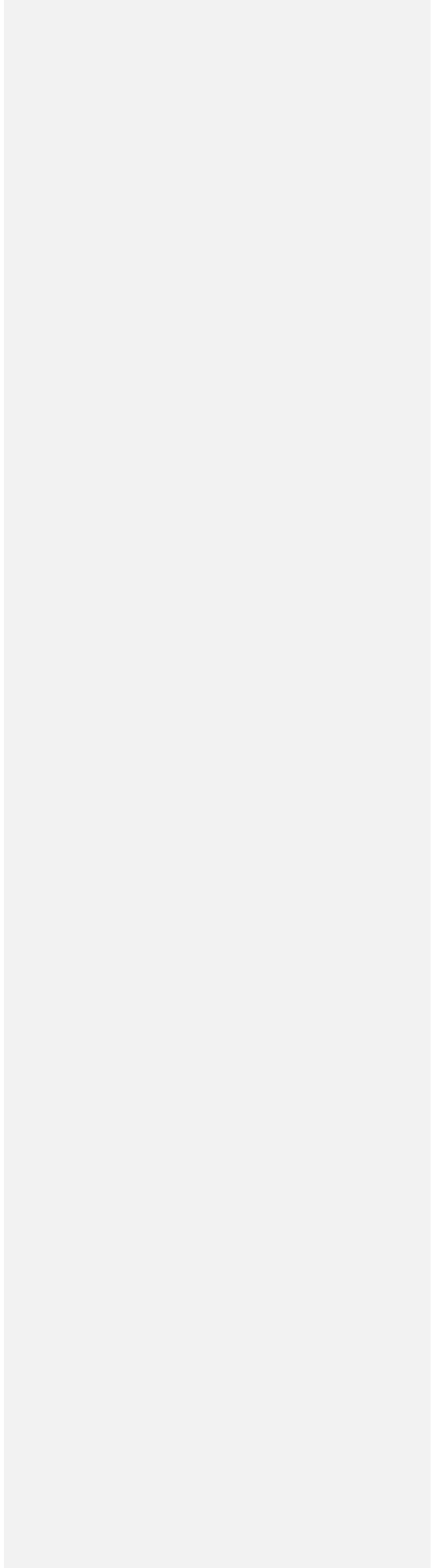
CITY COMMISSION OF THE
CITY OF DAVENPORT, FLORIDA

By: _____
H.B. "Rob" Robinson, Mayor

Date: _____

ATTEST:

By: _____
Rachel Castillo, City Clerk



Attachment: 21-02-26 Draft Single Project Implementation Agreement Redlined from 20-... (9023 : Project Implementation Agreement Update -

IN WITNESS WHEREOF, the undersigned has caused this Combined Projects Implementation Agreement to be duly executed and entered into as of the Effective Date.

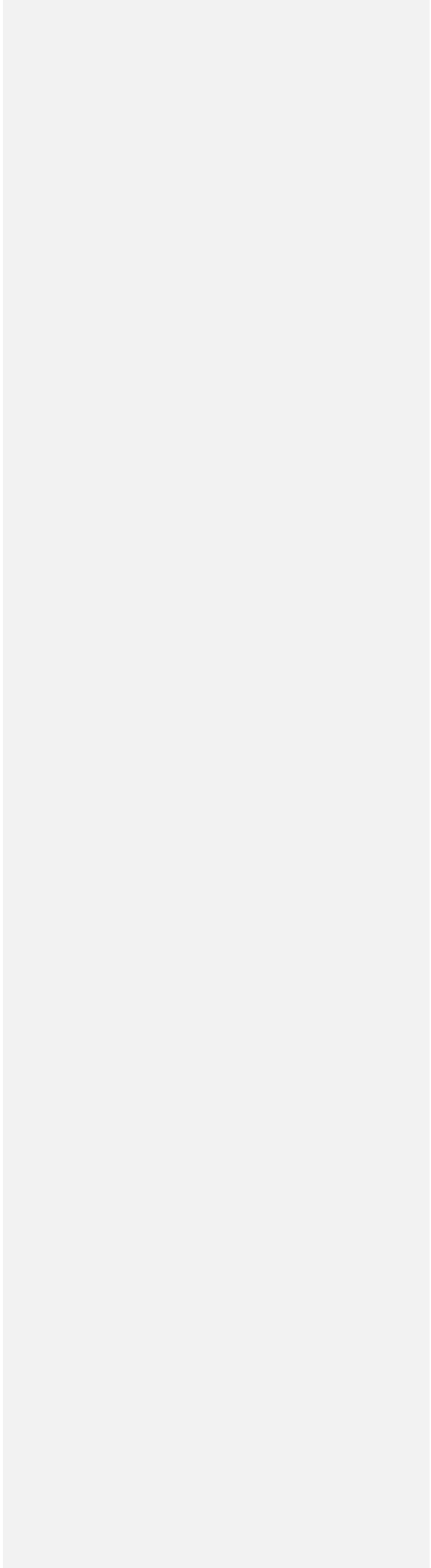
CITY COMMISSION OF THE
CITY OF EAGLE LAKE, FLORIDA

By: _____
Cory Coler, Mayor

Date: _____

ATTEST:

By: _____
Dawn Wright, City Clerk



IN WITNESS WHEREOF, the undersigned has caused this Combined Projects Implementation Agreement to be duly executed and entered into as of the Effective Date.

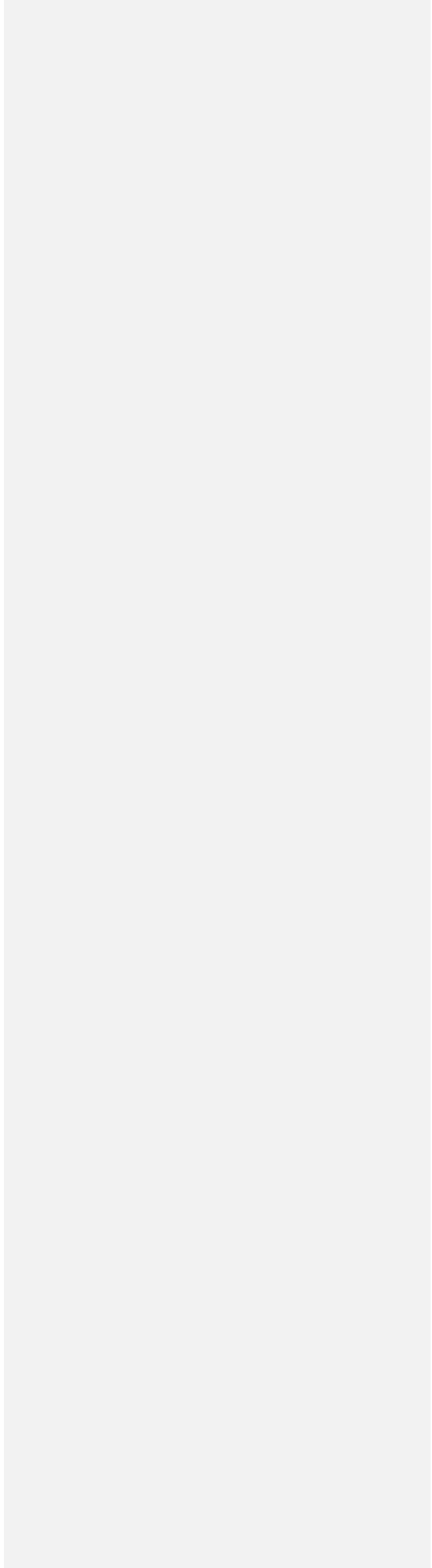
CITY COMMISSION OF THE
CITY OF FT. MEADE, FLORIDA

By: _____
James Watts, Mayor

Date: _____

ATTEST:

By: _____
Melissa Newman, Deputy City Clerk



Attachment: 21-02-26 Draft Single Project Implementation Agreement Redlined from 20-... (9023 : Project Implementation Agreement Update -

IN WITNESS WHEREOF, the undersigned has caused this Combined Projects Implementation Agreement to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF HAINES CITY, FLORIDA

By: _____
Morris L. West, Mayor

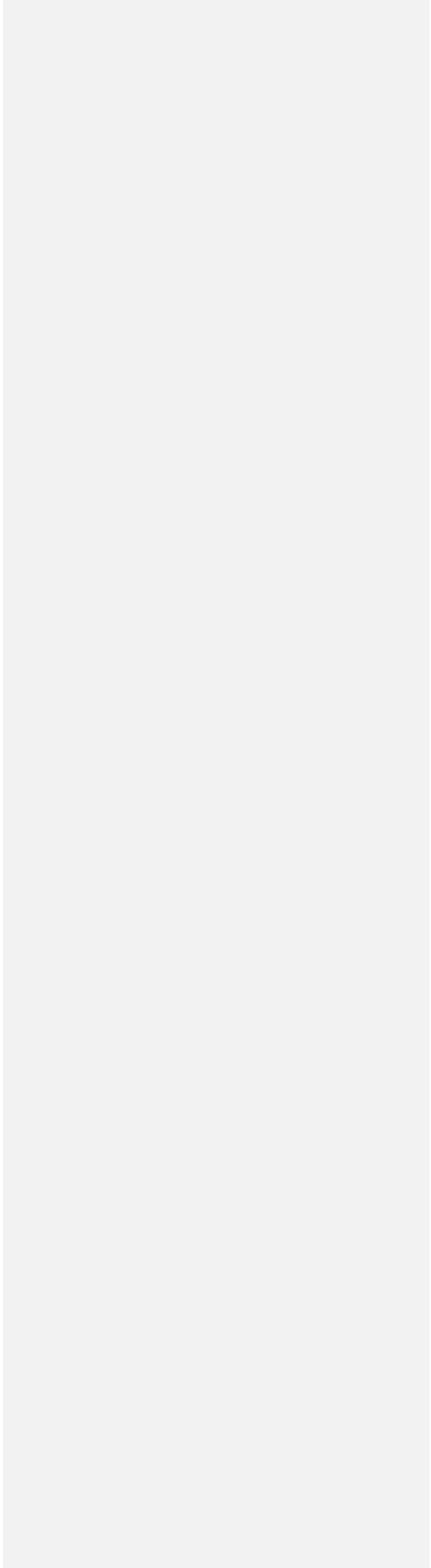
Date: _____

ATTEST:

By: _____
Linda Bourgeois, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Fred Reilly, City Attorney



IN WITNESS WHEREOF, the undersigned has caused this Combined Projects Implementation Agreement to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF LAKE ALFRED, FLORIDA

By: _____
Nancy Z. Daley, Mayor

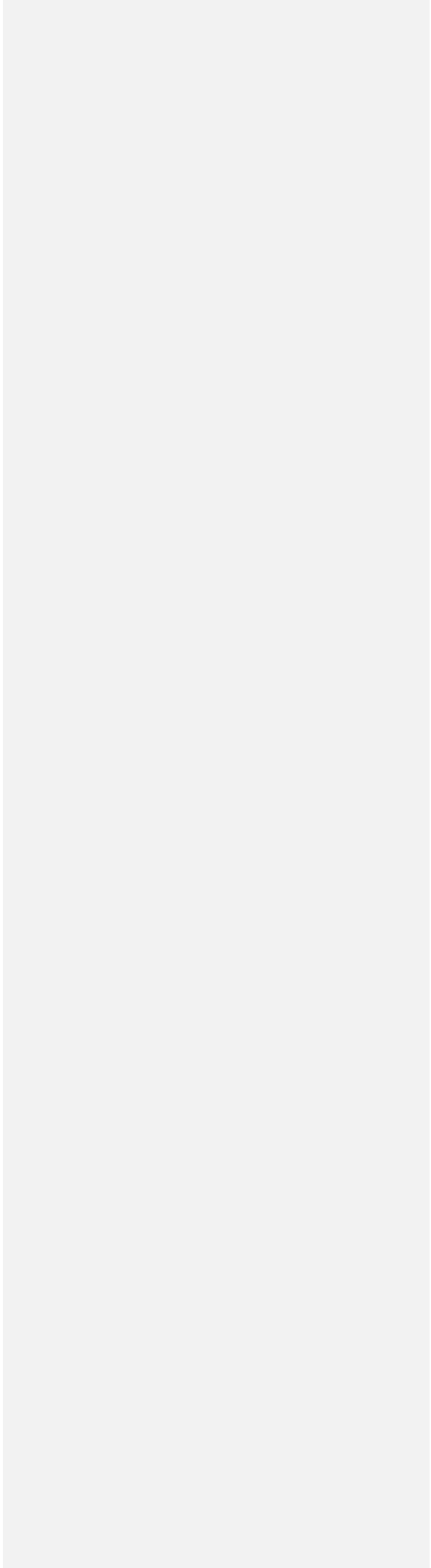
Date: _____

ATTEST:

By: _____
Amee Bailey, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Frederick J. ("John") Murphy, Jr., City Attorney



IN WITNESS WHEREOF, the undersigned has caused this Combined Projects Implementation Agreement to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF LAKELAND, FLORIDA

By: _____
William "Bill" Mutz, Mayor

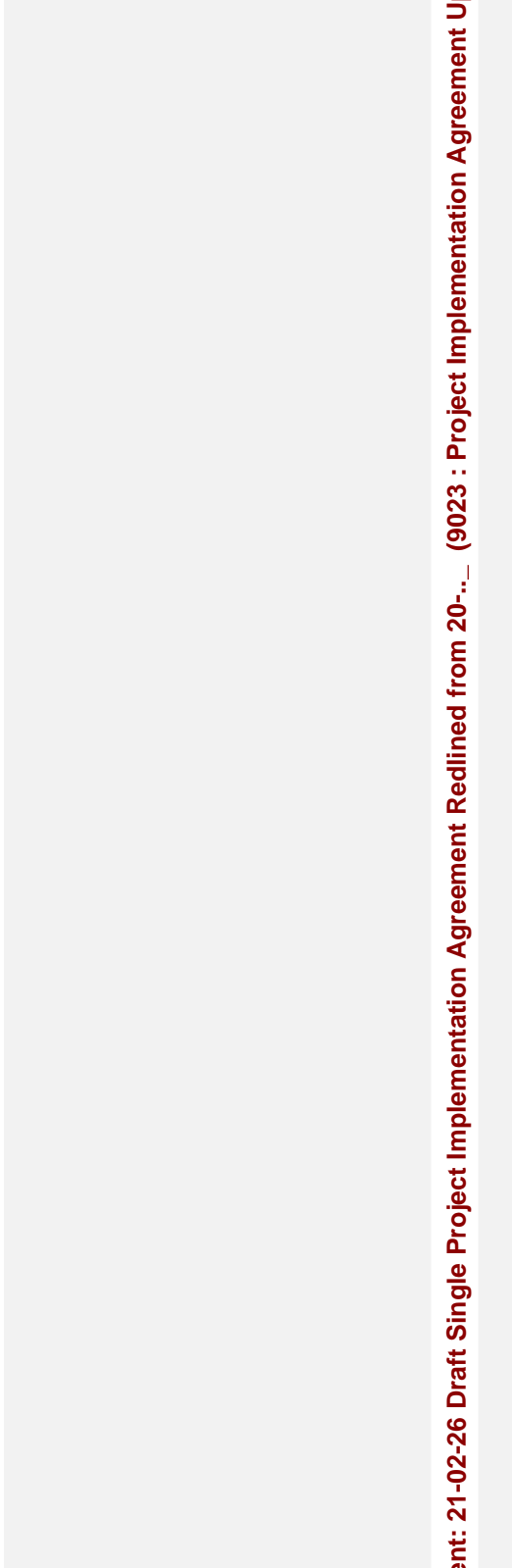
Date: _____

ATTEST:

By: _____
Kelly Koos, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Palmer Davis, Acting City Attorney



Attachment: 21-02-26 Draft Single Project Implementation Agreement Redlined from 20-... (9023 : Project Implementation Agreement Update -

IN WITNESS WHEREOF, the undersigned has caused this Combined Projects Implementation Agreement to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF LAKE WALES, FLORIDA

By: _____
Eugene Fultz, Mayor

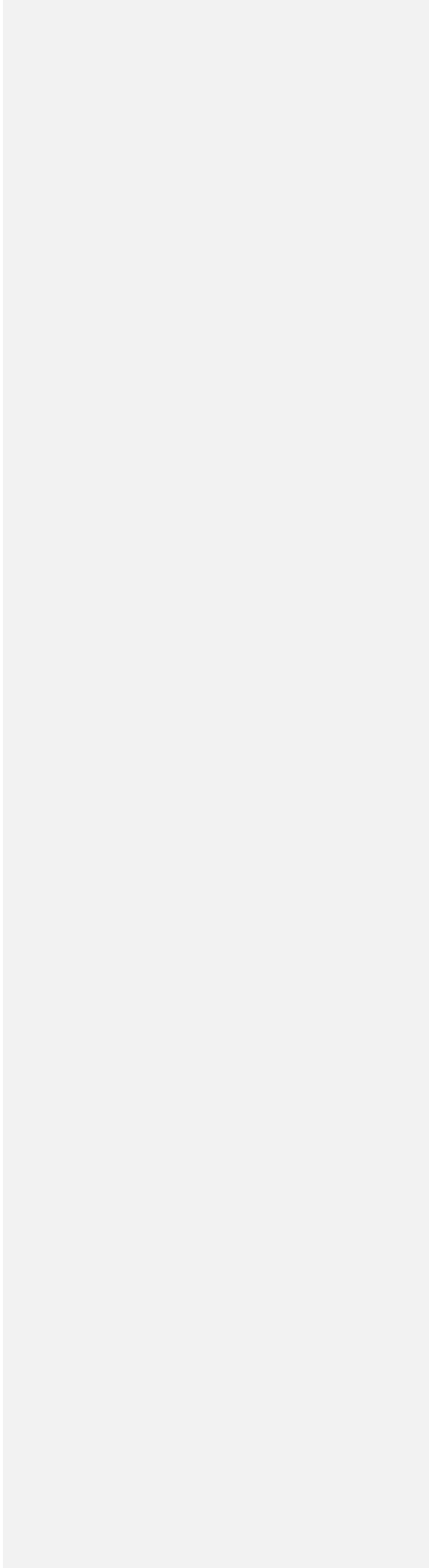
Date: _____

ATTEST:

By: _____
Clara VanBlargan, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Albert C. Galloway, Jr., City Attorney



IN WITNESS WHEREOF, the undersigned has caused this Combined Projects Implementation Agreement to be duly executed and entered into as of the Effective Date.

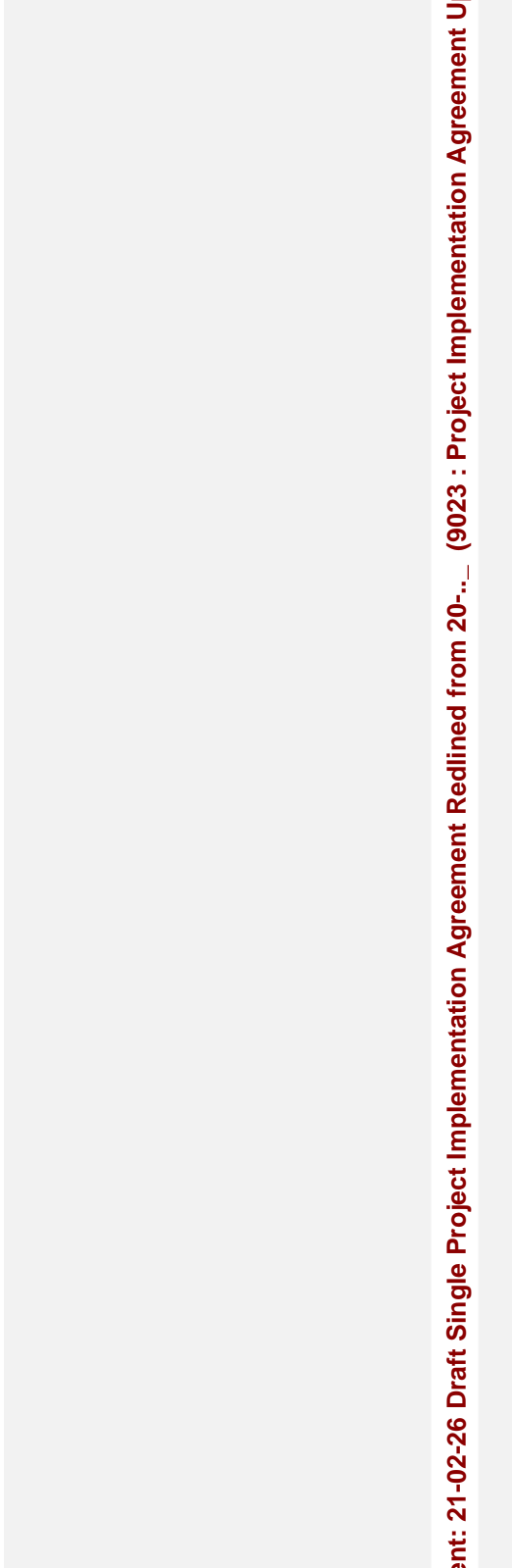
CITY COMMISSION OF THE
CITY OF MULBERRY, FLORIDA

By: _____
George H. Hatch, Mayor

Date: _____

ATTEST:

By: _____
Sharon Lauther, City Clerk



Attachment: 21-02-26 Draft Single Project Implementation Agreement Redlined from 20-... (9023 : Project Implementation Agreement Update -

IN WITNESS WHEREOF, the undersigned has caused this Combined Projects Implementation Agreement to be duly executed and entered into as of the Effective Date.

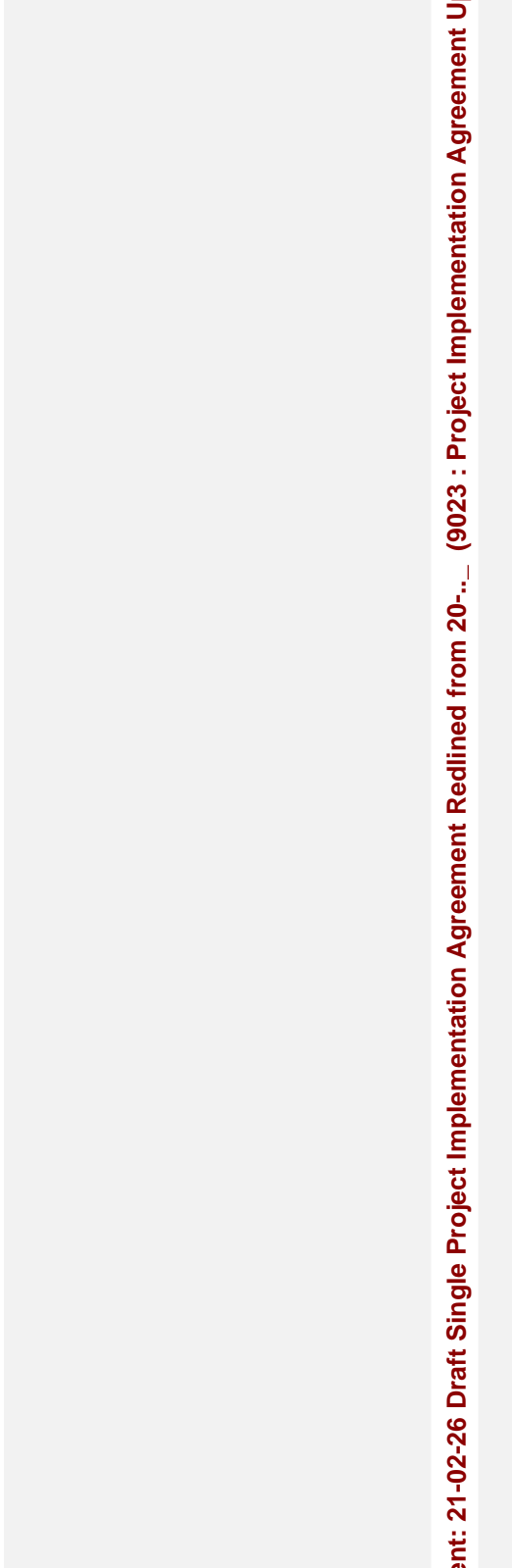
CITY COMMISSION OF THE
CITY OF POLK CITY, FLORIDA

By: _____
Joe LaCascia, Mayor

Date: _____

ATTEST:

By: _____
Patricia Jackson, City Clerk



Attachment: 21-02-26 Draft Single Project Implementation Agreement Redlined from 20-.._ (9023 : Project Implementation Agreement Update -

IN WITNESS WHEREOF, the undersigned has caused this Combined Projects Implementation Agreement to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF WINTER HAVEN, FLORIDA

By: _____
Bradley T. Datzler, Mayor

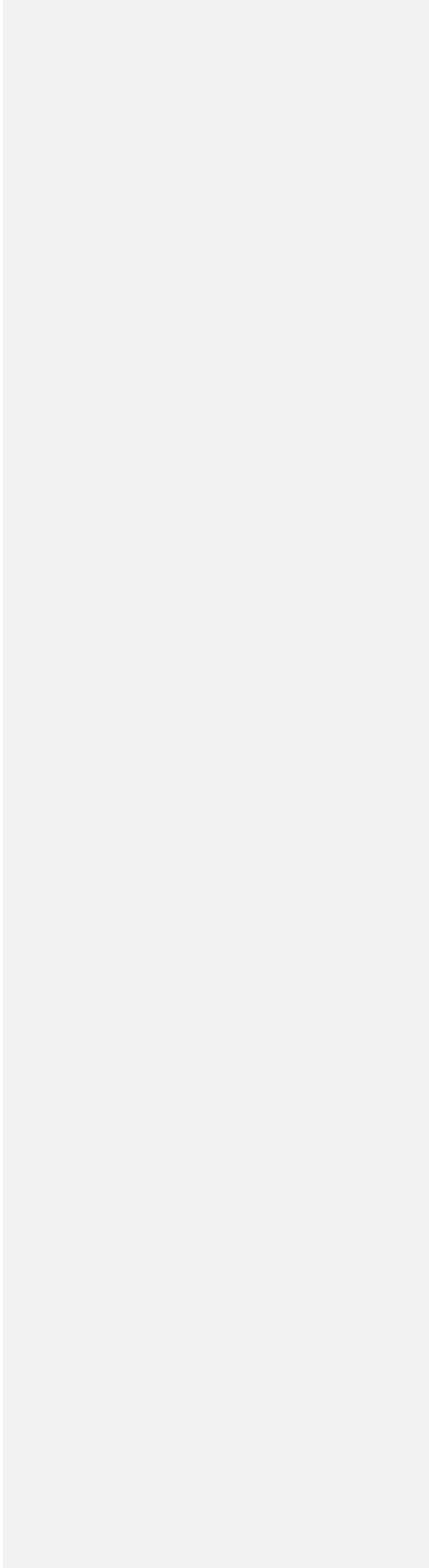
Date: _____

ATTEST:

By: _____
Joy Townsend, Deputy City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Frederick J. ("John") Murphy, Jr., City Attorney



IN WITNESS WHEREOF, the undersigned has caused this Combined Projects Implementation Agreement to be duly executed and entered into as of the Effective Date.

TOWN COMMISSION OF THE
TOWN OF DUNDEE, FLORIDA

By: _____
Sam Pennant, Mayor

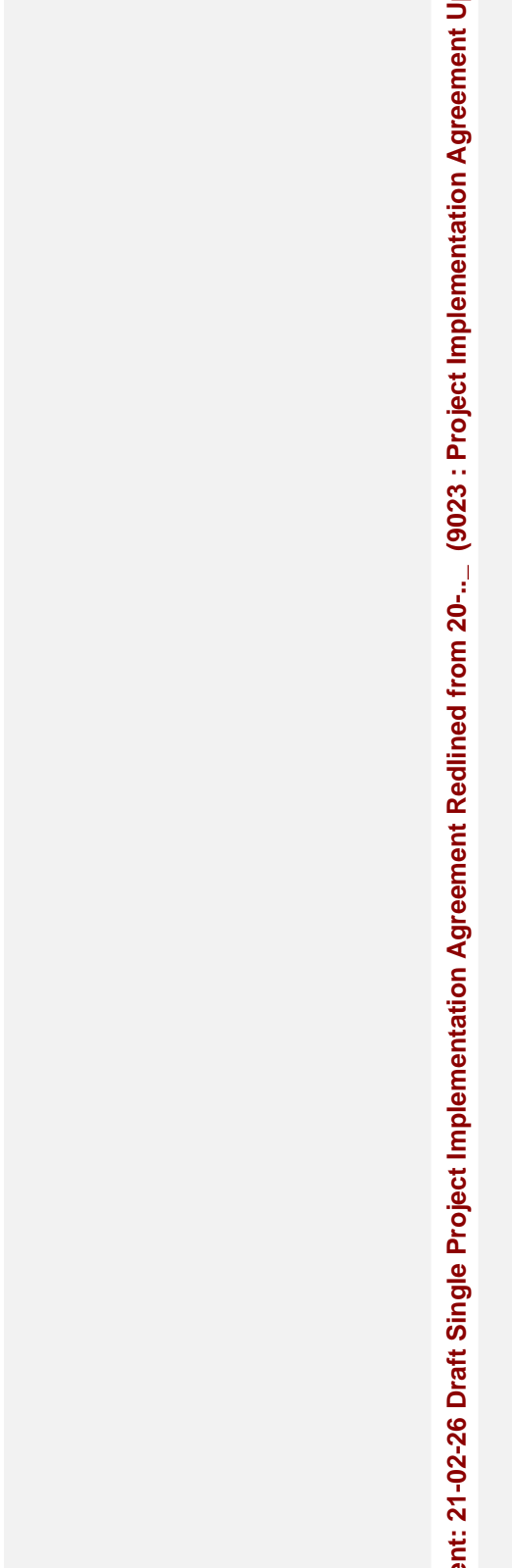
Date: _____

ATTEST:

By: _____
Deena Ware, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Frederick J. ("John") Murphy, Jr., City Attorney



Attachment: 21-02-26 Draft Single Project Implementation Agreement Redlined from 20-.._ (9023 : Project Implementation Agreement Update -

IN WITNESS WHEREOF, the undersigned has caused this Combined Projects Implementation Agreement to be duly executed and entered into as of the Effective Date.

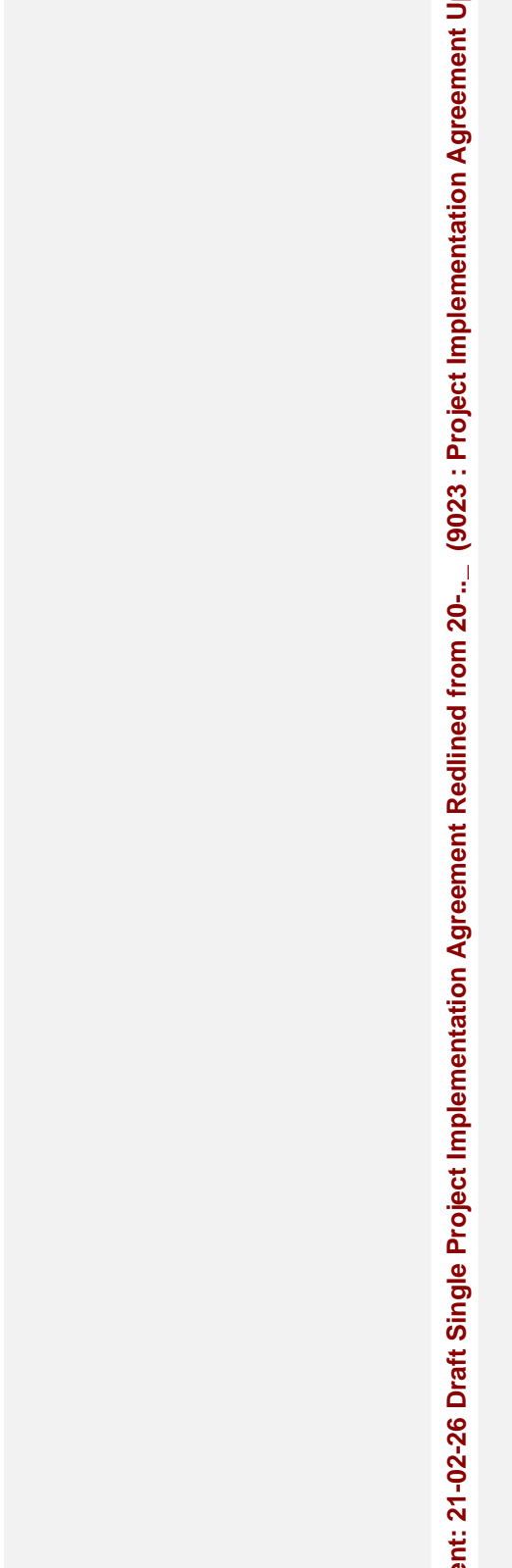
TOWN COUNCIL OF THE
TOWN OF LAKE HAMILTON, FLORIDA

By: _____
Mike Kehoe, Mayor

Date: _____

ATTEST:

By: _____
Sara Irvine, Town Clerk



Attachment: 21-02-26 Draft Single Project Implementation Agreement Redlined from 20-... (9023 : Project Implementation Agreement Update -

IN WITNESS WHEREOF, the undersigned has caused this Combined Projects Implementation Agreement to be duly executed and entered into as of the Effective Date.

ATTEST: POLK COUNTY, a political subdivision of The State of Florida

Stacy M. Butterfield
Clerk to the Board of County Commissioners

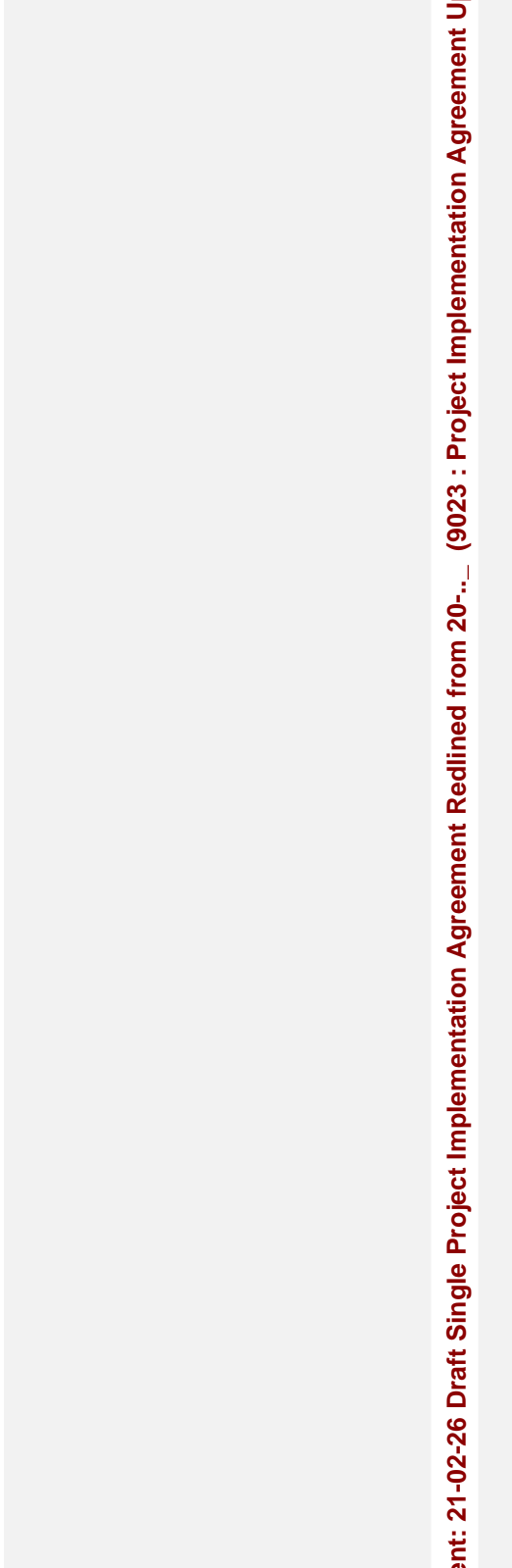
By: _____
Deputy Clerk

By: _____
W.C. Braswell, Chair
Board of County Commissioners

Dated and signed by the Chairman: _____

Reviewed as to form and legal sufficiency:

County Attorney's Office



IN WITNESS WHEREOF, the undersigned has caused this First Amendment to the Combined Projects Implementation Agreement to be duly executed and entered into as of the Effective Date.

POLK REGIONAL WATER COOPERATIVE

By: _____
Timothy J. Pospichal, Chair

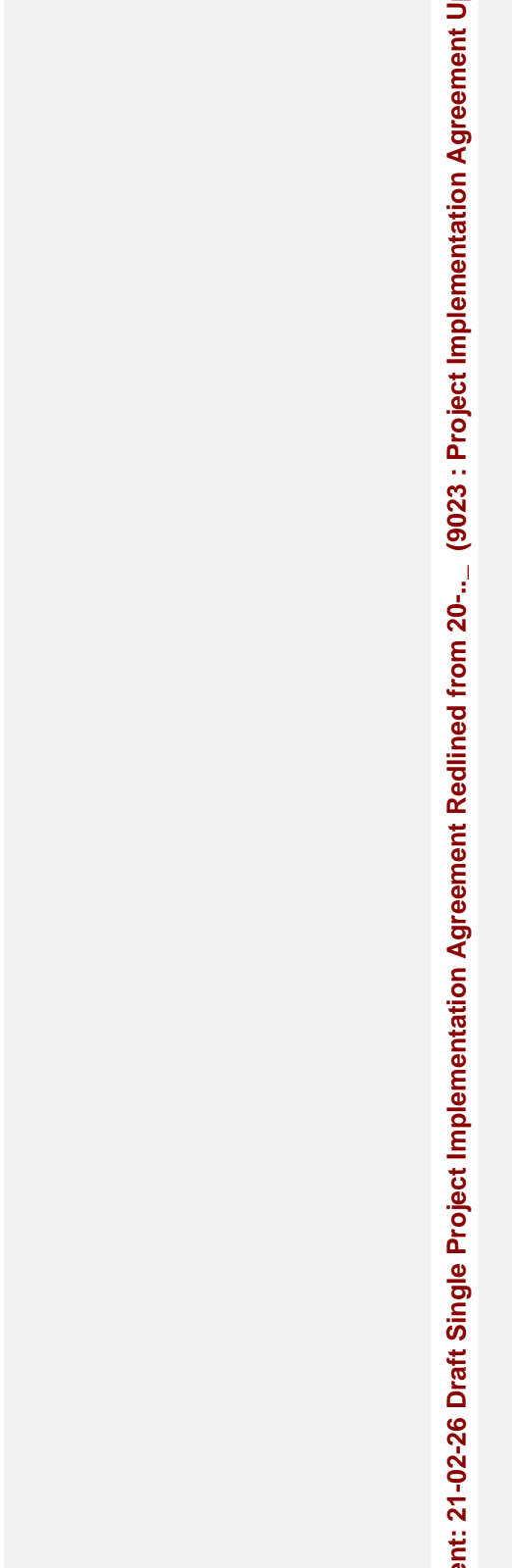
Date: _____

ATTEST:

By: _____
Eugene Fultz, Secretary/Treasurer

APPROVED AS TO FORM AND CORRECTNESS:

Edward P. de la Parte, Jr., Legal Counsel



Example Southeast Wellfield Water Allocation Table

Utility	Water Delivered in 2045 (MGD)	Percent of Total 2045 Allocation
Bartow	0.72	5.8%
Eagle Lake	0.86	6.9%
Mulberry	0.29	2.3%
Davenport	1.06	8.6%
Lake Hamilton	0.5	4.0%
Dundee	0.47	3.8%
Lake Alfred	0.43	3.5%
Haines City	2.42	19.5%
Winter Haven	1.52	12.3%
Lake Wales	0.73	5.9%
Polk County (CR, SW, NE, SE, ERUSAs)	3.38	27.3%
Total	12.38	100.0%

Attachment: Allocation Table Southeast Wellfield (002) (9023 : Project Implementation Agreement Update - Nason Yeager)

Example West Polk Wellfield Agreement Allocation Table

Utility	Water Delivered in 2045 (MGD)	Percent of Total 2045 Allocation
Auburndale	1.75	19.3%
Lakeland	6.31	69.7%
Polk City	0.01	0.1%
Polk County - NWRUSA	0.98	10.8%
Total	9.05	100.0%

Attachment: Allocation Table West Polk (002) (9023 : Project Implementation Agreement Update - Nason Yeager)

Southeast Wellfield Costs

\$ 4,004,937.57

Project No.	Project Name	Description	Total Invoices Paid	Reimbursement	Reimbursement Contract	Net Cost
2008-2-60-0	Southeast Polk County Exploratory Well	This project has been developed as a joint cooperative agreement between the Polk County Board of County Commissioners and the South Florida Water Management District and consists of the drilling and construction of a surficial groundwater monitoring well, an Upper Floridan Aquifer test well, a Lower Floridan Aquifer test well, and a dual zone monitoring well. Project also includes appropriate testing for the purpose of defining the viability of the Lower Floridan Aquifer in Southeast Polk County, as a future water supply source.	\$ 2,700,644.45	\$ 600,000.00	SFWMD Contract # 4600001460	\$ 2,100,644.45
2010-2-60-0	SE Well Field SFWMD	Permitting, design and construction of a Polk Regional Water Cooperative Southeast Wellfield to provide a long-term regional water supply to eastern Polk County. Average annual withdrawal quantities are anticipated between 15 to 30 MGD.	\$ 1,715,266.98			\$ 1,715,266.98
	WUP Application Fee		\$ 11,500.00			\$ 11,500.00
2011-4-60-0	Southeast Exploratory Well Peer Review and Hydrologic Services (SDI)		\$ 78,573.00			\$ 78,573.00
2012-1-60-0	PC SELF Wellfield Environmental Impact Plan Development (AMEC)		\$ 97,818.90			\$ 97,818.90
2009-6-70-0	SE Deep Exploratory Well 14-day APT		\$ 1,134.24			\$ 1,134.24
	Defense of WUP to Gold Coast Utility Challenge					\$ -