



**AGENDA
POLK REGIONAL WATER COOPERATIVE**

February 16, 2022 – 2:00 PM
Lake Myrtle Sports Complex
2701 Lake Myrtle Park Road
Auburndale, FL 33823

ZOOM Virtual Meeting
<https://us02web.zoom.us/j/84912001635?pwd=VTI6SHJuWWQxMDNaWDFvVWtkcVJaZz09>
Call In: +1 (646)558-8656
Meeting ID: 849 1200 1635
Password: 115190

- A. Call to Order
- B. Recognition of new primary/alternate appointees of members
- C. Agenda Revisions
- D. Public Comments (Limited to 3 minutes)
- E. Consent Items
- F. Regular BOD Items

RECESS REGULAR BOD/COMMENCE PROJECTS BOD:

- G. Southeast Wellfield Project BOD
 - 1. Southeast Wellfield Implementation Agreement amendment (ACTION ITEM)
 - 2. SRF Loan Request and Funding Schedule (ACTION ITEM)
 - 3. Southeast Wellfield Phase 1 Final Design, Construction Oversight, and Related Services Scope and Fee (INFORMATION ITEM)
- H. West Polk Project BOD
 - 4. West Polk Wellfield Implementation Agreement amendment (ACTION ITEM)

RECESS PROJECTS BOD/COMMENCE REGULAR BOD:

- I. Open Discussion
- J. Chair / Executive Director Report
- K. 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.

February 16, 2022 Polk Regional Water Cooperative Regular Meeting
Agenda Item #1

SUBJECT

Southeast Wellfield Implementation Agreement amendment (ACTION ITEM)

DESCRIPTION

In April of 2021, the Cooperative board approved the agreement for the implementation of the Southeast Wellfield final design and construction ("Implementation Agreement"). Since that time, staff, PRWC financial consultants, and members of the PRWC Funding Group have made significant progress to advance the grant and loan programs necessary to fund the project. As part of this process, the Implementation Agreement has been reviewed by Florida Department of Environmental Protection (FDEP), U.S. Environmental Protection Agency (EPA), and Southwest Florida Water Management District (SWFWMD) staff for consistency with the SRF loan, WIFIA loan, and SWFWMD cofunding programs. As a result of this review, modifications to the agreement have been suggested which would ensure the highest rating and to meet the financing and grant requirements of various agencies. These suggestions have been provided to PRWC member staff and legal counsel. Modifications have been made to the Implementation Agreement to address these concerns.

Attachments to this agenda item include:

- Outline of Major Amendments to SEWF and WPLFA Implementation Agreements
- Memorandum from Michael Wiener (Holland & Knight LLP) and Julie Santamaria (RBC Capital Markets) detailing suggested modifications to ensure the highest rating and to meet the financing requirements of WIFIA and other potential lenders.
- Letter from SWFWMD Executive Director Brian Armstrong regarding the Draft Cooperative Funding Agreement.

These attachments are also relevant to the West Polk Lower Floridan Aquifer Implementation Agreement.

If consensus approval is given regarding the changes, the amended Implementation Agreement will be distributed to member governments for their Commissions consideration and approval and for allocation request (2045 demand quantity) updates.

Staff asks that member governments take this to their Commissions for consideration prior to the March 16, 2022 PRWC BOD meeting.

RECOMMENDATION

Staff recommends distributing the Implementation Agreement to member governments as amended to confirm acceptance, participation and requested allocation.



Implementation Agreement Modifications

Agenda

- PRWC Accomplishments
- Lessons from the Past
- Water Supply Needs
- Implementation Agreement Changes
- Discussion

Regional strength pays off

- “Cooperative” means leveraging funding.
- WIFIA loan invitation.
- Historic state appropriations.
- 50% District match.

PRWC Accomplishments

G.1.a

Identified water supply challenge

Formed countywide cooperative to respond and meet growing demands

Selected and studied 4 AWS projects to determine infrastructure needs

Continues to meet SWFWMD grant criteria

Preparing for final design and construction of Southeast and West Polk Wellfields

\$22+ million in investments so far



Learning from the Past

Tampa Bay Water

- 1994 emergency order required reduction of over-pumping
- Decades and \$10s of millions spent on litigation resulted in a settlement agreement
- Pumping from 11 facilities was reduced by nearly 50%

PRWC

Prevent impacts to the natural environment due to over-pumping

Proactive approach to developing AWS can avoid millions in costly litigation

Current collaborative approach means **50% District co-funding** and favorable loan terms

Allows **time** to develop AWS solutions and implement other cost-savings measures

By the numbers

103.5 MGD

Water County needs
by 2045

82.5 MGD

21 MGD

82.5 MGD available from
Upper Floridan Aquifer

12.5 MGD

10 MGD

21 MGD must come from
non-traditional or AWS

12.5 MGD

10 MGD

Southeast and West Polk
Wellfields can meet needs

AWS is More Costly to Produce



- Alternative water supplies (surface, reclaimed, brackish) require more treatment
- Additional treatment is more costly
- Conservation can defer costly investment
- **Regional collaboration can help lower costs**

Southeast Wellfield – Phase 1

\$346M = Cost for design and construction of treatment facility plus transmission pipelines, land acquisition, injection wells



- 5 MGD of drinking water in 2026
- Desalination by reverse osmosis
- Preliminary design completed October 2021
- Final design to initiate March 2022
- Meets all requirements for SWFWMD grant and WIFIA loan funding

West Polk Wellfield – Phase 1

\$129M = Cost for design and construction of treatment facility plus transmission pipelines, land acquisition, injection wells



- 2.5 MGD of drinking water in 2027
- Desalination by reverse osmosis
- Preliminary design completed October 2021
- Final design to initiate October 2022
- Meets all requirements for SWFWMD grant and WIFIA loan funding

Funding and Financing Opportunities

SWFWMD Grants

- Resolution 15-07 appropriated \$40m
- Resolution 18-06 appropriated \$25m
- FY 2021 CFI funding for Southeast Wellfield
- **Cuts PRWC costs nearly in half.**

WIFIA Loan

- Up to \$235 million; covers remainder of member costs
- Federal guarantee – lower rates, fees, and costs
- Deferred repayment
- Loan amount tied directly to SWFWMD funding

Loan and grant surety must be demonstrated.

Funding and Financing Opportunities

State

Appropriations

In 3 years, the State of Florida will have funneled \$20m to PRWC – more than all its member governments have received over the last 10 years in

SRF Loan

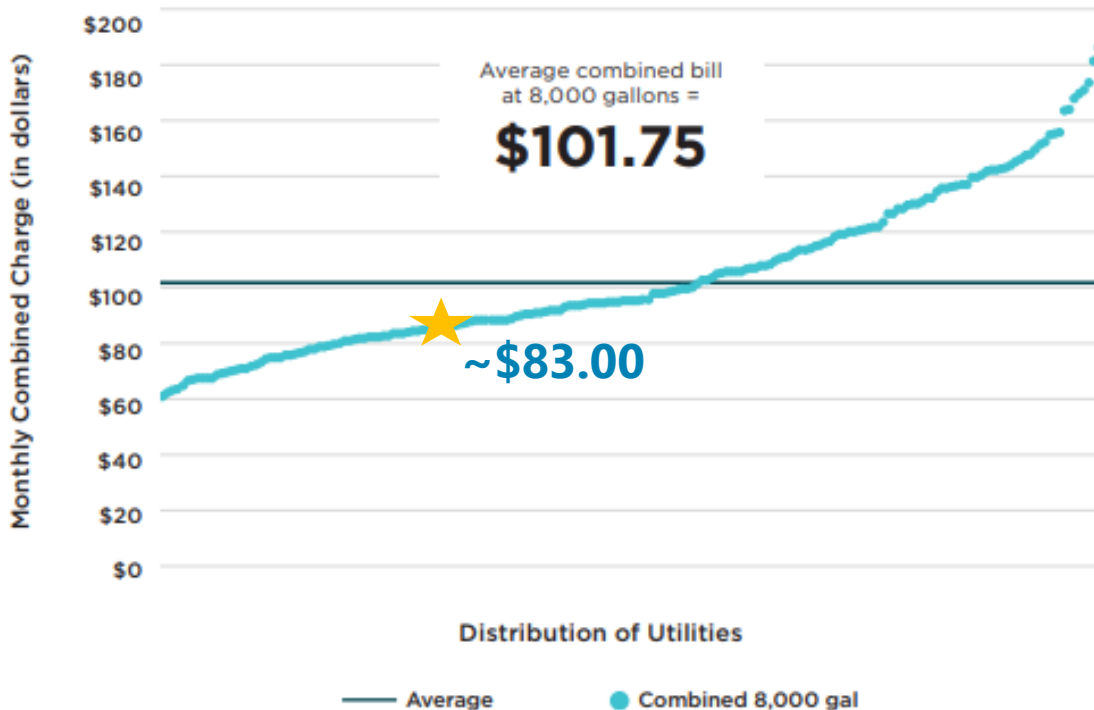
- Low interest
- Available immediately
- **But requires member action**

Rapid growth is driving the need for interim funding solutions

Future Water Rates

G.1.a

Combined Monthly Water and Wastewater Bill at 8,000 Gallons



- Water rates throughout the County are lower than the statewide average. Other communities are already relying on AWS
- After PRWC develops AWS, communities can expect to have water rates similar to the statewide average.

Attachment: 20220216_IA (18232 : Southeast Wellfield

Implementation Agreements

Originally Signed by participating members in April 2021

- Covered the Phase 1 Water Production Facilities and Transmission (design and construction)
- Necessary to secure lender surety
- Created mechanism to initiate final design
- **Are not sufficient to secure WIFIA and SRF Loans**

Why are there changes?

G.1.a

April 2021

Original Implementation Agreements Signed

May 2021

SWFWMD, EPA (WIFIA) and FDEP (SRF) provided feedback

August 2021

Memos distributed summarizing PRWC Bond Counsel and Financial Advisor recommended changes

December 2021

SWFWMD letter requesting changes to agreement

December 2021

Draft Southeast IA distributed to attorneys.

Attachment: 20220216_IA (18232 : Southeast Wellfield

Implementation Agreement Changes

Updated version Distributed 12/13/2021

- ✓ Cover the Phase 1 Water Production Facilities and Transmission (design and construction)
- ✓ Necessary to secure loans and grants
- ✓ Create mechanisms to initiate final design
- ✓ Are sufficient to secure WIFIA and SRF Loans

Updates Summary

- **Implements bond counsel and financial advisor suggestions**
 - Eliminates 60% off ramp (but Polk County commitment remains)
 - Makes SE and WP IAs uniform
 - Modifies Force Majeure and withdrawal provisions so that Project Participant is not excused from Base Rate Charge.
 - Creates “Reserves” to ensure continued payment of water charge, if a party temporarily withdraws; defines Reserve use.
 - Modifies “Operation and Maintenance Cost” to reflect costs without carve out.

Updates Summary

- **Updated effective date to eliminate conditions precedent**
- **Implements SWFWMD suggestions**
 - Cooperative is now a party to the agreement.
 - Proposes voting structure which requires majority vote of Project Board *and* Project Participants.
- **Addresses allocation changes***
 - Increases Dundee's allocation
 - To be updated to make Haines City a Project Participant

**To be verified and updated by membership*

Discussion



For questions or additional information, please
contact:

Ryan Taylor
Ed de la Parte
TeamOne

February 9, 2022

**AMENDED AND RESTATED IMPLEMENTATION
AGREEMENT
Southeast Wellfield Project**

THIS AMENDED AND RESTATED 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 P.O. Box 9005, Bartow, Florida 33831, 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 Lake Wales whose address is P.O. Box 1320, Lake Wales, FL 33859, the City of Lakeland whose address is 228 S Massachusetts Ave., Lakeland, FL 33801, the City of Mulberry whose address is P.O. Box 707, Mulberry, FL 33860, 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, Polk City, a Florida municipal corporation (fka “City of Polk City”), whose address is 123 Broadway Blvd SE, Polk City, FL 33868, 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”.

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THE PURPOSE of this Agreement is to implement the design, permitting, construction, operation, maintenance and funding of the Southeast Wellfield, an Approved Water Project of the Cooperative.

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, the Parties hereby agree, stipulate and covenant as follows:

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 Amended and Restated Implementation Agreement for the Southeast Wellfield Project, as it 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 8.3 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 without limitation the Southeast Wellfield Refund Cost.

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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, which are not paid from the proceeds of any Obligation and costs that will occur over the life of the Project for the assets comprising the Project.

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. Pursuant to and in accordance with the Interlocal Agreement, all powers, privileges, and duties vested in or imposed on the Cooperative with regards to the approval and implementation of the Project shall be exercised by the Project Board.

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, and may be amended if needed subject to written change orders approved in writing by the Cooperative and the Contractor engaged by the Cooperative.

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, Reserves and Variable Operation and Maintenance Cost

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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 a Party claiming excuse when it is either 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, pandemic, 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

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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 “Member Government” shall have the same meaning as in the Interlocal Agreement.

1.21 “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 Water Offsets withdrawn by a Project Participant.

1.22 “MGD” means million gallons a day.

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

1.24 “Operation and Maintenance Cost” means any and all costs incurred by the Project Board 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, and services; the operation, maintenance, management, security and development of the Project, which are not a Capital Replacement and Renewal Cost or are payable from the proceeds of any Obligation. Operation and Maintenance Costs, to the extent not constituting a Capital Replacement and Renewal Cost or payable from the proceeds of any Obligation, include, but are not limited to any cost of litigation or legal judgment against the Cooperative relating to the Project; cost of purchasing any water

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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; 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 (if one is established); and administrative costs incurred by the Cooperative for management of the Project.

1.25 “Parties” mean the Cooperative, the City of Auburndale, the City of Bartow, the City of Davenport, the City of Eagle Lake, the City of Fort Meade, the City of Haines City, the City of Lake Alfred, the City of Lake Wales, the City of Lakeland, the City of Mulberry, the City of Winter Haven, the Town of Dundee, the Town of Lake Hamilton, Polk City, a Florida municipal corporation (fka “City of Polk City”) and Polk County.

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

1.27 “Project” means the Southeast Wellfield.

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

1.29 “Project Associate” means a Party to this Agreement, who has elected to become a Project Associate in order to stay abreast of the status of the Project and enable them to make informed decisions about future participation as a Project Participant. A Project Associate

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has no financial responsibility or liability for the Project or voting rights but may inform the Cooperative about its future plans or needs for Project Water, and make comments and recommendations to the Project Board about the Project's direction and scope. A Project Associate is not a Project Participant as defined herein.

1.30 "Project Board" shall have the same meaning as in the Interlocal Agreement.

1.31 "Project Participant" means a Party to this Agreement, other than the Cooperative or a Project Associate, who has executed this Agreement for the purpose of implementing this Project, which includes the design, permitting, construction, operation, maintenance and funding of the Project and receipt of Project Water Service from the Cooperative.

1.32 "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 Water Offsets.

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

1.34 "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.

1.35 "Project Water Service" means the delivery of Project Water by the Cooperative to the Points of Connection for use by the Project Participants.

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1.36 **“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.

1.37 **“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 judgment in light of facts known, that should have been known, at the time the decision was made, or could have only been expected to accomplish the desired results at a reasonable cost consistent with applicable legal, engineering, reliability, safety and time requirements.

1.38 **“PSI”** means pounds per square inch.

1.39 **“Reserves”** means adequate monetary reserves established by the Cooperative to ensure the continued operation of the Project, in the event one or more Project Participants are unable to pay their Water Charge on a short term basis.

1.40 **“Southeast Wellfield”** means a new lower Floridan aquifer public supply wellfield to be located in southeast Polk County as permitted by Permit No. 53-00293-W issued from the South Florida Water Management District.

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.

1.42 **“True-up”** means the process specified in Section 10 of this Agreement.

1.43 **“Variable Operation and Maintenance Costs”** means all Operation and Maintenance Costs that change in direct proportion to changes in the volume of finished water

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produced by the Project, including, but not limited to, power, chemical, water purchases and Water Transfer Costs.

1.44 “Water Offset” means a quantity of upper Floridan aquifer, groundwater withdrawn by a Project Participant that will be offset by another Project Participant relinquishing its right under a District permit to withdraw from the upper Floridan aquifer as stated in the Project plan.

1.45 “Water Offset Cost” means the cost of producing Project Water used by one or more Project Participants for use as a Water Offset. The Water Charge paid by a Project Participant for the use of a Water Offset shall cover the cost of producing the Project Water.

1.46 “Water Allotment” 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 Allotment Table, the Water Allotment for each of the Project Participants will be determined based on the Water Allotment Percentages set forth in this table.

2045 Water Allotment Table

| Name of Party | 2045 Water Allotment Annual Average (MGD) | 2045 Water Allotment Percentage (%) |
|----------------------|---|-------------------------------------|
| City of Auburndale | 1.65 | 16.40% |
| City of Bartow | 0.36 | 3.58% |
| *City of Davenport | <i>Project Associate</i> | |
| * City of Eagle Lake | <i>Project Associate</i> | |
| * City of Fort Meade | <i>Project Associate</i> | |
| City of Haines City | | |
| City of Lake Alfred | 0.43 | 4.27% |
| *City of Lake Wales | <i>Project Associate</i> | |
| City of Lakeland | 0.10 | 0.99% |
| * City of Mulberry | <i>Project Associate</i> | |
| * Polk City | <i>Project Associate</i> | |

Commented [Ed1]: Haines City intends to provide a water allotment prior to the PRWC Board meeting.

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| Name of Party | 2045 Water Allotment Annual Average (MGD) | 2045 Water Allotment Percentage (%) |
|-------------------------------|---|-------------------------------------|
| City of Winter Haven | 1.52 | 15.11% |
| Town of Dundee | 2.60 | 25.84% |
| <i>*Town of Lake Hamilton</i> | <i>Project Associate</i> | |
| Polk County | 3.40 | 33.81% |
| TOTAL | 10.06 | 100.0000% |
| | | |

Commented [Ed12]: Dundee intends to provide a modification to the 2045 water allotment prior to the PRWC Board meeting.

1.47 “Water Charge” means for any Fiscal Year, the charge established by the Project Board pursuant to Section 13 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 Proportionate Share” means for any Fiscal Year, that portion of the Base Rate Charge each Project Participant is obligated to pay. The Water Cost Proportionate Share shall be based on each Project Participant’s projected 2045 Water Allotment, as revised at least every five (5) years through the True-Up process set forth in Section 10 and/or the provisions set forth in Sections 11, 19 and 20 of this Agreement.

1.49 “Water Transfer Cost” means those costs incurred by the Cooperative in transmitting Project Water from the Southeast Wellfield to Project Participants.

1.50 “Water Use Charge” means for any Fiscal Year that component of the Water Charge computed according to Section 13.3.2.

1.51 “Weighted Vote Method” means that each Director is assigned a vote based on its Water Allotment percentage under the Water Allotment Table identified in Section 1.46.

2. PURPOSE OF THE AGREEMENT.

2.1 Overall Agreement. This Agreement governs the overall implementation of the Project, which includes design, permitting, construction, operation, maintenance and funding

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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.

2.3 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, permit and/or other similar administrative matters between the District and any Party.

2.4 Project Participants and Project Associates. Each Party to this Agreement electing Project Associate status may at any time submit an election in writing to change its status to Project Participant. To receive Project Participant status, the Project Associate shall, prior to the end of the fiscal year, deliver to the Cooperative its Project Water Estimate and pay to the Cooperative its proportionate share of the Capital Cost, Capital Renewal and Replacement Cost, Debt Service Cost Fixed Operation and Maintenance Costs and Reserves, incurred to date by Project Participants, as well as 2.5% of its proportionate share of such costs expended to date. Those Member Governments who are not Project Associates, who wish to become Project Participants shall, prior to the end of the fiscal year, deliver to the Project Board its Project Water Estimate and pay to the Cooperative its proportionate share of the Capital Cost, Capital Renewal and Replacement Cost, Debt Service Cost, Fixed Operation and Maintenance Costs and Reserves, incurred to date by Project Participants, as well as 7.5% of its proportionate share of such costs expended to date. The right of a Project Associate or a Member Government who is not a Project

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Associate to become a Project Participant is subject to the availability of Project Water not committed to existing Project Participants.

3. CONSTRUCTION OF TERMS. 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 in applicability to the specific provision within which 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. REPRESENTATIONS 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,

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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. EFFECTIVE DATE. The Effective Date of this Agreement shall be the date when the Agreement is duly authorized and executed by the Parties.

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 with respect to the Project 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.

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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 majority vote of a quorum of the Project Board using the Weighted Vote Method specified in this Agreement, which vote must include at least a majority of the Project Participants.

7.2 Project Administrator. No later than thirty (30) days from the Effective Date of this Agreement, the Project Board shall designate the name, address, phone number, fax number and email address of its Project Administrator. The Project Administrator may be changed at any time by the Project Board. 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.

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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 8.4, for design and construction of the Project.

7.3.8 Manage the activities of the contractor(s) to assure that requirements 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 alternative financing mechanisms.

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.

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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 Cooperative shall procure a consultant or consultants to perform all or a portion of the professional services needed for each stage described below.

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8.1 Final Design and Bidding Stage.

8.1.1 Upon selection of the consultant(s), the 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 include a 100% final design. 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 100% final design, the Project Administrator will present it to the Project Board the final design and a Bidding Budget based on the final design for approval..

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 for their individual sufficient fiscal obligations to the Project.

8.1.6 Upon approval of the final design and Bidding Budget by the ProjectBoard, the Project Administrator will procure bids from contractors to construct the Project and the ProjectAdministrator will obtain a scope and fee from the consultant for its services for the Constructionstage for construction phase, post construction phase and administration services for approval by the Project Board.

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8.1.7 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.

8.1.8 To encourage Member Governments to initially execute this Agreement as Project Participants, Polk County will pay the 60% final design cost share for any Member Government who does not join this Agreement as a Project Participant. If after Polk County has paid the 60% final design costs for a Member Government that Member Government later seeks to become a Project Participant, it shall first reimburse Polk County the respective 60% final design cost Polk County paid to the Cooperative on behalf of that Member Government, together with interest accruing at the rate payable for judgments pursuant to Florida Statutes, section 55.03, from the date Polk County paid the design costs through the date the Member Government fully pays the amount owed to Polk County.

8.2 Real Estate Acquisition Stage. The Cooperative shall acquire any real property interests necessary to implement the Project, subject to the limitations of the Interlocal Agreement.

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.

8.4 Alternative Procurement Methods. The Project Board may approve the use of Alternative Procurement Methods as allowed by Florida Statutes including Chapters 255 and

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287, in place of the separate design and construction mechanisms described in Sections 8.1 and 8.3, including the procurement of a construction manager at risk.

8.5 Project Operation and Maintenance Stage. The Cooperative, upon completion of project construction, shall at all times operate and maintain the Project facilities in its ownership in accordance with Prudent Utility Practices.

8.6 Project Funding. A portion of the Project costs is expected to be reimbursed through cooperative funding from the District. The Cooperative anticipates issuing Obligations that will be used to pay the costs of the Project prior to reimbursement from the District of such Project costs. The Cooperative covenants to not issue Obligations in an amount that exceeds the amounts which the District has agreed to reimburse for such Project costs, which agreement by the District may be subject to such conditions precedent to funding, including appropriation and approval of reimbursement requests.

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. Ownership does not include any infrastructure or facilities owned by Project Participants as of the time of the execution of this Agreement.

10. TRUE-UPS.

10.1 Additions, assignments and substitutions. 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.

10.2 Construction phasing. At least every 5 years after the Effective Date of this Agreement, the Project Board will determine the size and timing for constructing the next phase and/or sub-phase of the Project. Any additions, substitutions, assignments, or revisions to the size

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and timing of construction phases or sub-phases must be approved by the Project Board and reflected in an Amendment to this Agreement.

10.3 Expansions and Capital Cost. The Project is permitted for 30 MGD and is proposed to be developed in phases, the first of which will provide approximately 10.06 MGD of finished water availability for Project Participants. Some components of the Project will be constructed to accommodate water production expansion and future development. Therefore, Project Participants will pay Capital Costs and commit to pay Obligations for certain Project components which will benefit the current Project Participants and the Project Participants of future Project expansions (“Common Capital Components”). For each expansion, the Capital Costs and Obligation commitments the Project Participants have made for the Common Capital Components will be re-allotted among all Project Participants of any future Project expansion in accordance with the then-current Water Allocation Table, and the then-current Project Participants shall reimburse the initial Project Participants for that portion of the Capital Costs and Obligation commitments paid for Common Capital Components which benefit the expansion Project Participants. Each time there is an expansion there shall be a similar re-allotment of Capital Costs and Obligation commitments for Common Capital Components based on the new Water Allocation Table and a reimbursement to existing Project Participants for Capital Costs and Obligation commitments paid for Common Capital Components which benefit the expansion Project Participants.

10.4 Water Use Charge. The True-Up of the Water Use Charge is as outlined in Section 13.5.

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10.5 Actual Use Data. During any True-Up process, the costs made true between the Project Participants shall be based upon new data or actual figures reflecting actual use versus estimates.

10.6 Water Allotments. At least once in every 5 year period after the Effective Date of this Agreement, and at any time that a Project Participant's 2045 Water Allotment increases, the Cooperative shall conduct a true-up of the Water Allotment table and of each Project Participant's Water Cost Proportionate Share to reflect the most current data, use and allotment estimates.

11. PROJECT WATER SERVICE.

11.1 Delivery of Project Water Service. During each Fiscal Year, starting with the Fiscal Year in which the Project Water Service is scheduled to commence, the Project Board 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 Project Administrator 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 Project Board to deliver to its Point of Connection during the upcoming Fiscal Year or the quantity of Water Offset, 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. The Project Administrator 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 Project Administrator by

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May 1, then the Project Participant shall be deemed to have requested its full Water Allotment for the upcoming Fiscal Year.

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 allotted by the Project Board according to the following priority schedule:

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

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

11.1.2.3 In the event a Project Participant with a Water Allotment delivers a Project Water Estimate to the Project Board indicating its intent to take a Water Offset during the upcoming Fiscal Year in an amount not exceeding its Water Allotment, a Project Participant may voluntarily request a Water Offset in its Project Water Estimate in order to offset the quantity of Water Offset used by another Project Participant. The request by a Project Participant in its Project Water Estimate to take a Water Offset must be reviewed and approved by the Project Board as to technical feasibility.

11.1.2.4 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

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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 Project Board.

11.3 Water Quality. The Cooperative shall deliver Project Water to each Project Participant's Point of Connection that: (1) 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 or set forth in Phase 1 of the Combined Projects Implementation Agreement. This Section 11.3 shall not apply to Water Offsets used by a Project Participant.

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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 Water Offsets 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 interests 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 Parties 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 for those Project Participants with a Water Allotment under the Water Allotment Table set forth above. This requirement applies equally to those Project Participants that will physically take Project Water and those Project Participants that will take Water Offsets. The Cooperative and a Project Participant may, by mutual agreement, more specifically identify or modify the Point of Connection or the location of the corresponding Meter.

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 Water Offsets taken by a Project Participant shall be exclusively measured by a Meter. The Cooperative shall own,

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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 whichcase, 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.

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13. WATER CHARGE. For each Fiscal Year, the Project Participants shall pay to the order of 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, Reserves 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. The Water Charge shall be computed in the manner specified in Section 13.3, 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 13.2. 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 Notification of Water Charge. On or before May 31 prior to the Fiscal Year in which the Project Water Service is scheduled to commence and on or before every May 31st 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 Project Board for this Project for the upcoming Fiscal Year.

13.3 Establishment of Water Charge. The Water Charge shall be established as follows:

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

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

13.3.1.2 The Base Rate Charge shall consist of the total of the Debt Service Cost, Capital Renewal and Replacement Cost, Fixed Operation and Maintenance Cost and Reserves determined pursuant to Section 13.3.1.1. The Base Rate Charge shall be allocated among each Project Participant based upon each Project Participant's Water Allotment Percentage identified in the then effective Water Allotment Table in Section 1.46, as it may be modified pursuant to Section 10, for the upcoming Fiscal Year.

13.3.1.3 The Base Rate Charge allotment computed for each Project Participant pursuant to Section 13.3.1.2 shall be increased by any underpayment or decreased by any overpayment determined pursuant to Sections 13.5 and/or 10 of this Agreement.

13.3.2 Water Use Charge. The Water Use Charge shall be computed as the Variable Operation and Maintenance Cost determined pursuant to Section 13.3.1.1 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.

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

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13.4.1 The Project Participants shall pay their individual Base Rate Charge allotment as specified in Section 13.3.1 in twelve (12) equal monthly payments during each calendar month starting in October and ending on the following September.

13.4.2 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 Project Board to the Project Participant's Point of Connection during the prior calendar month by the Water Use Charge identified in Section 13.3.2.

13.5 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, Reserves 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 verifying the Base Rate Charge portion of the Water Charge for 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 13.4.1. If the audit determines that an overpayment was made by a Project Participant, then said overpayment shall

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be deducted from that Project Participant's Base Rate Charge for the upcoming Fiscal Year in the manner specified in Section 13.4.1.

13.6 Certain Payments. The Water Charge shall not include any surcharge, tax, payment in lieu of taxes, payment in lieu of franchise fees, or any charge or payment not directly related to the cost of providing Project Water Service.

13.7 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 order of 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 delinquent Project Participant shall be charged with and pay to the order of the Cooperative interest on the amount unpaid from its due date at such rates the Project Board may establish from time to time.

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-

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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 term 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

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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. However, a Force Majeure Event shall not excuse a Project Participant from paying its Base Rate Charge, when due, pursuant to Section 13.4.

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) (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.

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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, and will be bound by any resulting mediation agreement that is approved by the governing body for each Party, 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. For all defaults, except the failure to pay the Base Rate Charge, when due, pursuant to Section 13.4, the defaulting Party shall have thirty (30) days to cure

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the default, unless such default is not capable of being cured within thirty (30) days, 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, with the exception of the suspension of Project Water Service or Water Offsets pursuant to Section 18.4 of this Agreement, 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 Default in Payment of Base Rate Charge. The failure by a Project Participant to pay the Base Rate Charge, when due, shall be immediately cured. If not cured, the Cooperative shall use the Reserves to pay the defaulting Project Participant's Base Rate Charge in the short term, in order to ensure the continued operation of the Project and the payment of the Debt Service until the defaulting Project Participant cures the default. Additionally, at the request of the Cooperative, the remaining Project Participants shall be obligated to make up any shortfalls created by the defaulting Project Participant's failure to pay its Base Rate Charge, when due, according to the Water Allotment Table in Section 1.46, in order to ensure the continued operation of the Project and the payment of the Debt Service until the defaulting Project Participant cures the default. In order to cure the default, the defaulting Project Participant must repay to the Cooperative its Base Rate Charge. Upon repayment of the Base Rate Charge by the defaulting Project Participant, the Cooperative shall replenish the Reserves and credit the other Project Participants for payments made in order to avoid a shortfall. Repayments to the Cooperative from a defaulting Project Participant shall first be used to credit Project Participants for payments made in order to avoid a shortfall, and then be used to replenish Reserves. If the defaulting Project Participant makes partial repayments to the Cooperative, credits shall be issued in payor order with the largest payor receiving credits first until made whole, and the smallest payor receiving credits last until made whole, until all Project Participants are fully repaid.

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18.3 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.

18.4 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 by the due date shall be in default of this Agreement and upon fifteen (15) days written notice, the Cooperative may suspend Project Water Service to a Project Participant and prohibit a Project Participant from using Water Offsets unless there is in mediation a good faith dispute or suspension of service compromises the health, safety, and welfare of the end water users. Suspension of Project Water Service to a Project Participant or prohibition of the use of Water Offsets 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 a Water Offset. The Cooperative's decision to suspend Project Water Service to a Project Participant or to prohibit Water Offsets 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 Water Offsets upon payment of all outstanding Water Charges, including any interest, may

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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 Process. A Project Participant who withdraws from this Agreement shall remain liable for payment of its share of the Water Charge. If the withdrawing Project Participant has submitted a Project Water Estimate to the Cooperative for the current Fiscal Year, then it shall remain liable to pay the Water 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 Allotment, 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 Allotment is completely redistributed among the remaining Project Participants.

19.2 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 Allotment, if any, and immediately forfeit its right to receive Project Water Service from the Project Board, including the use of Water Offsets. A Project Participant who withdraws from the Project may later request to join the Project again as a new

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Project Participant in accordance with Section 20 and, if approved to do so, will receive due credit given for the all previous Project expenditures.

19.3 Redistribution of Water. All of a withdrawing Project Participant's Water Allotment, 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 Allotment, if any, based upon the then applicable Water Allotment Table. Redistribution of the withdrawing Project Participant's Water Allotment 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) dayperiod a Project Participant will notify the Cooperative in writing of its intent to take some or all of the withdrawing Project Participant's Water Allotment. Any redistribution of the withdrawing Project Participant's Water Allotment to another Project Participant must be reviewed and approved by the Project Board as to technical feasibility. If two or more existing Project Participants exercise their right to take all of the withdrawing Project Participant's Water Allotment, then the withdrawing Project Participant's Water Allotment shall be redistributed in proportionate portions to the Project Participants, which requested redistribution. Any of the withdrawing Party's Water Allotment that is not redistributed, 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

February 9, 2022

Participant or existing Project Participant agrees to fully perform all the obligations of the existing Project Participant. Substitution shall mean the new or existing Project Participant shall at a minimum succeed to the old Project Participant's entire Water Allotment, if any. Prior to substitution taking effect, the existing Project Participant must notify all other existing Project Participants and Project Associates in writing of the substitution and offer the substitution on the same terms and conditions to the other existing Project Participants and Project Associates, 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 Party to this Agreement is proposed to be substituted for an existing Project Participant. If one of the existing Project Participants or Project Associates exercises its right of first refusal during this time period, then all of the substituted Project Participant's Water Allotment, if any shall be assigned to the substituting Party. If two or more existing Project Participants or Project Associates exercise their right of first refusal during this time period, then all of the substituted Project Participant's Water Allotment, if any, shall be reassigned in equal portions to the substituting Parties. If none of the existing Project Participants or Project Associates commit to acquire the substituted Project Participant's entire Water Allotment, if any, during this sixty (60) day period, then the Parties to this Agreement 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 Project Board as to technical feasibility. Any new Party to this Agreement must be unanimously approved by the existing Project Participants. Once the substitution takes place, the substituted Project Participant shall withdraw from the Project 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.

February 9, 2022

20.2 Addition. A new party may only be added to this Agreement by the unanimous decision of all the current Project Participants.

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. Subject to the provisions of Section 2.4 of this Agreement, any new Project Participant 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 and 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 Allotments 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 Allotment, if any, to a new Project Participant, an existing Project Participant, or a Project Associate if the assignee agrees to fully perform all the obligations of the existing Project Participant. Any new Party assignee must be unanimously approved by the existing Project

February 9, 2022

Participants. The complete assignment of an existing Project Participant's Water Allotment, if any, to a new Project Participant, an existing Project Participant, or a Project Associate 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 and Project Associates, who shall be provided at least sixty (60) days to exercise the right of first refusal. If one of the existing Project Participants or Project Associates exercises its right of first refusal during this time period, then the portion of the assigning Project Participant's Water Allotment, if any, up for assignment shall be transferred to the existing Project Participant. If two or more existing Project Participants or Project Associates exercise their right of first refusal during this time period, then the portion of the assigning Project Participant's Water Allotment, if any, up for assignment shall be transferred in equal portions to the existing Project Participants and Project Associates. If none of the Project Participants or Project Associates commit to acquire the assigning Project Participant's Water Allotment, if any, up for assignment, then the Parties to this Agreement shall be considered to have waived their right of first refusal. The right of first refusal shall not apply when an existing Project Participant or Project Associate is the assignee. Any assignment under this Section 20.3 must be reviewed and approved by the Cooperative 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 Allotment to the assignee Project Participant, as well as its voting rights, proportionate to the extent of the assignment. 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.

February 9, 2022

21. PERMITS.

21.1 No Party shall interfere with the existing consumptive use permits or existing water, wastewater, or reclaimed water facilities of a Member Government, except as may otherwise be consented to in writing by the Member Government.

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 the provisions of Section 21.1 shall apply.

21.4 No Party 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, unless the proposed Project Permit directly threatens an existing legal right of that Party to use the water resources of the state, in existence prior to the date of the application for the Project Permit.

21.5 A Member Government that is not a Party under 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.

February 9, 2022

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 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.

22.3 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; (5) 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

February 9, 2022

performance under the Agreement; and, (6) 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.

22.4 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, the Project Participants are not 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, regardless of whether such claims are grounded in contract, statute, tort, negligence, product liability, strict liability, or otherwise. Finally, the Cooperative agrees to indemnify and hold the Project Participants harmless from any injury that the Project Participants or their 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

February 9, 2022

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 Parties by email. All notices shall be delivered or sent to the Parties and/or Project Associates at their respective addresses shown below or such other addresses as a Party and/or Project Associate may designate by prior notice given in accordance with this provision to the other Parties and/or Project Associates:

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 3383
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

February 9, 2022

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

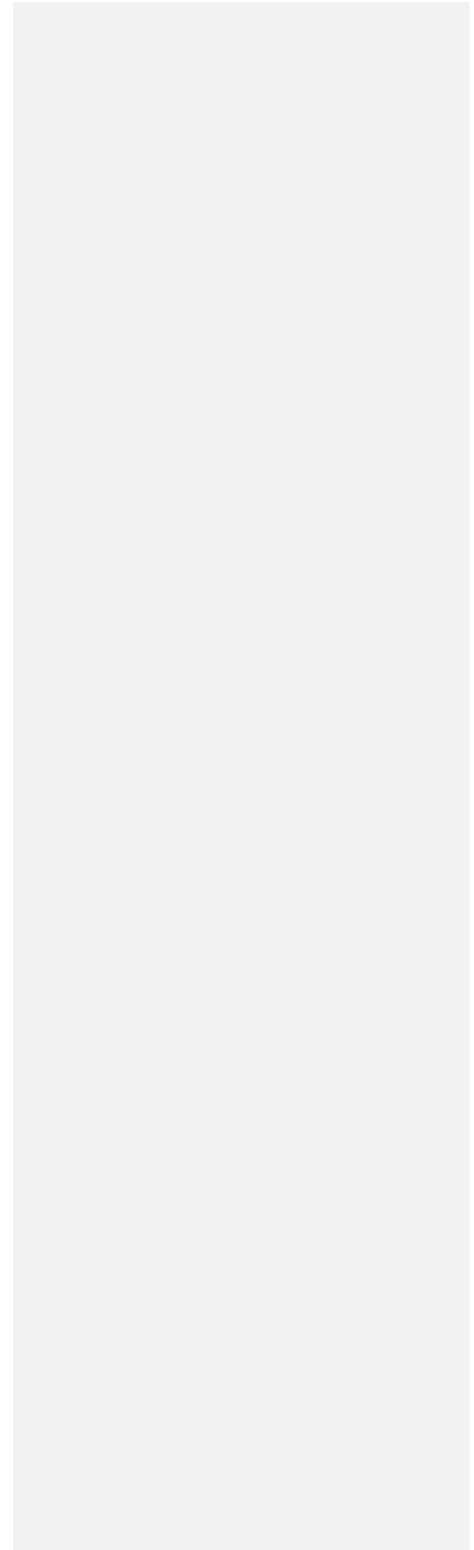
City of Lake Wales
City Manager
P. O. Box 1320
Lake Wales, Florida 33859
863-678-4196

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

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

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

Town of Dundee
Town Manager



February 9, 2022

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 City
City Manager
123 Broadway SE
Polk City, Florida 33868
863-984-1375, ext. 237

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

Polk Regional Water
Cooperative
Executive Director
Drawer CA01/P.O. Box 9005
Bartow, Florida 33831
Phone: 863-534-6444

25.2 All notices shall also be sent to the Cooperative Executive Director, with separate copies to the Project Administrator.

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 Project Board may extend or change any of the deadlines specified in this Agreement.

February 9, 2022

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, except for lenders of Cooperative Obligations, parties to cooperative funding agreements with the Cooperative and providers of grant funding to the Cooperative.

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.

February 9, 2022

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 of this Agreement, 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. This Agreement supersedes and replaces the previously executed Implementation Agreement for the Southeast Wellfield.

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.

February 9, 2022

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]

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF AUBURNDALE, FLORIDA

By: _____ Timothy J. Pospichal, Mayor

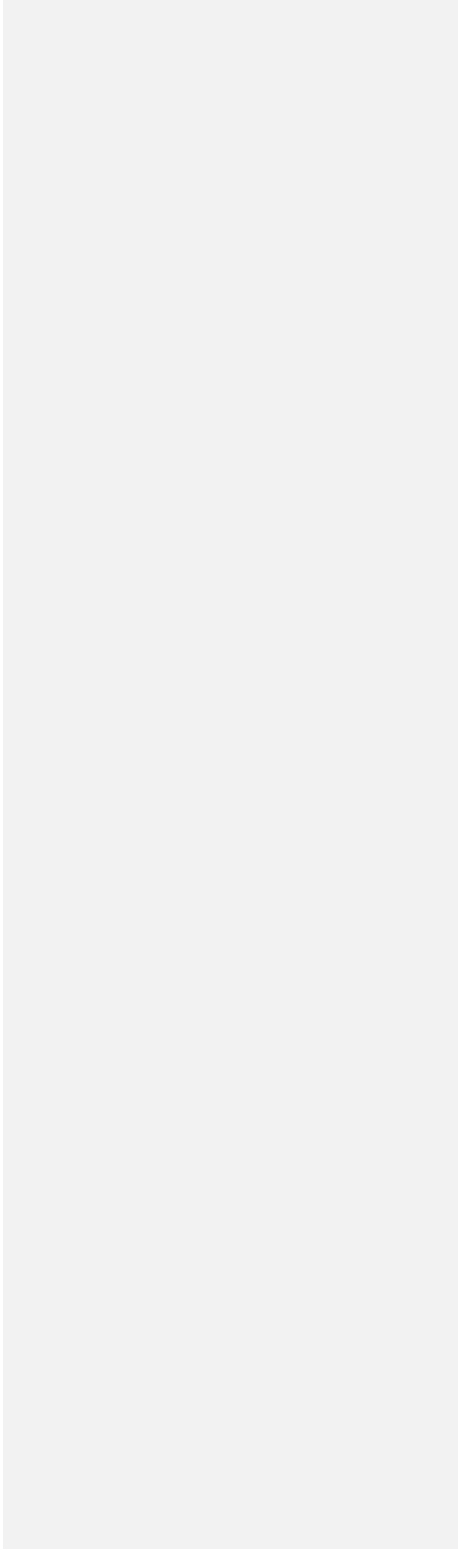
Date: _____

ATTEST:

By: _____ Shirley Lowrance, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Frederick J. Murphy, Jr., City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Clean) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF
THE CITY OF BARTOW,
FLORIDA

By: _____ Scott Sjoblom, Mayor

Date: _____

ATTEST:

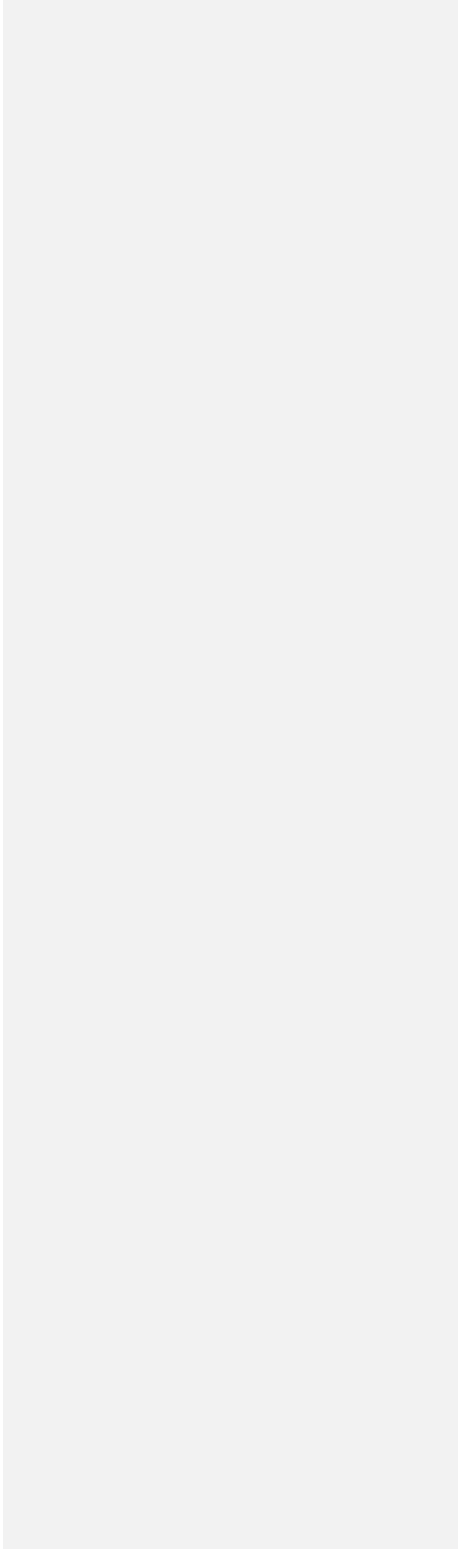
By: _____ Jacqueline Poole, City Clerk

Approved as to form and correctness:

Approved as to substance:

Sean R. Parker, City Attorney

George A. Long, City Manager



Attachment: 22-02-09 SEWF Implementation Agreement (Clean) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF DAVENPORT,
FLORIDA

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

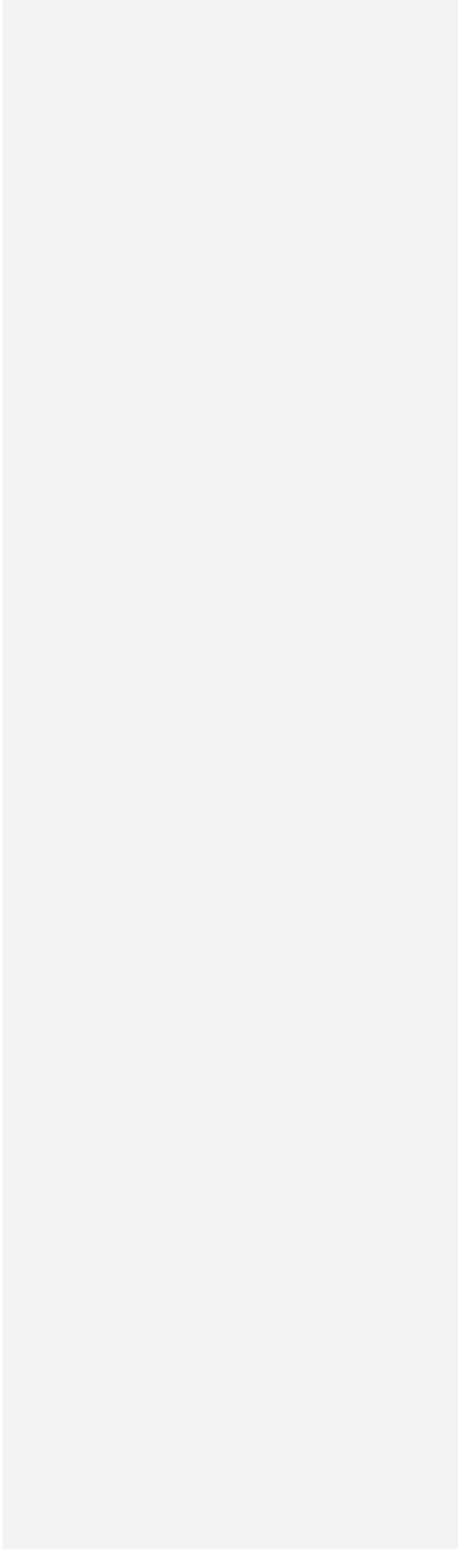
Date: _____

ATTEST:

By: _____ Rachel Castillo, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Thomas A. Cloud, City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Clean) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF EAGLE LAKE,
FLORIDA

By: _____ Cory Coler, Mayor

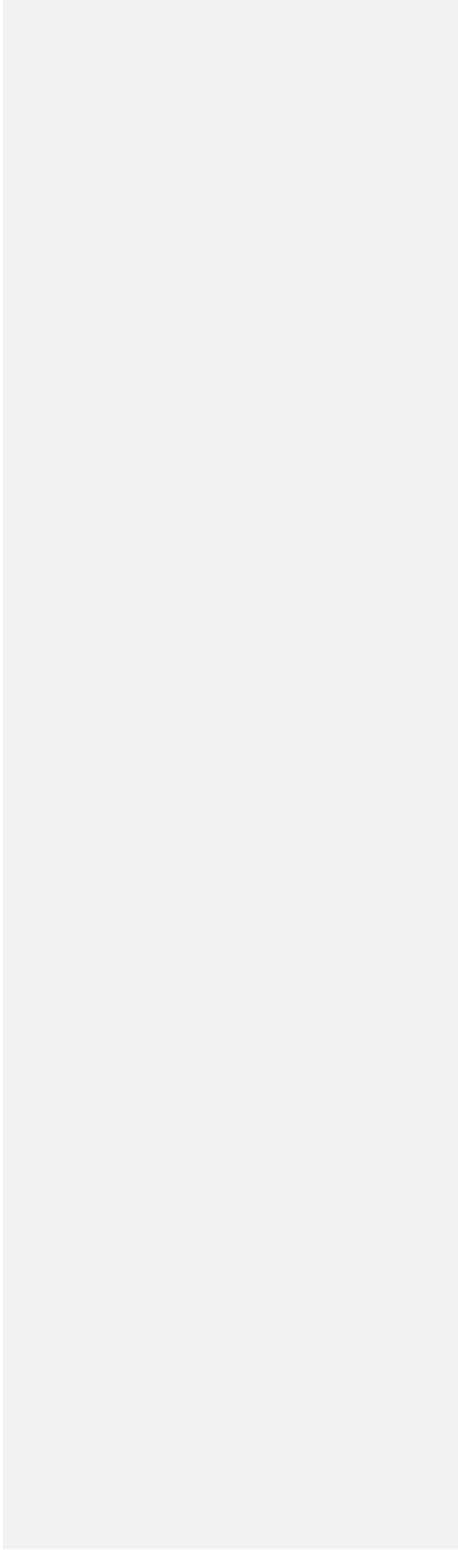
Date: _____

ATTEST:

By: _____ Dawn Wright, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Thomas A. Cloud, City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Clean) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF FT. MEADE,
FLORIDA

By: _____ James Watts, Mayor

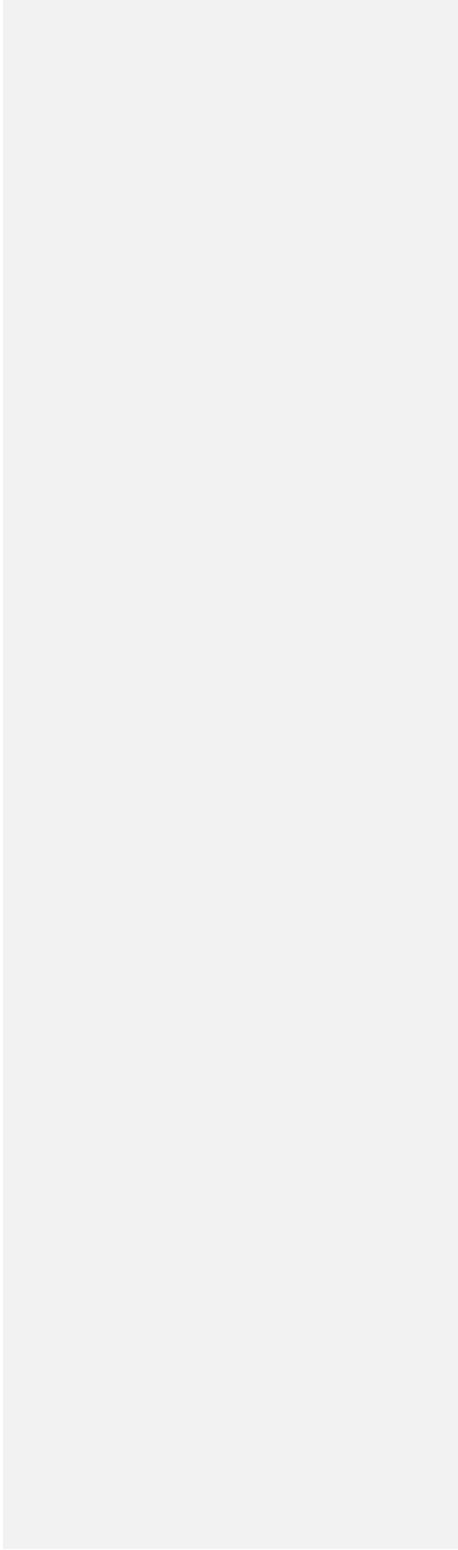
Date: _____

ATTEST:

By: _____ Melissa Newman, Deputy City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Thomas A. Cloud, City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Clean) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF HAINES CITY,
FLORIDA

By: _____ Morris L. West, Mayor

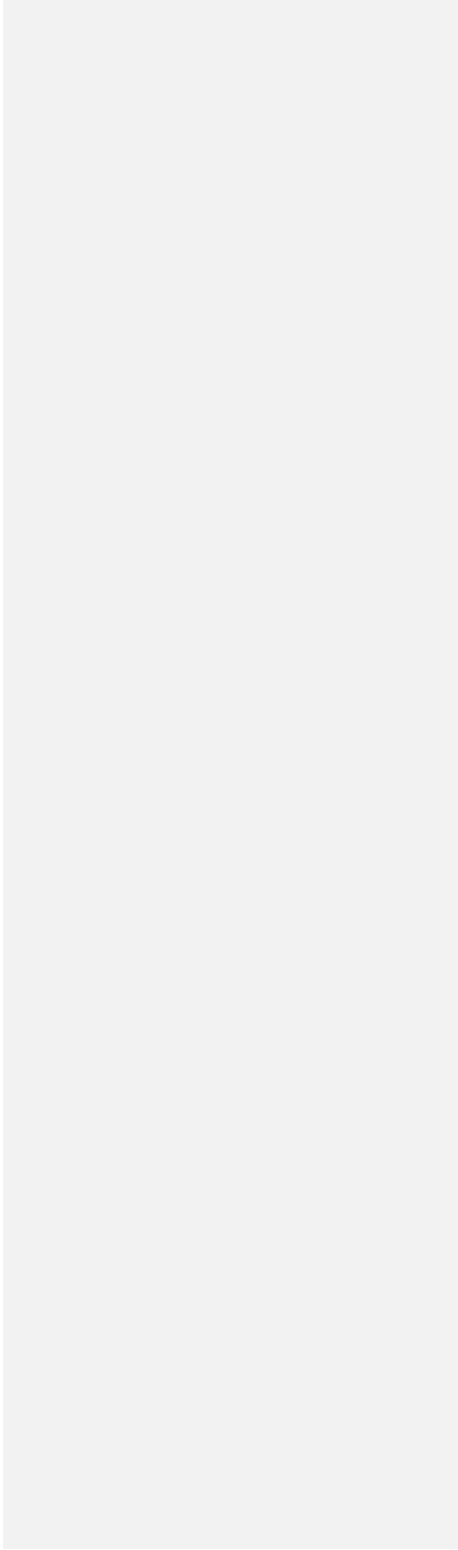
Date: _____

ATTEST:

By: _____ City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Fred Reilly, City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Clean) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF LAKE ALFRED, FLORIDA

By: _____ Nancy Z. Daley, Mayor

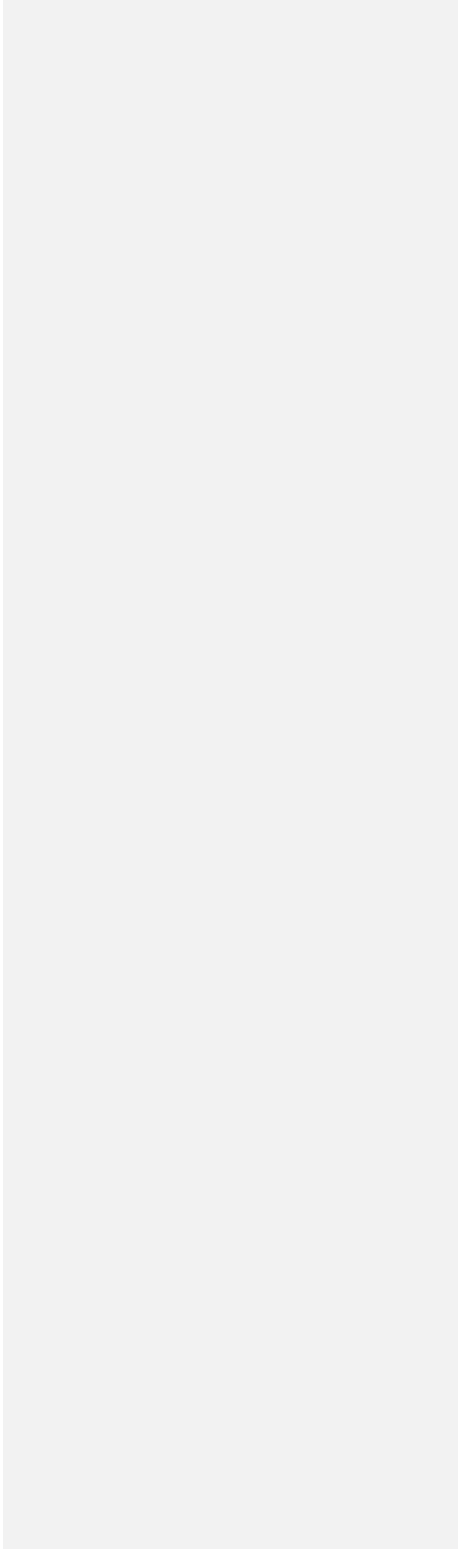
Date: _____

ATTEST:

By: _____ Linda Bourgeois, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Frederick J. Murphy, Jr., City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Clean) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF LAKE LAND,
FLORIDA

By: _____ H. William Mutz, Mayor

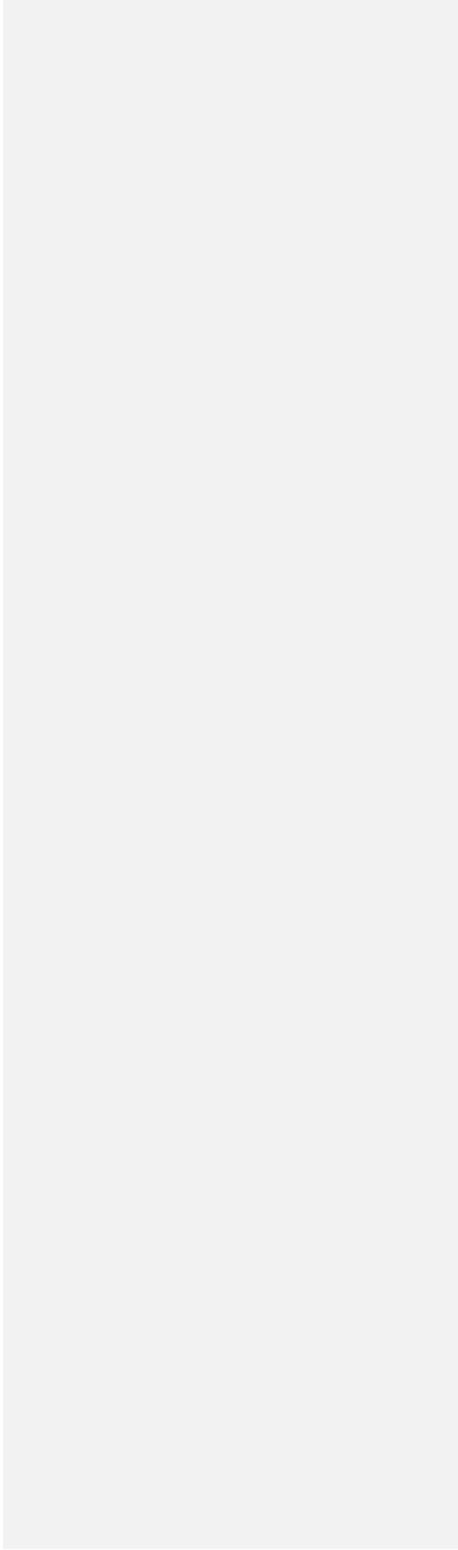
Date: _____

ATTEST:

By: _____ Kelly Koos, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Palmer Davis, City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Clean) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF LAKE WALES, FLORIDA

By: _____ Eugene Fultz, Mayor

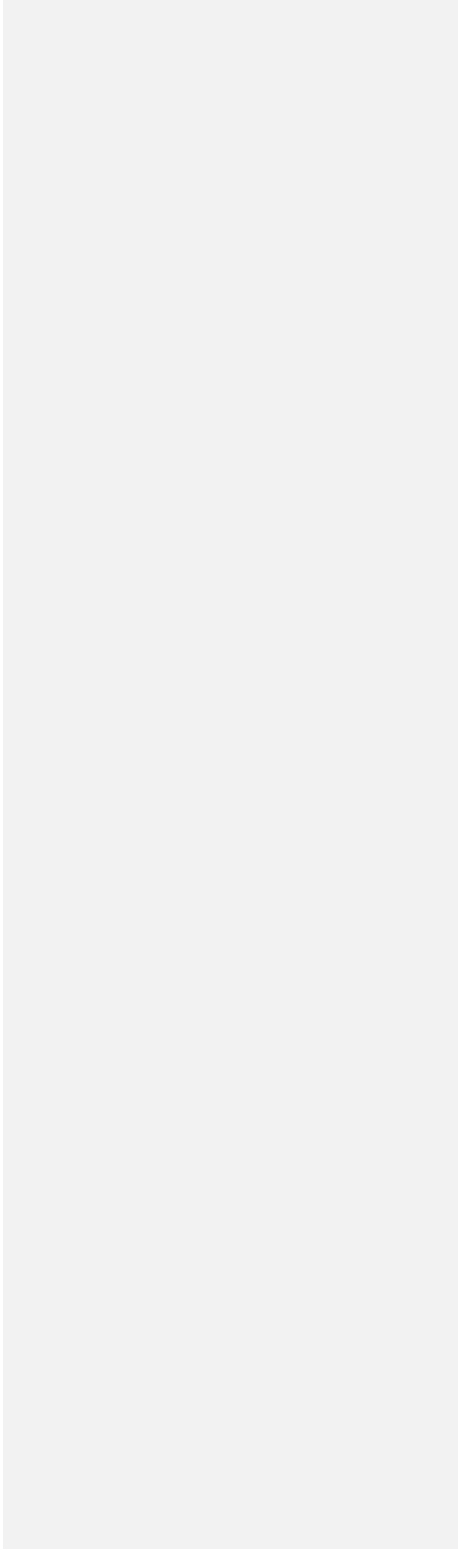
Date: _____

ATTEST:

By: _____ Clara VanBlargan, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Albert C. Galloway, Jr., City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Clean) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF MULBERRY,
FLORIDA

By: _____ George H. Hatch, Mayor

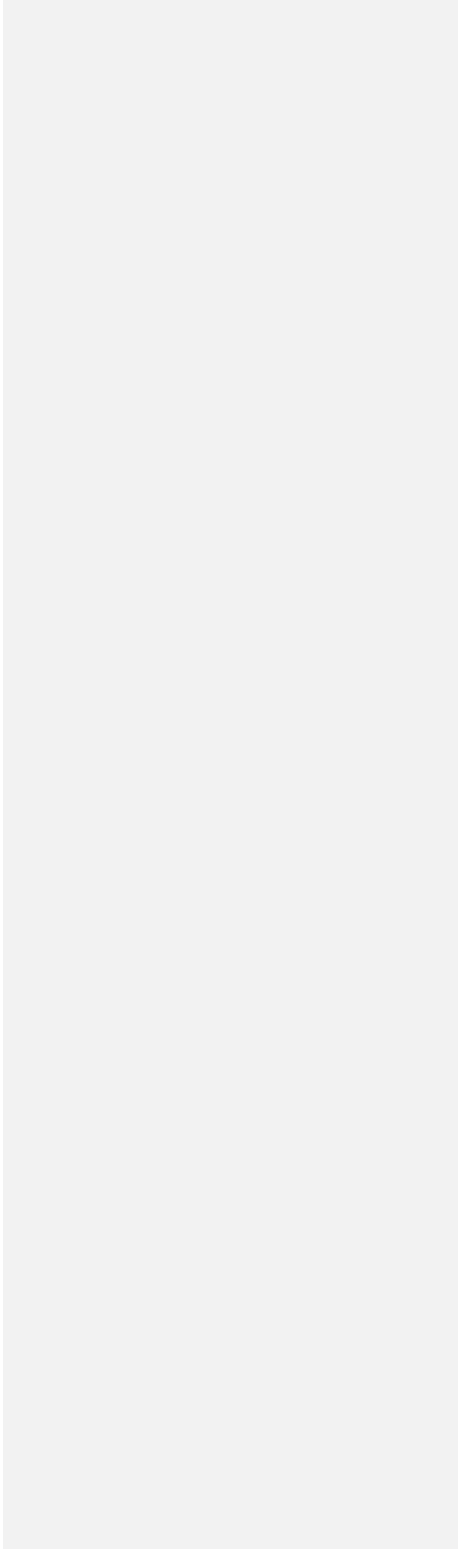
Date: _____

ATTEST:

By: _____ Sharon Lauther, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Frederick J. Murphy, Jr., City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Clean) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF POLK CITY,
FLORIDA

By: _____ Joe LaCascia, Mayor

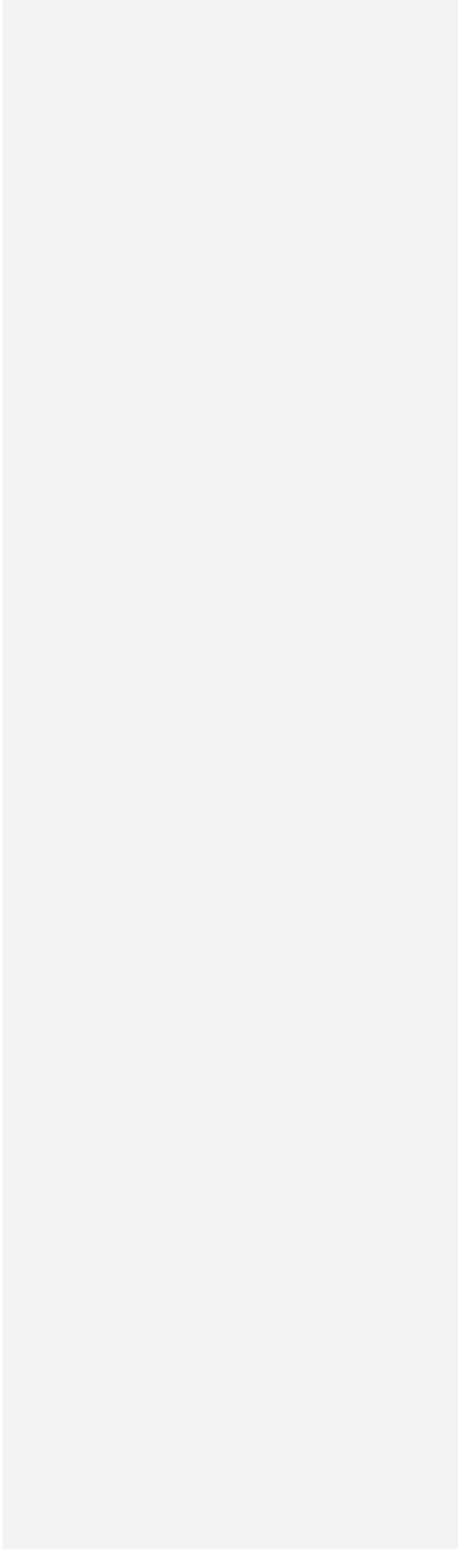
Date: _____

ATTEST:

By: _____ Patricia Jackson, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Thomas A. Cloud, City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Clean) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF WINTER HAVEN, FLORIDA

By: _____ Bradley T. Datnzler, Mayor

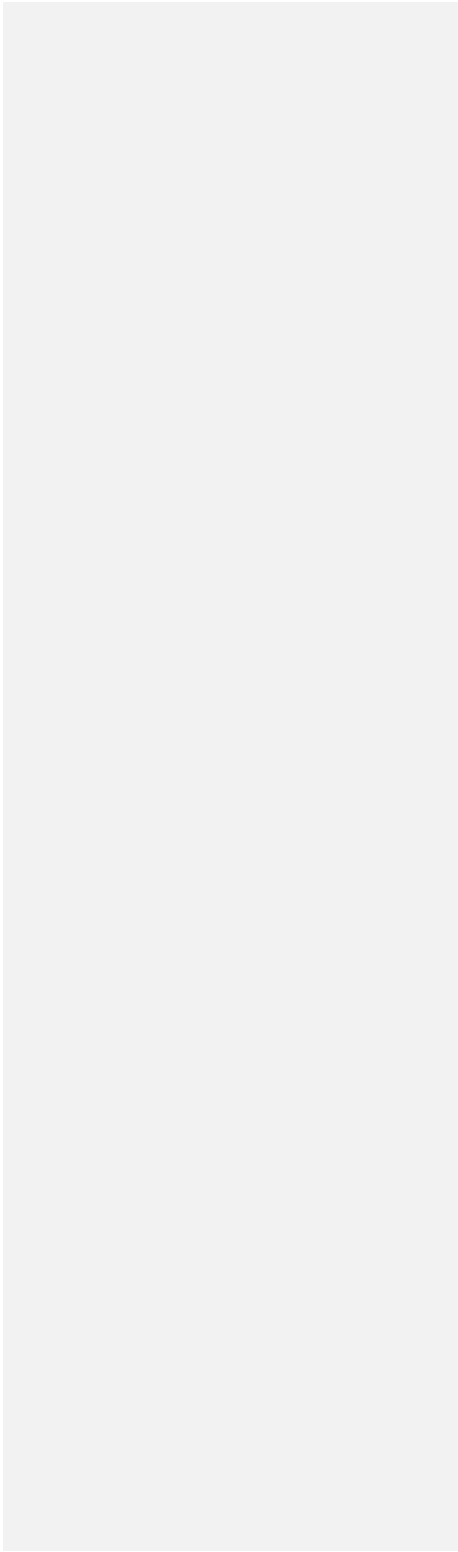
Date: _____

ATTEST:

By: _____ Vanessa Castillo, MMC City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Frederick J. Murphy, Jr., City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Clean) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

TOWN COMMISSION OF
THE TOWN OF DUNDEE,
FLORIDA

By: _____ Sam Pennant, Mayor

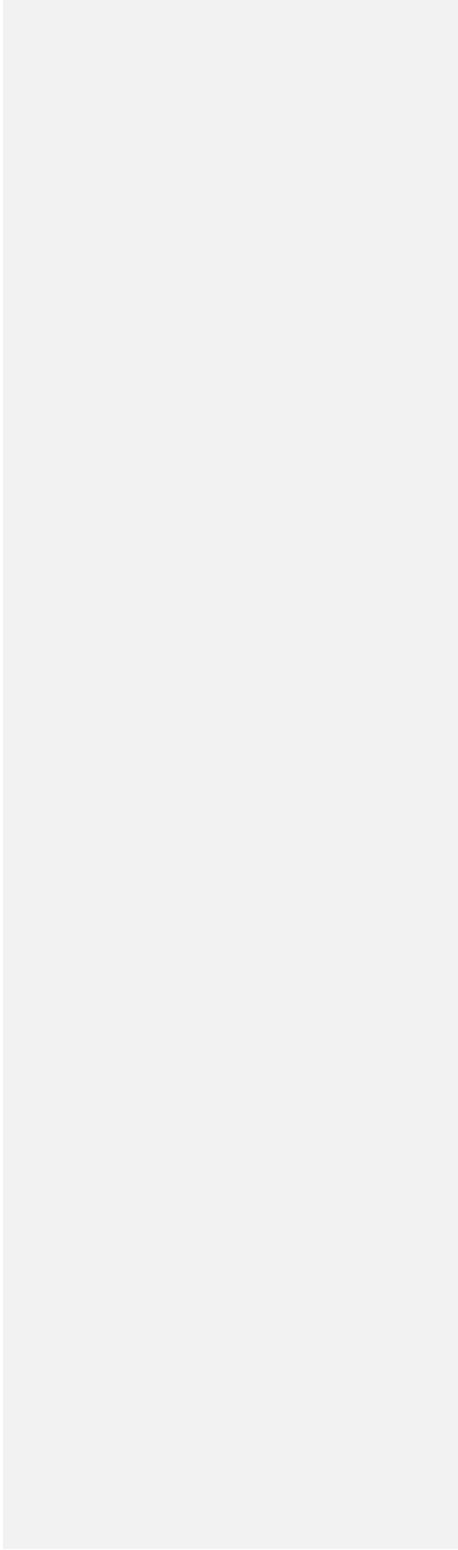
Date: _____

ATTEST:

By: _____ Jenn Garcia, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Frederick J. Murphy, Jr., City Attorney



February 9, 2022

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

TOWN COUNCIL OF THE
TOWN OF LAKE HAMILTON, FLORIDA

By: _____ Mike Kehoe, Mayor

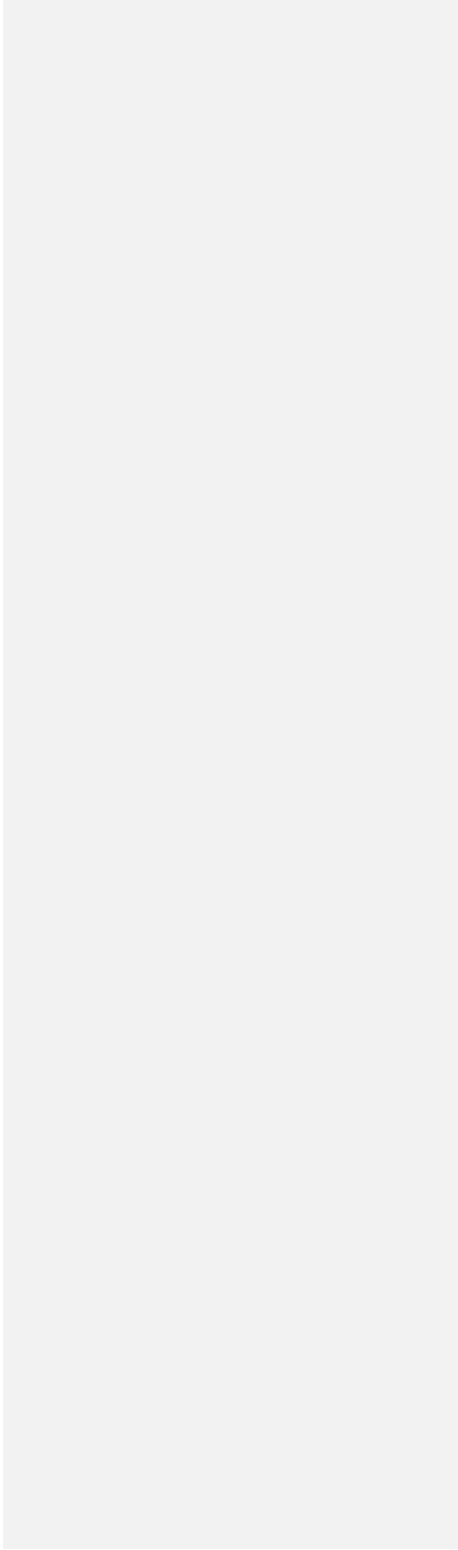
Date: _____

ATTEST:

By: _____ Sara Irvine, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Jeff Dawson, City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Clean) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

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

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

Stacy M. Butterfield
Clerk to the Board of County Commissioners

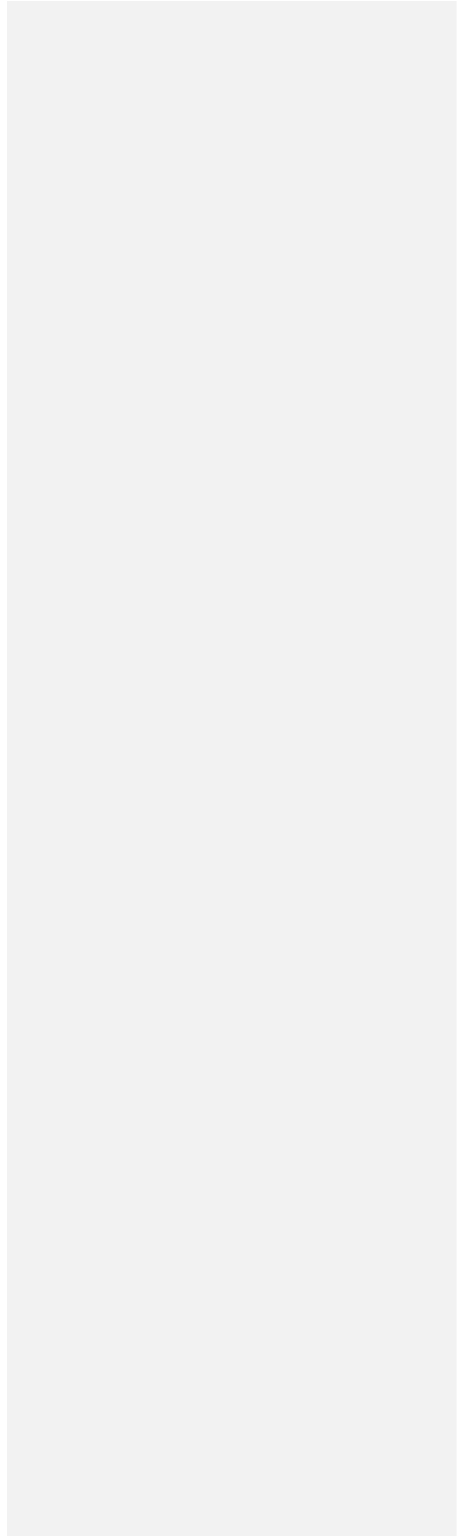
By: _____
Deputy Clerk

By: _____
Dr. Martha Santiago, Chair
Board of County Commissioners

Dated and signed by the Chairman: _____

Reviewed as to form and legal sufficiency:

County Attorney's Office



Attachment: 22-02-09 SEWF Implementation Agreement (Clean) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

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

POLK REGIONAL WATER COOPERATIVE

By: _____
Eugene Fultz, Chair

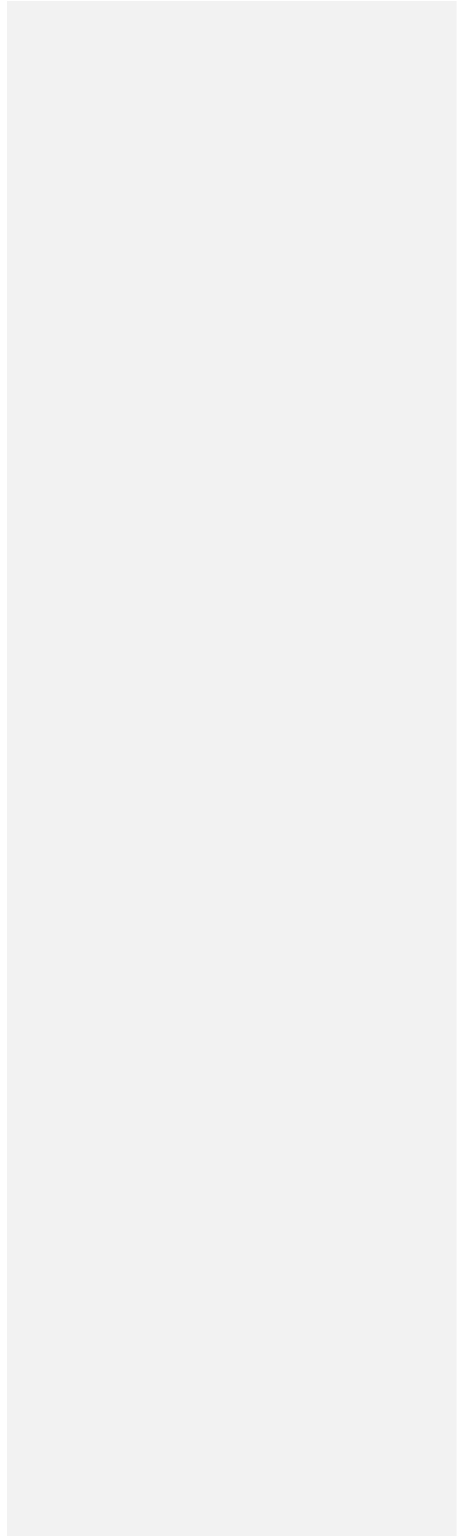
Date: _____

ATTEST:

By: _____
Mayor H. William Mutz,
Secretary/Treasurer

APPROVED AS TO FORM AND CORRECTNESS:

Edward P. de la Parte, Legal Counsel



Attachment: 22-02-09 SEWF Implementation Agreement (Clean) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

**AMENDED AND RESTATED IMPLEMENTATION AGREEMENT
Southeast Wellfield Project**

THIS AMENDED AND RESTATED 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 P.O. Box 9005, Bartow, Florida 33831, 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 Lake Wales whose address is P.O. Box 1320, Lake Wales, FL 33859, the City of Lakeland whose address is 228 S Massachusetts Ave., Lakeland, FL 33801, the City of Mulberry whose address is P.O. Box 707, Mulberry, FL 33860, 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, Polk City, a Florida municipal corporation (fka “City of Polk City”), whose address is 123 Broadway Blvd SE, Polk City, FL 33868, 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”.

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THE PURPOSE of this Agreement is to implement the design, permitting, construction, operation, maintenance and funding of the Southeast Wellfield, an Approved Water Project of the Cooperative.

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, the Parties hereby agree, stipulate and covenant as follows:

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 Amended and Restated Implementation Agreement for the Southeast Wellfield Project, as it 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 8.3 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 without limitation the Southeast Wellfield Refund Cost.

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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, which are not paid from the proceeds of any Obligation and costs that will occur over the life of the Project for the assets comprising the Project.

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. Pursuant to and in accordance with the Interlocal Agreement, all powers, privileges, and duties vested in or imposed on the Cooperative with regards to the approval and implementation of the Project shall be exercised by the Project Board.

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, and may be amended if needed subject to written change orders approved in writing by the Cooperative and the Contractor engaged by the Cooperative.

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, Reserves and Variable Operation and Maintenance Cost

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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 a Party claiming excuse when ~~makes it~~ is either 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, pandemic, 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

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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 “Member Government” shall have the same meaning as in the Interlocal Agreement.

1.21 “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 Water Offsets withdrawn by a Project Participant.

1.22 “MGD” means million gallons a day.

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

1.24 “Operation and Maintenance Cost” means any and all costs incurred by the Project Board 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, and services; the operation, maintenance, management, security and development of the Project, which are not a Capital Replacement and Renewal Cost or are payable from the proceeds of any Obligation. Operation and Maintenance Costs, to the extent not constituting a Capital Replacement and Renewal Cost or payable from the proceeds of any Obligation, include, but are not limited to any cost of litigation or legal judgment against the Cooperative relating to the Project; cost of purchasing any water

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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; 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 (if one is established); and administrative costs incurred by the Cooperative for management of the Project.

1.25 “Parties” mean the Cooperative, the City of Auburndale, the City of Bartow, the City of Davenport, the City of Eagle Lake, the City of Fort Meade, the City of Haines City, the City of Lake Alfred, the City of Lake Wales, the City of Lakeland, the City of Mulberry, the City of Winter Haven, the Town of Dundee, the Town of Lake Hamilton, Polk City, a Florida municipal corporation (fka “City of Polk City”) and Polk County.

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

1.27 “Project” means the Southeast Wellfield.

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

1.29 “Project Associate” means a Party to this Agreement, who has elected to become a Project Associate in order to stay abreast of the status of the Project and enable them to make informed decisions about future participants-participation as a Project Participant. A Project

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Associate has no financial responsibility or liability for the Project or voting rights but may inform the Cooperative about its future plans or needs for Project Water, and make comments and recommendations to the Project Board about the Project's direction and scope. A Project Associate is not a Project Participant as defined herein.

1.30 "Project Board" shall have the same meaning as in the Interlocal Agreement.

1.31 "Project Participant" means a Party to this Agreement, other than the Cooperative or a Project Associate, who has executed this Agreement for the purpose of implementing this Project, which includes the design, permitting, construction, operation, maintenance and funding of the Project and receipt of Project Water Service from the Cooperative.

1.32 "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 Water Offsets.

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

1.34 "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.

1.35 "Project Water Service" means the delivery of Project Water by the Cooperative to the Points of Connection for use by the Project Participants.

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1.36 **“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.

1.37 **“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 judgment in light of facts known, that should have been known, at the time the decision was made, or could have only been expected to accomplish the desired results at a reasonable cost consistent with applicable legal, engineering, reliability, safety and time requirements.

1.38 **“PSI”** means pounds per square inch.

1.39 **“Reserves”** means adequate monetary reserves established by the Cooperative to ensure the continued operation of the Project, in the event one or more Project Participants are unable to pay their Water Charge on a short term basis.

1.40 **“Southeast Wellfield”** means a new lower Floridan aquifer public supply wellfield to be located in southeast Polk County as permitted by Permit No. 53-00293-W issued from the South Florida Water Management District.

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.

1.42 **“True-up”** means the process specified in Section 10 of this Agreement.

1.43 **“Variable Operation and Maintenance Costs”** means all Operation and Maintenance Costs that change in direct proportion to changes in the volume of finished water

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produced by the Project, including, but not limited to, power, chemical, water purchases and Water Transfer Costs.

1.44 “Water Offset” means a quantity of upper Floridan aquifer, groundwater withdrawn by a Project Participant that will be offset by another Project Participant relinquishing its right under a District permit to withdraw from the upper Floridan aquifer as stated in the Project plan.

1.45 “Water Offset Cost” means the cost of producing Project Water used by one or more Project Participants for use as a Water Offset. The Water Charge paid by a Project Participant for the use of a Water Offset shall cover the cost of producing the Project Water.

1.46 “Water Allotment” 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 Allotment Table, the Water Allotment for each of the Project Participants will be determined based on the Water Allotment Percentages set forth in this table.

2045 Water Allotment Table

| Name of Party | 2045 Water Allotment Annual Average (MGD) | 2045 Water Allotment Percentage (%) |
|-----------------------------|---|-------------------------------------|
| City of Auburndale | 1.65 | 16.40% |
| City of Bartow | 0.36 | 3.58% |
| <i>*City of Davenport</i> | <i>Project Associate</i> | |
| <i>* City of Eagle Lake</i> | <i>Project Associate</i> | |
| <i>* City of Fort Meade</i> | <i>Project Associate</i> | |
| <i>*City of Haines City</i> | <i>Project Associate</i> | |
| City of Lake Alfred | 0.43 | 4.27% |
| <i>*City of Lake Wales</i> | <i>Project Associate</i> | |
| City of Lakeland | 0.10 | 0.99% |
| <i>* City of Mulberry</i> | <i>Project Associate</i> | |

Commented [Ed1]: Haines City intends to provide a water allotment prior to the PRWC Board meeting.

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| Name of Party | 2045 Water Allotment Annual Average (MGD) | 2045 Water Allotment Percentage (%) |
|-------------------------------|---|-------------------------------------|
| <i>* Polk City</i> | <i>Project Associate</i> | |
| City of Winter Haven | 1.52 | 15.11% |
| Town of Dundee | 2.60 | 25.84% |
| <i>*Town of Lake Hamilton</i> | <i>Project Associate</i> | |
| Polk County | 3.40 | 33.81% |
| TOTAL | 10.06 | 100.0000% |
| | | |

Commented [Ed12]: Dundee intends to provide a modification to the 2045 water allotment prior to the PRWC Board meeting.

1.47 “Water Charge” means for any Fiscal Year, the charge established by the Project Board pursuant to Section 13 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 Proportionate Share” ~~or “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 Proportionate Share shall be based on each Project Participant’s projected 2045 Water Allotment, as revised at least every five (5) years through the True-Up process set forth in Section 10 and/or the provisions set forth in Sections 11, 19 and 20 of this Agreement.

1.49 “Water Transfer Cost” means those costs incurred by the Cooperative in transmitting Project Water from the Southeast Wellfield to Project Participants.

1.50 “Water Use Charge” means for any Fiscal Year that component of the Water Charge computed according to Section 13.3.2.

1.51 “Weighted Vote Method” means that each Director is assigned a vote based on its Water Allotment percentage under the Water Allotment Table identified in Section 1.46.

2. PURPOSE OF THE AGREEMENT.

2.1 Overall Agreement. This Agreement governs the overall implementation of the Project, which includes design, permitting, construction, operation, maintenance and funding

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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.

2.3 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, permit and/or other similar administrative matters between the District and any Party.

2.4 Project Participants and Project Associates. Each Party to this Agreement electing Project Associate status may at any time submit an election in writing to change its status to Project Participant. To receive Project Participant status, the Project Associate shall, prior to the end of the fiscal year, deliver to the Cooperative its Project Water Estimate and pay to the Cooperative its proportionate share of the Capital Cost, Capital Renewal and Replacement Cost, Debt Service Cost Fixed Operation and Maintenance Costs and Reserves, incurred to date by Project Participants, as well as 2.5% of its proportionate share of such costs expended to date. Those Member Governments who are not Project Associates, who wish to become Project Participants shall, prior to the end of the fiscal year, deliver to the Project Board its Project Water Estimate and pay to the Cooperative its proportionate share of the Capital Cost, Capital Renewal and Replacement Cost, Debt Service Cost, Fixed Operation and Maintenance Costs and Reserves, incurred to date by Project Participants, as well as 7.5% of its proportionate share of such costs expended to date. The right of a Project Associate or a Member Government who is not a Project

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Associate to become a Project Participant is subject to the availability of Project Water not committed to existing Project Participants.

3. **CONSTRUCTION OF TERMS.** 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 in applicability to the specific provision within which 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. **REPRESENTATIONS 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,

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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. EFFECTIVE DATE. The Effective Date of this Agreement shall be the date when the Agreement is duly authorized and executed by the Parties ~~as determined by the Cooperative.~~

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 with respect to the Project 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.

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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 majority vote of a quorum of the Project Board using the Weighted Vote Method specified in this Agreement, which vote must include at least a majority of the Project Participants.

7.2 Project Administrator. No later than thirty (30) days from the Effective Date of this Agreement, the Project Board shall designate the name, address, phone number, fax number and email address of its Project Administrator. The Project Administrator may be changed at any time by the Project Board. 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.

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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 8.4, for design and construction of the Project.

7.3.8 Manage the activities of the contractor(s) to assure that requirements 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 alternative financing mechanisms.

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.

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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 Cooperative shall procure a consultant or consultants to perform all or a portion of the professional services needed for each stage described below.

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8.1 Final Design and Bidding Stage.

8.1.1 Upon selection of the consultant(s), the 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 include a 100% final design. 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 100% final design, the Project Administrator will present it to the Project Board the ~~100%~~ final design and a Bidding Budget based on the final design for approval..

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 for their individual sufficient fiscal obligations to the Project.

8.1.6 Upon approval of the final design and Bidding Budget by the ProjectBoard, the Project Administrator will procure bids from contractors to construct the Project and the ProjectAdministrator will obtain a scope and fee from the consultant for its services for the Constructionstage for construction phase, post construction phase and administration services for approval by the Project Board.

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8.1.7 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.

8.1.8 To encourage Member Governments to initially execute this Agreement as Project Participants, Polk County will pay the 60% final design cost share for any Member Government who does not join this Agreement as a Project Participant. If after Polk County has paid the 60% final design costs for a Member Government that Member Government later seeks to become a Project Participant, it shall first reimburse Polk County the respective 60% final design cost Polk County paid to the Cooperative on behalf of that Member Government, together with interest accruing at the rate payable for judgments pursuant to Florida Statutes, section 55.03, from the date Polk County paid the design costs through the date the Member Government fully pays the amount owed to Polk County.

8.2 Real Estate Acquisition Stage. The Cooperative shall acquire any real property interests necessary to implement the Project, subject to the limitations of the Interlocal Agreement.

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.

8.4 Alternative Procurement Methods. The Project Board may approve the use of Alternative Procurement Methods as allowed by Florida Statutes including Chapters 255 and

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287, in place of the separate design and construction mechanisms described in Sections 8.1 and 8.3, including the procurement of a construction manager at risk.

8.5 Project Operation and Maintenance Stage. The Cooperative, upon completion of project construction, shall at all times operate and maintain the Project facilities in its ownership in accordance with Prudent Utility Practices.

8.5.6 Project Funding. A portion of the Project costs is expected to be reimbursed through cooperative funding from the District. The Cooperative anticipates issuing Obligations that will be used to pay the costs of the Project prior to reimbursement from the District of such Project costs. The Cooperative covenants to not issue Obligations in an amount that exceeds the amounts which the District has agreed to reimburse for such Project costs, which agreement by the District may be subject to such conditions precedent to funding, including appropriation and approval of reimbursement requests.

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. Ownership does not include any infrastructure or facilities owned by Project Participants as of the time of the execution of this Agreement.

10. TRUE-UPS.

10.1 Additions, assignments and substitutions. 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.

10.2 Construction phasing. 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 for constructing the next phase and/or sub-phase of the Project. Any additions, substitutions,

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assignments, or revisions to the size and timing of construction phases or sub-phases must be approved by the Project Board and reflected in an Amendment to this Agreement.

10.3 Expansions and Capital Cost. The Project is permitted for 30 MGD and is proposed to be developed in phases, the first of which will provide approximately 10.06 MGD of finished water availability for Project Participants. Some components of the Project will be constructed to accommodate water production expansion and future development. Therefore, Project Participants will pay Capital Costs and commit to pay Obligations for certain Project components which will benefit the current Project Participants and the Project Participants of future Project expansions (“Common Capital Components”). For each expansion, the Capital Costs and Obligation commitments the Project Participants have made for the Common Capital Components will be re-allotted among all Pproject Pparticipants of any future Project expansion in accordance with the then-current Water Allocation Table, and the then- current Pproject Pparticipants shall reimburse the initial Project Participants for that portion of the Capital Costs and Obligation commitments paid for Common Capital Components which benefit the expansion Pproject Pparticipants. Each time there is an expansion there shall be a similar re--allotment of Capital Costs and Obligation commitments for Common Capital Components based on the new Water Allocation Table and a reimbursement to existing Project Participants for Capital Costs and Obligation commitments paid for Common Capital Components which benefit the expansion Pproject Pparticipants.

10.4 Water Use Charge. The True-Up of the Water Use Charge is as outlined in Section 13.5.

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10.5 Actual Use Data. During any True-Up process, the costs made true between the Project Participants shall be based upon new data or actual figures reflecting actual use versus estimates.

10.510.6 Water Allotments. At least once in every 5 year period after the Effective Date of this Agreement, and at any time that a Project Participant's 2045 Water Allotment increaseincreases, the Cooperative shall conduct a true-up of the Water Allotment table and of each Project Participant's Water Cost Proportionate Share to reflect the most current data, use and allotment estimates.

11. PROJECT WATER SERVICE.

11.1 Delivery of Project Water Service. During each Fiscal Year, starting with the Fiscal Year in which the Project Water Service is scheduled to commence, the Project Board 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 Project Administrator 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 Project Board to deliver to its Point of Connection during the upcoming Fiscal Year or the quantity of Water Offset, 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. The Project Administrator 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 Project Administrator by

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May 1, then the Project Participant shall be deemed to have requested its full Water Allotment for the upcoming Fiscal Year.

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 allotted by the Project Board according to the following priority schedule:

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

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

11.1.2.3 In the event a Project Participant with a Water Allotment delivers a Project Water Estimate to the Project Board indicating its intent to take a Water Offset during the upcoming Fiscal Year in an amount not exceeding its Water Allotment, a Project Participant may voluntarily request a Water Offset in its Project Water Estimate in order to offset the quantity of Water Offset used by another Project Participant. The request by a Project Participant in its Project Water Estimate to take a Water Offset must be reviewed and approved by the Project Board as to technical feasibility.

11.1.2.4 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

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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 Project Board.

11.3 Water Quality. The Cooperative shall deliver Project Water to each Project Participant's Point of Connection that: (1) 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 or set forth in Phase 1 of the Combined Projects Implementation Agreement. This Section 11.3 shall not apply to Water Offsets used by a Project Participant.

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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 Water Offsets 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 interests 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 Parties 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 for those Project Participants with a Water Allotment under the Water Allotment Table set forth above. This requirement applies equally to those Project Participants that will physically take Project Water and those Project Participants that will take Water Offsets. The Cooperative and a Project Participant may, by mutual agreement, more specifically identify or modify the Point of Connection or the location of the corresponding Meter.

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 Water Offsets taken by a Project Participant shall be exclusively measured by a Meter. The Cooperative shall own,

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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~~ 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 whichcase, 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.

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13. WATER CHARGE. For each Fiscal Year, the Project Participants shall pay to the order of 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, Reserves 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. ~~The Water Charge shall be uniform for all Project Participants.~~ The Water Charge shall be computed in the manner specified in Section 13.3, 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 13.2. 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 Notification of Water Charge. On or before May 31 prior to the Fiscal Year in which the Project Water Service is scheduled to commence and on or before every May 31st 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 Project Board for this Project for the upcoming Fiscal Year.

13.3 Establishment of Water Charge. The Water Charge shall be established as follows:

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

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

13.3.1.2 The Base Rate Charge shall consist of the total of the Debt Service Cost, Capital Renewal and Replacement Cost, Fixed Operation and Maintenance Cost and Reserves determined pursuant to Section 13.3.1.1. The Base Rate Charge shall be allocated among each Project Participant based upon each Project Participant's Water Allotment Percentage identified in the then effective Water Allotment Table in Section 1.46, as it may be modified pursuant to Section 10, for the upcoming Fiscal Year.

13.3.1.3 The Base Rate Charge allotment computed for each Project Participant pursuant to Section 13.3.1.2 shall be increased by any underpayment or decreased by any overpayment determined pursuant to Sections 13.5 and/or 10 of this Agreement.

13.3.2 Water Use Charge. The Water Use Charge shall be computed as the Variable Operation and Maintenance Cost determined pursuant to Section 13.3.1.1 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.

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

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13.4.1 The Project Participants shall pay their individual Base Rate Charge allotment as specified in Section 13.3.1 in twelve (12) equal monthly payments during each calendar month starting in October and ending on the following September.

13.4.2 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 Project Board to the Project Participant's Point of Connection during the prior calendar month by the Water Use Charge identified in Section 13.3.2.

13.5 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, Reserves 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 verifying the Base Rate Charge portion of the Water Charge for 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 13.4.1. If the audit determines that an overpayment was made by a Project Participant, then said overpayment shall

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be deducted from that Project Participant's Base Rate Charge for the upcoming Fiscal Year in the manner specified in Section 13.4.1.

13.6 Certain Payments. The Water Charge shall not include any surcharge, tax, payment in lieu of taxes, payment in lieu of franchise fees, or any charge or payment not directly related to the cost of providing Project Water Service.

13.7 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 order of 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 delinquent Project Participants shall be charged with and pay to the order of the Cooperative interest on the amount unpaid from its due date at such rates the Project Board may establish from time to time.

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-

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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

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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. However, a Force Majeure Event shall not excuse a Project Participant from paying its Base Rate Charge, when due, pursuant to Section 13.4.

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.

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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, and will be bound by any resulting mediation agreement that is approved by the governing body for each Party, 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. For all defaults, except the failure to pay the Base Rate Charge, when due, pursuant to Section 13.4, the defaulting Party shall have thirty (30) days to cure

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the default, unless such default is not capable of being cured within thirty (30) days, 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, with the exception of the suspension of Project Water Service or Water Offsets pursuant to Section 18.4 of this Agreement, 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 Default in Payment of Base Rate Charge. The failure by a Project Participant to pay the Base Rate Charge, when due, shall be immediately cured. If not cured, the Cooperative shall use the Reserves to pay the defaulting ~~Parties~~ Project Participant's Base Rate Charge in the short term, in order to ensure the continued operation of the Project and the payment of the Debt Service until the defaulting Project Participant cures the default. Additionally, at the request of the Cooperative, the remaining Project Participants shall be obligated to make up any shortfalls created by the defaulting Project Participant's failure to pay its Base Rate Charge, when due, according to the Water Allotment Table in Section 1.46, in order to ensure the continued operation of the Project and the payment of the Debt Service until the defaulting Project Participant cures the default. In order to cure the default, the defaulting ~~Party~~ Project Participant must repay to the Cooperative its Base Rate Charge. Upon repayment of the Base Rate Charge by the defaulting Project Participant, the Cooperative shall replenish the Reserves and ~~or~~ credit the other Project Participants for payments made in order to avoid a shortfall. Repayments to the Cooperative from a defaulting Project Participant shall first be used to credit Project Participants for payments made in order to avoid a shortfall, and then be used to replenish Reserves. If the defaulting Project Participant makes partial repayments to the Cooperative, credits shall be issued in payor order with the largest payor receiving credits first until made whole, and the smallest payor receiving credits last until made whole, until all Project Participants are fully repaid.

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18.3 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.

18.4 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 by the due date shall be in default of this Agreement and upon fifteen (15) days written notice, the Cooperative may suspend Project Water Service to a Project Participant and prohibit a Project Participant from using Water Offsets unless there is in mediation a good faith dispute or suspension of service compromises the health, safety, and welfare of the end water users. Suspension of Project Water Service to a Project Participant or prohibition of the use of Water Offsets 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 a Water Offset. The Cooperative's decision to suspend Project Water Service to a Project Participant or to prohibit Water Offsets 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 Water Offsets upon payment of all outstanding Water Charges, including any interest, may

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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 Process. A Project Participant who withdraws from this Agreement shall remain liable for payment of its share of the Water Charge. If the withdrawing Project Participant has submitted a Project Water Estimate to the Cooperative for the current Fiscal Year, then it shall remain liable to pay the Water 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 Allotment, 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 Allotment is completely redistributed among the remaining Project Participants.

19.2 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 Allotment, if any, and immediately forfeit its right to receive Project Water Service from the Project Board, including the use of Water Offsets. A Project Participant who withdraws from the Project may later request to join the Project again as a new

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Project Participant in accordance with Section 20 and, if approved to do so, will receive due credit given for the all previous Project expenditures.

19.3 Redistribution of Water. All of a withdrawing Project Participant's Water Allotment, 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 Allotment, if any, based upon the then applicable Water Allotment Table. Redistribution of the withdrawing Project Participant's Water Allotment 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) dayperiod a Project Participant will notify the Cooperative in writing of its intent to take some or all of the withdrawing Project Participant's Water Allotment. Any redistribution of the withdrawing Project Participant's Water Allotment to another Project Participant must be reviewed and approved by the Project Board as to technical feasibility. If two or more existing Project Participants exercise their right to take all of the withdrawing Project Participant's Water Allotment, then the withdrawing Project Participant's Water Allotment shall be redistributed in proportionate portions to the Project Participants, which requested redistribution. Any of the withdrawing Party's Water Allotment that is not redistributed, 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

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Participant or existing Project Participant agrees to fully perform all the obligations of the existing Project Participant. Substitution shall mean the new or existing Project Participant shall at a minimum succeed to the old Project Participant's entire Water Allotment, if any. Prior to substitution taking effect, the existing Project Participant must notify all other existing Project Participants and Project Associates in writing of the substitution and offer the substitution on the same terms and conditions to the other existing Project Participants and Project Associates, 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 Party to this Agreement is proposed to be substituted for an existing Project Participant. If one of the existing Project Participants or Project Associates exercises its right of first refusal during this time period, then all of the substituted Project Participant's Water Allotment, if any shall be assigned to the substituting Party. If two or more existing Project Participants or Project Associates exercise their right of first refusal during this time period, then all of the substituted Project Participant's Water Allotment, if any, shall be reassigned in equal portions to the substituting Parties. If none of the existing Project Participants or Project Associates commit to acquire the substituted Project Participant's entire Water Allotment, if any, during this sixty (60) day period, then the Parties to this Agreement 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 Project Board as to technical feasibility. Any new Party to this Agreement must be unanimously approved by the existing Project Participants. Once the substitution takes place, the substituted Project Participant shall withdraw from the Project 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.

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20.2 Addition. A new party may only be added to this Agreement by the unanimous decision of all the current Project Participants.

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. Subject to the provisions of Section 2.4 of this Agreement, any new Project Participant 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 and 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 Allotments 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 Allotment, if any, to a new Project Participant, an existing Project Participant, or a Project Associate if the assignee agrees to fully perform all the obligations of the existing Project Participant. Any new Party assignee must be unanimously approved by the existing Project

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Participants. The complete assignment of an existing Project Participant's Water Allotment, if any, to a new Project Participant, an existing Project Participant, or a Project Associate 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 and Project Associates, who shall be provided at least sixty (60) days to exercise the right of first refusal. If one of the existing Project Participants or Project Associates exercises its right of first refusal during this time period, then the portion of the assigning Project Participant's Water Allotment, if any, up for assignment shall be transferred to the existing Project Participant. If two or more existing Project Participants or Project Associates exercise their right of first refusal during this time period, then the portion of the assigning Project Participant's Water Allotment, if any, up for assignment shall be transferred in equal portions to the existing Project Participants and Project Associates. If none of the Project Participants or Project Associates commit to acquire the assigning Project Participant's Water Allotment, if any, up for assignment, then the Parties to this Agreement shall be considered to have waived their right of first refusal. The right of first refusal shall not apply when an existing Project Participant or Project Associate is the assignee. Any assignment under this Section 20.3 must be reviewed and approved by the Cooperative 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 Allotment to the assignee Project Participant, as well as its voting rights, proportionate to the extent of the assignment. 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.

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21. PERMITS.

21.1 No Party shall interfere with the existing consumptive use permits or existing water, wastewater, or reclaimed water facilities of a Member Government, except as may otherwise be consented to in writing by the Member Government.

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 the provisions of Section 21.1 shall apply.

21.4 No Party 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, unless the proposed Project Permit directly threatens an existing legal right of that Party to use the water resources of the state, in existence prior to the date of the application for the Project Permit.

21.5 A Member Government that is not a Party under 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.

February 9, 2022

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 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.

22.3 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; (65) 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

February 9, 2022

performance under the Agreement; and, (76) 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.

22.4 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, the Project Participants are not 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, regardless of whether such claims are grounded in contract, statute, tort, negligence, product liability, strict liability, or otherwise. Finally, the Cooperative agrees to indemnify and hold the Project Participants harmless from any injury that the Project Participants or their 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

February 9, 2022

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.

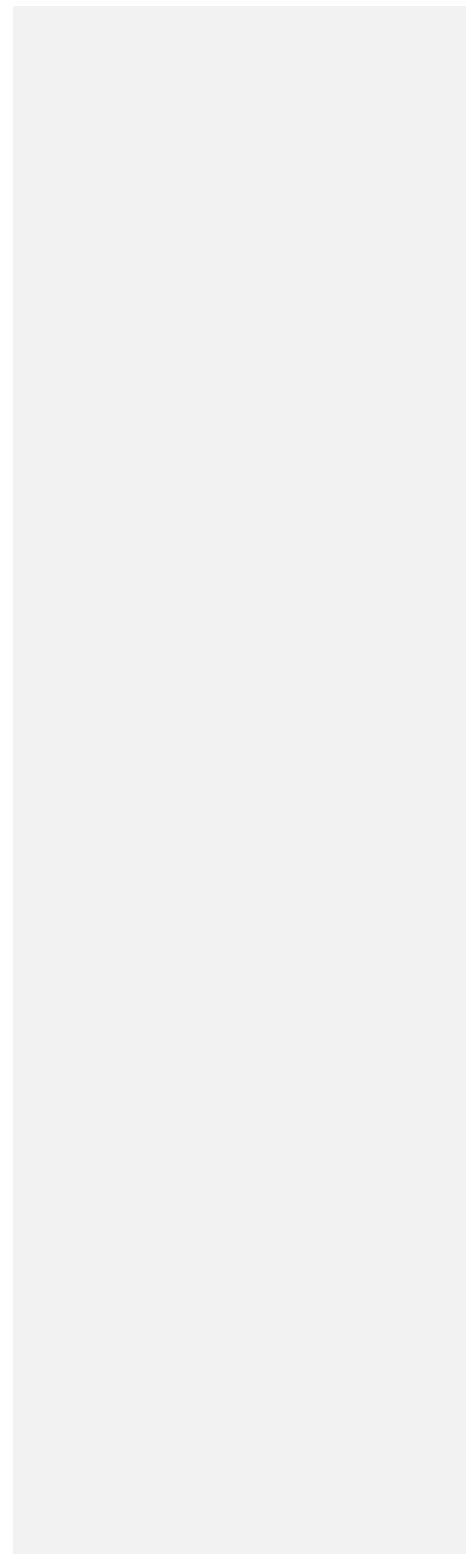
25.1 All notices provided for in this Agreement must be in writing and shall be sufficient and deemed to be given when sent by certified mail or registered mail, return receipt requested. A copy shall also be sent to the Parties by email. All notices shall be delivered or sent to the Parties and/or Project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

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 3383
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



February 9, 2022

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

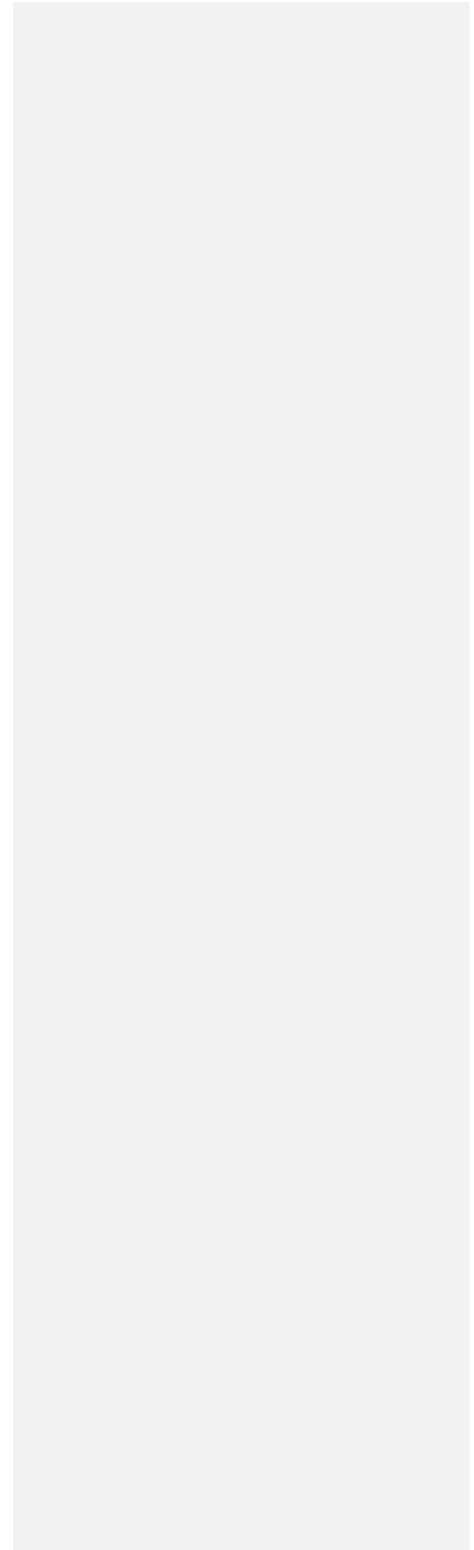
City of Lake Wales
City Manager
P. O. Box 1320
Lake Wales, Florida 33859
863-678-4196

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

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

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

Town of Dundee
Town Manager



February 9, 2022

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 City
City Manager
123 Broadway SE
Polk City, Florida 33868
863-984-1375, ext. 237

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

Polk Regional Water
Cooperative
Executive Director
Drawer CA01/P.O. Box 9005
Bartow, Florida 33831
Phone: 863-534-6444

25.2 All notices shall also be sent to the Cooperative Executive Director, with separate copies to the Project Administrator.

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 Project Board may extend or change any of the deadlines specified in this Agreement.

February 9, 2022

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, except for lenders of Cooperative Obligations, parties to cooperative funding agreements with the Cooperative and providers of grant funding to the Cooperative.

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.

February 9, 2022

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 of this Agreement, 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. [This Agreement supersedes and replaces the previously executed Implementation Agreement for the Southeast Wellfield.](#)

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.

February 9, 2022

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]

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF AUBURNDALE, FLORIDA

By: _____ Timothy J. Pospichal, Mayor

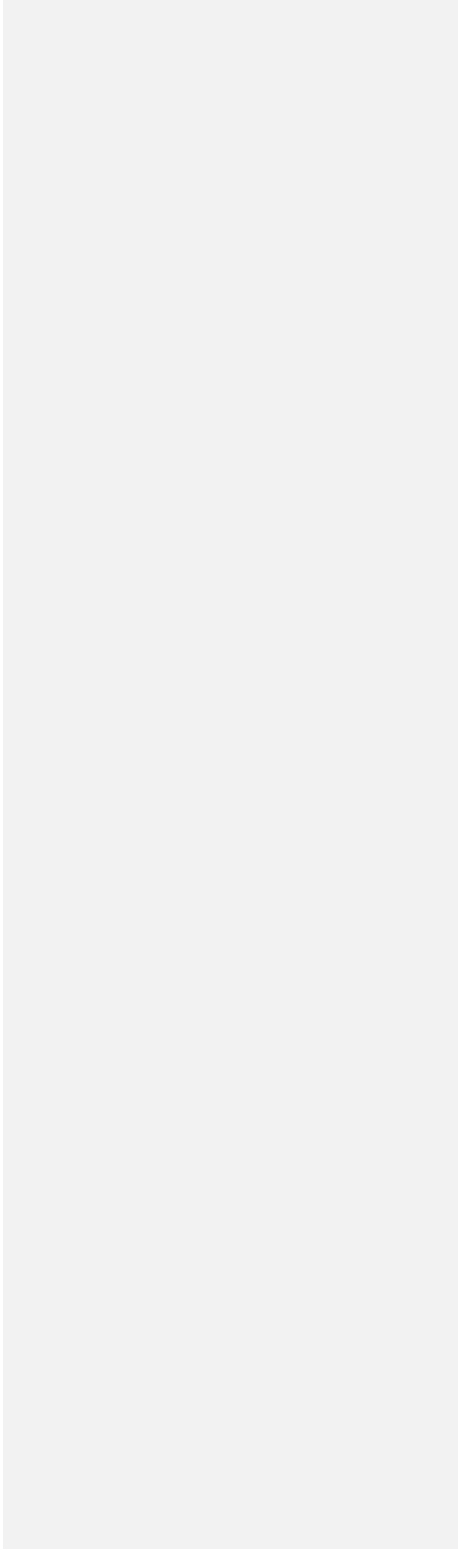
Date: _____

ATTEST:

By: _____ Shirley Lowrance, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Frederick J. Murphy, Jr., City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Redline) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF
THE CITY OF BARTOW,
FLORIDA

By: _____ Scott Sjoblom, Mayor

Date: _____

ATTEST:

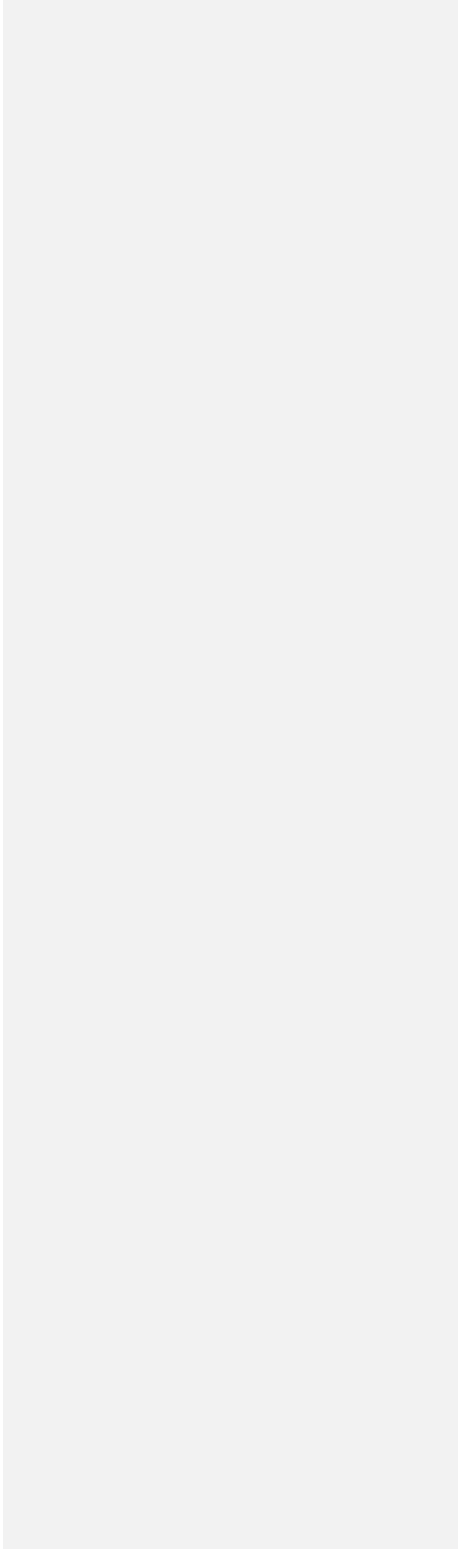
By: _____ Jacqueline Poole, City Clerk

Approved as to form and correctness:

Approved as to substance:

Sean R. Parker, City Attorney

George A. Long, City Manager



Attachment: 22-02-09 SEWF Implementation Agreement (Redline) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF DAVENPORT,
FLORIDA

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

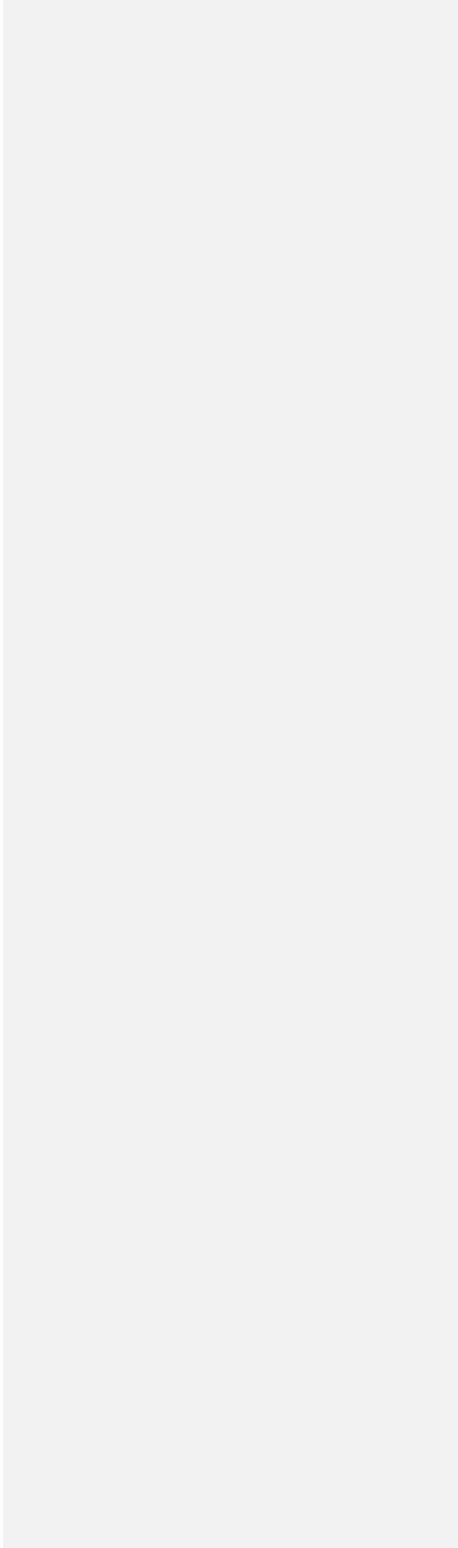
Date: _____

ATTEST:

By: _____ Rachel Castillo, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Thomas A. Cloud, City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Redline) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF EAGLE LAKE,
FLORIDA

By: _____ Cory Coler, Mayor

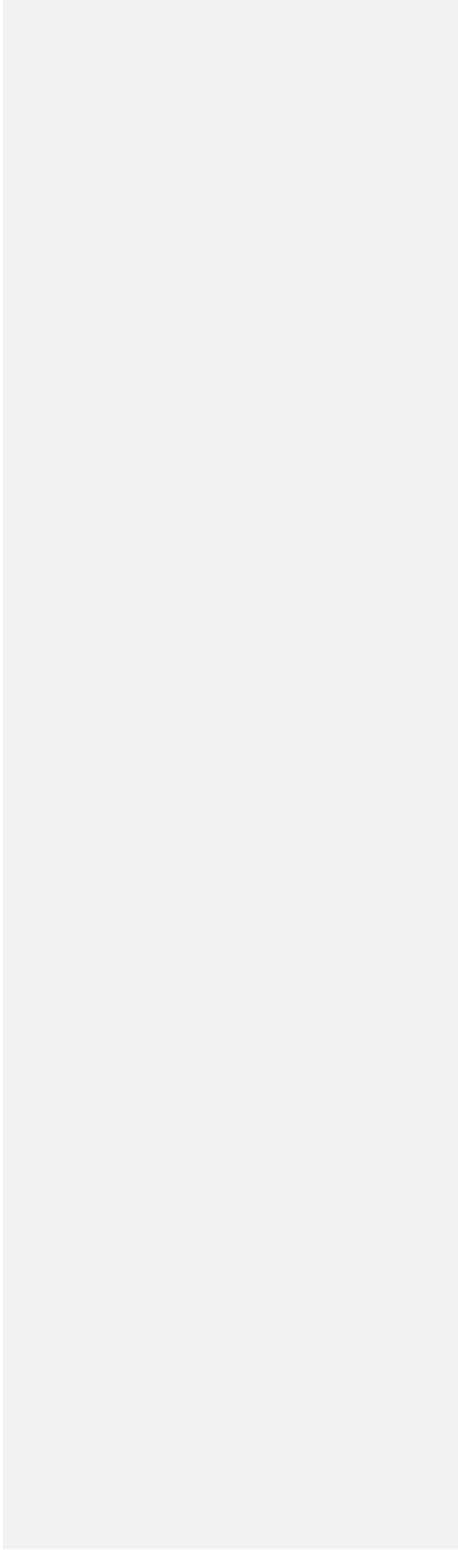
Date: _____

ATTEST:

By: _____ Dawn Wright, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Thomas A. Cloud, City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Redline) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF FT. MEADE,
FLORIDA

By: _____ James Watts, Mayor

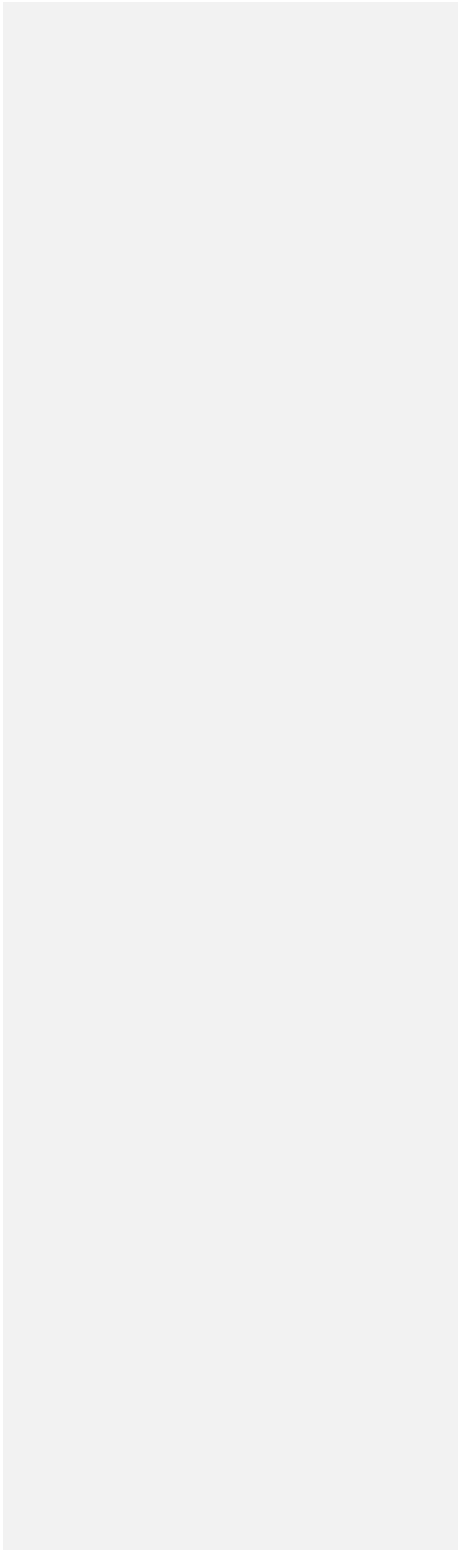
Date: _____

ATTEST:

By: _____ Melissa Newman, Deputy City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Thomas A. Cloud, City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Redline) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF HAINES CITY,
FLORIDA

By: _____ Morris L. West, Mayor

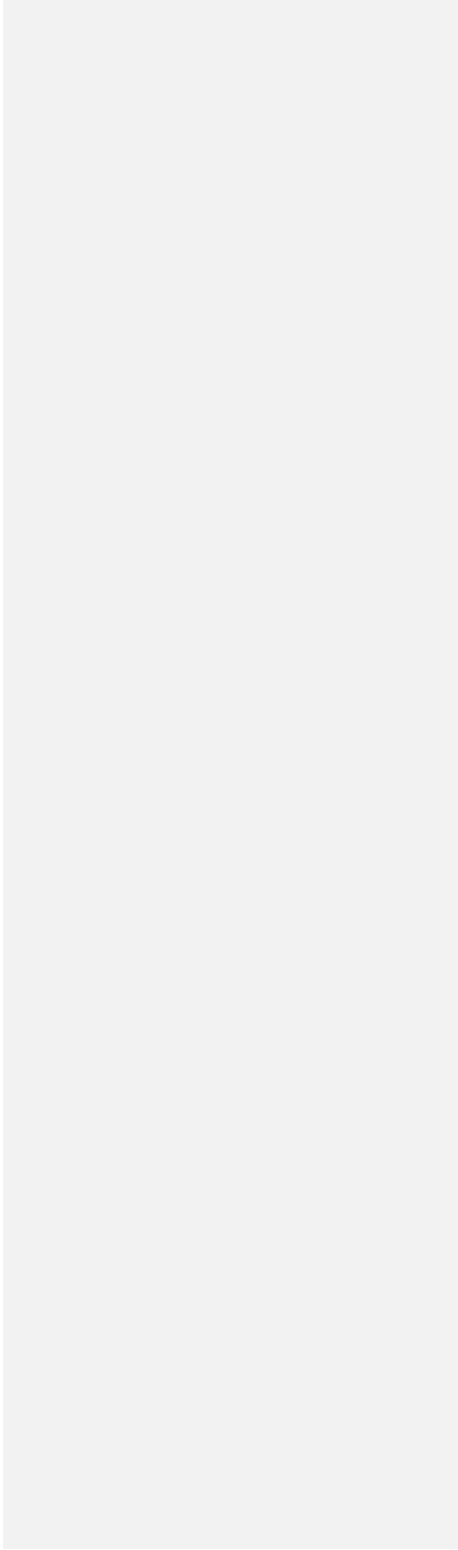
Date: _____

ATTEST:

By: _____ City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Fred Reilly, City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Redline) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF LAKE ALFRED, FLORIDA

By: _____ Nancy Z. Daley, Mayor

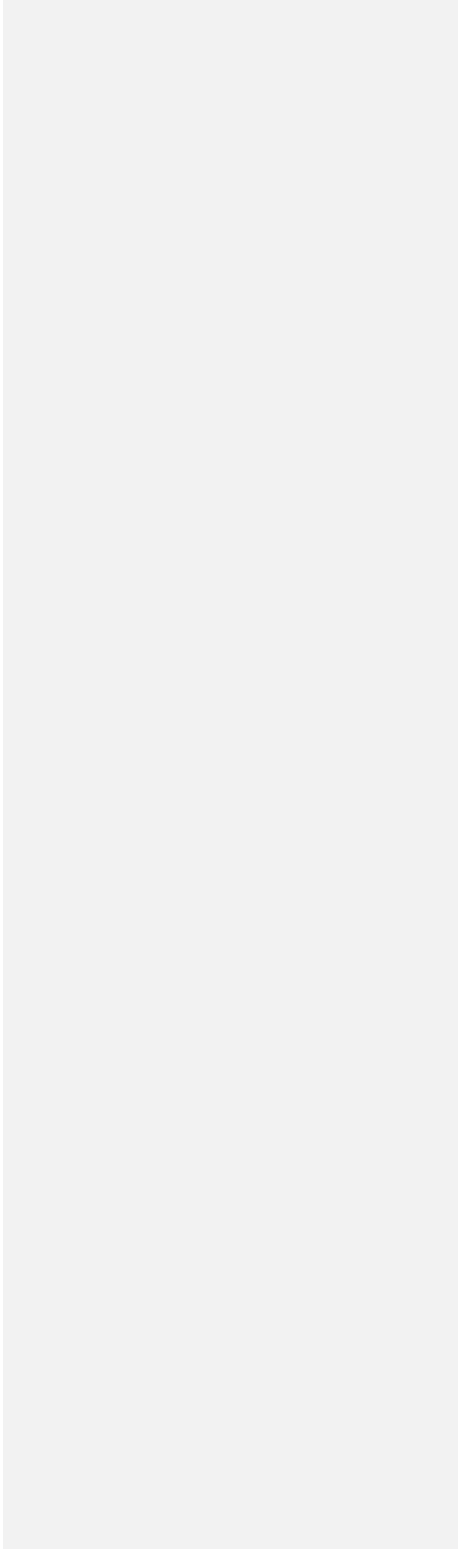
Date: _____

ATTEST:

By: _____ Linda Bourgeois, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Frederick J. Murphy, Jr., City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Redline) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF LAKE LAND,
FLORIDA

By: _____ H. William "Bill" Mutz, Mayor

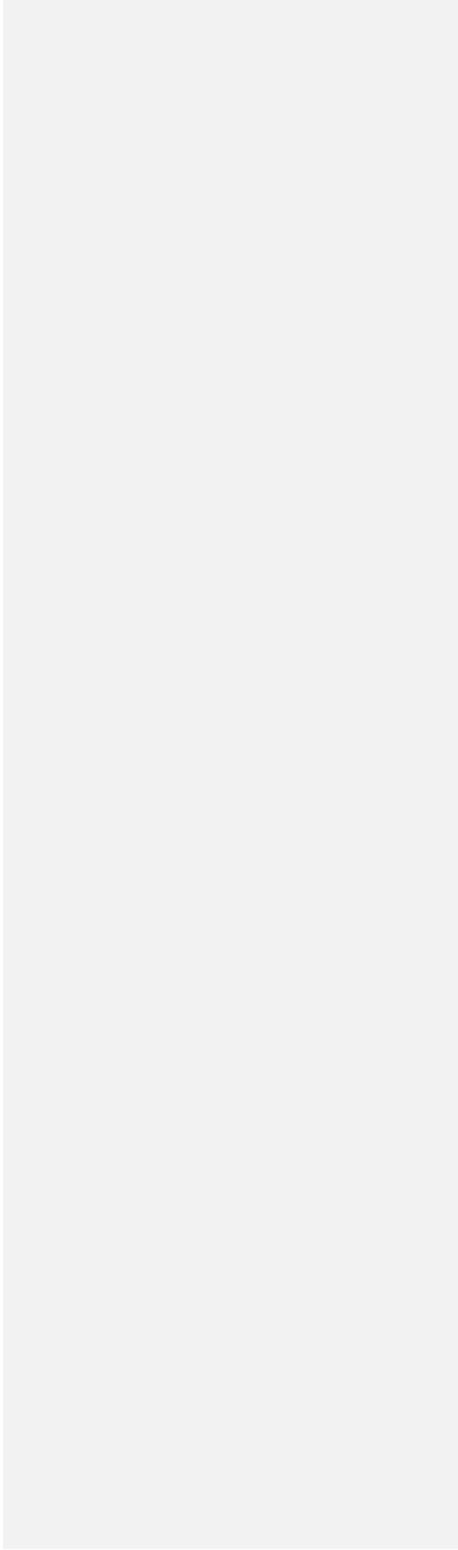
Date: _____

ATTEST:

By: _____ Kelly Koos, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Palmer Davis, City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Redline) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF LAKE WALES, FLORIDA

By: _____ Eugene Fultz, Mayor

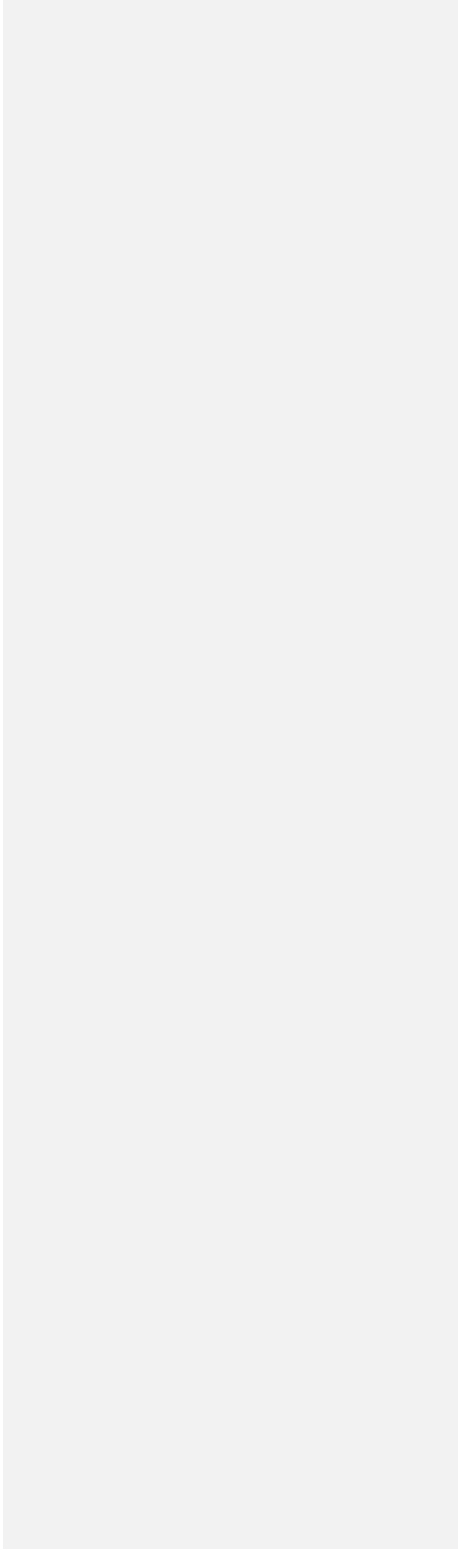
Date: _____

ATTEST:

By: _____ Clara VanBlargan, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Albert C. Galloway, Jr., City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Redline) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF MULBERRY,
FLORIDA

By: _____ George H. Hatch, Mayor

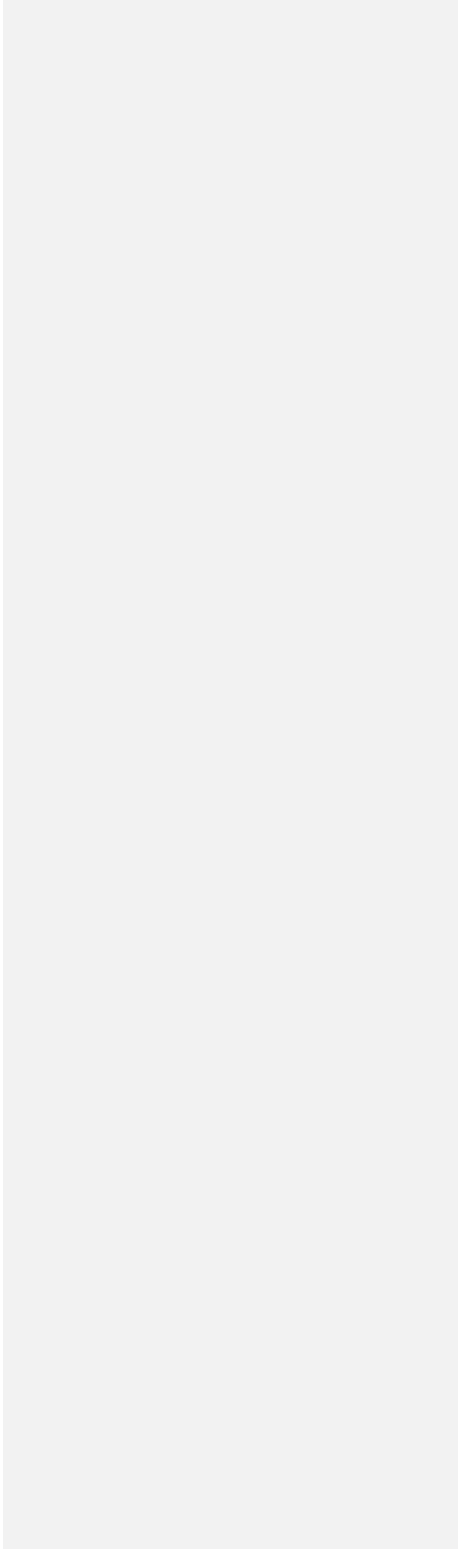
Date: _____

ATTEST:

By: _____ Sharon Lauther, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Frederick J. Murphy, Jr., City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Redline) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF POLK CITY,
FLORIDA

By: _____ Joe LaCascia, Mayor

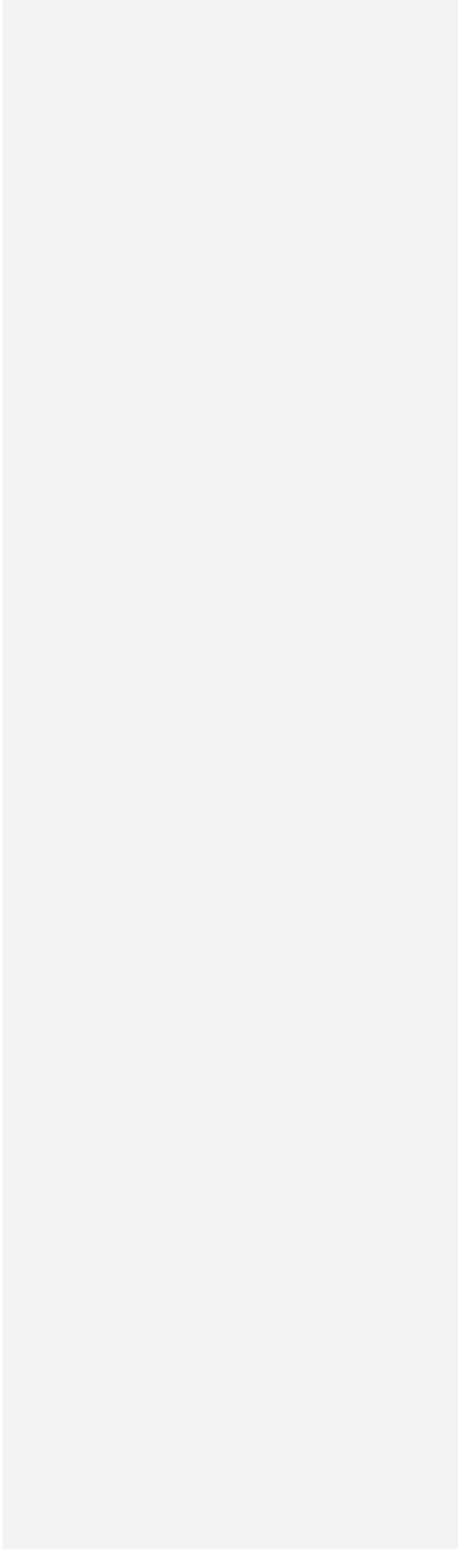
Date: _____

ATTEST:

By: _____ Patricia Jackson, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Thomas A. Cloud, City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Redline) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF WINTER HAVEN, FLORIDA

By: _____ Bradley T. Datnzler, Mayor

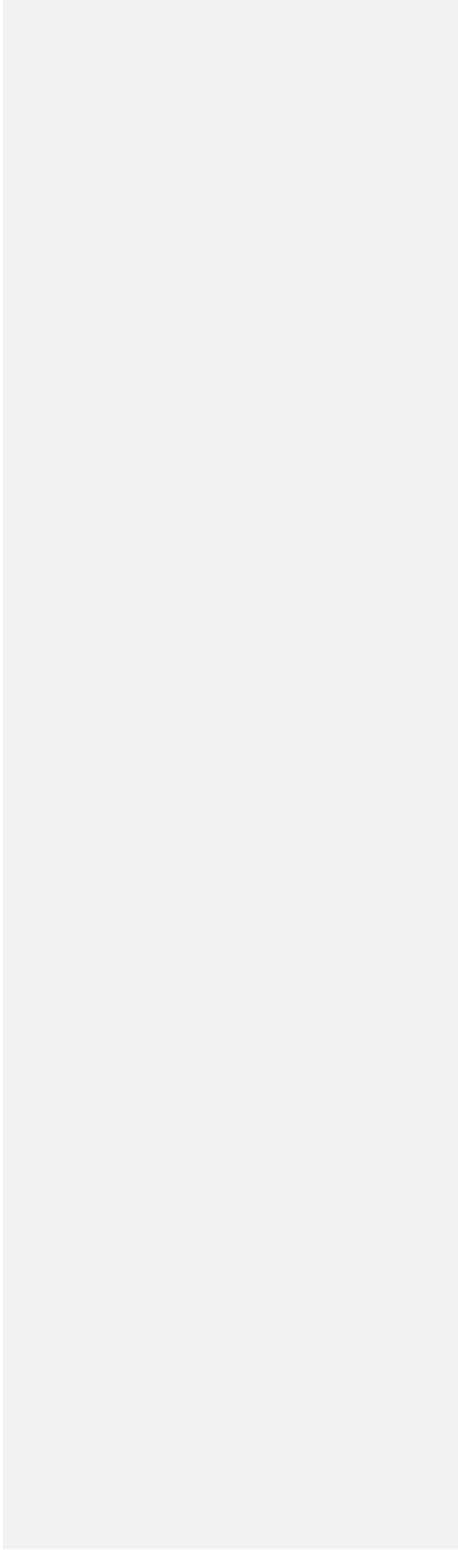
Date: _____

ATTEST:

By: _____ Vanessa Castillo, MMC City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Frederick J. Murphy, Jr., City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Redline) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

TOWN COMMISSION OF
THE TOWN OF DUNDEE,
FLORIDA

By: _____ Sam Pennant, Mayor

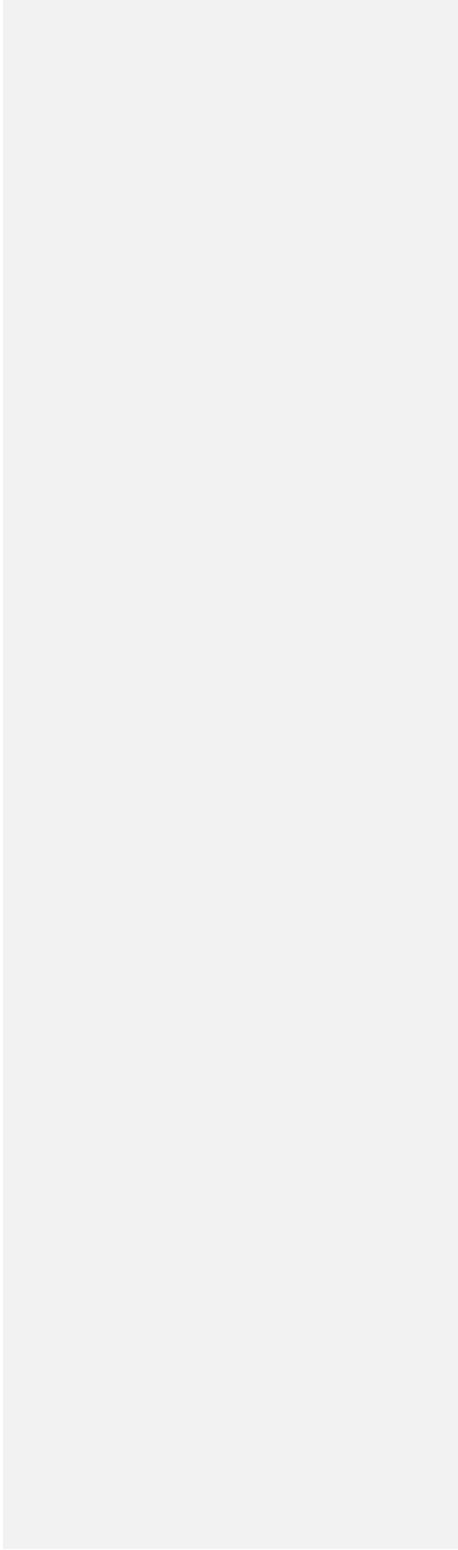
Date: _____

ATTEST:

By: _____ Jenn Garcia, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Frederick J. Murphy, Jr., City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Redline) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

TOWN COUNCIL OF THE
TOWN OF LAKE HAMILTON, FLORIDA

By: _____ Mike Kehoe, Mayor

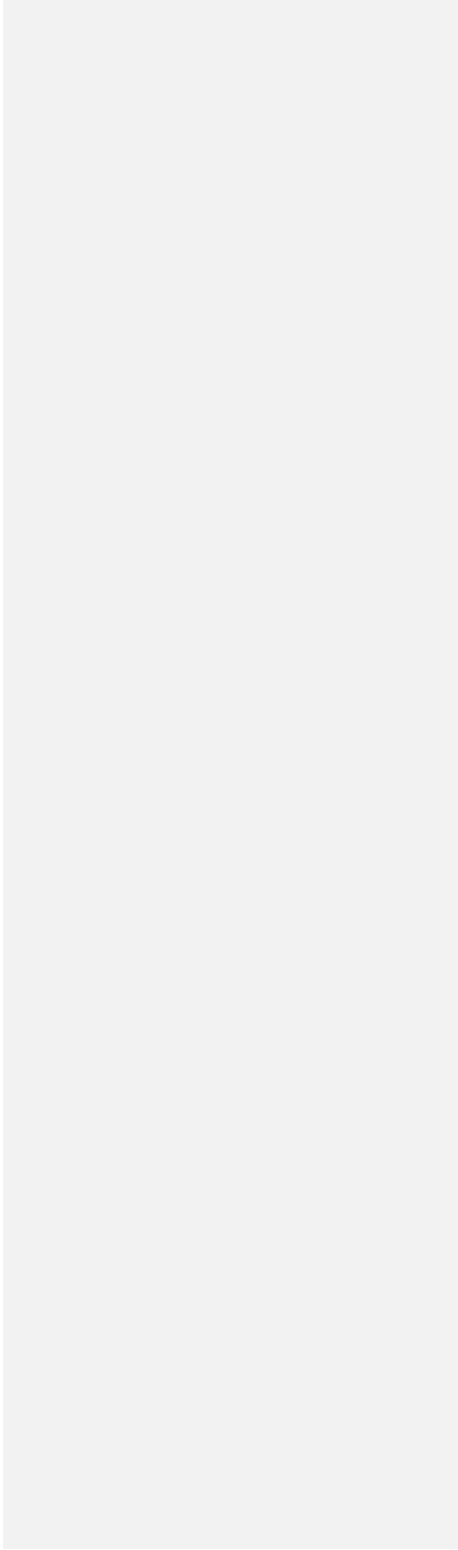
Date: _____

ATTEST:

By: _____ Sara Irvine, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Jeff Dawson, City Attorney



Attachment: 22-02-09 SEWF Implementation Agreement (Redline) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

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

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

Stacy M. Butterfield
Clerk to the Board of County Commissioners

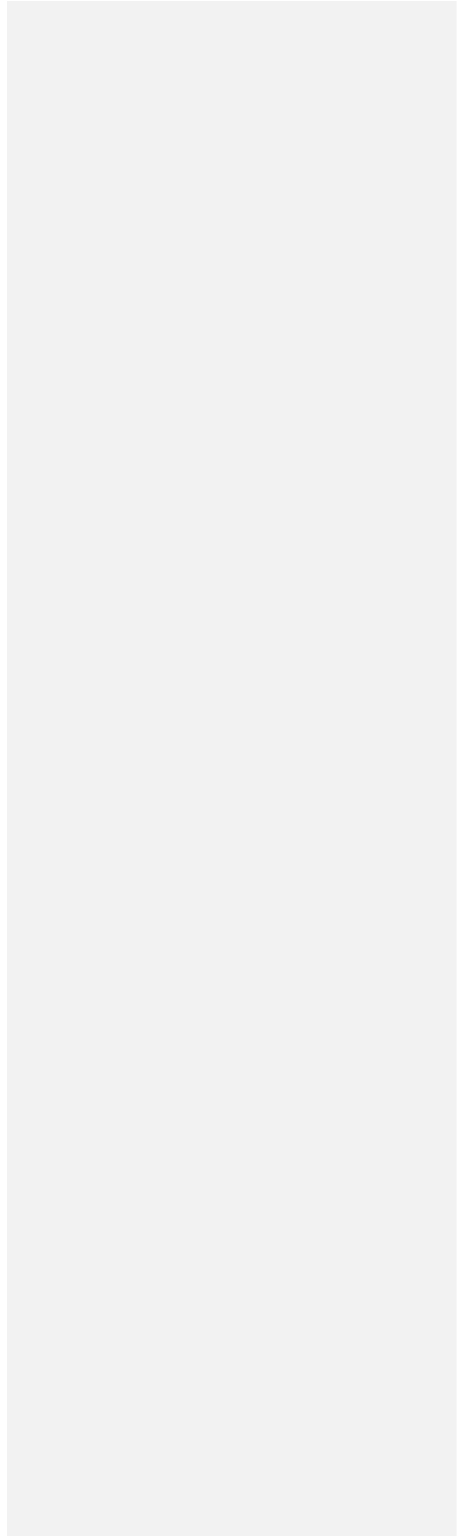
By: T. R. Wilson
Dr. Martha Santiago,
Board of County Commissioners

By: _____
Chair
Deputy Clerk

Dated and signed by the Chairman: _____

Reviewed as to form and legal sufficiency:

County Attorney's Office



Attachment: 22-02-09 SEWF Implementation Agreement (Redline) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

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

POLK REGIONAL WATER COOPERATIVE

By: _____
Eugene Fultz, Chair

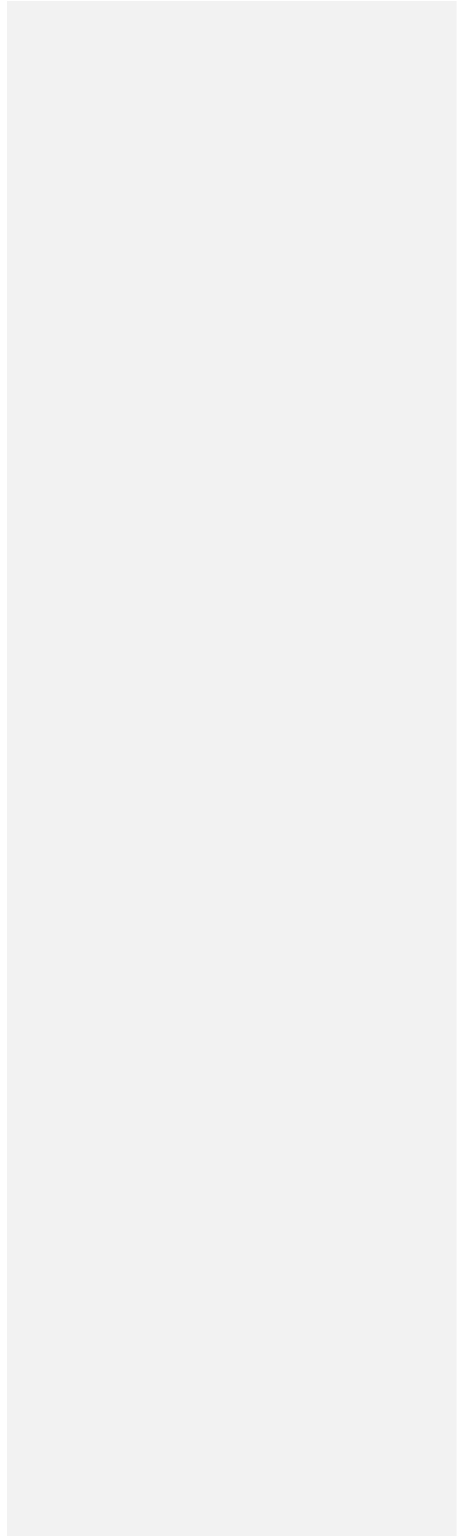
Date: _____

ATTEST:

By: _____
Mayor H. William ~~“Bill”~~ Mutz,
Secretary/Treasurer

APPROVED AS TO FORM AND CORRECTNESS:

Edward P. de la Parte, Legal Counsel



Attachment: 22-02-09 SEWF Implementation Agreement (Redline) (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION

January 22, 2022

MAJOR AMENDMENTS TO SEWF AND WPLFA IMPLEMENTATION AGREEMENTS

All amendments were based on the advice of the PRWC's Bond Counsel and Financial Advisor that the current agreements cannot be used to request a rating or to obtain the WIFIA and SRF loans. Additionally, changes were made to conform the two agreements as much as possible.

1. The Cooperative was added as a party to both agreements and wherever possible the Cooperative was substituted for the Project Board as the responsible entity.
2. Definition of "Operation and Maintenance Cost" was modified to reflect all operating costs without a carve out.
3. "Reserves" were added as a new component of the Base Rate Charge. Reserves are identified as adequate monetary reserves established by the Cooperative to ensure continued operation of the Project in the event one or more Project Participants are unable to pay their Water Charge on a short term basis.
4. 2045 Water Allotment Tables were updated based on new information and will need to be finalized at the time of execution.
5. The Effective Date was modified to eliminate the conditions precedent. The agreements will now take effect when duly authorized and executed by the Parties, as determined by the Cooperative.
6. The Project Board voting was modified to require not only a majority of the weighted vote, but also a majority of the Project Participants.
7. The 60% design off-ramp was eliminated. The Project Participants are now committed at the time the agreement is executed. However, in the SEWF Agreement, the provision requiring Polk County to pay 60% of the final design cost for Project Associates was left intact.
8. The Force Majeure provision was modified so as not to excuse a Project Participant from paying its Base Rate Charge.
9. A new provision was added regarding default in payment of the Base Rate Charge. The provision authorizes the Cooperative to use the Reserves to pay a defaulting Party's Base Rate Charge in the short term in order to ensure continued operation of the Project and the payment of the Debt Service. Upon exhaustion of the Reserves, the remaining Project Participants shall pay the defaulting Party's Base Rate Charge on a pro-rata basis based on the Water Allotment Table. The remaining Project Participants will be credited once the default is cured.
10. The withdrawal provision was modified so that a Party that withdraws from the Agreement shall continue be obligated to pay its Base Rate Charge regardless of whether it receives any water until such time as another Party acquires the withdrawing Party's Water Allotment.

MEMORANDUM

To: Southeast Wellfield Project Board
West Polk Wellfield Project Board

From: Michael L. Wiener, Holland & Knight LLP
Julie Santamaria, RBC Capital Markets

Dated: August 26, 2021

Re: Polk Regional Water Cooperative s

Staff and members of the financing team for the Polk Regional Water Cooperative have been entering into discussions with or preparing to have discussions with, the U.S. Environmental Protection Agency (EPA) and their counsel in connection with the WIFIA loan, the rating agency and SWFWMD. In connection with these discussions there have been some concerns raised with the Implementation Agreements for the two wellfield projects and it is recommended that the agreements being modified to ensure the highest rating and to meet the financing requirements of WIFIA and other potential lenders. Mr. de la Parte will also have other recommendations to better conform the two agreements to each other and some other cleanup modifications. Below is a summary of the more material modifications:

- The Cooperative needs to be added as a party to each of the Implementation Agreements.
- Section 1.23 – The definition of Operation of Maintenance Cost should be modified to reflect all operating costs of the wellfields without a carve out. The rating agency and the lenders will expect that all costs of operating the facilities will be have a source of funding to ensure its continued operation and revenue generating operations.
- 2045 Water Allotment Tables need to be finalized.
- Section 5.2 – Remove the SWFWMD Funding Commitment as a condition precedent to the effective date of the Implementation Agreements.
- Section 14.1 – Late payments fees should be consistent between the two agreements. The higher the late payment fee the stronger the incentive there is for a member to pay promptly. Currently the West Polk agreement provides for 12% per annum and the Southeast agreement provides for the rate to be set by the Project Board.
- Section 16.1 – Force Majeure provision currently provides for certain events which excuses a member from performance. Lenders do not typically have a force majeure provision related to the payment of debt service or payments for the operation of the system. There could be reserves set up to address short term operational issues that causes a delay in payment. However, the force majeure provision should not apply to the payment of the Base Rate Charge (or at least the debt service component). Consideration should also be

given to setting up adequate reserves to ensure the continued operations of the system if there is a short term event of a single member.

- Section 18.1 – There is a 30 day grace period for defaults under the agreement. The rating agency and lenders will expect that there is a requirement for all payments to be promptly paid to ensure its continued operation and revenue generating operations and the payment of debt service. **The 30 day cure period should not apply to payment of the Base Rate Charge. Additionally, if there is a default by one member the other members should be obligated to make up any shortfalls to ensure the continued operation of the project and the payment of debt service until the defaulting member cures such payment default.**
- Section 19.1 – A member has a right to withdraw prior to the completion of 60% design. The agreement should be modified to automatically reallocate the remaining members shares under the agreement. **Additionally, the withdrawal of one or more members could impact the financial feasibility of the project. Therefore, all members, especially those with the largest water allotment shares, should consider waiving this right to withdraw.**
- Section 27 – Currently there are no third party beneficiaries of the implementation agreements. This should be expanded to provide that the lenders are third party beneficiaries to enforce the provisions of the agreement.

These amendments need to be made before the Cooperative can request a rating and to address EPA's questions regarding the WIFIA Loan.

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An Equal Opportunity Employer

Southwest Florida Water Management District

2379 Broad Street, Brooksville, Florida 34604-6899

(352) 796-7211 or 1-800-423-1476 (FL only)

WaterMatters.org

G.1.f

Bartow Office
170 Century Boulevard
Bartow, Florida 33830-7700
(863) 534-1448 or
1-800-492-7862 (FL only)

Sarasota Office
78 Sarasota Center Boulevard
Sarasota, Florida 34240-9770
(941) 377-3722 or
1-800-320-3503 (FL only)

Tampa Office
7601 U.S. 301 North (Fort King Highway)
Tampa, Florida 33637-6759
(813) 985-7481 or
1-800-836-0797 (FL only)

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Pinellas
- John Mitten**
Hernando, Marion
- Seth Weightman**
Pasco
- Brian J. Armstrong, P.G.**
Executive Director

December 9, 2021

Subject: Draft Cooperative Funding Agreement

Dear:

I understand that the Polk Regional Water Cooperative (PRWC) Board of Directors will be addressing some outstanding issues with the Lower Floridan Aquifer project implementation agreements at its January 19 meeting. As you know, the law firm of Holland & Knight recently issued a memorandum with a number of recommendations for modifying the implementation agreements. At our Governing Board meetings and in communications with you we have previously identified additional critical pieces that are needed to be in place for the District to continue budgeting for these projects.

As a reminder, these are some of the other key items we will need to see in place for our cooperative funding:

- Mechanism to guarantee repayment if the projects are not completed or used as intended. This issue was also raised in the Holland & Knight memorandum. The current implementation agreements do not demonstrate a commitment by the PRWC members to participate in the projects. The PRWC cannot enter into the District's funding agreement unless the members also sign the agreement or propose an acceptable alternative.
- The Cooperative must own and control the projects. This is a requirement of our Cooperative Funding Policy and ensures that the projects remain multijurisdictional in nature.
- The weighted vote must be addressed. The District only funds potable alternative water supply projects for regional water supply entities. The full PRWC Board of Directors must retain final decision-making authority over the projects if the District is contributing funding.

The District has budgeted or planned up to \$300 million in tax dollars to help develop these alternative water supplies because we understand the necessity of a sustainable water supply for life and economic prosperity in Polk County. However, the District cannot indefinitely tie up \$300 million in short- and long-term funding without assurances that protect the taxpayer investment and actually develop sustainable supplies.

While we recognize the complexity of some of these issues, the clock is ticking on finding resolutions. In fact, about a week after your January meeting, our Governing Board will hold a workshop to discuss, among other items, the District's long-term funding needs. These discussions will include funding for the PRWC projects.

Attachment: 21-12-09 PRWC Letter (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION ITEM))

Draft Cooperative Funding Agreement
Page 2
December 9, 2021

As further guidance regarding District requirements, I am attaching a copy of the Draft Cooperative Funding Agreement which I have already shared with your counsel. Please don't hesitate to contact our Resource Management Director, Jennette Seachrist or General Counsel, Chris Tumminia should you have any questions.

Sincerely,



Brian J. Armstrong, P.G.
Executive Director

cc: SWFWMD Governing Board
SWFWMD Executive Staff
Cindy Rodriguez, SWFWMD

Attachment: 21-12-09 PRWC Letter (18232 : Southeast Wellfield Implementation Agreement amendment (ACTION ITEM))

February 16, 2022 Polk Regional Water Cooperative Regular Meeting
Agenda Item #2

SUBJECT

SRF Loan Request and Funding Schedule (ACTION ITEM)

DESCRIPTION

The PRWC funding group has been working to formulate a strategy to fund the Southeast Wellfield project as contemplated in the Implementation Agreement. As part of this strategy, securing a State Revolving Fund (SRF) loan for the initial design work will be required to support activities until the Water Infrastructure Finance and Innovation Act (WIFIA) loan closes. This agenda item involves a presentation on the overall funding plan and will include consideration for authorization to request \$21,525,000 be set aside by the Florida Department of Environmental Protection (FDEP) under the design and construction SRF loan for 2022 activities.

The design loan funding would be used for 60% design and hydraulic modeling costs along with FY 2022 land acquisition, hydraulic modeling, public outreach, financing and permitting activities.

The planning loan funding would be used for completion of the SEWF Test Production Well #3, West Polk Test Production Well #2 and refinancing of Bartow's Combined Projects Implementation Agreement Phase 1 pre-payment.

RECOMMENDATION

Staff recommends the board authorize the Executive Director to request an additional \$21,525,000 to be allocated to the PRWC for 2022 activities under the SRF design and planning loans.

FISCAL IMPACT

If approved by FDEP, SRF will make available \$21.525M to reimburse PRWC project expenses through 2022.



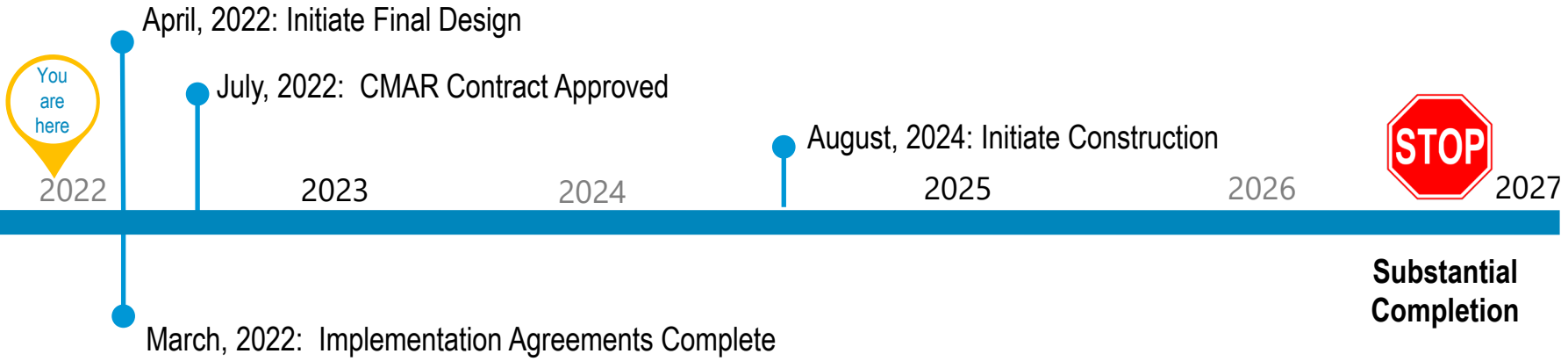
PRWC Board of Directors Meeting

Attachment: 68180 (18233 : SRP) Loan Request and Funding

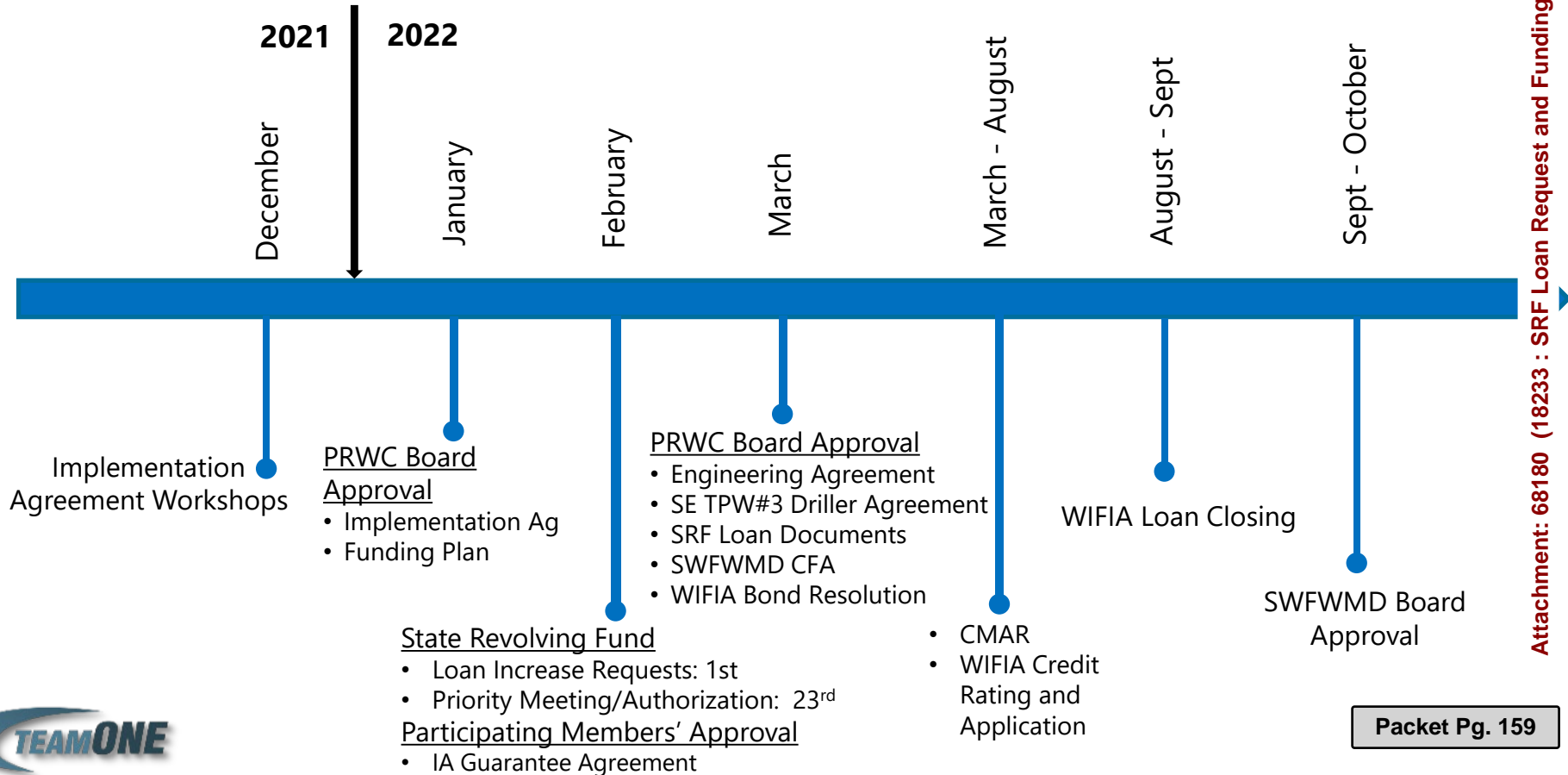
Staff requests authorization be given to the Executive Director to request that up to an additional \$21,525,000 be allocated to the PRWC activities under the SRF Southeast design Loan.



5 Years to AWS



Attachment: 68180 (18233 : SRF Loan Request and Funding



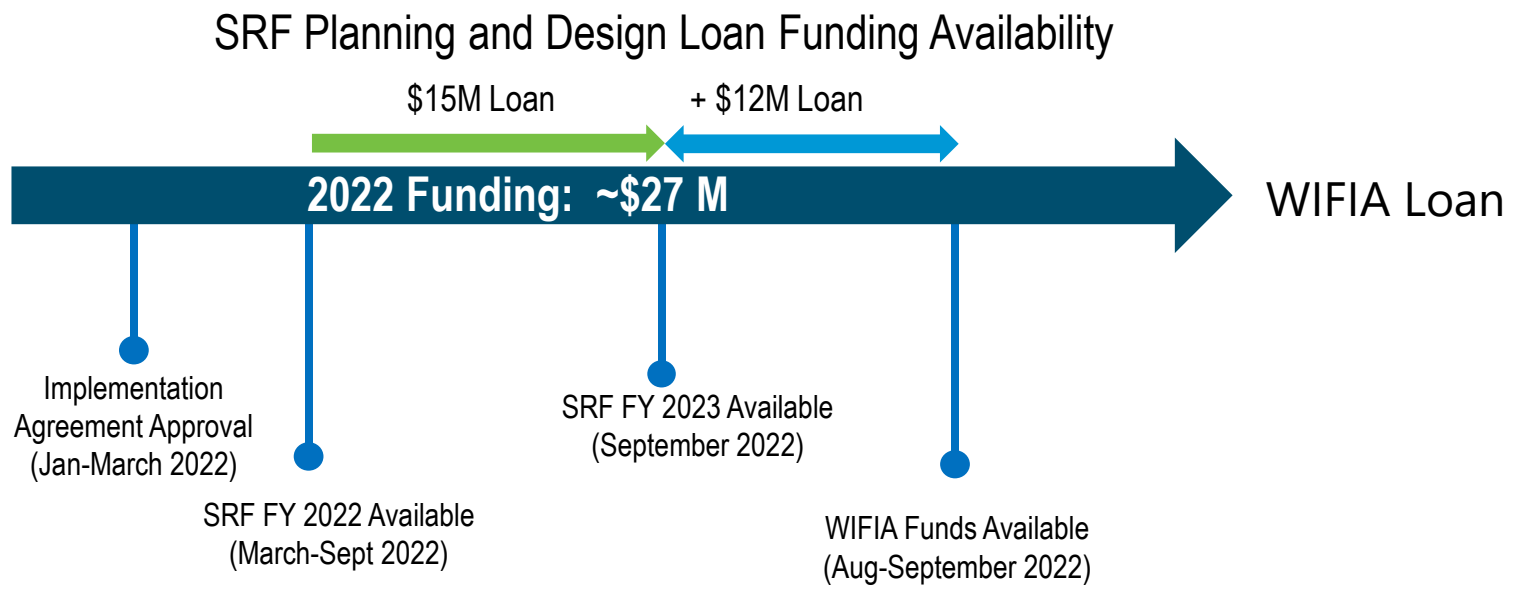
Attachment: 68180 (18233 : SRF Loan Request and Funding



| SE Wellfield SRF Design Loan | |
|------------------------------|---------------------|
| 60% Design | \$17,000,000 |
| 25% Acquisition | \$2,000,000 |
| Hydraulic Modeling | \$1,200,000 |
| 25% Public Outreach | \$250,000 |
| 50% Funding/Financing | \$800,000 |
| 25% WUP | \$275,000 |
| Total | \$21,525,000 |

| PRWC SRF Planning Loan | |
|--|---------------------|
| Test Production Well #3 | \$2,362,500 |
| Test Production Well #2 | \$2,362,500 |
| Bartow Refinance of SRF | \$796,516 |
| Total | \$5,521,516 |
| SRF Funding Request Grand Total | \$27,046,516 |

2022 Expenses for Planning and Design Loans: ~\$27M



Staff requests authorization be given to the Executive Director to request that up to an additional \$21,525,000 be allocated to the PRWC activities under the SRF Southeast design Loan.



Eugene Fultz
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William Simpson
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Tom Fellows
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Randy Billings
City of Eagle Lake

James Watts
City of Fort Meade

Austin Gravley
City of Frostproof

Morris West
City of Haines City

Jack Dearmin
City of Lake Alfred

Michael Kehoe
Town of Lake Hamilton

Collins Smith
City of Mulberry

Joe LaCascia
City of Polk City

Nathaniel Birdsong, Jr.
City of Winter Haven

330 W. Church Street
Drawer AT01
Bartow, Florida 33830

Office: 863-534-6444
Fax: 863-534-7069

February 8, 2022

Shanin Speas-Frost, Program Administrator
Florida Department of Environmental Protection
State Revolving Fund - Drinking Water Program
3900 Commonwealth Boulevard
Tallahassee, FL 32399-3000

Delivered via email: SRF_Reporting@dep.state.fl.us

Re: PRWC SRF Design Loan #DW532001 Request

Dear Ms. Speas-Frost:

Please accept this letter as an official request to increase the Polk Regional Water Cooperative (PRWC) SRF Design Loan request of \$381,290 by an additional **\$21,525,000** to a grand total of \$21,906,290 during the upcoming February 23, 2022 Priority Funding meeting.

The increase in funds will be utilized to advance the PRWC Southeast Wellfield, water production facility (WPF), and transmission project design and provide bridge financing while the PRWC closes on the Water Infrastructure Finance and Innovation Act (WIFIA) Loan to fund the design and construction of the Southeast Wellfield, WPF, and distribution system. We are of the understanding that the additional SRF funds, if approved, are available from the date of that meeting, meaning that we can incur cost against these funds; however, we recognize that SRF funds cannot be dispersed until both a PRWC loan agreement is executed, and individual member guarantee agreements are completed.

If this request is approved on February 23rd, the PRWC Board will proceed with approving the SRF loan agreement during their March 16, 2022 meeting. The Board will also request members approve their respective guarantee agreements through their separate board processes in March.

Should you have any questions or require additional information please contact me or our consultant contacts, Robert Beltran (rbeltran@dewberry.com) or Mary Thomas (mthomas@carollo.com).

Best Regards,

Ryan J. Taylor, Executive Director

p.c. Gregory Alfsen, P.E.

Attachment: PRWC SRF Design Loan Letter (1) (18233 : SRF Loan Request and Funding Schedule (ACTION ITEM))



Polk Regional
Water Cooperative

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City of Winter Haven

330 W. Church Street
Drawer AT01
Bartow, Florida 33830

Office: 863-534-6444
Fax: 863-534-7069

February 8, 2022

Shanin Speas-Frost, Program Administrator
Florida Department of Environmental Protection
State Revolving Fund - Drinking Water Program
3900 Commonwealth Boulevard
Tallahassee, FL 32399-3000

Delivered via email: SRF_Reporting@dep.state.fl.us

Re: PRWC SRF Loan #DW532000

Dear Ms. Speas-Frost:

Please accept this letter as an official request to increase the Polk Regional Water Cooperative (PRWC) SRF Planning Loan #DW532000 by an additional \$5,521,516 to a grand total of \$15,435,906 during the upcoming February 23, 2022, Priority Funding meeting.

The increase in funds will be utilized to continue the PRWC Southeast Wellfield and West Polk Lower Floridan Aquifer planning and preliminary design project to provide additional test wells as recommended by third party reviewers to allow us to better perform final designs, and provide Owner financing for the project. We are of the understanding that the additional SRF funds, if approved, are available from the date of that meeting, meaning that we can incur cost against these funds; however, we recognize that SRF funds cannot be dispersed until both a PRWC loan agreement is executed and individual member guarantee agreements and amendments are completed.

If this request is approved on February 23rd, the PRWC Board will proceed with approving the SRF loan agreement during their March 16, 2022, meeting. The PRWC Board will also request that members approve their respective guarantee agreements through their separate board processes in March.

Should you have any questions or require additional information, please contact me or our consultant contacts, Robert Beltran (rbeltran@dewberry.com) or Mary Thomas (mthomas@carollo.com).

Best regards,

Ryan J. Taylor, Executive Director

p.c. Gregory Alfsen, P.E.

Attachment: PRWC SRF Loan DW532000 (1) (18233 : SRF Loan Request and Funding Schedule (ACTION ITEM))

February 16, 2022 Polk Regional Water Cooperative Regular Meeting
Agenda Item #3

SUBJECT

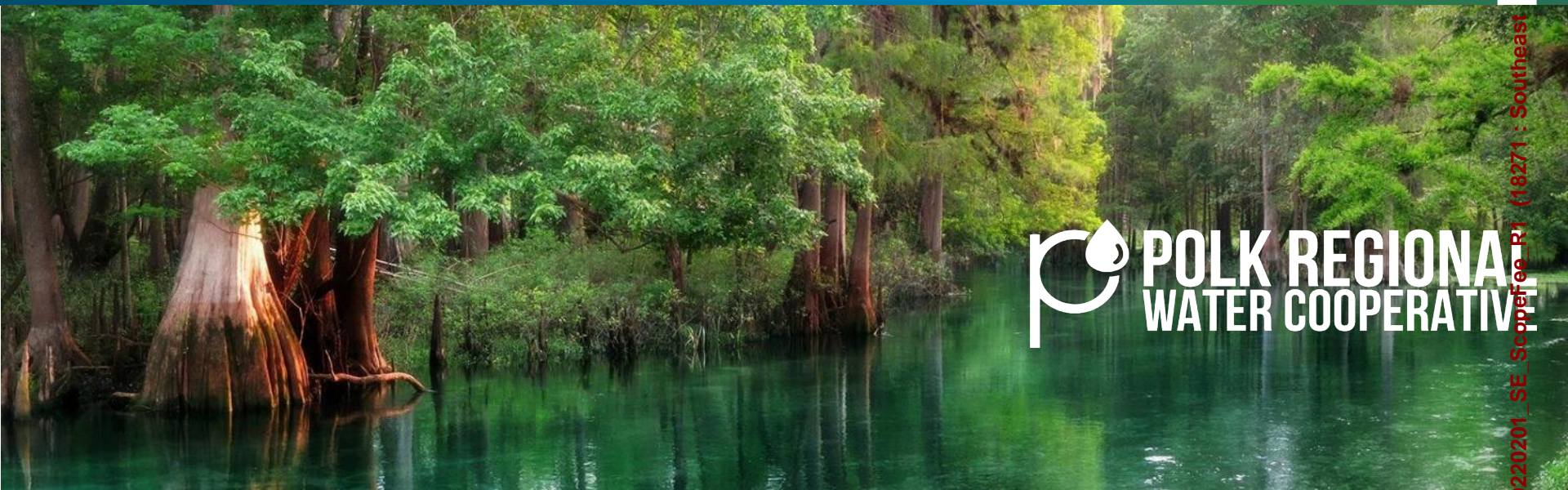
Southeast Wellfield Phase 1 Final Design, Construction Oversight, and Related Services Scope and Fee (INFORMATION ITEM)

DESCRIPTION

Carollo Engineers and team (a.k.a. "TeamOne) has been requested by staff to prepare a scope and fee proposal to complete the Phase 1 design, construction oversight, and other related services to implement Phase 1 of the Southeast wellfield project. This presentation will summarize the scope elements and total cost for the program. While the scope and fee presented represents the entire program, consultants would only be authorized to proceed with year 2022 (e.g. 60% design) services consistent with the SRF loan request.

RECOMMENDATION

Staff recommends members review and consider the draft scope and fee to be authorized during the March 2022 board meeting.



PRWC Board of Directors

Southeast Wellfield Scope and Fee

Attachment: 20220201 SE Scope Fee PJ (18271 - Southeast)

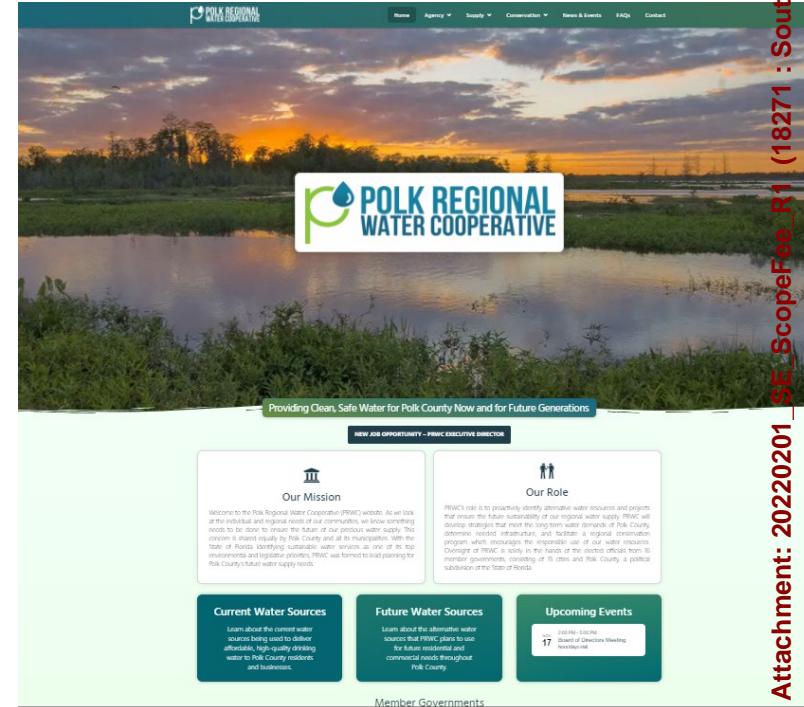
- Implementation agreement allows for the final design and construction of the Southeast Wellfield project.
- All District co-funded elements must be owned and operated by PRWC.
- Until PRWC is revenue-generating entity, TeamOne to provide additional services which will be provided by PRWC staff in the future.

- Water quality and hydraulic modeling
- Public outreach
- Funding and financing support
- Water use permitting compliance
- 60% design phase
- 90% design phase
- 100% design phase
- Engineering services during construction
- Post construction services
- Task management and workshops (each task)

- Update hydraulic modeling to include *assumed* project participants
 - As of today's Implementation Agreement
 - Allows for additions at completion of 60% design
- Collect member WQ for blending analysis
 - Corrosion and disinfection byproduct modeling and testing to be conducted.
 - Memo to recommend mitigation measures; **implementation to be member responsibility.**





- Implement an outreach plan which:
 - Creates uniform materials **for member use.** ★
 - Provides informational materials for field staff (e.g. surveyors and contractors).
- Maintain PRWC website.
- Ensure ADA compliance of website and materials.
- Respond to online and phone inquiries from the public.
- Create materials for Conservation Team.
- Provide social media updates.
- Prepare and present materials at public meetings in compliance with WIFIA and SRF requirements.



Attachment: 20220201_SE_ScopeFee_R1 (18271 : Southeast

- Update rate analysis.
- Update SRF and WIFIA loan applications and documentation (to address 60% design).
- Prepare capital finance plans.
- Pursue other funding opportunities.
- Provide loan compliance support.
- Provide ongoing state appropriations support.
- Funding workgroup coordination.

- WUP Compliance/Permit Modification
 - Establishing baseline monitoring program, as required by SFWMD.
 - Compliance monitoring and reporting for the duration of the final design and construction contract.
 - Minor modification to permit to transfer permit to PRWC, clarify Project Participants and AWS allocations
- Virtual pipeline evaluation 

- Transmission pipeline design & pre-permitting
 - Including booster pump station preliminary designs 
 - Soil corrosion evaluation
- Water production facility design & pre-permitting
 - Includes Project Associate demands.
- Raw water well and pipeline design
- Injection well design
- Land acquisition support
- Support services
 - Survey
 - Geotech
 - Environmental evaluations

- Transmission pipeline design will address changes to be made at 90% based on 60% design comments.
- Water production facility design not expected to change capacity.
- Bid-ready documents may be prepared at 90% or 100% depending on CMAR status.
- Permit application submitted at 90% stage.

- 3 resident project representatives (RPRs) assumed for pipeline construction.
- 2 RPRs assumed for plant construction (includes raw water wells and main).
- 27-month construction schedule currently planned.
- Training and commissioning support.

- Develop O&M manuals; coordinate with operator (contract or otherwise).
- Develop record drawings.
- Develop Asset Management “inventory.”

Traditional Design Elements

- 60% design phase
- 90% design phase
- 100% design phase
- Task management and workshops

Traditional Construction Elements

- Engineering services during construction
- Record drawings
- Task management and workshops

Compare grand total to PDR

Additional Scope Elements

- Water quality and hydraulic modeling
- Public outreach
- Land acquisition including survey
- Funding and financing support
- WUP mod and compliance
- Asset management and post construction services
- Task management and workshops

Costs NOT contemplated in

Packet Pg. 177

Traditional Design Elements

- 60% design phase
- 90% design phase
- 100% design phase
- Task management and workshops

Traditional Construction Elements

- Engineering services during construction
- Record drawings
- Task management and workshops

- TeamOne DRAFT Proposal: ~\$37.3M
- This is below the PDR estimate for traditional engineering services.
- This will be cofunded by SWFWMD, so PRWC portion expected to be approximately **\$18.6M**

- TeamOne DRAFT Proposal: ~\$15.8M
- This is anticipated to be cofunded by SWFWMD. PRWC portion may be approximately **\$8M**

Additional Scope Elements

- Water quality and hydraulic modeling
- Public outreach
- Land acquisition including survey
- Funding and financing support
- WUP mod and compliance
- Asset management and post construction services
- Task management and workshops

Costs NOT contemplated in

Examples:

- PRWC participating member certainty minimizes design changes at 60%.
- Only portion of Survey, SUE, and Geotech services to be authorized initially.
 - Additional efforts to be authorized by PA as needed.
- Early collaboration (value engineering) and good communication with CMAR can minimize changes to SOS.

- **Present the contract amendment to BOD during March meeting.**
- Authorize TeamOne to only proceed with FY 2022 tasks; up to \$21.5 M
 - 60% design
 - A portion of acquisition
 - Hydraulic Modeling
 - A portion of Public Outreach
 - A portion of Funding/financing
 - A portion of WUP Compliance

February 16, 2022 Polk Regional Water Cooperative Regular Meeting
Agenda Item #4

SUBJECT

West Polk Wellfield Implementation Agreement amendment (ACTION ITEM)

DESCRIPTION

In April of 2021, the Cooperative board approved the agreement for the implementation of the Southeast Wellfield final design and construction ("Implementation Agreement"). Since that time, staff, PRWC financial consultants, and members of the PRWC Funding Group have made significant progress to advance the grant and loan programs necessary to fund the project. As part of this process, the Implementation Agreement has been reviewed by Florida Department of Environmental Protection (FDEP), U.S. Environmental Protection Agency (EPA), and Southwest Florida Water Management District (SWFWMD) staff for consistency with the SRF loan, WIFIA loan, and SWFWMD cofunding programs. As a result of this review, modifications to the agreement have been suggested which would ensure the highest rating and to meet the financing and grant requirements of various agencies. These suggestions have been provided to PRWC member staff and legal counsel. Modifications have been made to the Implementation Agreement to address these concerns.

Attachments to this agenda item include:

- Outline of Major Amendments to SEWF and WPLFA Implementation Agreements
- Memorandum from Michael Wiener (Holland & Knight LLP) and Julie Santamaria (RBC Capital Markets) detailing suggested modifications to ensure the highest rating and to meet the financing requirements of WIFIA and other potential lenders.
- Letter from SWFWMD Executive Director Brian Armstrong regarding the Draft Cooperative Funding Agreement.

These attachments were provided in the Southeast Wellfield Implementation Agreement agenda item listed earlier on this agenda.

If consensus approval is given regarding the changes, the amended Implementation Agreement will be distributed to member governments for their Commissions consideration and approval and for allocation request (2045 demand quantity) updates.

Staff asks that member governments take this to their Commissions for consideration prior to the March 16, 2022 PRWC BOD meeting.

RECOMMENDATION

Staff recommends distributing the Implementation Agreement to member governments as amended to confirm acceptance, participation and requested allocation.

February 9, 2022

**AMENDED AND RESTATED IMPLEMENTATION
AGREEMENT
West Polk Lower Floridan Aquifer Wellfield**

THIS AMENDED AND RESTATED 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 P.O. Box 9005, Bartow, Florida 33831, the City of Auburndale whose address is P.O. Box 186, Auburndale, FL 33823, the City of Lakeland whose address is 228 S. Massachusetts Avenue, Lakeland, Florida 33801, Polk City, Florida, a Florida municipal corporation (fka “City of Polk City”) whose address is 123 Broadway Blvd SE, Polk City, Florida 33868, 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, the City of Mulberry whose address is P.O. Box 707, Mulberry, Florida 33860, the City of Lake Alfred whose address is 155 East Pomelo Street, Lake Alfred, Florida 33850, the City of Winter Haven whose address is P.O. Box 2270, Winter Haven, Florida 33883, the City of Bartow whose address is 450 N. Wilson Avenue, Bartow, Florida 33838, the Town of Dundee, Florida whose address is 2020 East Main Street, Dundee, Florida 33838 and the City of Fort Meade, whose address is 8 West Broadway Street, Fort Meade, Florida 33841, individually also referred to as a “Party” and collectively referred to as the “Parties”.

THE PURPOSE of this Agreement is to implement the design, permitting, construction, operation, maintenance and funding of the West Polk Lower Floridan Wellfield, an Approved Water Project of the Cooperative.

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, the Parties hereby agree, stipulate and covenant as follows:

February 9, 2022

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 Amended and Restated Implementation Agreement for the West Polk Lower Floridan Wellfield, as it 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 8.3 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.

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, which are not paid from the proceeds of any Obligation and costs that will occur over the life of the Project for the assets comprising the Project.

February 9, 2022

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. Pursuant to and in accordance with the Interlocal Agreement, all powers, privileges, and duties vested in or imposed on the Cooperative with regards to the approval and implementation of the Project shall be exercised by the Project Board.

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, and may be amended if needed subject to written change orders approved in writing by the Cooperative and the Contractor engaged by the Cooperative.

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, Reserves 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.

February 9, 2022

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 when it is either 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, pandemic, 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.

February 9, 2022

1.20 **“Member Government”** shall have the same meaning as in the Interlocal Agreement.

1.21 **“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 Water Offsets withdrawn by a Project Participant.

1.22 **“MGD”** means million gallons a day.

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

1.24 **“Operation and Maintenance Cost”** means any and all costs incurred by the Project Board 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 and services; the operation, maintenance management, security and development of the Project, which are not a Capital Replacement and Renewal Cost or are payable from the proceeds of any Obligation. Operation and Maintenance Costs, to the extent not constituting a Capital Replacement and Renewal Cost or payable from the proceeds of any Obligation, include, but are not limited to 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,; 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

February 9, 2022

taxes and impact fees, if applicable; moneys to be deposited to a Rate Stabilization Fund (if one is established); and administrative costs incurred by the Cooperative for management of the Project.

1.25 “Parties” mean the Cooperative, the City of Auburndale, the City of Lake Alfred, the City of Lakeland, the City of Mulberry, Polk City (fka “City of Polk City”) , Polk County, the City of Winter Haven, the City of Bartow, the Town of Dundee and the City of Fort Meade.

1.26 “Points of Connection” means the physical location where Cooperative owned infrastructure connects to a Project Participant’s owned infrastructure. For the West Polk Lower Floridan Aquifer Project, this will be where the Cooperatives’ finished water pipeline from the West Polk water treatment plant physically connects to the City of Lakeland’s water system.

1.27 “Project” means the West Polk Lower Floridan Aquifer Wellfield.

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

1.29 “Project Associate” means a Party to this Agreement who has elected to become a Project Associate in order to stay abreast of the status of the Project and enable them to make informed decisions about future participation as a Project Participant. A Project Associate has no financial responsibility or liability for the Project or voting rights but may inform the Cooperative about its future plans or needs for Project Water, and make comments and recommendations to the Project Board about the Project’s direction and scope. A Project Associate is not a Project Participant as defined herein.

1.30 “Project Board” shall have the same meaning as in the Interlocal Agreement.

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1.31 “Project Participants” means a Party to this Agreement, other than the Cooperative or a Project Associate, who has executed this Agreement for the purpose of implementing this Project, which includes the design, permitting, construction, operation, maintenance and funding of the Project and receipt of Project Water Service from the Cooperative.

1.32 “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 Water Offsets.

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

1.34 “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.

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

1.36 “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.

1.37 “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,

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which in the exercise of reasonable judgment in light of facts known, that should have been known, at the time the decision was made, or could have only been expected to accomplish the desired results at a reasonable cost consistent with applicable legal, engineering, reliability, safety and time requirements.

1.38 “PSI” means pounds per square inch.

1.39 “Reserves” means adequate monetary reserves established by the Cooperative to ensure continued operation of the Project, in the event one or more Project Participants are unable to pay their Water Charge on a short term basis.

1.40 “True-up” means the process specified in Section 10 of this Agreement.

1.41 “Variable Operation and Maintenance Costs” means all Operation and Maintenance Costs 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.

1.42 “Water Offset” means a quantity of upper Floridan aquifer groundwater withdrawn by a Project Participant that will be offset by another Project Participant relinquishing its right under a District permit to withdraw from the upper Floridan aquifer as stated in the Project plan.

1.43 “Water Offset Cost” means the cost of producing Project Water used by one or more Project Participants for use as a Water Offset. The Water Charge paid by a Project Participant for the use of a Water Offset shall cover the cost of producing the Project Water.

1.44 “Water Allotment” 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 Allotment Table, the Water Allotment

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for each of the Project Participants will be determined based on the Water Allotment Percentages set forth in this table.

2045 Water Allotment Table:

| Name of Party | 2045 Water Allotment Annual Average (MGD) | 2045 Water Allotment Percentage (%) |
|-----------------------------|--|--|
| City of Auburndale | 0.10 | 1.269% |
| City of Bartow | 0.36 | 4.568% |
| City of Lakeland | 6.31 | 80.077% |
| City of Polk City | 0.03 | 0.380% |
| Polk County | 0.98 | 12.436% |
| City of Winter Haven | 0.10 | 1.270% |
| <i>*City of Lake Alfred</i> | <i>Project Associate</i> | |
| <i>*City of Mulberry</i> | <i>Project Associate</i> | |
| <i>*City of Fort Meade</i> | <i>Project Associate</i> | |
| TOTAL | 7.88 | 100.000% |

1.45 “Water Charge” means for any Fiscal Year, the charge established by the Project Board pursuant to Section 13 for providing Project Water Service to the Project Participants. This charge is comprised of the Base Rate Charge and the Water Use Charge.

1.46 “Water Cost Proportionate Share” or “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 Proportionate Share shall be based on each Project Participant’s projected 2045 Water Allotment, as revised at least every five (5) years through the True-Up process set forth in Section 10 and/or the provisions set forth in Section 11, 19 and 20 of this Agreement.

1.47 “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.

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1.48 “Water Use Charge” means for any Fiscal Year that component of the Water Charge computed according to Section 13.3.2.

1.49 “Weighted Vote Method” means that each Director is assigned a vote based on its Water Allotment percentage under the Water Allotment Table identified in Section 1.44.

1.50 “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, permitting, 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.

2.3 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, permit and/or other similar administrative matters between the District and any Party.

2.4 Project Participants and Project Associates. Each Party to this Agreement electing Project Associate status may at anytime submit an election in writing to change its status to Project Participant. To receive Project Participant status, the Project Associate

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shall, prior to the end of the fiscal year, deliver to the Cooperative its Project Water Estimate and pay to the Cooperative its proportionate share of the Capital Cost, Capital Renewal and Replacement Cost, Debt Service Cost, Fixed Operation and Maintenance Costs and Reserves, incurred to date by Project Participants, as well as 2.5% of its proportionate share of such costs expended to date. Those Member Governments who are not Project Associates, who wish to become Project Participants shall, prior to the end of the fiscal year, deliver to the Project Board its Project Water Estimate and pay to the Cooperative its proportionate share of the Capital Cost, Capital Renewal and Replacement Cost, Debt Service Cost, Fixed Operation and Maintenance Costs and Reserves, incurred to date by Project Participants, as well as 7.5% of its proportionate share of such costs expended to date. The right of a Project Associate or a Member Government who is not a Project Associate to become a Project Participant is subject to the availability of Project Water not committed to existing Project Participants.

3. CONSTRUCTION OF TERMS. 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 in applicability to the specific provision within which 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.

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4. REPRESENTATIONS 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.

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5. **EFFECTIVE DATE.** The Effective Date of this Agreement shall be the date when the Agreement is duly authorized and executed by the Parties.

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 with respect to the Project 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 majority vote of a quorum of the Project Board using the Weighted Vote Method specified in this Agreement, which vote must include at least a majority of the Project Participants.

7.2 **Project Administrator.** No later than thirty (30) days from the Effective Date of this Agreement, the Project Board shall designate the name, address, phone number, fax number and email address of its Project Administrator. The Project Administrator may be changed at any time by the Project Board. 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

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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 8.4, for design and construction of the Project.

7.3.8 Manage the activities of the contractor(s) to assure that requirements 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 alternative financing mechanisms.

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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.

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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 Cooperative 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 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 include a 100% final design. 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 100% final design, the Project Administrator will present it to the Project Board the final design and a Bidding Budget based on the final design for approval.

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.

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8.1.5 Project Participants will develop funding mechanisms as required for their individual sufficient fiscal obligations to the Project.

8.1.6 Upon approval of the final design and Bidding Budget by the Project Board, the Project Administrator 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 phase, post construction phase and administration services for approval by the Project Board.

8.1.7 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.

8.2 Real Estate Acquisition Stage. The Cooperative shall acquire any real property interests necessary to implement the Project, subject to the limitations of the Interlocal Agreement.

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.

8.4 Alternative Procurement Methods. 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 in Sections 8.1 and 8.3, including the procurement of a construction manager at risk.

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8.5 Project Operation and Maintenance Stage. The Cooperative, upon completion of project construction, shall at all times operate and maintain the Project facilities in its ownership in accordance with Prudent Utility Practices.

8.6 Project Funding. A portion of the Project costs is expected to be reimbursed through cooperative funding from the District. The Cooperative anticipates issuing Obligations that will be used to pay the costs of the Project prior to reimbursement from the District of such Project costs. The Cooperative covenants to not issue Obligations in an amount that exceeds the amounts which the District has agreed to reimburse for such Project costs, which agreement by the District may be subject to such conditions precedent to funding, including appropriation and approval of reimbursement requests.

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. Ownership does not include any infrastructure or facilities owned by Project Participants as of the time of the execution of this Agreement.

10. TRUE-UP.

10.1 Additions, assignments and substitutions. 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.

10.2 Construction phasing. At least every 5 years after the Effective Date of this Agreement, the Project Board will determine the size and timing for constructing the next phase and/or sub-phase of the Project. Any additions, substitutions, assignments, or revisions to the size and timing of construction phases or sub-phases must be approved by the Project Board and reflected in an Amendment to this Agreement.

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10.3 Expansions and Capital Cost. The Project is proposed to be developed in phases, the first of which will provide approximately 7.88 MGD of finished water availability for Project Participants. Some components of the Project will be constructed to accommodate water production expansion and future development. Therefore, Project Participants will pay Capital Costs and commit to pay Obligations for certain Project components which will benefit the current Project Participants and the Project Participants of future Project expansions (“Common Capital Components”). For each expansion, the Capital Costs and Obligation commitments the Project Participants have made for the Common Capital Components will be re-allotted among all Project Participants of any future Project expansion in accordance with the then-current Water Allocation Table, and the then-current Project Participants shall reimburse the initial Project Participants for that portion of the Capital Costs and Obligation commitments paid for Common Capital Components which benefit the expansion Project Participants. Each time there is an expansion there shall be a similar re-allotment of Capital Costs and Obligation commitments for Common Capital Components based on the new Water Allocation Table and a reimbursement to existing Project Participants for Capital Costs and Obligation commitments paid for Common Capital Components which benefit the expansion Project Participants.

10.4 Water Use Charge. The True-Up of the Water Use Charge is as outlined in Section 13.5.

10.5 Actual Use Data. During any True-Up process, the costs made true between the Project Participants shall be based upon new data or actual figures reflecting actual use versus estimates.

10.6 Water Allotments. At least once in every 5 year period after the Effective Date of this Agreement, and at any time that a Project Participant’s 2045 Water Allotment

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increases, the Cooperative shall conduct a true-up of the Water Allotment table and of each Project Participant's Water Cost Proportionate Share to reflect the most current data, use and allotment estimates.

11. PROJECT WATER SERVICE.

11.1 Delivery of Project Water Service. During each Fiscal Year, starting with the Fiscal Year in which the Project Water Service is scheduled to commence, the Project Board 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 Project Administrator 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 Project Board to deliver to its Point of Connection during the upcoming Fiscal Year or the quantity of Water Offset, 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. The Project Administrator 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 Project Administrator by May 1, then the Project Participant shall be deemed to have requested its full Water Allotment for the upcoming Fiscal Year.

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 allotted by the Project Board according to the following priority schedule:

11.1.2.1 Every Project Participant with a Water Allotment

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shall be allowed to take up to its full Water Allotment from the Project.

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

11.1.2.3 In the event a Project Participant with a Water Allotment delivers a Project Water Estimate to the Project Board indicating its intent to take a Water Offset during the upcoming Fiscal Year in an amount not exceeding its Water Allotment, a Project Participant may voluntarily request a Water Offset in its Project Water Estimate in order to offset the quantity of Water Offset used by another Project Participant. The request by a Project Participant in its Project Water Estimate to take a Water Offset must be reviewed and approved by the Project Board as to technical feasibility.

11.1.2.4 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

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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 Project Board.

11.3 Water Quality. The Cooperative shall deliver Project Water to each Project Participant's Point of Connection that: (1) 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 or set forth in Phase 1 of the Combined Projects Implementation Agreement. This Section 11.3 shall not apply to Water Offsets 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 Water Offsets 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

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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 interests 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 Parties 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 for those Project Participants with a Water Allotment under the Water Allotment Table set forth above. This requirement applies equally to those Project Participants that will physically take Project Water and those Project Participants that will take Water Offsets. The Cooperative and a Project Participant may, by mutual agreement, more specifically identify or modify the Point of Connection or the location of the corresponding Meter.

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 Water Offsets 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

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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 to the order of 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, Reserves 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

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Charge shall consist of a Base Rate Charge and a Water Use Charge. The Water Charge shall be computed in the manner specified in Section 13.3, 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 13.2. 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 Notification of Water Charge. On or before May 31 prior to the Fiscal Year in which the Project Water Service is scheduled to commence and on or before every May 31st 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 Project Board for this Project for the upcoming Fiscal Year.

13.3 Establishment of Water Charge. The Water Charge shall be established as follows:

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

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

13.3.1.2 The Base Rate Charge shall consist of the total of the Debt Service Cost, Capital Renewal and Replacement Cost, Fixed Operation and Maintenance Cost

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and Reserves determined pursuant to Section 13.3.1.1. The Base Rate Charge shall be allocated among each Project Participant based upon each Project Participant's Water Allotment Percentage identified in the then effective Water Allotment Table in Section 1.44, as it may be modified pursuant to Section 10, for the upcoming Fiscal Year.

13.3.1.3 The Base Rate Charge allotment computed for each Project Participant pursuant to Section 13.3.1.2 shall be increased by any underpayment or decreased by any overpayment determined pursuant to Sections 13.5 and/or 10 of this Agreement.

13.3.2 Water Use Charge. The Water Use Charge shall be computed as the Variable Operation and Maintenance Cost determined pursuant to Section 13.3.1.1 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.

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

13.4.1 The Project Participants shall pay their individual Base Rate Charge allotment as specified in Section 13.3.1 in twelve (12) equal monthly payments during each calendar month starting in October and ending on the following September.

13.4.2 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 Project Board to the Project Participant's Point of Connection during the prior calendar month by the Water Use Charge identified in Section 13.3.2.

13.5 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

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actual Debt Service Costs, Capital Renewal and Replacement Costs, Fixed Operation and Maintenance Costs, Reserves 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 verifying the Base Rate Charge portion of the Water Charge for 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 13.4.1. If the audit determines that an overpayment was made by 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 13.4.1.

13.6 Certain Payments. The Water Charge shall not include any surcharge, tax, payment in lieu of taxes, payment in lieu of franchise fees, or any charge or payment not directly related to the cost of providing Project Water Service.

13.7 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.

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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 order of 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 delinquent Project Participant shall be charged with and pay to the order of the Cooperative interest on the amount unpaid from its due date until paid at such rates the Project Board may establish from time to time..

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 term of this Agreement, a Project Participant shall pay the Water Charge from its utility system operation and maintenance account.

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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

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or failure is caused by a Force Majeure Event. However, a Force Majeure Event shall not excuse a Project Participant from paying its Base Rate Charge, when due, pursuant to Section 13.4

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, and will be bound by any resulting mediation agreement that is approved by the governing body for each Party,

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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. For all defaults, except the failure to pay the Base Rate Charge, when due, pursuant to Section 13.4, the defaulting Party shall have thirty (30) days to cure the default, unless such default is not capable of being cured within thirty (30) days, 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, with the exception of the suspension of Project Water Service or Water Offsets pursuant to Section 18.4 of this Agreement, 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 Default in Payment of Base Rate Charge. The failure by a Project Participant to pay the Base Rate Charge, when due, shall be immediately cured. If not cured, the Cooperative shall use the Reserves to pay the defaulting Project Participant's Base Rate Charge in the short term, in order to ensure

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the continued operation of the Project and the payment of the Debt Service until the defaulting Project Participant cures the default. Additionally, at the request of the Cooperative, the remaining Project Participants shall be obligated to make up any shortfalls created by the defaulting Project Participant's failure to pay its Base Rate Charge, when due, according to the Water Allotment Table in Section 1.44, in order to ensure the continued operation of the Project and the payment of the Debt Service until the defaulting Project Participant cures the default. In order to cure the default, the defaulting Project Participant must repay to the Cooperative its Base Rate Charge. Upon repayment of the Base Rate Charge by the defaulting Project Participant, the Cooperative shall replenish the Reserves and/or credit the other Project Participants for payments made in order to avoid a shortfall. Repayments to the Cooperative from a defaulting Project Participant shall first be used to credit Project Participants for payments made in order to avoid a shortfall, and then be used to replenish Reserves. If the defaulting Project Participant makes partial repayments to the Cooperative, credits shall be issued in payor order with the largest payor receiving credits first until made whole, and the smallest payer receiving credits last until made whole, until all Project Participants are fully repaid.

18.3 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.

18.4 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 by the due date shall be in default of this Agreement and upon fifteen (15) days written notice, the Cooperative may suspend Project Water Service to the Project Participant and prohibit a Project

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Participant from using Water Offsets unless there is in mediation a good faith dispute or suspension of service compromises the health, safety, and welfare of the end water users. Suspension of Project Water Service to a Project Participant or prohibition of the use of Water Offsets 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 a Water Offset. The Cooperative's decision to suspend Project Water Service to a Project Participant or to prohibit Water Offsets 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 Water Offsets 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 Process. A Project Participant who withdraws from this Agreement shall remain liable for payment of its share of the Water Charge. If the withdrawing Project Participant has submitted a Project Water Estimate to the Cooperative for the current Fiscal Year, then it shall remain liable to pay the Water 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 Allotment,

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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 Allotment is completely redistributed among the remaining Project Participants.

19.2 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 Allotment, if any, and immediately forfeit its right to receive Project Water Service from the Project Board, including the use of Water Offsets. A Project Participant who withdraws from the Project may later request to join the Project again as a new Project Participant in accordance with Section 20 and, if approved to do so, will receive due credit given for the all previous Project expenditures.

19.3 Redistribution of Water. All of a withdrawing Project Participant's Water Allotment, 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 Allotment, if any, based upon the then applicable Water Allotment Table. Redistribution of the withdrawing Project Participant's Water Allotment 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 Allotment. Any redistribution of the

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withdrawing Project Participant's Water Allotment to another Project Participant must be reviewed and approved by the Project Board as to technical feasibility. If two or more existing Project Participants exercise their right to take all of the withdrawing Project Participant's Water Allotment, then the withdrawing Project Participant's Water Allotment shall be redistributed in proportionate portions to the Project Participants, which requested redistribution. Any of the withdrawing Party's Water Allotment that is not redistributed, 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. Substitution shall mean the new or existing Project Participant shall at a minimum succeed to the old Project Participant's entire Water Allotment, if any. 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 Allotment, if any, 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

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the substituted Project Participant's Water Allotment, if any, shall be reassigned 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 Allotment, if any, 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 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 Project Board 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.

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. Subject to the provisions of Section 2.4 of this Agreement, any new Project Participant 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 and 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

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to reflect the reassignment of Water Allotments 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 Allotment, if any, 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. The complete assignment of an existing Project Participant's Water Allotment, if any, 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 Allotment, if any, 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 Allotment, if any, 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 Allotment, if any, up for assignment, then the other existing Project Participants shall be considered to have waived their right of first refusal. The right of first

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refusal shall not apply when an existing Project Participant or Project Associate is the assignee. Any assignment under this Section 20.3 must be reviewed and approved by the 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 Allotment to the assignee Project Participant, as well as its voting rights, proportionate to the extent of the assignment. Once assignment takes place, the assigning Project Participant shall cooperate with the Project Board in any modification to the Project Permits necessary to effectuate this assignment.

21. PERMITS.

21.1 No Party shall interfere with the existing consumptive use permits or existing water, wastewater, or reclaimed water facilities of a Member Government, except as may otherwise be consented to in writing by the Member Government.

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 the provisions of Section 21.1 shall apply .

21.4 No Party 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, unless the proposed Project Permit directly threatens an existing legal right of

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a Party to use the water resources of the state, in existence prior to the date of the application for the Project Permit.

21.5 A Member Government that is not a Party under 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 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.

22.3 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

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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; (5) 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, (6) 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.

22.4 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, the Project Participants are not 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, regardless of whether such claims are grounded in contract, statute, tort, negligence, product liability, strict

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liability, or otherwise. Finally, the Cooperative agrees to indemnify and hold the Project Participants harmless from any injury that the Project Participants or their 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 Parties by email. All notices shall be delivered or sent to the Parties and/or Project Associates at their respective addresses shown below or such other addresses as a Party and/or Project Associate may designate by prior notice given in accordance with this provision to the other Parties and/or Project Associates:

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

City of Bartow
 City Manager

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P.O. Box 1069
Bartow, Florida 3383
863-534-0100

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

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

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

Polk City, Florida
City Manager
123 Broadway SE
Polk City, Florida 33868
863-984-1375 Ext. 237

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

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

Polk Regional Water
Cooperative
Executive Director
Drawer CA01/P.O. Box 9005
Bartow, Florida 33831
Phone: 863-534-6444

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25.2 All notices shall also be sent to the Cooperative Executive Director, with a separate copies to the Project Administrator

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 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, except for lenders of Cooperative Obligations, parties to cooperative funding agreements with the Cooperative and the providers of grant funding to the Cooperative.

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

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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 of this Agreement, 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. This Agreement supersedes and replaces the previously executed Implementation Agreement for the West Polk Lower Floridan Wellfield.

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.

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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

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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]

February 9, 2022

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

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:

Fredrick J. Murphy, Jr., City Attorney

Attachment: 22-02-09 WPLFA Implementation Agreement (Clean) (18234 : West Polk Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF LAKELAND,
FLORIDA

By: _____ H. William Mutz, Mayor

Date: _____

ATTEST:

By: _____ Kelly Koos, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Palmer Davis, City Attorney

Attachment: 22-02-09 WPLFA Implementation Agreement (Clean) (18234 : West Polk Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE
POLK CITY, FLORIDA,

By: _____ Joseph LaCascia, Mayor

Date: _____

ATTEST:

By: _____ Patricia Jackson, City Clerk

APPROVED AS TO FORM & LEGALITY

By: _____ Thomas A. Cloud, City Attorney

Attachment: 22-02-09 WPLFA Implementation Agreement (Clean) (18234 : West Polk Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

IN WITNESS WHEREOF, the undersigned has caused this 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: _____
T. R. Wilson, Chair
Board of County Commissioners

Dated and signed by the Chairman: _____

Reviewed as to form and legal sufficiency:

County Attorney's Office

Attachment: 22-02-09 WPLFA Implementation Agreement (Clean) (18234 : West Polk Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE CITY OF FORT MEADE, FLORIDA

By: _____ Samuel Berrien, Mayor

Date: _____

ATTEST:

By: _____ Melissa Cannon, Deputy City Clerk

APPROVED AS TO FORM & LEGALITY

By: _____ Thomas A. Cloud, City Attorney

Attachment: 22-02-09 WPLFA Implementation Agreement (Clean) (18234 : West Polk Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

WHEREOF, the undersigned has caused this 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: 22-02-09 WPLFA Implementation Agreement (Clean) (18234 : West Polk Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE CITY OF LAKE ALFRED, FLORIDA

By: _____ Ryan Leavengood, City Manager

Date: _____

ATTEST:

By: _____ Linda Bourgeois, BAS, MMC, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Frederick J. Murphy, Jr., City Attorney

Attachment: 22-02-09 WPLFA Implementation Agreement (Clean) (18234 : West Polk Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

IN WITNESS WHEREOF, the undersigned has caused this 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. Dantzler, City Mayor

Date: _____

ATTEST:

By: _____ Vanessa Castillo, MMC, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Frederick J. Murphy, Jr., City Attorney

Attachment: 22-02-09 WPLFA Implementation Agreement (Clean) (18234 : West Polk Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

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

CITY COMMISSION OF THE CITY OF BARTOW, FLORIDA

By: _____ Scott Sjoblom, Mayor

Date: _____

ATTEST:

By: _____ Jacqueline Poole, MMC, FCRM, CPM, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Sean R. Parker., City Attorney

Attachment: 22-02-09 WPLFA Implementation Agreement (Clean) (18234 : West Polk Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

IN WITNESS WHEREOF, the undersigned has caused this 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: _____ Jenn Garcia, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Frederick J. Murphy, Jr., Town Attorney

Attachment: 22-02-09 WPLFA Implementation Agreement (Clean) (18234 : West Polk Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be dulyexecuted and entered into.

POLK REGIONAL WATER COOPERATIVE

By: _____ Eugene Fultz, Chair

Date: _____

ATTEST:

By: _____ Mayor H. William Mutz, Secretary/Treasurer

APPROVED AS TO FORM AND CORRECTNESS:

Edward P. de la Parte, Legal Counsel

Attachment: 22-02-09 WPLFA Implementation Agreement (Clean) (18234 : West Polk Wellfield Implementation Agreement amendment (ACTION

February 9, 2022

AMENDED AND RESTATED IMPLEMENTATION AGREEMENT

West Polk Lower Floridan u Aquifer Wellfield

THIS AMENDED AND RESTATED 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 P.O. Box 9005, Bartow, Florida 33831, the City of Auburndale whose address is P.O. Box 186, Auburndale, FL 33823, ~~the City of Eagle Lake whose address is P.O. Box 129, Eagle Lake, Florida 33839~~, the City of Lakeland whose address is 228 S. Massachusetts Avenue, Lakeland, Florida 33801, Polk City, Florida, a Florida municipal corporation (fka “City of Polk City”) whose address is 123 Broadway Blvd SE, Polk City, Florida 33868, 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, the City of Mulberry whose address is P.O. Box 707, Mulberry, Florida 33860, the City of Lake Alfred whose address is 155 East Pomelo Street, Lake Alfred, Florida 33850, ~~and~~ the City of Winter Haven whose address is P.O. Box 2270, Winter Haven, Florida 33883, the City of Bartow whose address is 450 N. Wilson Avenue, Bartow, Florida 33838, the Town of Dundee, Florida whose address is 2020 East Main Street, Dundee, Florida 33838 and the City of Fort Meade, whose address is 8 West Broadway Street, Fort Meade, Florida 33841, individually also referred to as a “Party” and collectively referred to as the “Parties”.

THE PURPOSE of this Agreement is to implement the design, permitting, construction, operation, maintenance and funding of the West Polk Lower Floridan Wellfield, an Approved Water Project of the Cooperative.

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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, the Parties hereby agree, stipulate and covenant as follows:

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 Amended and Restated Implementation Agreement for the West Polk Lower Floridan Wellfield, as it 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 8.3 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.

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,

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which are not paid from the proceeds of any Obligation and costs that will occur over the life of the Project for the assets comprising the Project.

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. Pursuant to and in accordance with the Interlocal Agreement, all powers, privileges, and duties vested in or imposed on the Cooperative with regards to the approval and implementation of the Project shall be exercised by the Project Board.

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, and may be amended if needed subject to written change orders approved in writing by the Cooperative and the Contractor engaged by the Cooperative.

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, Reserves 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.

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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 when~~ it is either 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, pandemic, 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.

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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 “Member Government” shall have the same meaning as in the Interlocal Agreement.

1.21 “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 Water Offsets withdrawn by a Project Participant.

1.22 “MGD” means million gallons a day.

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

1.24 “Operation and Maintenance Cost” means any and all costs incurred by the Project Board 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 and services; the operation, maintenance, management, security and development of the Project, which are not a Capital Replacement and Renewal Cost or are payable from the proceeds of any Obligation. Operation and Maintenance Costs, to the extent not constituting a Capital Replacement and Renewal Cost or payable from the proceeds of any Obligation, include, but are not limited to 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,; administrative,

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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 (if one is established); and administrative costs incurred by the Cooperative for management of the Project.

1.25 “Parties” mean the Cooperative, the City of Auburndale, ~~the City of Eagle Lake,~~ the City of Lake Alfred, the City of Lakeland, the City of Mulberry, Polk City (fka “City of Polk City”) , Polk County, ~~and~~ the City of Winter Haven, the City of Bartow, the Town of Dundee and the City of Fort Meade.

1.26 “Points of Connection” means the physical location where Cooperative owned infrastructure connects to a Project Participant’s owned infrastructure. For the West Polk Lower Floridan Aquifer Project, this will be where the Cooperatives’ finished water pipeline from the West Polk water treatment plant physically connects to the City of Lakeland’s water system.

1.27 “Project” means the West Polk Lower Floridan Aquifer Wellfield.

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

1.29 “Project Associate” means a Party to this Agreement who has elected to become a Project Associate in order to stay abreast of the status of the Project and enable them to make informed decisions about future participation as a Project Participant. A Project Associate has no financial responsibility or liability for the Project or voting rights but may inform the Cooperative about its future plans or needs for Project Water, and make comments and

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recommendations to the Project Board about the Project's direction and scope. A Project Associate is not a Project Participant as defined herein.

1.30 “Project Board” shall have the same meaning as in the Interlocal Agreement.

1.31 “Project Participants” means a Party to this Agreement, other than the Cooperative or a Project Associate, who has executed this Agreement for the purpose of implementing this Project, which includes the design, permitting, construction, operation, maintenance and funding of the Project and receipt of Project Water Service from the Cooperative.

1.32 “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 Water Offsets.

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

1.34 “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.

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

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1.36 “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.

1.37 “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 judgment in light of facts known, that should have been known, at the time the decision was made, or could have only been expected to accomplish the desired results at a reasonable cost consistent with applicable legal, engineering, reliability, safety and time requirements.

1.38 “PSI” means pounds per square inch.

1.39 “Reserves” means adequate monetary reserves established by the Cooperative to ensure continued operation of the Project, in the event one or more Project Participants are unable to pay their Water Charge on a short term basis.

1.40 “True-up” means the process specified in Section 10 of this Agreement.

1.41 “Variable Operation and Maintenance Costs” means all Operation and Maintenance Costs 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.

1.42 “Water Offset” means a quantity of upper Floridan aquifer groundwater withdrawn by a Project Participant that will be offset by another Project Participant relinquishing its right under a District permit to withdraw from the upper Floridan aquifer as stated in the Project plan.

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1.43 “Water Offset Cost” means the cost of producing Project Water used by one or more Project Participants for use as a Water Offset. The Water Charge paid by a Project Participant for the use of a Water Offset shall cover the cost of producing the Project Water.

1.44 “Water Allotment” 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 Allotment Table, the Water Allotment for each of the Project Participants will be determined based on the Water Allotment Percentages set forth in this table.

2045 Water Allotment Table:

| Name of Party | 2045 Water Allotment Annual Average (MGD) | 2045 Water Allotment Percentage (%) |
|-------------------------------|---|-------------------------------------|
| City of Auburndale | 0.10 | 1.26995% |
| City of Eagle Lake | 0.20 | 2.591% |
| <u>City of Bartow</u> | <u>0.36</u> | <u>4.568%</u> |
| City of Lakeland | 6.314 | 80.07781.736% |
| City of Polk City | 0.03 | 0.38089% |
| Polk County | 0.98 | 12.436694% |
| City of Winter Haven | 0.10 | 1.27095% |
| <i>*City of Lake Alfred</i> | | <i>Project Associate</i> |
| <i>*City of Mulberry</i> | | <i>Project Associate</i> |
| <i>*City of Fort Meade</i> | | <i>Project Associate</i> |
| TOTAL | <u>7.887.72</u> | 100.000% |

1.45 “Water Charge” means for any Fiscal Year, the charge established by the Project Board pursuant to Section 13 for providing Project Water Service to the Project Participants. This charge is comprised of the Base Rate Charge and the Water Use Charge.

1.46 “Water Cost Proportionate Share” or “Water Cost Allocation” means for any Fiscal Year, that portion of the Base Rate Charge each Project Participant is obligated to

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pay. The Water Cost Proportionate Share shall be based on each Project Participant's projected 2045 Water Allotment, as revised at least every five (5) years through the True-Up process set forth in Section 10 and/or the provisions set forth in Section 11, 19 and 20 of this Agreement.

1.47 “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.

1.48 “Water Use Charge” means for any Fiscal Year that component of the Water Charge computed according to Section 13.3.2.

1.49 “Weighted Vote Method” means that each Director is assigned a vote based on its Water Allotment percentage under the Water Allotment Table identified in Section 1.44.

1.50 “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, permitting, 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.

2.3 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

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be changed or affected by this Agreement. Additionally, nothing in this Agreement is intended to change any existing agreement, permit and/or other similar administrative matters between the District and any Party.

2.4 Project Participants and Project Associates. Each Party to this Agreement electing Project Associate status may at any time submit an election in writing to change its status to Project Participant. To receive Project Participant status, the Project Associate shall, prior to the end of the fiscal year, deliver to the Cooperative its Project Water Estimate and pay to the Cooperative its proportionate share of the Capital Cost, Capital Renewal and Replacement Cost, Debt Service Cost, Fixed Operation and Maintenance Costs and Reserves, incurred to date by Project Participants, as well as 2.5% of its proportionate share of such costs expended to date. Those Member Governments who are not Project Associates, who wish to become Project Participants shall, prior to the end of the fiscal year, deliver to the Project Board its Project Water Estimate and pay to the Cooperative its proportionate share of the Capital Cost, Capital Renewal and Replacement Cost, Debt Service Cost, Fixed Operation and Maintenance Costs and Reserves, incurred to date by Project Participants, as well as 7.5% of its proportionate share of such costs expended to date. The right of a Project Associate or a Member Government who is not a Project Associate to become a Project Participant is subject to the availability of Project Water not committed to existing Project Participants.

3. CONSTRUCTION OF TERMS. 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 in applicability to the specific provision within which such references are set forth, but instead refer to this Agreement taken as a whole.

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“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. REPRESENTATIONS 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,

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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. EFFECTIVE DATE. The Effective Date of this Agreement shall be the date when the Agreement is duly authorized and executed by the Parties ~~as determined by Cooperative.~~

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 with respect to the Project 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 majority vote of a quorum of the Project Board using the Weighted Vote Method specified in this Agreement, which vote must

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include at least a majority of the Project Participants.

7.2 Project Administrator. No later than thirty (30) days from the Effective Date of this Agreement, the Project Board shall designate the name, address, phone number, fax number and email address of its Project Administrator. The Project Administrator may be changed at any time by the Project Board. 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 8.4, for design and construction of the Project.

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7.3.8 Manage the activities of the contractor(s) to assure that requirements 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 alternative financing mechanisms.

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

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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 Cooperative 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 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 include a 100% final design. The 100%

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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 100% final design, the Project Administrator will present it to the Project Board the ~~100%~~ final design and a Bidding Budget based on the final design for approval.

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 for their individual sufficient fiscal obligations to the Project.

8.1.6 Upon approval of the final design and Bidding Budget by the Project Board, the Project Administrator 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 phase, post construction phase and administration services for approval by the Project Board.

8.1.7 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.

8.2 Real Estate Acquisition Stage. The Cooperative shall acquire any real property interests necessary to implement the Project, subject to the limitations of the Interlocal Agreement.

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

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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.

8.4 Alternative Procurement Methods. 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 in Sections 8.1 and 8.3, including the procurement of a construction manager at risk.

8.5 Project Operation and Maintenance Stage. The Cooperative, upon completion of project construction, shall at all times operate and maintain the Project facilities in its ownership in accordance with Prudent Utility Practices.

8.58.6 Project Funding. A portion of the Project costs is expected to be reimbursed through cooperative funding from the District. The Cooperative anticipates issuing Obligations that will be used to pay the costs of the Project prior to reimbursement from the District of such Project costs. The Cooperative covenants to not issue Obligations in an amount that exceeds the amounts which the District has agreed to reimburse for such Project costs, which agreement by the District may be subject to such conditions precedent to funding, including appropriation and approval of reimbursement requests.

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. Ownership does not include any infrastructure or facilities owned by Project Participants as of the time of the execution of this Agreement.

10. TRUE-UP.

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10.1 Additions, assignments and substitutions. 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.

10.2 Construction phasing. 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 for constructing the next phase and/or sub-phase of the Project. Any additions, substitutions, assignments, or revisions to the size and timing of construction phases or sub-phases must be approved by the Project Board and reflected in an Amendment to this Agreement.

10.3 Expansions and Capital Cost. The Project is ~~is~~ proposed to be developed in phases, the first of which will provide approximately ~~7.72~~7.88 MGD of finished water availability for Project Participants. Some components of the Project will be constructed to accommodate water production expansion and future development. Therefore, Project Participants will pay Capital Costs and commit to pay Obligations for certain Project components which will benefit the current Project Participants and the Project Pparticipants of future Project expansions (“Common Capital Components”). For each expansion, the Capital Costs and Obligation commitments the Project Participants have made for the Common Capital Components will be re-allotted among all Project Participants of any future Project expansion in accordance with the then-current Water Allocation Table, and the then- current Pproject Pparticipants shall reimburse the initial Project Participants for that portion of the Capital Costs and Obligation commitments paid for Common Capital Components which benefit the expansion Pproject Pparticipants. Each time there is an expansion there shall be a similar re--allotment of Capital Costs and Obligation commitments for Common Capital Components based on the new Water Allocation Table and a

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reimbursement to existing Project Participants for Capital Costs and Obligation commitments paid for Common Capital Components which benefit the expansion Pproject Pparticipants.

10.4 Water Use Charge. The True-Up of the Water Use Charge is as outlined in Section 13.5.

10.5 Actual Use Data. During any True-Up process, the costs made true between the Project Participants shall be based upon new data or actual figures reflecting actual use versus estimates.

10.510.6 Water Allotments. At least once in every 5 year period after the Effective Date of this Agreement, and at any time that a Project Participant's 2045 Water Allotment increaseincreases, the Cooperative shall conduct a true-up of the Water Allotment table and of each Project Participant's Water Cost Proportionate Share to reflect the most current data, use and allotment estimates.

11. PROJECT WATER SERVICE.

11.1 Delivery of Project Water Service. During each Fiscal Year, starting with the Fiscal Year in which the Project Water Service is scheduled to commence, the Project Board 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 Project Administrator 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 Project Board to deliver to its Point of Connection during the upcoming Fiscal Year or the quantity of Water Offset, 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

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will need. The Project Administrator 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 Project Administrator by May 1, then the Project Participant shall be deemed to have requested its full Water Allotment for the upcoming Fiscal Year.

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 allotted by the Project Board according to the following priority schedule:

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

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

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

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

11.1.2.4 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 Project Board.

11.3 Water Quality. The Cooperative shall deliver Project Water to each Project Participant's Point of Connection that: (1) is stabilized and of good and uniform quality; (2) meets all applicable federal and state drinking water standards and regulations, including, but not limited

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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 or set forth in Phase 1 of the Combined Projects Implementation Agreement. This Section 11.3 shall not apply to Water Offsets 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 Water Offsets 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 interests 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 Parties 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 for those Project Participants with a Water Allotment under the Water Allotment Table set forth above. This requirement applies equally to those Project Participants that will physically take Project Water and those Project Participants that will take Water Offsets. The Cooperative

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and a Project Participant may, by mutual agreement, more specifically identify or modify the Point of Connection or the location of the corresponding Meter.

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 Water Offsets 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

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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 to the order of 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, Reserves 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. ~~The Water Charge shall be uniform for all Project Participants.~~ The Water Charge shall be computed in the manner specified in Section 13.3, 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 13.2. ~~The Water Charge shall be uniform 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 Notification of Water Charge. On or before May 31 prior to the Fiscal Year in which the Project Water Service is scheduled to commence and on or before every May 31st 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

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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 Project Board for this Project for the upcoming Fiscal Year.

13.3 Establishment of Water Charge. The Water Charge shall be established as follows:

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

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

13.3.1.2 The Base Rate Charge shall consist of the total of the Debt Service Cost, Capital Renewal and Replacement Cost, Fixed Operation and Maintenance Cost and Reserves determined pursuant to Section 13.3.1.1. The Base Rate Charge shall be allocated among each Project Participant based upon each Project Participant's Water Allotment Percentage identified in the then effective Water Allotment Table in Section 1.44, as it may be modified pursuant to Section 10, for the upcoming Fiscal Year.

13.3.1.3 The Base Rate Charge allotment computed for each Project Participant pursuant to Section 13.3.1.2 shall be increased by any underpayment or decreased by any overpayment determined pursuant to Sections 13.5 and/or 10 of this Agreement.

13.3.2 Water Use Charge. The Water Use Charge shall be computed as the Variable Operation and Maintenance Cost determined pursuant to Section 13.3.1.1 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.

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

13.4.1 The Project Participants shall pay their individual Base Rate Charge allotment as specified in Section 13.3.1 in twelve (12) equal monthly payments during each calendar month starting in October and ending on the following September.

13.4.2 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 Project Board to the Project Participant's Point of Connection during the prior calendar month by the Water Use Charge identified in Section 13.3.2.

13.5 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, Reserves 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 verifying the Base Rate Charge portion of the Water Charge for 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

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for the upcoming Fiscal Year and paid in the manner specified in Section 13.4.1. If the audit determines that an overpayment was made by 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 13.4.1.

13.6 Certain Payments. The Water Charge shall not include any surcharge, tax, payment in lieu of taxes, payment in lieu of franchise fees, or any charge or payment not directly related to the cost of providing Project Water Service.

13.7 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 order of 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 delinquent Project Participants shall be charged with and pay to the order of the Cooperative interest on the amount unpaid from its due date until paid at such rates the Project Board may establish from time to time..

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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

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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. However, a Force Majeure Event shall not excuse a Project Participant from paying its Base Rate Charge, when due, pursuant to Section 13.4

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.

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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, and will be bound by any resulting mediation agreement that is approved by the governing body for each Party, 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.

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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. For all defaults, except the failure to pay the Base Rate Charge, when due, pursuant to Section 13.4, the defaulting Party shall have thirty (30) days to cure the default, unless such default is not capable of being cured within thirty (30) days, 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, with the exception of the suspension of Project Water Service or Water Offsets pursuant to Section 18.4 of this Agreement, 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 Default in Payment of Base Rate Charge. The failure by a Project Participant to pay the Base Rate Charge, when due, shall be immediately cured. If not cured, the Cooperative shall use the Reserves to pay the defaulting ~~Parties~~ Project Participant's Base Rate Charge in the short term, in order to ensure the continued operation of the Project and the payment of the Debt Service until the defaulting Project Participant cures the default. Additionally, at the request of the Cooperative, the remaining Project Participants shall be obligated to make up any shortfalls created by the defaulting Project Participant's failure to pay its Base Rate Charge, when due, according to the Water Allotment Table in Section 1.44, in order to ensure the continued operation of the Project and the payment of the Debt Service until the defaulting Project Participant cures the default. In order to cure the default, the defaulting ~~Party~~ Project Participant must repay to the Cooperative its Base Rate Charge. Upon repayment of the Base Rate Charge by the defaulting Project Participant, the Cooperative ~~will~~ shall replenish the Reserves and/or credit the other Project Participants for

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payments made in order to avoid a shortfall. Repayments to the Cooperative from a defaulting Project Participant shall first be used to credit Project Participants for payments made in order to avoid a shortfall, and then be used to replenish Reserves. If the defaulting Project Participant makes partial repayments to the Cooperative, credits shall be issued in payor order with the largest payor receiving credits first until made whole, and the smallest payer receiving credits last until made whole, until all Project Participants are fully repaid.

18.3 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.

18.4 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 by the due date shall be in default of this Agreement and upon fifteen (15) days written notice, the Cooperative may suspend Project Water Service to the Project Participant and prohibit a Project Participant from using Water Offsets unless there is in mediation a good faith dispute or suspension of service compromises the health, safety, and welfare of the end water users. Suspension of Project Water Service to a Project Participant or prohibition of the use of Water Offsets 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

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Project Water Service to the Project Participant or immediately allow a Project Participant to use a Water Offset. The Cooperative's decision to suspend Project Water Service to a Project Participant or to prohibit Water Offsets 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 Water Offsets 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 Process. A Project Participant who withdraws from this Agreement shall remain liable for payment of its share of the Water Charge. If the withdrawing Project Participant has submitted a Project Water Estimate to the Cooperative for the current Fiscal Year, then it shall remain liable to pay the Water 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 Allotment, 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 Allotment is completely redistributed among the remaining Project Participants.

19.2 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

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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 Allotment, if any, and immediately forfeit its right to receive Project Water Service from the Project Board, including the use of Water Offsets. A Project Participant who withdraws from the Project may later request to join the Project again as a new Project Participant in accordance with Section 20 and, if approved to do so, will receive due credit given for the all previous Project expenditures.

19.3 Redistribution of Water. All of a withdrawing Project Participant's Water Allotment, 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 Allotment, if any, based upon the then applicable Water Allotment Table. Redistribution of the withdrawing Project Participant's Water Allotment 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 Allotment. Any redistribution of the withdrawing Project Participant's Water Allotment to another Project Participant must be reviewed and approved by the Project Board as to technical feasibility. If two or more existing Project Participants exercise their right to take all of the withdrawing Project Participant's Water Allotment, then the withdrawing Project Participant's Water Allotment shall be redistributed in proportionate portions to the Project Participants, which requested redistribution. Any of the withdrawing Party's Water Allotment that is not redistributed, shall become Excess Water.

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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. Substitution shall mean the new or existing Project Participant shall at a minimum succeed to the old Project Participant's entire Water Allotment, if any. 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 Allotment, if any, 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 Allotment, if any, shall be reassigned 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 Allotment, if any, 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 Project Board as to technical feasibility. Once the substitution takes place, the substituted Project

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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 Project Board 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.

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. Subject to the provisions of Section 2.4 of this Agreement, any new Project Participant 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 and 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 Allotments 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.

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20.2.320.3 Assignment. As a matter of right, an existing Project Participant may assign a portion of its Water Allotment, if any, 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. The complete assignment of an existing Project Participant's Water Allotment, if any, 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 Allotment, if any, 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 Allotment, if any, 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 Allotment, if any, 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~~ Project Participant or Project Associate is the assignee. Any assignment under this Section 20.3 must be reviewed and approved by the 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 Allotment to the assignee Project Participant, as well as its voting rights, proportionate to the

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extent of the assignment. Once assignment takes place, the assigning Project Participant shall cooperate with the Project Board in any modification to the Project Permits necessary to effectuate this assignment.

21. PERMITS.

21.1 No Party shall interfere with the existing consumptive use permits or existing water, wastewater, or reclaimed water facilities of a Member Government, except as may otherwise be consented to in writing by the Member Government.

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 the provisions of Section 21.1 shall apply .

21.4 No Party 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, unless the proposed Project Permit directly threatens an existing legal right of a Party to use the water resources of the state, in existence prior to the date of the application for the Project Permit.

21.5 A Member Government that is not a Party under 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

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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 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.

22.3 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; (65) provide and pay for reasonable requested opinions of counsel as to the binding

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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, (76) 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.

22.4 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, the Project Participants are not 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, regardless of whether such claims are grounded in contract, statute, tort, negligence, product liability, strict liability, or otherwise. Finally, the Cooperative agrees to indemnify and hold the Project Participants harmless from any injury that the Project Participants or their officers, agents, attorneys, employees or invitees sustain while carrying out the Cooperative's obligations under this Agreement.

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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 Parties by email. All notices shall be delivered or sent to the Parties and/or Project Associates at their respective addresses shown below or such other addresses as a Party and/or Project Associate may designate by prior notice given in accordance with this provision to the other Parties and/or Project Associates:

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

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

City of Bartow
 City Manager
 P.O. Box 1069
 Bartow, Florida 3383

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[863-534-0100](tel:863-534-0100)[City of Fort Meade](#)[City Manager](#)[P. O. 856](#)[Fort Meade, Florida 33841](#)[863-285-1100](tel:863-285-1100)

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

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

Polk City, Florida
 City Manager
 123 Broadway SE
 Polk City, Florida 33868
 863-984-1375 Ext. 237

[Town of Dundee](#)[Town Manager](#)[P.O. Box 1000](#)[Dundee, Florida 33838](#)[863-438-8330](tel:863-438-8330)

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

Polk Regional Water
 Cooperative
 Executive Director
 Drawer CA01/P.O. Box 9005
 Bartow, Florida 33831
 Phone: 863-534-6444

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25.2 All notices shall also be sent to the Cooperative Executive Director, with a separate copies to the Project Administrator

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 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, except for lenders of Cooperative Obligations, parties to cooperative funding agreements with the Cooperative and the providers of grant funding to the Cooperative.

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

February 9, 2022

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 of this Agreement, 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. This Agreement supersedes and replaces the previously executed Implementation Agreement for the West Polk Lower Floridan Wellfield.

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.

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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

February 9, 2022

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]

February 9, 2022

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

CITY COMMISSION OF THE CITY OF AUBURNDALE, FLORIDA

~~as a Project Participant.~~

By: _____ Timothy J. Pospichal, Mayor

Date: _____

ATTEST:

By: _____ Shirley Lowrance, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Fredrick J. Murphy, Jr., City Attorney

Attachment: 22-02-09 WPLFA Implementation Agreement (Redline) (18234 : West Polk Wellfield Implementation Agreement amendment

February 9, 2022

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

~~CITY COMMISSION OF THE
CITY OF EAGLE LAKE,
FLORIDA~~

~~as a Project Participant.~~

By: _____ Cory Coler, Mayor

Date: _____

ATTEST:

By: _____ Dawn Wright, City Clerk

Attachment: 22-02-09 WPLFA Implementation Agreement (Redline) (18234 : West Polk Wellfield Implementation Agreement amendment

February 9, 2022

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

CITY COMMISSION OF THE CITY OF LAKELAND, FLORIDA

as a Project Participant.

By: _____ H. William "Bill" Mutz, Mayor

Date: _____

ATTEST:

By: _____ Kelly Koos, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Palmer Davis, City Attorney

Attachment: 22-02-09 WPLFA Implementation Agreement (Redline) (18234 : West Polk Wellfield Implementation Agreement amendment

February 9, 2022

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

CITY COMMISSION OF THE
POLK CITY, FLORIDA, ~~a Florida municipal~~
~~corporation as a Project Participant.~~

By: _____ Joseph LaCascia, Mayor

Date: _____

ATTEST:

By: _____ Patricia Jackson, City Clerk

APPROVED AS TO FORM & LEGALITY

By: _____ Thomas A. Cloud, City Attorney

Attachment: 22-02-09 WPLFA Implementation Agreement (Redline) (18234 : West Polk Wellfield Implementation Agreement amendment

February 9, 2022

IN WITNESS WHEREOF, the undersigned has caused this 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

~~as a Project Participant.~~

Stacy M. Butterfield
Clerk to the Board of County Commissioners

By: _____
Deputy Clerk

By: _____
T. R. Wilson, Chair
Board of County Commissioners

Dated and signed by the Chairman: _____

Reviewed as to form and legal sufficiency:

County Attorney's Office

Attachment: 22-02-09 WPLFA Implementation Agreement (Redline) (18234 : West Polk Wellfield Implementation Agreement amendment

February 9, 2022

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

CITY COMMISSION OF THE CITY OF FORT MEADE, FLORIDA

By: _____ Samuel Berrien, Mayor

Date: _____

ATTEST:

By: _____ Melissa Cannon, Deputy City Clerk

APPROVED AS TO FORM & LEGALITY

By: _____ Thomas A. Cloud, City Attorney

Attachment: 22-02-09 WPLFA Implementation Agreement (Redline) (18234 : West Polk Wellfield Implementation Agreement amendment

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF MULBERRY,
FLORIDA

~~as a Project Associate.~~

By: _____ George H. Hatch, Mayor

Date: _____

ATTEST:

By: _____ Sharon Lauther, City Clerk

Attachment: 22-02-09 WPLFA Implementation Agreement (Redline) (18234 : West Polk Wellfield Implementation Agreement amendment

February 9, 2022

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

CITY COMMISSION OF THE CITY OF LAKE ~~ALFORD~~ALFRED, FLORIDA

~~as a Project Associate.~~

By: _____ Ryan Leavengood, City Manager

Date: _____

ATTEST:

By: _____ Linda Bourgeois, BAS, MMC, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Frederick J. Murphy, Jr., City Attorney

Attachment: 22-02-09 WPLFA Implementation Agreement (Redline) (18234 : West Polk Wellfield Implementation Agreement amendment

February 9, 2022

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

CITY COMMISSION OF THE
CITY OF WINTER HAVEN, FLORIDA

~~as a Project Participant.~~

By: _____ Bradley T. Dantzler, City Mayor

Date: _____

ATTEST:

By: _____ Vanessa Castillo, MMC, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Frederick J. Murphy, Jr., City Attorney

Attachment: 22-02-09 WPLFA Implementation Agreement (Redline) (18234 : West Polk Wellfield Implementation Agreement amendment

February 9, 2022

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

CITY COMMISSION OF THE CITY OF BARTOW, FLORIDA

By: _____ Scott Sjoblom, Mayor

Date: _____

ATTEST:

By: _____ Jacqueline Poole, MMC, FCRM, CPM, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Sean R. Parker., City Attorney

Attachment: 22-02-09 WPLFA Implementation Agreement (Redline) (18234 : West Polk Wellfield Implementation Agreement amendment

February 9, 2022

IN WITNESS WHEREOF, the undersigned has caused this 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: _____ Jenn Garcia, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Frederick J. Murphy, Jr., Town Attorney

Attachment: 22-02-09 WPLFA Implementation Agreement (Redline) (18234 : West Polk Wellfield Implementation Agreement amendment

February 9, 2022

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be dulyexecuted and entered into.

POLK REGIONAL WATER COOPERATIVE

By: _____ Eugene Fultz, Chair

Date: _____

ATTEST:

By: _____ Mayor H. William ~~“Bill”~~ Mutz,
Secretary/Treasurer

APPROVED AS TO FORM AND CORRECTNESS:

Edward P. de la Parte, Legal Counsel

Attachment: 22-02-09 WPLFA Implementation Agreement (Redline) (18234 : West Polk Wellfield Implementation Agreement amendment