



# Polk Regional Water Cooperative Meeting

## Agenda - Final-revised

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January 18, 2023 POLK REGIONAL WATER COOPERATIVE  
Lake Myrtle Sports Complex

**Zoom Meeting**

<https://us02web.zoom.us/j/82771758259?pwd=WmxUWIhwbTJ3TzBEZmh2QWtVaGRYUT09>

Meeting ID: 827 7175 8259

Passcode: 734354

1-305-224-1968,,82771758259#,,,,\*734354# US

- 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**
  - E.1. Approval of November BOD Meeting Minutes - Action Item
- F. Regular BOD Items**
  - F.1. Business Plan Update Process, WIFIA Loan Status, and Potential Impacts from Proposed Changes to SWFWMD Funding Structure - Information Item
- G. Recess Regular BOD/Commence Projects BOD**
  - G.1. Adopt Resolution 2023-01 and Approval of an Amendment to Existing State Revolving Fund (SRF) Planning Loan DW532000 - Action Item
- H. Recess Combined Projects BOD/Commence Southeast Wellfield BOD**
  - H.1. Adopt Resolution 2023-02 to Approve the Revolving Line of Credit Loan Agreement with Wells Fargo Bank - Action Item
  - H.2. Adopt Resolution 2023-03 and Approval of an Amendment to the State Revolving Fund (SRF) loan DW532001 for the SE Wellfield - Action Item
  - H.3. Approval of the Transfer Agreement Between Polk Regional Water Cooperative and Polk County ("Transfer Agreement") (ACTION ITEM)
  - H.4. Status of the pipeline design and approval of final Points of Connection for the Southeast Transmission Project (Action Item).

**I. Recess Southeast Wellfield BOD/Commence West Polk BOD**

- I.1. Adopt Resolution 2023-02 to Approve the Revolving Line of Credit Loan Agreement with Wells Fargo Bank - Action Item
- I.2. Adopt Resolution 2023-04 and Approval of the State Revolving Fund (SRF) loan DW532002 for the West Polk Final Design - Action Item
- I.3. Approve the SWFWMD Cooperative Funding Agreement for the West Polk LFA Project - Action Item
- I.4. Approval to Defer the Determination of Final Points of Connection for the West Polk Project - Action Item

**J. Recess West Polk BOD/Commence Regular BOD**

**K. Open Discussion**

**L. Chair / Executive Director Report**

**M. Adjournment**

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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.



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Agenda Item E.1.

1/18/2023

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**SUBJECT**

Approval of November BOD Meeting Minutes - Action Item

**DESCRIPTION**

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

- Regular PRWC BOD meeting - November 16, 2022

**RECOMMENDATION**

Consent Agenda - Recommend approval of minutes for referenced meeting.

**FISCAL IMPACT**

No fiscal impact for this item

**CONTACT INFORMATION**

Eric DeHaven



MINUTES  
POLK REGIONAL WATER COOPERATIVE

November 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/89184130789?pwd=VG0vVC9HYVQra21ZTmt6K2NaTXI2Zz09>

Call In: +1(309)205-3325  
Meeting ID: 891 8413 0789  
Password: 188224

Member Governments in Attendance:

<u>Member Government</u>	<u>Representative</u>
City of Auburndale	Commissioner Richard Hamann, Alternate
City of Bartow	Commissioner Steve Githens, Primary
City of Davenport	Commissioner Tom Fellows, Primary
City of Dundee	In Absence, Commissioner Bert Goddard, Primary
City of Eagle Lake	In Absence, Commissioner Randy Billings, Primary
City of Fort Meade	In Absence, Commissioner James Watts, Primary
City of Frostproof	In Absence, Vice Mayor Austin Gravley, Primary
City of Haines City	Mayor Morris West, Primary
City of Lake Alfred	Vice Mayor Jack Dearmin, Primary
Town of Lake Hamilton	Mayor Mike Kehoe, Primary
City of Lake Wales	In Absence, Commissioner Daniel Williams, Primary
City of Lakeland	Mayor Bill Mutz, Primary (Vice Chair)
City of Mulberry	In Absence, Commissioner Collins Smith, Primary
City of Polk City	Mayor Joe LaCascia, Primary
City of Winter Haven	Mayor Pro-Tem Nathaniel Birdsong, Primary (Secretary/Treasurer)
Polk County	Commissioner George Lindsey, Primary (Chair)

A. Call to Order

Meeting called to order by Chair Lindsey at **2:00 PM**.



B. Recognition of new primary/alternate appointees of members

Member roll call around the table was requested by Chair Lindsey.

**Chair Lindsey** acknowledged the passing of Commissioner Billy Simpson who had served diligently representing Bartow on the council for many years. He extended sympathy to Mr. Simpson's family and added how great a loss this was to the community.

C. Agenda Revisions

No agenda revisions were presented.

D. Public Comments

No public comments were presented.

E. Consent Items

E.1. Board of Directors meeting minutes from September 21, 2022.

E.2. Auditing services engagement letter (FY2022) Brynjulfson CPA.

E.3. Polk Regional Water Cooperative Board of Directors meeting schedule 2023.

**Executive Director DeHaven** stated a conflict with the March 15, 2023 meeting was just discovered – it was Polk County Days for the legislature. The proposal was to change that meeting to March 22, 2023.

Motion to approve consent agenda made by Commissioner Githens, seconded by Mayor West. Motion was unanimously approved.

F. Regular Board of Directors Items

F.1. Update on conservation measures and proposal for a PRWC Member Funded Program (Information)

**Ann Yasalonis** (UF/IFAS) presented highlights of the PRWC Water Conservation Programs coordinated through the UF/IFAS office since July 2021. She reviewed the Water Conservation Specialist's accomplishments from July 2021 – November 2022. Areas served and those without dedicated Water Conservation Staff were also noted. The presentation concluded with recommendations for successful implementation. [slides]

**Executive Director DeHaven** thanked IFAS for all the work they did on the contract. He noted this was the contract extended until April 2023 in the prior board meeting with dollars still available. E.D. DeHaven added they were light on staff since Beth Roberson left but anyone with conservation needs could contact him or Ms. Yasalonis. He stated a proposal for a member funded conservation program would be coming. The timeline was to announce it today and work with members to

determine their interest before the March 2023 board meeting. The next step would be to determine the dollars associated with that interest and bring that to the board at the July meeting. That would coincide with the administrative budget approval process and the Board would also be asked to approve a conservation budget. A PRWC consultant completed a Demand Management Plan in 2019 which aligned with the recommendations from IFAS. He noted a couple of main items to focus on moving forward. E.D. DeHaven added that a self-funded PRWC process would largely address past issues with implementation. [slides]

**Commissioner Githens** asked E.D. DeHaven if \$156,000 was available but only \$39,000 was spent what happened to the balance of \$117,000

**Executive Director DeHaven** replied it was split 50/50. The District retained 50% (their grant not spent) and the other 50% was retained in the PRWC administrative budget. It could be used for conservation moving forward.

**Commissioner Githens** stated we effectively lost their 50% of the \$117,000

**Executive Director DeHaven** responded he was correct.

**Mayor LaCascia** questioned if the PRWC conservation results that Ms. Yasalonis had spoken on reflected those programs implemented by Lakeland and Winter Haven.

**Executive Director DeHaven** affirmed they were.

**Mayor LaCascia** added then they were reporting their program results to the PRWC.

**Executive Director DeHaven** clarified that the PRWC conservation program compiled county wide numbers through Jackie Hollister at Polk County.

**Vice Chair Mutz** commented he thought consideration should be given to making sure people were aware of this program. Even with limited staff, the internet could be utilized for social media traction. Telling people they could receive something for free to help them save money – should have them coming to our doors. If that were happening there would not be unutilized funds. He stated that thought should be taken on how to better communicate and connect with people. Also, he questioned if there was a way to make it easier for people; possibly even have them pick up when short staffed and still maintain accountability. His encouragement was to think broader, consider ways to make the process more autopilot and broaden the base of people who were aware of the program.

**Mayor LaCascia** stated regardless of communication or a great program, people would not respond until they see an increase in water rates. Then all of this would come to fruition and there will be action from everybody. It was human nature and something that would need to be worked around.

**Chair Lindsey** wholeheartedly agreed with both Mayors comments. He stated that every utility had a desire to make this happen, but right now we were a fractured system. Adding to that fracture was that two of the largest systems (Polk County and Lakeland) were not part of the Water Star Program. He suggested members contact E.D. DeHaven with any thoughts or ideas on ways to bring the pieces together for a

viable, comprehensive program. He felt Mayor Mutz's ideas on internet connections and social media were probably the most expeditious method. Then he noted that Mayor LaCascia was correct that until customers felt pain in their pocketbooks the issue would not be important to them. Adding, we still had the responsibility of making conservation an important element of meeting needs in the next decade. His concluding thought was that IFAS still needed to be the focal point – the implementation element across all utility systems.

**Executive Director DeHaven** stated he would be working with the utility directors on this item. He suggested members let their utility directors know how interested they were in participating and the level they wanted to participate.

F.2. Approval of the Heartland Headwaters Protection and Sustainability Annual Comprehensive Water Resources Report FY2023-2024 (ACTON ITEM)

**Mary Thomas** (TeamOne) stated each year a Heartland Report was submit to the legislature and the Water Management District. It hearkened back to the Heartland Act which passed in 2017. That Act placed a very high priority on the county and this area related to water resources in the state. This area being the headwaters to multiple rivers and the green swamp was viewed as having great importance to the state. The bill itself indicated the state should prioritize funding for water resource projects in the area. TeamOne prepares a report every year summarizing the water resource projects being implemented by the PRWC and individual members. Those projects then were ranked and a financial "ask" of the legislature was created. Ms. Thomas reviewed past funding provided and the process for prioritizing projects for the coming year. The process currently prioritized the Southeast and West Polk Wellfield projects, the Demand Management Program and the individual member projects associated with receiving water from the Southeast Wellfield. She reminded members that while the PRWC would be implementing a water supply program, members were obligated to build the infrastructure necessary to receive that water. Ms. Thomas then covered the projects given highest priority and their allocations. She stated that individual member projects ranking lower still benefited from participating in the Southeast and West Polk Wellfield projects. A summary table was then presented showing individual member funding should the legislature allocate funds to the Southeast and West Polk projects. Finally, she presented the Heartland Project Ranking list that would appear in the report submitted to the state. [slides]

**Chair Lindsey** asked if all the projects submitted were reviewed by the Technical Advisory Committee (TAC) and helped to produce the ranking.

**Ms. Thomas** responded yes it had been vetted by TAC.

Motion to approve the Annual Report to be presented to the state and the District made by Vice Chair Birdsong, seconded by Mayor LaCascia. Motion was unanimously approved.

Recess Regular Board of Directors Meeting / Commence Combined Projects Board of Directors Meeting at 2:31 P.M.

A. Combined Projects Board of Directors Items

G.1. Revenue Options (Information)

**Robert Beltran** (TeamOne) introduced himself and his associate Henry Thomas, who would be discussing revenue options. He stated everyone here wanted to make sure there was adequate water supply to meet future growth needs. Mr. Beltran suggested members make sure they were prepared to meet their obligations as its just around the corner. He reviewed the program goals and how AWS was more costly to produce. Mr. Beltran presented a funding plan chart [FY2023–FY2032] which showed estimated forecast numbers. He noted they were looking to defer any payments in 2023 to the end of the fiscal year (beginning of 2024) and advised members to look at 2023 and 2024 together for budgeting. He added there was still the additional administration element to be considered in their planning and budgeting. [slides]

**Henry Thomas** discussed four revenue options and showed examples for members to consider when funding costs associated with the AWS projects. Mr. Thomas also reviewed items that needed to be recovered in the rates charged to cover costs. Finally, he listed steps for members to start that process. [slides]

**Mayor LaCascia** asked Mr. Thomas if he considered capital construct costs and impact fees to be synonymous when he spoke about recovering some of the capital construction costs.

**Mr. Thomas** replied the Florida statutes on impact fees specifically exempt water and wastewater connection fees but they were akin as they both relate to the capital cost of new capacity to serve growth. He did think there was a relationship but he liked the terminology “capital connection fee” because the statute specifically excluded them. He added, there was solid legal evidence of the statute specially not addressing capital connection fees. Therefore, his clients were advised to change the name of their water and sewer impact fees to capital connection fees to align better with the state statute.

**Mayor LaCascia** asked if there was a work-around in terms of the definition and what was allowed on impact fees.

**Mr. Thomas** explained that capital connection fees were governed by almost 40 years of Florida case law and the statute largely reflected that case law. He noted that parts of the statute were very smart – like setting up a separate fund to keep fees in and only use it for those purposes. The staff that helped craft that bill shared they specifically intended to exempt the water and wastewater impact fees from the statute.

**Mayor LaCascia** stated he was concerned about the cost of money going forward. He asked if the presentation was based on the originally contemplated interest rates with WIFIA or have increases in rates been considered.

**Mr. Thomas** replied estimates were based strictly on the capital cost to be funded and paid back through principal payments. An argument could be made to including the financing costs but case law suggested a credit would be needed because not all customers would be equal. He explained a customer who came on in year one would not impose interest costs because they were paying their share today. But a customer that came on in year five should pay. Mr. Thomas stated they suggest to their clients to have an ancillary but separate charge for carrying to be applied against the cost of money. It was an attempt to make it fair between customers who buy capacity today and those whose capacity would not be used for several years. The term used for it was “accrued guaranteed revenues” or “guaranteed revenues”.

**Chair Lindsey** remarked the evolving differentiation between capital connection fees and the typical impact fees were that impact fees had to have a rational nexus for the cost to the services delivered (typically police, fire, jails, roads, schools, parks etc.). Whereas the connection fees and their exclusion as resighted in the statute were more measurable. The connection fees were more of a measured service and an enterprise fund as opposed to typical impact fees for other public services. While there was a rational nexus it was not as finitely measured, so referring to them as connection fees was the right vernacular. He then encouraged everyone that they should have already started conducting rate studies.

#### G.2. Wells Fargo Line of Credit (Information)

**Executive Director DeHaven** stated the next presentation was on the Wells Fargo line of credit (LOC) and Julie Santamaria was the PRWC financial consultant with RBC Capital. He noted she had been critical in the handling of the Wells Fargo LOC and she spoke back in July when the LOC was expanded.

**Julie Santamaria** (RBC Capital Markets) introduced herself as the Cooperatives financial advisor. She then reviewed the LOC history and explained that in January 2023 a new LOC would be requested. Based on the projected needs this revolving LOC would be appropriate for the next two years. After the two years it was anticipated the LOC would need to be increased. Ms. Santamaria stated they had reached out to both Wells Fargo and Truist regarding LOC terms. She added they recently worked with the City of Lakeland on a variable rate bank loan in which Truist and Wells Fargo had the most aggressive interest rates and best terms. Once negotiations concluded a recommendation would be presented. [slides]

**Chair Lindsey** asked Ms. Santamaria what increases in rates had she seen since this started in 2017.

**Ms. Santamaria** replied the short-term interest rates had increased significantly due to the FED’s actions. She thought the current rate was around 4.5% but would be subject to change. The RBC economists anticipated the medium-term to longer-term interest rates would be going down over the next 6-8 months. However, it was unclear if that would happen or how long the short-term rates would remain high.

**Chair Lindsey** asked if Ms. Santamaria recalled the rate in 2017.

**Ms. Santamaria** responded it was variable as well – based on the Libor rate plus she thought 80 basis points or 0.80%.

**Chair Lindsey** inquired if that would be close to 2% – 2.25%.

**Ms. Santamaria** replied probably because the base rate was so much lower. She added they did believe the spread to Libor would be lower than the 0.80% – that it would be more competitive based on what they have seen recently in the market.

**Mayor LaCascia** said with a traditional LOC lender would hypothecate a certain number of dollars to use as a draw account. He asked to clarify if Ms. Santamaria said this LOC would be a variable rate from day one.

**Ms. Santamaria** replied yes sir.

**Mayor LaCascia** remarked then that would be based upon the interest rate at the time we draw the funds.

**Ms. Santamaria** confirmed it was and based on the amount drawn.

**Chair Lindsey** asked if it was collared.

**Ms. Santamaria** replied no there was no limit. She added there may be a maximum rate under Florida law but it was a variable rate that could go up and down as the base rate fluctuated.

Recess Combined Projects Board of Directors Meeting / Commence Southeast Wellfield Board of Directors Meeting at 3:08 P.M.

#### H. Southeast Wellfield Project Board of Directors Items

##### H.1. Approve Construction Manager at Risk (CMAR) Agreement and Pre-Construction Services Addendum with Florida Water Partners, a Garney/Wharton Smith Joint Venture, for the Southeast LFA Wellfield Project. (ACTION ITEM)

**Mark Addison** (SE Wellfield PM) stated he was seeking approval for the CMAR Agreement and pre-construction services addendum with Florida Water Partners (Florida Water Partners being a joint venture between Garney Construction and Wharton Smith). Mr. Addison started by introducing the Board to the two CMAR representatives Adam Corn (Garney Construction) and Clyde Burgess (Wharton Smith). He then provided a CMAR agreement overview which included both the Southeast Wellfield and West Polk LFA Wellfield projects. There were changes to the Southeast Wellfield scope which he covered along with reviewing the West Polk project scope. Mr. Addison then provided an outline of services in the CMAR that applied to both projects. The expectation was that the value engineering (VE) recommendations during the course of design would result in cost savings for certain project elements. He then explained the Pre-Construction Services Addendum for the Southeast Wellfield project served to authorize the CMAR to proceed with pre-construction services. Mr. Addison stated the SWFWMD grant agreements for the Southeast Wellfield and SRF design loan would be used to fund pre-construction services for Southeast. He wanted to mention that based on reviews of similar

magnitude projects (with respect to cost/utility projects), a typical pre-construction CMAR fee ranged from 0.8% – 1.2% of the construction cost. The pre-construction services fee for the Southeast Wellfield project was about 1.07% of the estimated construction cost which falls within that range. Mr. Addison then provided a breakdown of pre-construction services costs for the Water Treatment Plant/Wellfield vs Transmission System based on the initial authorization. He explained the agenda item included approval of the total fee for pre-construction services with the PRWC Executive Director authorization necessary to exceed expenditures beyond the \$1,877,120. He concluded by noting that other considerations such as the CMAR's insurance for pre-construction fee services were typical for professional type services not directly related to construction. [slides]

Motion to approve the CMAR Agreement and Pre-Construction Services Addendum made by Vice Chair Mutz, seconded by Commissioner Githens. Motion was unanimously approved.

Recess Southeast Wellfield Board of Directors Meeting / Commence West Polk Board of Directors Meeting at 3:16 P.M.

A. West Polk Wellfield Project Board of Directors Items

- I.1. Approve Construction Manager at Rick (CMAR) Agreement and Pre-Construction Services Addendum with Florida Water Partners, a Garney/Wharton Smith Join Venture, for the West Polk LFA Wellfield Project. (ACTION ITEM)

Vice Chair Mutz stated this item was the same action just reviewed but applicable to the West Polk Wellfield Project.

**Executive Director DeHaven** clarified that this motion did not include pre-construction services – that would be provided to West Polk at a later date. This item was just to approve the CMAR agreement.

Motion to approve the CMAR Agreement made by Mayor Pro-Tem Birdsong, seconded by Commissioner Hamann. Motion was unanimously approved.

- I.2. Approve the TeamOne Scope of Work and Fee for Final Design, Construction Oversight and Related Services for the West Polk LFA Wellfield Project. (ACTION ITEM)

**Executive Director DeHaven** shared an overview of this item. He then added Ms. Thomas would discuss the scope and fees while Mr. Mattiacci would talk about fee review. [slide]

**Ms. Thomas** (TeamOne) explained when they were asked to write this scope they started with the Implementation Agreement as a base. That was a 2.5 MGD Phase 1 facility with the option to expand to 10 MGD or more. This scope of work covered the PRWC assets but work still needed to be done by members who were obligated

to construct the receiving facilities. She added there were elements in this scope that might not be common to ordinary design scopes because TeamOne was providing additional services that PRWC staff would handle in the future. Ms. Thomas then covered the various scope elements. [slides]

**Tom Mattiacci** (West Polk PM) reviewed traditional engineering services along with TeamOne costs and the expected portion for the PRWC after District co-funding. He also reviewed the additional TeamOne scope items not typically incorporated but were needed for this project. [slides]

**Vice Chair Mutz** asked if a joint motion was needed for TeamOne and Carollo.

**Executive Director DeHaven** replied that TeamOne and Carollo were one in the same.

**Vice Chair Mutz** asked Mr. Mattiacci if there were any components missing he thought may need to be included that would warrant additional costs.

**Mr. Mattiacci** replied he did not think anything was excluded. He commented he worked extensively with the county on the Southeast engineering scope and on putting together this engineering services scope which included things not in the Southeast scope.

Motion to approve Change Order #6 for Carollo/TeamOne and West Polk Board must authorize expenditures beyond \$10,027,057 made by Chair Lindsey, seconded by Commissioner Githens. Motion was unanimously approved.

Recess West Polk Board of Directors Meeting / Commence Regular Board of Directors Meeting at 3:28 P.M.

J. Open Discussion

No comments provided.

K. Chair / Executive Director Comments

**Executive Director DeHaven** stated he had two items to bring up. He informed members that the January 2023 meeting would be full of many financial matters. The LOC will be presented for consideration by Ms. Santamaria. The State Revolving Fund (SRF) design loan amendment will also be coming. The SRF loan amendment was important because the original design loan had guarantee agreements attached that need to be updated. The intention was to have DEP provide the final document and the new guarantee loans for the amendment. Each member would receive a copy and need to have them approved by their prospective councils and commissions. The amendment was needed for the Southeast and West Polk test production wells. E.D. DeHaven offered to discuss the item with any of the members councils or commissions. He then added there would be a SRF



loan item for the West Polk design in January. He also wanted to mention the WIFIA loan documents might be ready for approve in January but if not they would be by March.

The second item he wanted to discuss involved the Water Management District. They recently held a governing board workshop which was attended by all three large water supply authorities where they presented a long-term funding plan. The presentation indicated their funding would not be sufficient in the short-term to cover the needs of all three water supply authorities moving forward. The amounts being requested by the three water supply authorities for years 2025 – 2026 was beyond the amount the District had available in their long-term reserves. Therefore, it was suggested to their board to pay the bills in a longer-term fashion. He gave the example: if in the year 2025 the PRWC expended \$25M on construction, the District may only be capable of paying \$15M that year but would make up the deficit in future years. Their funding was in place but the schedule of their funding might need to be deferred out a further period of time. The PRWC will work with TeamOne, Mr. de la Parte and our financial consultants to look at the impact this will have and find the mechanisms available to make up the deficit. Currently, the LOC was used as a cash-flow mechanism. There was a chance money could be held longer in the LOC but that means incurring interest. There was a chance of using SRF to bridge the gap but due to limits that might not be available. Then since the Master Bond Resolution was in place a bond maybe a possibility. Many options were available but the problem needed to be defined in order for it to be managed.

**Chair Lindsey** asked Mr. de la Parte if there was any merit without eroding our relationship with the District to collectively ask them to consider our situation differently. The other two entities were both established with revenue generating mechanisms. They were already selling product and assumedly have prudently accommodated reserves. We were not in that position yet. Additionally, he asked if it would be appropriate to ask the District for a difference in their allocation formula and not treat all entities in the same fashion.

**Mr. de la Parte** responded he believed so. There really was not an opportunity for public comment at the District workshop. Many of the District's board members may not have information about the co-operative's special situation and that might influence their decision. Adding as he understood, it was only a workshop and they have not made any decision yet so there was still an opportunity to educate them.

**Chair Lindsey** stated he would like to suggest that between staff and council a letter be prepared and someone make a motion, so the District has the benefit of knowing our different situation. He then asked to have it sent to all the members.

**Mayor LaCascia** questioned if Chair Lindsey was asking for special consideration for Polk County or the PRWC.

**Chair Lindsey** replied the PRWC.

**\*\*Motion added:** Approval to draft a letter to the Water Management District expressing PRWC's concern of their deferred funding and to consider PRWC differently than the other two water supply authorities since at present PRWC was non-revenue generating.

Motion to approve letter to the Water Management District made by Vice Chair Mutz, seconded by Commissioner Fellows. Motion was unanimously approved.

**Vice Chair Mutz** asked if consideration could be given to utilizing inexpensive laptops for meetings instead of using paper going forward (based on the size of the packets). He stated it would be more effective for participants and we would pay for them with the paper savings.

**Chair Lindsey** asked staff to look into his request.

L. Adjournment

Board meeting adjourned by Chair Lindsey at 3:36 P.M.



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**SUBJECT**

Business Plan Update Process, WIFIA Loan Status, and Potential Impacts from Proposed Changes to SWFWMD Funding Structure - Information Item

**DESCRIPTION**

This item provides the process for future updates to the PRWC business plan (Plan) for the Southeast Wellfield and West Polk projects. Since 2019, the Plan evolved from an instructional description of multiple available funding sources into a plan with financial forecasts and assumptions and now reflects multiple state revolving fund (SRF) loans and legislative grants, updates to the District cost-share program, and input from WIFIA and the credit agencies. The Plan is an adaptive management tool that will evolve and be updated annually as assumptions become actual data points. The key areas that are anticipated to drive changes in the Plan include:

- Financial changes (interest rate changes, actual expenditures, or other changes in timing of funding)
- Demand allocations and future supply needs
- Additional grants and appropriations received

The Plan update process continues to be coordinated to reflect its multiple funding sources and to project future member payments. As an example of the changes that are occurring, the WIFIA loan application continues to be on-schedule for closing in March, however, WIFIA has recently requested that the financial pro forma model utilize current interest rates. Previously, the financial model assumed a 2.25% interest rate. The model will now assume an interest rate of 4.2%, which includes the current treasury rate of 3.7% plus the WIFIA recommended 50- basis point spread (bps) buffer.

The changes to the SWFWMD funding structure include a three-year extension to the current payment schedule. This extension results in additional expenses of approximately \$15.2 million dollars to the PRWC and its members. In a letter dated December 5, 2022, the PRWC suggested alternative approaches to the SWFWMD to reduce this cost increase. Items suggested for the agencies' consideration included:

1. Compress the reimbursement schedule
2. Allow cooperators to utilize grant funds
3. Agency assist PRWC to obtain Heartland funds
4. Allow modifications to the construction schedule

The Plan is an adaptive management tool that is driven by key project and funding milestones. The Plan will continue to evolve and be updated annually.

RECOMMENDATION

This is an information item, and no action is required.

FISCAL IMPACT

No fiscal impact.

CONTACT INFORMATION

Robert Beltran  
Murray Hamilton



December 5, 2022

**Via Email and U.S. Mail**

**[Joel.Schleicher@watermattersboard.org](mailto:Joel.Schleicher@watermattersboard.org)**

George Lindsey, Chair  
Polk County

Bill Mutz, Vice Chair  
City of Lakeland

Nathaniel Birdsong, Jr.  
City of Winter Haven

Keith Cowie  
City of Auburndale

Steve Githens  
City of Bartow

Tom Fellows  
City of Davenport

Bert Goddard  
Town of Dundee

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 LaCasia  
City of Polk City

Joel Schleicher, Chair  
Governing Board  
Southwest Florida Water Management District  
2379 Broad Street  
Brooksville, FL 34604

**Re: Cooperative Funding Initiative Policy Changes**

Dear Mr. Schleicher,

This letter is intended to provide information and suggestions to the Southwest Florida Water Management District (SWFWMD) Governing Board as it considers changes to its Cooperative Funding Initiative (CFI) policy. As you know, the Polk Regional Water Cooperative (PRWC) was created by Polk County and its 15 municipal governments a mere 6 years ago in 2016 to develop alternative water supply (AWS) sources for their citizens. This makes the PRWC the new kid on the block, since the other three regional water supply authorities were created in the 1970's and the early 1980's.

I understand the SWFWMD Governing Board held a workshop on November 15, 2022 to address changes to its CFI policy. One of the changes being considered by the Governing Board is extending the reimbursement schedule for the committed projects. In the case of the PRWC that would extend the payment schedule for its committed projects by 3 years. Under the original reimbursement schedule, SWFWMD funds would be available during construction from FY2024 through FY2027. Under the new schedule SWFWMD funds would be available from FY2024 through FY2030. This new schedule will result in additional expenses of approximately \$15.2 M to the PRWC and its members. Because the PRWC was only recently created, it does not have a functioning water system and does not currently sell water to its members. This is different from the other three regional authorities, which have had functioning water systems for at least 30 years with the opportunity to adjust water rates and accumulate reserves. Since the PRWC does not have a functioning water system it has no reserves or ability to adjust rates to make up for the funding schedule change. Ultimately, this schedule change will cause a greater financial impact to the PRWC customers in comparison to the water customers of the other two regional water supply authorities. As such we respectfully request you reconsider this "one size fits all" funding approach. Please see attached Exhibit "A" which offers in detail long range funding alternatives.

330 W. Church Street  
Drawer CA01  
Bartow, FL 33830

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

Thank you for your favorable consideration and the opportunity for more conversation with you.

Sincerely,



George Lindsey, Chair  
Board of Directors  
Polk Regional Water Cooperative

cc: SWFWMD Governing Board  
PRWC Board of Directors  
Brian Armstrong, Executive Director  
Eric DeHaven, Executive Director  
Jeanette M. Seachrist, Resource Management Director

## **EXHIBIT A PRWC INFORMATION AND SUGGESTIONS REGARDING CFI POLICY CHANGES**

### **Options for SWFWMD's Consideration**

Given the unique challenges faced by the PRWC in contrast to the other regional water authorities, here are options that would more equitably address the fiscal impact of this policy change on the PRWC's customers:

1. **Compress the Reimbursement Schedule for the PRWC's Projects.** Under this option, the PRWC would proceed with its current construction schedule that has the committed AWS projects completed by 2028. However, instead of extending its reimbursement schedule by 3 years to 2030, SWFWMD would reduce the extension.
2. **Allow Cooperators such as the PRWC to Use Grant Funds Received by the Cooperator to Cover Increased Project Costs.** Under SWFWMD's current CFI Policy, grant funds received by a cooperator are used to proportionally reduce each party's share. SWFWMD staff has recommended modifying this policy to allow cooperators to use these grant funds to cover increased project costs until the shares are equal. The PRWC would instead urge the Governing Board to modify the policy to allow the cooperator to apply 100% of the grant funds to reducing the cooperator's share of the project cost.
3. **Allow Cooperators such as the PRWC to Use Grant Funds Received by SWFWMD to Cover Increased Project Costs.** Under SWFWMD's current CFI policy, grant funds received by SWFWMD are used to equally reduce each party's share. SWFWMD staff has discussed continuing this policy to reduce each party's share proportionately but has floated the idea of allowing the cooperator to use the grant funds for cost increases until the shares are equal. The PRWC would recommend modifying the policy to allow the cooperator to apply 100% of the grant funds received by SWFWMD to reduce the cooperator's share of the project costs until the parties' shares are equal. Finally, the PRWC would recommend applying this policy retroactively to the grant funding received by the SWFWMD on the PRWC's behalf for FY 2023. This would allow the PRWC to use the entire \$11.7M in AWS funding to reduce its share of the project costs.
4. **Assist the PRWC in Obtaining Heartland Headwater Funds.** Under Section 373.463, Florida Statutes, the PRWC is obligated to prepare an annual report to the Florida Legislature identifying projects for state funding consideration. The PRWC has been successful in the past few years in obtaining state funds under this program for PRWC and member projects. The PRWC would ask the Governing Board to consider having SWFWMD take a more active role in assisting the PRWC in obtaining those funds.

5. **Allow the PRWC to Change the Construction Schedule to Manage Cash Flow.**<sup>1</sup> As previously mentioned, the Cooperative Funding Agreements entered in by the PRWC and SWFWMD require completion of the committed AWS projects by 2028. This schedule is intended to reduce impacts from Upper Floridan aquifer withdrawals. One obvious strategy for minimizing the impact of SWFWMD's new reimbursement schedule would be to extend the completion date for the projects to 2030. This way the PRWC's construction cash flow would be in sync with SWFWMD's new reimbursement schedule. However, the extension of the completion date would mean that a number of the PRWC's members would have to withdraw groundwater in excess of their 2025 demonstrated demand for an additional three years. For example, Haines City's demonstrated 2025 demand is approximately 6 mgd and its 2030 projected demand is 8.5 mgd. If the construction schedule is extended to 2030, Haines City would need a gap permit authorizing withdrawals of about 2.5 mgd above its demonstrated 2025 demand. Similar gap permits would be needed for a number of the PRWC's other members, if the construction of the committed AWS projects were delayed.

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<sup>1</sup> Please note this option would need to be approved by the PRWC Board of Directors and the recently executed CMAR agreement would need to be modified.





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Agenda Item G.1.

1/18/2023

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## SUBJECT

Adopt Resolution 2023-01 and Approval of an Amendment to Existing State Revolving Fund (SRF) Planning Loan DW532000 - Action Item

## DESCRIPTION

This item reflects an increase to the PRWC existing planning loan from \$9,914,390 to \$13,624,440. This funding source now includes planning expenses such as test production wells #2 and #3. Attached for reference, is the resolution to approve the amendment to the existing SRF planning loan.

For the communities participating in the State Revolving Fund to fund test production wells #2 and #3, the FDEP is requiring revised Guaranty Agreements. These Guaranty Agreements will need to be executed by the participating community.

## RECOMMENDATION

Adopt Resolution 2023-01 to approve existing SRF planning loan amendment

## FISCAL IMPACT

The SRF Loan will increase by \$3,710,050.

## CONTACT INFORMATION

Tom Mattiacci

## POLK REGIONAL WATER COOPERATIVE

### Resolution 2023-01

**A RESOLUTION OF THE POLK REGIONAL COOPERATIVE, AN INDEPENDENT SPECIAL DISTRICT OF THE STATE OF FLORIDA, RELATING TO THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION DRINKING WATER STATE REVOLVING FUND LOAN PROGRAM; MAKING FINDINGS; AUTHORIZING AN AMENDMENT TO PLANNING LOAN AGREEMENT DW532000 TO INCREASE THE LOAN AMOUNT TO \$13,624,440.00 (EXCLUDING CAPITALIZED INTEREST) AND TO MAKE CERTAIN OTHER TECHNICAL AMENDMENTS; APPROVING THE FORM OF AMENDMENT 1 TO THE LOAN AGREEMENT; DESIGNATING AUTHORIZED REPRESENTATIVES; DELEGATING CERTAIN MATTERS TO THE CHAIRMAN OR THE VICE CHAIRMAN; PROVIDING FOR CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE**

The Board of Directors of the Polk Regional Water Cooperative (“Cooperative”), created pursuant to Section 373.713, Florida Statutes, and an Interlocal Agreement pursuant to Section 163.01, Florida Statutes, in lawful session and in regular order of business properly presented, finds that:

**WHEREAS**, Florida Statutes provide for the State of Florida Department of Environmental Protection (“Department”) Drinking Water State Revolving Fund (“State Revolving Fund”) to make loans to local government agencies to finance the construction of drinking water facilities; and

**WHEREAS**, the Florida Administrative Code requires authorization to apply for loans, to establish pledged revenues, to designate an authorized representative, to provide assurances of compliance with the loan program requirements, and to enter into a loan agreement; and

**WHEREAS**, in 2018 the Cooperative applied for and obtained a Loan from the State Revolving Fund (the “Loan”) in the amount of \$9,914,390.00 for funding planning or administrative work necessary for the Cooperative to qualify for State Revolving Fund financing for construction of drinking water facilities; and

**WHEREAS**, on or about August 3, 2018, the Cooperative and the Department entered into Planning Loan Agreement DW532000 authorizing the Loan (the “Loan Agreement”); and

**WHEREAS**, Cooperative staff applied to the Department to increase the amount of the Loan from \$9,914,390.00 to \$13,624,440, which includes funding for the construction of test production wells and to reimburse the City of Bartow, who originally decided to self-fund its share of the Project; and

**WHEREAS**, on or about July 13, 2022, the Cooperative Board of Directors adopted a Water Revenue Bond Resolution No. 2022-05 (the “Master Bond Resolution”) to provide for the issuance of water revenue bonds secured by certain “Pledged Revenues” (as defined therein) to finance and refinance the Cooperative’s water projects; and

**WHEREAS**, the Department has agreed to amend the Loan Agreement to (a) increase the amount of the Loan to \$13,624,440.00, (b) add technical provisions and approvals necessary to coordinate with the Master Bond Resolution which will secure the Loan as an Additional Bond on parity with other Bonds (as defined in the Master Bond Resolution) issued thereunder, and (c) remove the Department’s remedy of acceleration upon an event of default under the Master Bond Resolution; and

**WHEREAS**, the Loan will be secured as an Additional Bond under the Master Bond Resolution; and

**WHEREAS**, the Cooperative intends to enter into Amendment 1 to the Loan Agreement in substantially the form attached hereto as Exhibit “A” (the “Loan Agreement Amendment No. 1”) for financing the planning related activities associated with the Project.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE POLK REGIONAL WATER COOPERATIVE AS FOLLOWS:**

**Section 1.** The foregoing findings are incorporated herein by reference and made a part hereof.

**Section 2.** The Cooperative is authorized to apply for an amendment to the Loan to increase the amount to \$13,624,440.00 (the “Amended Loan”).

**Section 3.** The Cooperative is authorized to pledge for the repayment of the Amended Loan, and hereby reaffirms the pledge of, the “Pledged Revenues” as defined in the Master Bond Resolution on a parity with Bonds (as defined in the Master Bond Resolution) issued thereunder in accordance with the thereof. Such Pledged Revenues include the payments that the Combined Project Participants are obligated to make to the Cooperative under Sections 8 of the Combined Projects Implementation Agreement, as amended from time to time (“Implementation Agreement”). The Amended Loan will constitute a Series of Bonds (such capitalized terms are defined in the Master Bond Resolution) issued under the Master Bond Resolution, entitled to all the security and benefits thereof.

**Section 4.** Each of the Chairman and the Vice-Chairman, acting individually, is hereby designated as an authorized representative and signatory of the Cooperative (each an “Authorized Signatory”) to provide the assurances and commitments required by the Amended Loan.

**Section 5.** The Cooperative is authorized to execute Loan Agreement Amendment No. 1 with the State Revolving Fund in substantially the form attached hereto as Exhibit "A. The form

and terms of Loan Agreement Amendment No. 1 attached hereto and any related documents (collectively, the "Amended Loan Documents") are hereby approved, and the Authorized Signatories are authorized to execute and deliver the same, with such changes, insertions, omissions and filling of blanks as may be approved by the Authorized Signatory executing the same, such approval to be conclusively evidenced by the execution thereof by such Authorized Signatory, and there is hereby delegated to the Authorized Signatories the authority to establish the principal amount of the Amended Loan in an amount not to exceed \$13,624,440.00, execution of the Loan Agreement Amendment No. 1 to constitute conclusive evidence of the establishment of such amount. The Authorized Signatories are hereby authorized to execute and deliver on behalf of the Cooperative the Amended Loan Documents as provided hereby and the Secretary is hereby authorized to attest any such signatures on any such documents and to affix the Cooperative's seal thereto to the extent required by such documents. All officials and employees of the Cooperative, including, without limitation, the Authorized Signatories, are authorized and empowered, collectively or individually, to take all other actions and steps and to execute all instruments, documents, and contracts on behalf of the Cooperative as they shall deem necessary or desirable in connection with the Amended Loan and the carrying out of the intention of this Resolution, including, without limitation, paying costs related hereto. The Chairman is authorized to delegate responsibility to appropriate Cooperative staff to carry out technical, financial, and administrative activities associated with the Loan Agreement Amendment No. 1.

**Section 6.** The Loan will not be secured by the Composite Reserve Account or by any special account in the Reserve Fund. The Amended Loan will not be entered into unless the Cooperative complies with the requirements of Section 12.02 of the Bond Resolution or the holders of the outstanding Bonds waive such requirements.

**Section 7.** The legal authority to incur debt, liabilities or obligations, as necessary to construct this Project consists of Article VIII, Section 1 and 2, Constitution of the State of Florida, Sections 163.01(7) and 373.713(2), Florida Statutes (2022), Section 2.04 of the Interlocal Agreement Relating to the Establishment of the Polk Regional Water Cooperative and Section 8 of the Implementation Agreement.

**Section 8.** All resolutions or part of resolutions in conflict with any of this Resolution are hereby repealed. All prior actions of officials and employees of the Cooperative, including, without limitation, the Authorized Signatories, with respect to the Amended Loan are hereby ratified, confirmed and approved.

**Section 9.** If a section or portion of a section of this Resolution proves to be invalid, unlawful or unconstitutional, it shall not be held to invalidate or impair the validity, force or effect of any other section or part of this Resolution.

**Section 10.** The Resolution shall become effective immediately upon its passage and adoption.

DONE at Auburndale, Florida this 18<sup>th</sup> day of January, 2023

Board of Directors of the Polk Regional Water Cooperative:

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Executive Director

Approved as to Form:

\_\_\_\_\_  
Edward P. de la Parte  
Legal Counsel

# EXHIBIT A

## STATE REVOLVING FUND AMENDMENT 1 TO LOAN AGREEMENT DW532000 POLK REGIONAL WATER COOPERATIVE

This amendment is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and the POLK REGIONAL WATER COOPERATIVE (Project Sponsor) existing as an independent special district created pursuant to Chapter 189 Florida Statutes, Section 373.1962, Florida Statutes, and the Interlocal Agreement creating the Polk Regional Water Cooperative (“Interlocal Agreement”) entered into on June 1, 2016 pursuant to Chapter 163.01, Florida Statutes. Collectively, the Department and the Project Sponsor shall be referred to as “Parties” or individually as “Party”.

The Department and the Project Sponsor entered into a Drinking Water State Revolving Fund Loan Agreement, Number DW532000, authorizing a Loan amount of \$9,914,390, excluding Capitalized Interest; and

The Project Sponsor is entitled to additional financing in the amount of \$3,710,050 excluding Capitalized Interest; and

Loan repayment activities need rescheduling to give the Project Sponsor additional time to complete planning activities; and

Certain provisions of the Agreement need revision.

The Parties hereto agree as follows:

1. Section 1.01 of the Agreement is amended to include the following definition:

“Final Unilateral Amendment” shall mean the Loan Agreement unilaterally finalized by the Department after Loan Agreement and Project abandonment under Section 8.06 that establishes the final amortization schedule for the Loan.

“Master Bond Resolution” shall mean the Polk Regional Water Cooperative Resolution No. 2022-05 providing for the issuance of water revenue bonds, additional bonds, and payment of such bonds, as well as guarantee of repayment of this loan, from revenues as specified within the resolution.

2. Subsection 1.01. (19) of the Agreement is deleted and replaced as follows:

(19) “Pledged Revenues” shall mean the specific revenues pledged as security for repayment of the Loan and shall be the Project Sponsor’s Net Revenues allocable to the Debt Service Cost under the Implementation Agreement; provided, however, that upon adoption of the Project Sponsor’s master bond resolution, “Pledged Revenues” shall have the meaning set forth in the master bond resolution.

3. Subsection 2.03(1) of the Agreement is deleted and replaced as follows:

(1) The financial assistance authorized pursuant to this Loan Agreement consists of the following:

State Resources Awarded to the Project Sponsor Pursuant to this Agreement Consist of the Following:					
State Program Number	Funding Source	CSFA Number	CSFA Title or Fund Source Description	Funding Amount	State Appropriation Category
Original Agreement	Drinking Water Revolving Loan TF	37.076	Drinking Water Facility Construction	\$13,624,440	140129

3. Section 3.01 of the Agreement is deleted and replaced as follows:

3.01. LOAN DEBT SERVICE ACCOUNT.

(1) General Provisions. The Project Sponsor shall establish a Loan Debt Service Account with a Depository for the purposes set forth in this section. Moneys in the Loan Debt Service Account shall be kept separate and apart from all other funds and accounts of the Project Sponsor. All such funds shall be and constitute trust funds for such purposes, and there is hereby created a lien upon such funds in favor of the Department, such other pari-passu liens approved in writing by the Department, and so long as the Project Sponsor has not adopted a master bond resolution, the holders of bonds and other parity obligations of the Project Sponsor, until such funds are applied as herein provided. Any funds on deposit in the Loan Debt Service Account that, in the opinion of the Project Sponsor, are not immediately necessary for expenditure, as herein provided, may be invested and reinvested in investments that are lawfully permitted and that shall mature or be redeemable at not less than par on or before the dates on which such funds are estimated to be needed. All income derived from investment of funds in the Loan Debt Service Account shall be deposited therein and shall be used to as provided herein. Moneys in the Loan Debt Service Account shall be secured at all times in the manner prescribed by the laws of the State relating to the securing of public funds and as may be provided by resolution of the Project Sponsor. The Semiannual Loan Payments are described in Section 10 hereof.

(1) RESERVED.

(3) Deposits Pursuant to the Master Bond Resolution. All Gross Revenues received by the Project Sponsor from Participants, including Debt Service Costs, shall be deposited as provided in such master bond resolution, and the Project Sponsor shall only deposit the Monthly Loan Deposits into the Loan Debt Service Account. In such event, beginning six months prior to each Semiannual Loan Payment, the Project Sponsor shall make six Monthly Loan Deposits. The first five deposits each shall be at least equal to one-sixth of the Semiannual Loan Payment. The sixth Monthly Loan Deposit shall be at least equal to the amount required to make the total on deposit in the Loan Debt Service Account equal to the Semiannual Loan Payment amount, taking into consideration investment earnings credited to the account pursuant to Section 3.02.

Any month in which the Project Sponsor fails to make a required Monthly Loan Deposit,

the Project Sponsor's Authorized Representative shall notify the Department of such failure. In addition, the Project Sponsor agrees to budget, by amendment if necessary, payment to the Department from other legally available non-ad valorem funds all sums becoming due before the same become delinquent. This requirement shall not be construed to give superiority to the Department's claim on any revenues over prior claims of general creditors of the Project Sponsor, nor shall it be construed to give the Department the power to require the Project Sponsor to levy and collect any revenues other than Pledged Revenues. All Gross Revenues received by the Project Sponsor from Participants, including Debt Service Costs, shall be deposited as provided in Master Bond Resolution, and the Project Sponsor shall only deposit the Monthly Loan Deposits into the Loan Debt Service Account.

4. Section 6.02 of the Agreement is deleted and replaced as follows:

All rights, remedies, and powers conferred in this Agreement and the transaction documents are cumulative and are not exclusive of any other rights or remedies, and they shall be in addition to every other right, power, and remedy that Department may have, whether specifically granted in this Agreement or any other transaction document, or existing at law, in equity, or by statute. Any and all such rights and remedies may be exercised from time to time and as often and in such order as Department may deem expedient. Upon any of the Events of Default and subject to the rights of others having prior liens on the Pledged Revenues, the Department may enforce its rights by, inter alia, any of the following remedies:

(1) By mandamus or other proceeding at law or in equity, cause to establish rates and collect fees and charges for use of the Utility System, and to require the Project Sponsor to fulfill this Agreement.

(2) By action or suit in equity, require the Project Sponsor to account for all moneys received from the Department or from the ownership of the Utility System and to account for the receipt, use, application, or disposition of the Pledged Revenues.

(3) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the Department.

(4) By applying to a court of competent jurisdiction, cause to appoint a receiver to manage the Utility System, establish and collect fees and charges and apply the revenues as provided herein.

(5) By certifying to the Auditor General and the Chief Financial Officer delinquency on loan repayments, the Department may intercept the delinquent amount plus six percent, expressed as an annual interest rate, penalty of the amount due to the Department from any unobligated funds due to the Project Sponsor under any revenue or tax sharing fund established by the State, except as otherwise provided by the State Constitution or State law. Penalty interest shall accrue on any amount due and payable beginning on the 30th day following the date upon which payment is due.

(6) By notifying financial market credit rating agencies and potential creditors.



(7) By suing for payment of amounts due with interest on overdue payments together with all costs of collection, including attorneys' fees.

(8) By increasing the interest rate on the unpaid principal of the Loan to as much as 1.667 times the Loan interest rate for a default under Subsection 6.01(1).

(9) Make demand upon Guarantors' for amounts due up to the guaranteed amount specified in their guaranty agreement.

5. Section 7.02 of the Agreement is deleted and replaced as follows:

The Project Sponsor may issue additional debt obligations on a parity with, or senior to, the lien of the Department on the Pledged Revenues provided the Department's written consent is obtained. Such consent may be granted if the Project Sponsor demonstrates at the time of such issuance that the Pledged Revenues, which may take into account reasonable projections of growth of the Water System and revenue increases, plus revenues to be pledged to the additional proposed debt obligations will, during the period of time Semiannual Loan Payments are to be made under this Agreement, equal or exceed the annual combined debt service requirements of this Agreement and the obligations proposed to be issued by the Project Sponsor and will satisfy the coverage requirements of all other debt obligations secured by the Pledged Revenues.

6. Section 8.01 of the Agreement is deleted and replaced as follows:

The Department consents to the issuance of this Loan as a senior lien obligation pursuant to Section 7.02 of the Drinking Water State Revolving Fund Design Loan Agreement DW532001 dated August 9, 2022 (the "SE Wellfield Agreement") between the Department and the Project Sponsor. The Department and the Project Sponsor agree that the Loan hereunder shall be an Additional Bond under the Master Bond Resolution. The Department, in connection with the issuance of the Loan hereunder and as the sole holder of all obligations outstanding under the Master Bond Resolution, agrees to waive the requirements under Section 12.02 of the Master Bond Resolution for the issuance of Additional Bonds. The parties agree that the loan under the SE Wellfield Agreement is also an Additional Bond under the Master Bond Resolution.

All Semiannual Loan payments required to be made under this Agreement shall be cumulative and any deficiencies in any Fiscal Year shall be added to the payments due in the succeeding year and all years thereafter until fully paid. Payments shall continue to be secured by this Agreement until all of the payments required shall be fully paid to the Department. If at any time the Project Sponsor shall have paid, or shall have made provision for the timely payment of, the entire principal amount of the Loan and interest, the pledge of, and lien on, the Pledged Revenues to the Department shall be no longer in effect. Deposit of sufficient cash, securities, or investments, authorized by law, from time to time, may be made to effect defeasance of this Loan. However, the deposit shall be made in irrevocable trust with a banking institution or trust company for the sole benefit of the Department. There shall be no penalty imposed by the Department for early retirement of this Loan.

7. Section 8.06 of the Agreement is deleted and replaced as follows:

## 8.06. ABANDONMENT, TERMINATION OR VOLUNTARY CANCELLATION.

Failure of the Project Sponsor to actively prosecute or avail itself of this Loan (including e.g. described in para 1 and 2 below) shall constitute its abrogation and abandonment of the rights hereunder, and the Department may then, upon written notification to the Project Sponsor, suspend or terminate this Agreement.

(1) Failure of the Project Sponsor to draw Loan proceeds within eighteen months after the effective date of this Agreement, or by the date set in Section 10.07(3) to establish the Loan Debt Service Account, whichever date occurs first.

(2) Failure of the Project Sponsor, after the initial Loan draw, to draw any funds under the Loan Agreement for twenty-four months, without approved justification or demonstrable progress on the Project.

Upon a determination of abandonment by the Department, the Loan will be suspended, and the Department will implement administrative close out procedures (in lieu of those in Section 4.05) and provide written notification of Final Unilateral Amendment to the Project Sponsor.

In the event that following the execution of this Agreement, the Project Sponsor decides not to proceed with this Loan, this Agreement can be cancelled by the Project Sponsor, without penalty, if no funds have been disbursed.

8. Additional financing in the amount of \$3,710,050, excluding Capitalized Interest, is hereby awarded to the Project Sponsor.

9. An interest rate of 1.89 percent per annum is established for the additional financing amount awarded in this amendment.

10. The estimated principal amount of the Loan is hereby revised to \$14,248,640, which consists of \$13,624,440 authorized for disbursement to the Project Sponsor and \$624,200 of Capitalized Interest.

11. An additional Loan Service Fee in the amount of \$74,201, for a total of \$272,489, is hereby estimated. The fee represents two percent of the Loan amount excluding Capitalized Interest; that is, two percent of \$13,624,440.

12. The Semiannual Loan Payment amount is hereby revised and shall be in the amount of \$800,244. Such payments shall be received by the Department on February 15, 2025, and semiannually thereafter on August 15 and February 15 of each year until all amounts due hereunder have been fully paid. Until this Agreement is further amended, each Semiannual Loan Payment will be proportionally applied, after deduction of the Loan Service Fee is complete, toward repayment of the amounts owed on each incremental Loan amount at the date such payment is due.

The Semiannual Loan Payment amount is based on the total amount owed of \$14,521,129, which consists of the Loan principal plus the estimated Loan Service Fee.

13. The Project Sponsor and the Department acknowledge that the actual cost of the Project has not been determined. Project cost adjustments may be made as a result of mutually agreed upon Project changes. Capitalized Interest will be recalculated based on actual dates and amounts of Loan disbursements. If the Project Sponsor receives other governmental financial assistance for this Project, the costs funded by such other governmental assistance will not be financed by this Loan. The Department shall establish the final Project costs after its final inspection of the Project records. Changes in Project costs may also occur as a result of an audit.

The estimated Project costs are revised as follows:

CATEGORY	PROJECT COSTS (\$)
Planning (Disbursable Amount)	13,624,440
Capitalized Interest	624,200
TOTAL (Loan Principal Amount)	14,248,640

14. The items scheduled under Section 10.07 of the Agreement are rescheduled as follows:

(2) Completion of all Planning Activities for all Project facilities proposed for loan funding no later than August 15, 2024.

(3) Unless deferred by amendment, establish the Loan Debt Service Account and begin Monthly Loan Deposits no later than August 15, 2024.

(4) The first Semiannual Loan Payment in the amount of \$800,244 shall be due February 15, 2025.

15. Section 10.08. is deleted and replaced as follows:

10.08. SPECIAL CONDITION.

(1) Prior to this Amendment being executed, the Project Sponsor shall submit a Legal Opinion addressing the availability of Pledged Revenues, the right to increase rates, and subordination of the pledge.

(2) This Loan is on parity with the Wells Fargo Bank, National Association, line of credit dated November 1, 2017, amended and restated on May 16, 2022, in an amount not to exceed \$5,000,000, to be used for allowable project costs.

16. All other terms and provisions of the Loan Agreement shall remain in effect.

This Amendment 1 to Loan Agreement DW532000 may be executed in two or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

IN WITNESS WHEREOF, the Department has caused this amendment to the Loan Agreement to be executed on its behalf by the Secretary or Designee and the Project Sponsor has caused this amendment to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this amendment shall be as set forth below by the Department.

for  
**POLK REGIONAL WATER COOPERATIVE**

\_\_\_\_\_  
Chairman

Attest:

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Attorney

SEAL

for  
**STATE OF FLORIDA**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

\_\_\_\_\_  
Secretary or Designee

\_\_\_\_\_  
Date



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**SUBJECT**

Adopt Resolution 2023-02 to Approve the Revolving Line of Credit Loan Agreement with Wells Fargo Bank - Action Item

**DESCRIPTION**

On October 18, 2017, the PRWC approved Resolution 17-03 authorizing a loan agreement with Wells Fargo Bank, National Association ("Wells") to provide a line of credit ("LOC") in a principal amount not to exceed \$6,000,000 for cash flow purposes, to bridge the gap on project invoice disbursement and receiving reimbursements. The LOC was subsequently modified to, among other things, reduce the commitment amount to \$5.0 million to more closely reflect project needs. The current LOC matures on May 16, 2023.

In advance of the LOC expiring, PRWC and its Financial Advisor requested term sheets from Wells and Truist Bank to replace the existing LOC with a two-year revolving line of credit (the "2023 LOC") in an aggregate principal amount not to be outstanding at any time in excess of \$15,000,000. Wells Fargo was determined to have the lowest cost and is recommended as the provider of the 2023 LOC pursuant to the terms of a Loan Agreement between the PRWC and Wells (the "2023 Loan Agreement"). The 2023 Loan Agreement will be issued under the master bond Resolution No. 2022-05 adopted by the PRWC on July 13, 2022. Draws upon the 2023 LOC will be evidenced by two notes (each a "Note" and collectively, the "Notes") and draws can be made either on a tax-exempt or taxable basis up to an aggregate principal amount outstanding of not to exceed \$15,000,000. The Notes will mature two years from their date of issuance and the interest rate applicable to each Note is based upon a variable rate of interest calculated utilizing the secured overnight financing rate plus a spread. There will be an unused fee of 0.35% for the amounts committed but not drawn under the 2023 LOC, which rate will reduce to 0.30% when the balance on the line exceeds 50% of the commitment amount.

**RECOMMENDATION**

Staff recommends approval of the resolution authorizing the 2023 LOC, as described above.

**FISCAL IMPACT**

The fiscal impacts of the 2023 Loan Agreement and the 2023 LOC are unable to be determined at this time due to the flexibility of the timing and amounts of future draws on the 2023 LOC and the variable interest rate.

CONTACT INFORMATION

Julie Santamaria

RESOLUTION NO. 2023-02

A RESOLUTION OF THE POLK REGIONAL WATER COOPERATIVE AUTHORIZING A REVOLVING LOAN IN THE PRINCIPAL AMOUNT AT ANY ONE TIME NOT EXCEEDING \$15,000,000 AND PROVIDING FOR THE ISSUANCE OF ITS REVOLVING REVENUE NOTE, SERIES 2023A AND REVOLVING REVENUE NOTE, SERIES 2023B (FEDERALLY TAXABLE) TO EVIDENCE SUCH LOAN TO FINANCE THE COSTS OF THE PROJECTS AND PAY COSTS OF ISSUANCE; APPROVING THE FORM OF A LOAN AGREEMENT, REVOLVING REVENUE NOTE, SERIES 2023A AND REVOLVING REVENUE NOTE, SERIES 2023B (FEDERALLY TAXABLE) TO BE ISSUED THEREUNDER; AUTHORIZING THE AWARD OF THE SALE OF SAID NOTES ON A NEGOTIATED BASIS TO WELLS FARGO BANK, NATIONAL ASSOCIATION; PROVIDING OTHER DETAILS WITH RESPECT THERETO; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE POLK REGIONAL WATER COOPERATIVE (the "Issuer") that:

**Section 1.** Authority for this Resolution. This Resolution is adopted pursuant to Section 163.01 and Chapter 189, Florida Statutes, the Interlocal Agreement, the Constitution of the State and other applicable provisions of law (collectively, the "Act") and the Bond Resolution, as hereinafter defined.

**Section 2.** Findings. The Issuer hereby finds as follows:

A. The Issuer was established as separate legal entity, public agency and unit of special purpose local government pursuant to Section 173.01(7)(g), Florida Statutes, and a regional water supply authority pursuant to Section 373.713, Florida Statutes, by its members pursuant to the Interlocal Agreement to provide for the planning, acquisition, development, management, operation, improvement and maintenance of Projects and the System.

B. The Issuer is authorized under the Act and the Bond Resolution to issue the Series 2023 Notes to finance a portion of the costs of development, acquisition and construction of the Projects and to pay issuance costs.

C. The Board, based on the advice of RBC Capital Markets, LLC, financial advisor to the Issuer (the "Financial Advisor"), has determined that it is financially advantageous to the Issuer to finance a portion of the costs of the Projects (including through reimbursement) through the issuance of the Issuer's Series 2023 Notes, payable from and secured by a lien upon the Pledged Revenues under the Bond Resolution.

D. The Pledged Revenues are anticipated to be sufficient to timely pay the principal of and interest on the Series 2023 Notes as the same shall become due.

E. Because of prevailing and anticipated market conditions and the nature of the Loan, and taking into account the advice of the Financial Advisor, it is not feasible, cost effective or advantageous to sell the Series 2023 Notes and enter into the hereinafter described Loan Agreement through a competitive sale and it is in the best interest of the Issuer to accept the terms of the Loan from the Purchaser in a principal amount outstanding at any time not to exceed the Loan Amount, at a negotiated sale upon the terms and conditions outlined herein and in the Loan Agreement and as determined by the Authorized Signatory executing the Loan Agreement on behalf of the Issuer in accordance with the terms hereof;

F. Prior to the sale of the Series 2023 Notes, there shall be delivered to the Issuer a disclosure statement containing the information required by Section 218.385(6), Florida Statutes, and a Truth-in-Bonding Statement pursuant to Section 218.385(2), Florida Statutes, in order for the Series 2023 Notes to be issued pursuant to this Resolution and the Bond Resolution. No further disclosure is required by the Issuer.

G. The Series 2023A Note shall be issued as a Tax-Exempt Bond, the interest on which shall be excludable from gross income under the applicable provisions of the Internal Revenue Code and the Series 2023B Note shall be issued as a Taxable Bond, the interest on which shall not be excludable from gross income under the applicable provisions of the Internal Revenue Code.

H. The Series 2023 Notes will not be issued unless the applicable requirements of the Bond Resolution are satisfied. Upon issuance in accordance with the terms hereof and of the Loan Agreement, the Series 2023 Notes will constitute a Series of Bonds issued under the Bond Resolution, as supplemented hereby, entitled to all the security and benefits thereof. The Series 2023 Notes are further determined to be Designated Maturity Bonds and shall be issued as a Full Draw LOC under the Bond Resolution.

**Section 3. Definitions.** Words and phrases used herein in capitalized form and not otherwise defined herein (including, without limitation, in the preamble hereto) shall have the meanings ascribed thereto in the Bond Resolution or, if not defined therein, in the Loan Agreement (as each is hereinafter defined) and, in addition, the following words and phrases shall have the following meanings:

"Authorized Signatories" means any one or more of the Chairman or the Vice Chairman of the Issuer.

"Bond Resolution" means Resolution No. 2022-05 duly adopted by the Board of Directors of the Issuer on July 13, 2022, as amended and supplemented.

"Business Day" means a day other than (i) a Saturday, Sunday, legal holiday or day on which banking institutions in Polk County, Florida are authorized or required by law or executive order to close, or (ii) a day on which the New York Stock Exchange is closed.

"Loan" means the loan to the Issuer by the Purchaser as documented herein and in the Loan Agreement, and as evidenced by the Series 2023 Notes.

"Loan Agreement" means the Loan Agreement between the Issuer and the Purchaser related to the Series 2023 Notes, the form of which is attached hereto as Exhibit A.



"Loan Amount" means a principal amount outstanding at any time not to exceed \$15,000,000.

"Projects" means collectively, the Southeast Wellfield Project and the West Polk Wellfield Project, together with supply lines, transmission lines and water production facilities, the costs of which are to be funded in whole or in part with proceeds from the Series 2023 Notes, as set forth in the Loan Agreement.

"Purchaser" means Wells Fargo Bank, National Association, together with its successors and assigns.

"Series 2023 Notes" means, collectively, the Series 2023A Note and the Series 2023B Note.

"Series 2023A Note" means the Issuer's Revolving Revenue Note, Series 2023A.

"Series 2023B Note" means Issuer's Revolving Revenue Note, Series 2023B (Federally Taxable).

**Section 4.** Projects. To the extent not previously authorized, the Board hereby authorizes the Projects. The Board hereby specifically ratifies and affirms all actions previously taken in furtherance of the undertaking of the financing of the Projects and obtaining the Loan. Each Project shall be deemed to be a "Project" as defined in the Bond Resolution and an "Approved Water Project" as defined in the Interlocal Agreement.

**Section 5.** Loan Agreement and Series 2023 Notes.

A. The Issuer is authorized to execute the Loan Agreement with the Purchaser in substantially the form attached hereto as Exhibit "A" and to issue and deliver to the Purchaser the Series 2023 Notes, substantially in the forms attached to the Loan Agreement, and to apply the proceeds thereof to finance the Projects (including through reimbursement) and to pay the costs of issuance of the Series 2023 Notes. The forms and terms of the Loan Agreement and Series 2023 Notes attached hereto are hereby approved, and the Authorized Signatories are authorized to execute and deliver the same, with such changes, insertions, omissions and filling of blanks, as may be approved by the Authorized Signatories, such approval to be conclusively evidenced by the execution thereof by any Authorized Signatory. An initial draw on the Series 2023 Notes is hereby authorized to be applied to pay the amount of outstanding principal of and interest on the Polk Regional Water Cooperative Revenue Note (Phase 1 Project), Series 2017, as amended and restated on May 16, 2022 (the "Series 2017 Note"), and issued pursuant to the Amended and Restated Loan Agreement dated May 16, 2022 between the Issuer and the Purchaser (the "Loan Agreement"). The Series 2017 Note and the Loan Agreement will be terminated upon the application of the initial draw.

B. The covenants and agreements set forth herein and in the Bond Resolution to be performed by the Issuer shall be for the equal benefit, protection and security of the Purchaser and the Holders of the Series 2023 Notes, and the Series 2023 Notes shall be of equal rank with all other Bonds and Additional Bonds issued under the Bond Resolution, without preference, priority or distinction over any other Bond. All applicable covenants contained in the Bond Resolution shall be fully applicable to the Series 2023 Notes as if originally issued thereunder.

C. The Authorized Signatories may authorize the modification of the name or series designation of the Series 2023 Notes, as deemed appropriate, the approval of such modification to be evidenced by the execution and delivery of the Series 2023 Notes showing such modification.

D. The Series 2023 Notes shall not be secured by the Composite Reserve Account created by the Bond Resolution or any reserve account within the Reserve Fund and there shall be no Reserve Requirement with respect to the Series 2023 Notes.

E. The Series 2023 Notes shall be issued as fully registered notes in a principal amount outstanding at any time not to exceed the Loan Amount. Principal of the Series 2023 Notes shall be payable to the Purchaser in accordance with the Loan Agreement.

F. If the date for the payment of principal of or interest on the Series 2023 Notes shall be a day other than a Business Day, then the date for such payment shall be the next succeeding Business Day, and payment on such day shall have the same force and effect as if made on the nominal date of payment.

G. The Series 2023 Notes shall be subject to redemption as set forth in the Loan Agreement and the Series 2023 Notes. Notwithstanding anything in the Bond Resolution to the contrary, notice of redemption shall be given as provided in the Loan Agreement.

H. The Series 2023 Notes shall be and have all the qualities and incidents of negotiable instruments under the laws of the State of Florida, and the Purchaser, in accepting the Series 2023 Notes, shall be conclusively deemed to have agreed that the Series 2023 Notes shall be and have all of the qualities and incidents of negotiable instruments under the laws of the State of Florida.

I. The Loan Agreement shall be a Full Draw LOC under the Bond Resolution and the Series 2023 Notes shall be Designated Maturity Bonds.

J. Subject to full satisfaction of the conditions set forth in this Section 5, the Issuer hereby authorizes a delegated negotiated sale of the Series 2023 Notes to the Purchaser in accordance with the terms of the Loan Agreement, each of the Loan Agreement and the Series 2023 Notes attached thereto to be substantially in the form attached hereto as Exhibit "A," with such changes, amendments, modifications, omissions and additions thereto as shall be approved by the Chairman and the Secretary or such other Authorized Signatory in accordance with the provisions of this Section 5 and upon delivery of a disclosure statement(s) and truth-in-bonding statement meeting the requirements of Section 218.385, Florida Statutes, the execution thereof being deemed conclusive evidence of the approval of such changes and the full and complete satisfaction of the conditions set forth in this Section 5.

K. The provisions of the Loan Agreement when executed and delivered by the parties thereto, shall be incorporated by reference herein so long as the Series 2023 Notes shall remain outstanding.

**Section 6.** Loan Agreement and Bond Not to be General Obligation or Indebtedness of the Issuer. Neither the Loan Agreement nor the Series 2023 Notes shall be deemed to constitute a general debt or obligation or a pledge of the faith and credit of the Issuer, the

members of the Issuer, the State of Florida, or any political subdivision thereof within the meaning of any constitutional, legislative or charter provision or limitation, and no Holder of the Series 2023 Notes shall ever have the right, directly or indirectly, to require or compel the exercise of the ad valorem taxing power of the members of the Issuer, or any other political subdivision of the State of Florida or taxation in any form on any real or personal property for the payment of the principal of and interest on the Series 2023 Notes or under the Loan Agreement or for the payment of any other amounts provided for in the Bond Resolution or the Loan Agreement. The Issuer has no taxing power. Neither the Loan Agreement nor the Series 2023 Notes shall constitute a lien upon any property of or in the Issuer or its members, but shall constitute a lien only upon the Pledged Revenues in the manner provided in the Bond Resolution.

**Section 7.** Severability. If any one or more of the covenants, agreements or provisions of this Resolution should be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separate from the remaining covenants, agreements or provisions of the Bond Resolution, this Resolution, the Loan Agreement and the Series 2023 Notes.

**Section 8.** Applicable Provisions of Law. This Resolution shall be governed by and construed in accordance with the laws of the State of Florida.

**Section 9.** Authorizations. The Authorized Signatories are hereby authorized to execute and deliver on behalf of the Issuer the Loan Documents as provided hereby and the Secretary is hereby authorized to attest any such signatures on any such documents and to affix the Issuer's seal thereto to the extent required by such documents. All officials and employees of the Issuer, including, without limitation, the Authorized Signatories, are authorized and empowered, collectively or individually, to take all other actions and steps and to execute all instruments, documents, and contracts on behalf of the Issuer as they shall deem necessary or desirable in connection with the completion of the Loan and the carrying out of the intention of this Resolution, including, without limitation, filing of all tax reporting requirements and paying costs related hereto.

**Section 10.** Controlling Law; Member of the Board of Issuer Not Liable. All covenants, stipulations, obligations and agreements of the Issuer contained in the Bond Resolution and herein shall be deemed to be covenants, stipulations, obligations and agreements of the Issuer to the full extent authorized by the Act and provided by the Constitution and laws of the State of Florida. No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, agent or employee of the Board in his or her individual capacity, and neither the members of the Board nor any official executing the Loan Agreement, the Series 2023 Notes or other documents contemplated hereby shall be liable personally on the Loan Agreement, the Series 2023 Notes or the Bond Resolution or shall be subject to any personal liability or accountability by reason of the issuance or the execution by the Board or such official.

**Section 11.** Authority as Paying Agent and Registrar. The Issuer is hereby designated paying agent and registrar for the Series 2023 Notes.

**Section 12.** Repealer. All resolutions or parts thereof in conflict herewith are hereby repealed.

**Section 13.** Effective Date. This Resolution shall take effect immediately upon its adoption.

*[Remainder of Page Intentionally Left Blank]*

Passed and duly adopted by the Board of Directors of the Polk Regional Water Cooperative on the 18th day of January, 2023.

POLK REGIONAL WATER COOPERATIVE

By: \_\_\_\_\_  
Chairman

ATTESTED:

By: \_\_\_\_\_  
Secretary

#180436469\_v5 155673.00007

EXHIBIT "A" TO RESOLUTION  
FORM OF LOAN AGREEMENT

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**POLK REGIONAL WATER COOPERATIVE**  
and  
**WELLS FARGO BANK, NATIONAL ASSOCIATION**

**LOAN AGREEMENT**

Dated as of January 18, 2023

Not to be Outstanding in Excess of  
\$15,000,000  
POLK REGIONAL WATER COOPERATIVE  
REVOLVING REVENUE NOTE, SERIES 2023A  
AND  
REVOLVING REVENUE NOTE, SERIES 2023B (FEDERALLY TAXABLE)

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## **LOAN AGREEMENT**

This Loan Agreement (together with any and all modifications, alterations, amendments and supplements hereto made in accordance with the provisions hereof, this "Agreement") is made and entered into as of January \_\_, 2023, by and between the Polk Regional Water Cooperative (the "Cooperative"), a public agency and unit of special purpose government of the State of Florida, and Wells Fargo Bank, National Association (together with its successors and assigns, the "Lender");

WHEREAS, the Cooperative was formed pursuant to Section 163.01 and Chapter 189, Florida Statutes, and pursuant to an Interlocal Agreement Relating to Establishment of the Polk Regional Water Cooperative, effective as of June 1, 2016 (the "Interlocal Agreement") as executed by Polk County, Florida (the "County") and the municipalities located within the County and set forth therein (collectively, the "Members"); and

WHEREAS, the Board of Directors of the Cooperative (the "Board") duly adopted Resolution No. 2022-05 on July 13, 2022 (the "Resolution"), as supplemented by Resolution No. 2023-\_\_\_ adopted by the Board on January 18, 2023 (the "Supplemental Resolution" and collectively with the Resolution, the "Bond Resolution"), authorizing, among other things, the issuance of the Polk Regional Water Cooperative Revolving Revenue Note, Series 2023A (the "Tax-Exempt Note") and the Polk Regional Water Cooperative Revolving Revenue Note, Series 2023B (Federally Taxable) (the "Taxable Note" and together with the Tax-Exempt Note, each a "Note" and collectively, the "Notes") for the purpose of financing certain Costs of the 2023 Project; and

WHEREAS; to evidence the obligation of the Cooperative to repay such Loan the Cooperative shall deliver the Notes to the Lender in an aggregate amount not to exceed the Maximum Commitment Amount (as defined herein);

WHEREAS, the Notes shall be issued pursuant to the terms and provisions of the Bond Resolution and this Agreement; and

WHEREAS, the execution and delivery of this Agreement and the Notes have been duly authorized by the Bond Resolution.

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby and in consideration of the mutual covenants hereinafter contained, DO HEREBY AGREE as follows:

### **ARTICLE I DEFINITION OF TERMS**

Section 1.01. Definitions. Words and terms used in this Agreement and not otherwise defined herein shall have the meanings as set forth in the Interlocal Agreement, the Bond Resolution and the recitals above, and the following words and terms as used in this Agreement shall have the following meanings:

"Act" means, collectively, Section 163.01 and Chapter 189, Florida Statutes, the Interlocal Agreement, the Constitution of the State, the Bond Resolution, and other applicable provisions of law.

"Additional Bonds" shall have the meaning to such term in the Bond Resolution.

"Advance" means a borrowing of money under a Note, pursuant to Section 5.06 hereof.

"Affiliate" means, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. A Person shall be deemed to control another Person if the controlling Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other Person, whether through the ownership of voting securities, by contract or otherwise. Without limitation, any director, executive officer or beneficial owner of 5% or more of the equity of a Person shall for the purposes of this Agreement, be deemed to control the other Person.

"Anti-Corruption Laws" means: (a) the U.S. Foreign Corrupt Practices Act of 1977, as amended; (b) the U.K. Bribery Act 2010, as amended; and (c) any other anti-bribery or anti-corruption laws, regulations or ordinances in any jurisdiction in which the Cooperative is located or doing business.

"Anti-Money Laundering Laws" means applicable Laws or regulations in any jurisdiction in which the Cooperative is located or doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

"Available Amount" means, for any day, the Maximum Commitment Amount net of the aggregate amount of Advances outstanding at such time.

"Bank Transferee" shall have the meaning assigned to such term in Section 7.15(b).

"Benchmark Floor" means a rate of interest equal to zero percent (0%).

"Bonds" shall have the meaning given to such term in the Bond Resolution.

"Business Day" means (a) for all purposes other than as set forth in clause (b) below, any day other than a Saturday, Sunday or legal holiday on which banks in Polk County, Florida or New York, New York, are authorized by law to close and (b) with respect to all notices and determinations in connection with, and payments of principal and interest on, any Loan bearing interest at Daily Simple SOFR, any day that is a Business Day described in clause (a) and that is also a Federal Reserve Business Day.

"Chair" means the Chair or the Vice Chair of the Cooperative.

"Chief Executive Officer" means the Executive Director of the Cooperative or in the absence of an Executive Director any other person designated by the Cooperative as its chief administrative officer.

"Code" means the Internal Revenue Code of 1986, as amended, and any Treasury Regulations, whether temporary, proposed or final, promulgated thereunder or applicable thereto.

"Costs of the 2023 Project" means with respect to the Southeast Wellfield Project and the West Polk Wellfield Project, all items of cost with respect to such Projects permitted under the Act to be financed with proceeds of the Notes hereunder (including reimbursement to the Cooperative or any member of the Cooperative in connection with items previously incurred in anticipation of the issuance of the Notes).

"Daily Simple SOFR" means, with respect to any day (a "SOFR Rate Day"), a rate per annum equal to SOFR for the day (such day, the "SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's Website; provided, however, that if Daily Simple SOFR determined as provided above would be less than the Benchmark Floor, then Daily Simple SOFR shall be deemed to be the Benchmark Floor. If by 5:00 p.m. (New York City time) on the second (2<sup>nd</sup>) U.S. Government Securities Business Day immediately following any SOFR Determination Day, SOFR in respect of such SOFR Determination Day has not been published on the SOFR Administrator's Website and a Benchmark Replacement Date with respect to Daily Simple SOFR has not occurred, then SOFR for such SOFR Determination Day will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which SOFR was published on the SOFR Administrator's Website; provided that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days.

"Default" means the occurrence of any event which, with the giving of notice or the passage of time, or both, would (unless waived by the Lender or cured to the reasonable satisfaction of the Lender) constitute an Event of Default.

"Default Rate" means the greatest of (i) the Prime Rate plus 4.00%, (ii) the Federal Funds Rate plus 5.00% or (iii) 10.00%.

"Delivery Date" means January \_\_\_\_, 2023, subject to the satisfaction or waiver by the Lender of the conditions precedent set forth in Article IV hereof.

"Determination of Taxability" means a final decree or judgment of any federal court or a final determination of the Internal Revenue Service or of the United States Treasury Department concluding that any interest payable on the Tax-Exempt Note is includable in the gross income of the Noteholder due to an action or inaction of the Cooperative. No such decree or determination shall be considered final for the purposes of this paragraph unless the Cooperative has been given written notice thereof and, if it is so desired by the Cooperative and the Cooperative has exhausted or waived all legal or administrative rights available to it to contest such decree or determination.

"Event of Default" means an event of default specified in Article VI of this Agreement.

"Existing Indebtedness" means the amounts outstanding under the SRF Loan Agreements, which as of the Delivery Date is **[\$7,100,000]**.

"Favorable Opinion of Note Counsel" means an opinion of Note Counsel to the effect that either (a) a contemplated action will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Note, or (b) the interest on the Tax-Exempt Note is excludable to the holder thereof for Federal income tax purposes.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that: (a) if such day is not a Business Day, then the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; and (b) if no such rate is so published on such next succeeding Business Day, then the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of one-hundredth of one percent) charged to the Lender on such day on such transactions as determined by the Lender. Each determination of the Federal Funds Rate by the Lender shall be conclusive and binding on the Cooperative. If the Federal Funds Rate determined as provided above would be less than zero percent (0%), then the Federal funds Rate shall be deemed to be zero percent (0%).

"Federal Reserve Business Day" means any day that is not a Saturday, Sunday or other day on which the Federal Reserve Bank of New York is closed.

"Final Maturity Date" means January \_\_\_\_, 2025, or such later date which this Agreement may be extended or renewed in the sole discretion of the Lender by written notice from the Lender to the Cooperative, together with a Favorable Opinion of Note Counsel.

"Fiscal Year" means the period commencing on October 1 of each year and ending on the succeeding September 30, or such other consecutive 12-month period as may be hereafter designated as the fiscal year of the Cooperative pursuant to general law.

"GAAP" means generally accepted accounting principles for governmental accounting, consistently applied.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Implementation Agreement" shall have the meaning given to such term in the Bond Resolution.

"Initial Purchaser" means Wells Fargo Bank, National Association.

"Interest Payment Date" means the first Business Day of each month and the Final Maturity Date.

"Interest Period" means, with respect to any Advance, the period from (and including) the date such Advance is made to (but excluding) the next succeeding Interest Payment Date, and thereafter shall mean the period from (and including) such Interest Payment Date to (but excluding) the next succeeding Interest Payment Date.

"Interest Rate" means, with respect to a Taxable Advance, the Taxable Interest Rate, and with respect to a Tax-Exempt Advance, the Tax-Exempt Interest Rate.

"Investor Letter" shall have the meaning assigned to such term in Section 7.15(d).

"Law" means any treaty or any federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, order or decree of any court or other Governmental Authority.

"Lender" has the meaning set forth in the introductory paragraph hereof.

"Loan" means the outstanding principal amount of the Notes issued hereunder.

"Loan Documents" means this Agreement, the Notes, the Supplemental Resolution, the Interlocal Agreement, the Implementation Agreement and all other documents, agreements, certificates, schedules, notes, and opinions, however described, referenced herein or executed or delivered pursuant hereto or in connection with or arising with the Loan or the transaction contemplated by this Agreement.

"Margin Rate Factor" means the greater of (a) 1.0, and (b) the product of (i) one minus the then current Maximum Federal Corporate Tax Rate in effect on the date of calculation multiplied by (ii) the quotient of (A) one divided by (B) one minus the Maximum Federal Corporate Tax Rate on the MRF Effective Date. The effective date of any change in the Margin Rate Factor shall be the effective date of the decrease or increase (as applicable) in the Maximum Federal Corporate Tax Rate resulting in such change.

"Maximum Commitment Amount" means, for any day, \$15,000,000, and as the same may hereafter be modified in accordance with the terms of this Agreement.

"Maximum Federal Corporate Tax Rate" shall mean the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, determined without regard to tax rate or tax benefit make-up provisions such as the last two sentences of Section 11(b)(1) of the Code, as in effect from time to time (or, if as a result of a change in the Code the rate of income taxation imposed on corporations shall not be applicable to the Lender, the maximum statutory rate of federal income taxation which could apply to the Lender).

"Maximum Rate" means an interest rate per annum equal to the lesser of the maximum rate permitted by law and twenty percent (20%) per annum.

"MRF Effective Date" means initially the Delivery Date, and thereafter the date of any amendment on which the Tax-Exempt Applicable Spread or the Tax-Exempt Adjusted Daily Simple SOFR Rate is modified.

"Non-Bank Transferee" shall have the meaning assigned to such term in Section 7.15(d).

"Note" or "Notes" shall have the meaning assigned to such term in the recitals.

"Note Counsel" means Holland & Knight LLP or such other attorney-at-law or firm of such attorneys designated by the Cooperative and having expertise in the legal aspects of the issuance of indebtedness by states and political subdivisions thereof.

"Noteholder" or "Owner" means initially the Lender and thereafter any Transferee to whom the Lender or a subsequent Owner may transfer the Notes as shown on the registration books of the Cooperative kept for that purpose in accordance with provisions of this Agreement.

"Participant(s)" means any bank(s) or other financial institution(s) which may purchase a participation interest from the Lender in this Agreement and the Notes pursuant to a participation agreement between the Lender and the Participant(s).

"Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107 56 (signed into law October 26, 2001).

"Person" means natural persons, firms, trusts, estates, associations, corporations, partnerships and public bodies.

"Pledged Revenues" shall have the meaning given to such term in the Bond Resolution.

"Prime Rate" means on any day, the rate of interest per annum then most recently established by the Initial Purchaser as its "prime rate." Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by the Initial Purchaser to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and the Initial Purchaser may make various business or other loans at rates of interest having no relationship to such rate. If the initial Purchaser ceases to exist or to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported. If the Prime Rate determined as provided above would be less than zero percent (0%), then the Prime Rate shall be deemed to be zero percent (0%).

"Projects" shall have the meaning given to such term in the Bond Resolution.

"Qualified Holder" a commercial bank organized under the laws of the United States, or any state thereof, or any other country which is a member of the Organization for Economic Cooperation and Development, or a political subdivision of any such country, and, in any such case, having a combined capital and surplus, determined as of the date of any transfer hereunder of not less than \$5,000,000,000.



"Qualified Institutional Buyer" shall have the meaning assigned to such term in Rule 144A promulgated under the Securities Act.

"Rebate Amount" means the excess of the amount earned on all non-purpose investments (as defined in Section 148(f)(6) of the Code) over the amount which would have been earned if such non-purpose investments were invested at a rate equal to the yield on the Note, plus any income attributable to such excess to the extent required to be paid to the United States in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Loan.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"Sanction" or "Sanctions" means any and all economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and restrictions and anti-terrorism laws imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future statute or Executive Order, (b) the United Nations Security Council, (c) the European Union, (d) the United Kingdom, or (e) any other Governmental Authority with jurisdiction over the Cooperative.

"Sanctioned Target" means any target of Sanctions, including: (a) Persons on any list of targets identified or designated pursuant to any Sanctions, (b) Persons, countries, or territories that are the target of any territorial or country-based Sanctions program, (c) Persons that are a target of Sanctions due to their ownership or control by any Sanctioned Target(s), or (d) otherwise a target of Sanctions, including vessels and aircraft, that are designated under any Sanctions program.

"Secretary" means the Secretary or Assistant Secretary of the Cooperative or such other Officer delegated to serve as Secretary in the absence of such appointed Secretary.

"Securities Act" means the Securities Act of 1933, as amended.

"Southeast Wellfield" means the lower Floridian aquifer public supply wellfield to be located in southeast Polk County.

"Southeast Wellfield Project" means the project described in the Implementation Agreement for the Southeast Wellfield.

"SOFR" means a rate per annum equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"SRF Loan Agreements" means collectively, the (i) State Department of Environmental Protection State Revolving Loan DW532000 to the Cooperative pursuant to the loan agreement entered into by the Cooperative and the State Department of Environmental Protection (ii) the State Department of Environmental Protection State Revolving Loan DW532001 to the Cooperative pursuant to the loan agreement entered into by the Cooperative and the State Department of Environmental Protection and (iii) the State Department of Environmental Protection State Revolving Loan DW532002 to the Cooperative pursuant to the loan agreement entered into by the Cooperative and the State Department of Environmental Protection.

"State" means the State of Florida.

"Tax-Exempt Adjusted Daily Simple SOFR Rate" means the product of (a) the sum of (i) the product of 80% times Daily Simple SOFR and (ii) the Tax-Exempt Applicable Spread, multiplied by (b) the Margin Rate Factor, rounded to the fifth decimal place.

"Tax-Exempt Advance" means an Advance under the Tax-Exempt Note that is subject to the Tax-Exempt Interest Rate.

"Tax-Exempt Applicable Spread" means 46 basis points (0.46%).

"Tax-Exempt Interest Rate" means initially the Tax-Exempt Adjusted Daily Simple SOFR Rate, provided however, such rate may be adjusted upon a Determination of Taxability and an Event of Default as provided herein.

"Taxable Adjusted Daily Simple SOFR Rate" means the sum of (i) Daily Simple SOFR and (ii) the Taxable Applicable Spread, rounded to the fifth decimal place.

"Taxable Advance" means an Advance under the Taxable Note that is subject to the Taxable Interest Rate.

"Taxable Applicable Spread" means 65 basis points (0.65%).

"Taxable Interest Rate" means initially the Taxable Adjusted Daily Simple SOFR Rate, provided however, such rate may be adjusted upon an Event of Default as provided herein.

"Taxable Rate" means an interest rate per annum equal to the Interest Rate otherwise borne by the Tax-Exempt Note multiplied by the Taxable Rate Factor.

"Taxable Rate Factor" means, for each day that the Taxable Rate is determined, the quotient of (i) one divided by (ii) one minus the Maximum Federal Corporate Tax Rate in effect as of such day.

"Transferee" means each Bank Transferee or Non-Bank Transferee pursuant to Section 7.15 for so long as such Bank Transferee or Non-Bank Transferee is an Owner.

"Undrawn Fee" shall have the meaning set forth in Section 5.08(a) of this Agreement.

"U.S. Government Securities Business Day" means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association, or any successor thereto, recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"West Polk Wellfield" means the lower Floridian aquifer public water supply wellfield to be located in west Polk County.

"West Polk Wellfield Project" means the project described in the Implementation Agreement for the West Polk Wellfield.

"2023 Project" means collectively, the Southeast Wellfield Project and the West Polk Wellfield Project, together with supply lines, transmission lines and water production facilities, the costs of which are to be funded in whole or in part with proceeds from the Notes.

Section 1.02. Interpretation. Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

Section 1.03. Titles and Headings. The titles and headings of the articles and sections of this Agreement have been inserted for convenience of reference only and are not to be considered a part hereof, shall not in any way modify or restrict any of the terms and provisions hereof, and shall not be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

## **ARTICLE II REPRESENTATIONS OF COOPERATIVE**

The Cooperative represents and warrants to the Lender that:

Section 2.01. Powers of Cooperative. The Cooperative is an interlocal agency established under the Act is duly organized and validly existing under the constitution and the laws of the State. The Cooperative has the power to borrow the amount provided for in this Agreement, to execute and deliver the Loan Documents, to secure the Notes in the manner contemplated hereby, and to perform and observe all the terms and conditions of the Bond Resolution and the Loan Documents on its part to be performed and observed. The Cooperative may lawfully issue the Notes in order to finance and refinance the Costs of the 2023 Project, including, without limitation, capitalized interest on the Loan during the period until completion of the 2023 Project.

Section 2.02. Authorization of Loan. The Cooperative has full legal right, power, and authority to adopt the Bond Resolution and to execute and deliver this Agreement, to issue, sell, execute and deliver the Notes to the Lender, and to carry out and consummate all other transactions contemplated hereby and by the other Loan Documents (as it applies to the 2023 Project and the Loan), and the Cooperative has complied and will comply with all provisions of applicable law in all material matters relating to such transactions. The Cooperative, pursuant to the Bond Resolution, has duly authorized the borrowing of the amount provided for in this Agreement, the

execution and delivery of this Agreement, and the making and delivery of the Notes to the Lender, and to that end the Cooperative warrants that it will take all action and will do all things which it is authorized by law to take and to do in order to fulfill all covenants on its part to be performed and to provide for and to assure payment of the Notes. The Cooperative has duly adopted the Bond Resolution and authorized the execution, delivery, and performance of the Notes and this Agreement and the taking of any and all other such action as may be required on the part of the Cooperative to carry out, give effect to and consummate the transactions contemplated by the Loan Documents (as it applies to the 2023 Project and the Loan) and the Bond Resolution. This Agreement and the Notes have been duly authorized, executed, issued and delivered to the Lender and constitute legal, valid and binding obligations of the Cooperative enforceable in accordance with their respective terms and the terms of the Bond Resolution, and are entitled to the benefits and security of the Bond Resolution and this Agreement. All approvals, consents, and orders of and filings with any Governmental Authority or agency which would constitute a condition precedent to the execution and delivery of this Agreement and the issuance of the Notes or the execution and delivery of or the performance by the Cooperative of its obligations under the Loan Documents (as it applies to the 2023 Project and the Loan) and the Bond Resolution have been obtained or made and any consents, approvals, and orders to be received or filings so made are in full force and effect.

Section 2.03. No Violation of Law or Contract. The Cooperative is not in default in any material respect under any agreement or other instrument to which it is a party or by which it may be bound, the breach of which could result in a material and adverse impact on the financial condition of the Cooperative, the ability of the Cooperative to perform its obligations hereunder or under the Notes or the legality, validity, binding effect or enforceability of any Loan Document. The making and performing by the Cooperative of this Agreement and the Notes will not violate any applicable provision of law, or any resolution of the Cooperative, or any regulation, order or decree of any court, and will not result in a breach of any of the terms of any agreement, indenture, note or instrument to which the Cooperative is a party or by which the Cooperative is bound, the breach of which could result in a material and adverse impact on the financial condition of the Cooperative, the ability of the Cooperative to perform its obligations hereunder or under the Notes or the legality, validity, binding effect or enforceability of any Loan Document. The Loan Documents constitute legal, valid and binding obligations of the Cooperative enforceable in accordance with their respective terms.

Section 2.04. Litigation, Etc. There are no actions or proceedings pending against the Cooperative or affecting the Cooperative or, to the knowledge of the Cooperative, threatened, which, either in any case or in the aggregate, might result in any material adverse change in the financial condition of the Cooperative, or which questions the legality, validity, binding effect or enforceability of this Agreement, the Notes, the Bond Resolution, the Pledged Revenues or any of the other Loan Documents or of any action taken or to be taken in connection with the transactions contemplated hereby or thereby.

Section 2.05. Financial Information. The financial information regarding the Cooperative furnished to the Lender by the Cooperative in connection with the Loan is accurate, and there has been no material and adverse change in the financial condition of the Cooperative or the Pledged Revenues from that presented in such information.

Section 2.06. Interlocal Agreement. The Interlocal Agreement has been properly filed with the Clerk of the Circuit Court of Polk County, Florida, in accordance with Section 163.01, Florida Statutes.

Section 2.07. Federal Reserve Regulations. No part of the proceeds of the Notes will be used for the purpose, whether immediate, incidental or ultimate, to purchase or carry any margin stock (within the meaning of Regulation U) or for any other purpose which would violate any of the regulations of the Board of Governors of the Federal Reserve System.

Section 2.08. No Sovereign Immunity. The defense of sovereign immunity is not available to the Cooperative in any proceedings by the Lender to enforce any of the obligations of the Cooperative under this Agreement or the Notes, except to the extent that any such proceeding seeks enforcement based on tort or similar claim and in such case such defense is available only to the extent set forth under Florida Statutes Section 768.28 or other similarly applicable provision of law.

Section 2.09. Security. The Notes are secured solely by a pledge of the Pledged Revenues.

Section 2.10. Usury. This Agreement and the Notes do not provide for any payments that would violate any applicable Florida law regarding permissible maximum rates of interest.

Section 2.11. Anti-Money Laundering and Anti-Corruption Laws; Sanctions.

(a) Anti-Money Laundering and Anti-Corruption Laws. The Cooperative agrees, to the extent applicable, to comply with Anti-Money Laundering Laws and Anti-Corruption Laws and, to the best of the Cooperative's knowledge, after due care and inquiry, no officer, director or employee acting on behalf of the Cooperative is under investigation for an alleged violation of Anti-Money Laundering Laws or Anti-Corruption Laws by a Governmental Authority that enforces such laws.

(b) Sanctions. The Cooperative (i) is not a Sanctioned Target; (ii) is not owned or controlled by, or is acting or purporting to act for or on behalf of, directly or indirectly, a Sanctioned Target; (iii) agrees, to the extent applicable, to comply with laws related to Sanctions; and (iv) to the best of the Cooperative's knowledge, after due care and inquiry, no officer, director or employee acting on behalf of the Cooperative is under investigation for an alleged violation of Sanction(s) by a Governmental Authority that enforces Sanctions.

Section 2.12. No Acceleration. The Cooperative is not a party to any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement, resolution, indenture or similar facility that includes an acceleration right, or otherwise has the ability to demand such facility be immediately due and payable after an event of default thereunder.

**ARTICLE III**  
**COVENANTS OF THE COOPERATIVE**

Section 3.01. Affirmative Covenants. The Cooperative covenants, for so long as any of the principal amount of or interest on the Loan is outstanding and unpaid or any duty or obligation of the Cooperative hereunder or under the Notes remains unpaid or unperformed, as follows:

(a) Payment. The Cooperative covenants that it shall duly and punctually pay, but solely from the Pledged Revenues, the principal of the Notes and the interest thereon on the dates, at the place and in the manner (and subject to the limitations) provided herein, in the Bond Resolution and in the Notes according to the true intent and meaning thereof.

(b) Use of Proceeds. The Cooperative covenants that the proceeds from the Notes will be used only to pay Costs of the 2023 Project, including, without limitation refinancing of Costs of the 2023 Project originally paid with proceeds of the Polk Regional Water Cooperative Revenue Note (Phase 1 Project), Series 2017, as amended and restated on May 16, 2022, and issued pursuant to the Amended and Restated Loan Agreement dated May 16, 2022, between the Cooperative and the Initial Purchaser.

(c) Maintenance of Existence. The Cooperative covenants that it will at all times maintain its existence until all amounts due and owing from the Cooperative to the Lender hereunder and under the Notes have been paid in full.

(d) Pledged Revenues. Pursuant to the Bond Resolution, the Cooperative has pledged the Pledged Revenues as security for the repayment of the Notes. The Cooperative covenants that it will take all actions necessary to continue to timely receive the Pledged Revenues until all amounts due and owing from the Cooperative to the Lender hereunder and under the Notes have been paid in full. The Cooperative will not take any action which will impair or adversely affect its receipt of the Pledged Revenues, or impair or adversely affect in any manner the pledge of the Pledged Revenues or the rights of the Noteholder.

(e) Financial Statements.

(i) The Cooperative will cause an audit to be completed of its books and accounts and shall furnish to the Lender audited year-end financial statements of the Cooperative certified by an independent certified public accountant reasonably acceptable to the Lender to the effect that such audit has been conducted in accordance with generally accepted auditing standards and stating whether such financial statements present fairly in all material respects the financial position of the Cooperative and the results of its operations and cash flows for the periods covered by the audit report, all in conformity with GAAP applied on a consistent basis. The Cooperative shall adopt an annual budget as required by law. The Cooperative shall provide the Lender with (i) its audited financial statements for each Fiscal Year ending on and after September 30, 2022 within 270 days after the end thereof, certified by an authorized officer of the Cooperative to be a true and correct copy and (ii) concurrently with the delivery of the financial statements referred to in clause (i) above, a certificate of an authorized officer of the

Cooperative stating whether any Default or Event of Default exists on the date of such certificate and, if any Default or Event of Default then exists, setting forth the details thereof and the actions which the Cooperative is taking or proposes to take with respect thereto.

(ii) (A) Promptly upon obtaining knowledge of any Default or Event of Default, or notice thereof, and in any event within five (5) Business Days thereafter, a certificate signed by the Chief Executive Officer of the Cooperative specifying in reasonable detail the nature and period of existence thereof and what action the Cooperative has taken or proposes to take with respect thereto; (B) promptly following a written request of the Lender, a certificate of the Chief Executive Officer of the Cooperative as to the existence or absence, as the case may be, of a Default or an Event of Default under this Agreement; and (C) promptly upon obtaining knowledge of any "default" or "event of default" as defined under any loan agreement, notice specifying in reasonable detail the nature and period of existence thereof and what action the Cooperative has taken or proposes to take with respect thereto.

(iii) As promptly as practicable, written notice to the Lender of all actions, suits or proceedings pending or threatened against the Cooperative in court or before any arbitrator of any kind or before any Governmental Authority which could reasonably be expected to result in a material adverse effect.

(iv) Such other information regarding the business affairs, financial condition and/or operations of the Cooperative as the Lender may from time to time reasonably request.

(f) Separate Accounts. Pursuant to the Supplemental Resolution, any amounts drawn under the Notes and not immediately spent shall be set aside in separate accounts of the Cooperative until needed to pay Costs of the 2023 Project.

(g) Comply with Laws. The Cooperative is in compliance with and shall comply with all applicable federal, state and local laws and regulatory requirements in all material respects including, without limitation, all Sanctions, Anti-Money Laundering Laws and Anti-Corruption Laws that are applicable to the Cooperative.

(h) Sovereign Immunity. To the extent authorized by applicable law, the Cooperative agrees to waive sovereign immunity from suit and liability for the purposes of adjudicating a claim to enforce its duties and obligations under this Agreement and the Notes or for damages for a breach of any of the foregoing, except to the extent that any such proceeding seeks enforcement based on tort or similar claim and in such case such defense is only available to the extent set forth under Florida Statutes, Section 768.28 or other similarly applicable provisions of law.

(i) Books and Records. The Cooperative will keep proper books of record and account in which full, true and correct entries in accordance with GAAP. All financial data (including financial ratios and other financial calculations) required to be submitted pursuant to

this Agreement shall be prepared in conformity with GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the financial statements, except as otherwise specifically prescribed herein. Except as provided in the immediately preceding sentence, in preparing any financial data or statements contemplated or referred to in this Agreement, the Cooperative shall not vary or modify the accounting methods or principles from the accounting standards employed in the preparation of its audited financial statements described in Section 3.01(e) hereof.

(j) Visitation and Inspection. To the extent permitted by law, the Cooperative will permit any Person designated by the Lender (at the expense of the Lender, unless and until a Default or Event of Default has occurred, at which time such expenses shall be borne by the Cooperative) to visit any of the offices of the Cooperative to examine the books and financial records (except books and financial records the examination of which by the Lender is prohibited by law or by attorney or client privilege), including minutes of meetings of any relevant governmental committees or agencies, and make copies thereof or extracts therefrom, and to discuss the affairs, finances and accounts of the Cooperative with their principal officials, all at such reasonable times and as often as the Lender may reasonably request,

(k) Most Favored Nations Provision. If after the Delivery Date the Cooperative shall adopt a resolution or enter into an agreement or other instrument authorizing the issuance of any debt secured by the Pledged Revenues which includes an acceleration right or otherwise has the ability to demand such debt be immediately due and payable after an event of default thereunder, then the Lender shall also have such right of acceleration upon an Event of Default hereunder.

Section 3.02. Negative Covenants. The Cooperative covenants, for so long as any of the principal amount of or interest on the Loan is outstanding and unpaid or any obligations of the Cooperative hereunder or under the Notes remains unpaid or unperformed, that:

(a) Financing Documents. The Cooperative shall not alter or amend the Bond Resolution, the Implementation Agreement or the Interlocal Agreement, which would materially adversely affect the payment obligations hereunder, rights or remedies of the Lender or impair the authority thereby or hereby given with respect to the issuance and payment of the Notes, without prior written approval of the Lender. Nothing contained herein shall, however, impair or restrict the Cooperative's right to amend the Interlocal Agreement or the Implementation Agreement in accordance with the Bond Resolution.

(b) Disposition of Assets. The Cooperative shall not dispose of any of its assets other than in accordance with the Bond Resolution.

(c) No Pledge or Impairment: Additional Bonds. Except in accordance with the Bond Resolution or as set forth in Section 3.05 hereof, the Cooperative will not pledge or permit a lien to occur on any Pledged Revenues to any other indebtedness of the Cooperative or issue any indebtedness payable from Pledged Revenues without the express written consent of the Lender.



(d) Anti-Money Laundering and Anti-Corruption Laws. The Cooperative shall not, and shall ensure that each officer, director or employee acting on behalf of the Cooperative shall not, use any proceeds of the Loan to fund, finance or facilitate any activities, business or transactions that would be prohibited by Anti-Money Laundering Laws or Anti-Corruption Laws.

(e) Sanctions. The Cooperative shall not, and shall ensure that each officer, director or employee acting on behalf of the Cooperative shall not, use any proceeds of the Loan to fund, finance or facilitate any activities, business or transactions: (i) that are prohibited by Sanctions or (ii) that would be prohibited by Sanctions if conducted by the Lender. The Cooperative shall notify the Lender in writing not more than one (1) Business Day after first becoming aware of any breach of this Section 3.02(e).

(f) Source of Repayment and Collateral. The Cooperative shall not fund any payment of the Loan with proceeds, or provide as collateral any property, that is directly or indirectly derived from any transaction or activity that is prohibited by Sanctions, Anti-Money Laundering Laws or Anti-Corruption Laws that are in each case applicable to the Cooperative, or that could otherwise cause the Lender to be in violation of Sanctions, Anti-Money Laundering Laws or Anti-Corruption Laws that are in each case applicable to the Cooperative.

Section 3.03. Registration and Exchange of Note; Persons Treated as Owners. So long as the Notes remain outstanding, the Cooperative will keep books for the registration and transfer of the Notes. Upon the written consent of the Cooperative, the Cooperative will transfer the registration of the Notes in whole and not in part, upon written request of the Lender specifying the name, address and taxpayer identification number of the transferee. Transfers of the Notes or portions thereof shall be made only to Transferees subject to the conditions of Section 7.15 hereof.

The Person in whose name each Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of principal and interest on the Loan shall be made only to or upon the written order of such Person. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

Section 3.04. Pledge; Payment of Principal and Interest; Limited Obligation. The Notes shall be Additional Bonds under the Bond Resolution, and the Cooperative has under the Bond Resolution pledged the Pledged Revenues as security for the repayment of Bonds, including the Notes. The Cooperative promises that it will promptly pay the principal of and interest on the Loan at the place, on the dates and in the manner provided in the Notes and this Agreement according to the true intent and meaning hereof and thereof, provided that the principal of and interest on the Loan is payable solely from the Pledged Revenues, and nothing in the Notes or this Agreement shall be construed as pledging any other funds or assets to such payment or as authorizing such payment to be made from any other source. The Notes are special obligations of the Cooperative secured solely by the Pledged Revenues and are payable from the Pledged Revenues as provided in this Agreement and the Bond Resolution. The Notes will not constitute a general debt, liability or obligation of the Cooperative or the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory limitation. Neither the faith and credit nor the taxing power of the Cooperative or of the State of Florida or any political subdivision thereof is pledged to the payment of the principal of or interest on the Notes and the

Noteholder shall never have the right to compel any exercise of any ad valorem taxing power of the Cooperative or of the State of Florida or any political subdivision thereof, directly or indirectly to enforce such payment. The Notes shall not constitute a lien upon any property of the Cooperative except upon the Pledged Revenues.

Section 3.05. Application of Provisions of Bond Resolution. The Notes shall for all purposes be considered Additional Bonds issued under the authority of Section 12.02 of the Bond Resolution and shall be entitled to all the protection and security provided in and by the Bond Resolution for Additional Bonds, and the Notes shall be in all respects entitled to the same security, rights and privileges enjoyed by the Additional Bonds except as otherwise provided herein. The debt service on the Notes shall be payable on a parity with the Existing Indebtedness and any other Additional Bonds hereafter issued. The terms and provisions of the Bond Resolution as supplemented hereby shall remain in full force and effect and be applicable with respect to the Notes. This Agreement shall be a Full Draw LOC under the Bond Resolution, the Notes shall be Designated Maturity Bonds and, for purposes of calculating the Bond Service Requirement shall be assumed to amortize of up to a thirty year period as of such testing date. The Purchaser agrees that the Cooperative shall not be required to comply with Section 12.02 of the Bond Resolution in connection with additional State Revolving Fund loans or loans with the United States Environmental Protection Agency under the Water Infrastructure Financing Act, outstanding in the aggregate amount of not to exceed \$320,000,000 at any time.

Section 3.06. Tax Covenants. It is the intention of the Cooperative that the interest on the Tax-Exempt Note be and remain excluded from gross income for federal income tax purposes and to this end the Cooperative hereby represents to and covenants with the Owner that it will comply with the requirements applicable to it contained in Section 103 and Part IV of Subchapter B of Chapter 1 of Subtitle A of the Code to the extent necessary to preserve the exclusion of interest on the Tax-Exempt Note issued hereunder from gross income for federal income tax purposes. Specifically, without intending to limit in any way the generality of the foregoing, the Cooperative covenants and agrees:

- (1) to the extent required by the Code, to make or cause to be made all necessary determinations and calculations of the Rebate Amount and required payments of the Rebate Amount;
- (2) to set aside sufficient moneys of the Cooperative to timely pay the Rebate Amount to the United States of America;
- (3) to pay, at the time and to the extent required under the Code, the Rebate Amount to the United States of America from legally available funds;
- (4) to maintain and retain all records pertaining to the Rebate Amount with respect to the Tax-Exempt Note and required payments of the Rebate Amount with respect to the Tax-Exempt Note for at least six years after the Final Maturity Date or such other period as shall be necessary to comply with the Code;
- (5) to refrain from taking any action that would cause the Tax-Exempt Note to become an arbitrage bond under Section 148 of the Code.

The Cooperative understands that the foregoing covenants impose continuing obligations on the Cooperative that will exist as long as the requirements of Section 103 and Part IV of Subchapter B of Chapter 1 of Subtitle A of the Code are applicable to the Tax-Exempt Note.

Notwithstanding any other provision of the Bond Resolution, the obligation of the Cooperative to pay the Rebate Amount to the United States of America and to comply with the other requirements of this Section 3.06 shall survive the defeasance or payment in full of the Tax-Exempt Note.

Section 3.07. Business Days. In any case where the due date of interest on or principal of the Notes is not a Business Day, then payment of such principal or interest need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the nominal date of payment.

Section 3.08. Officers and Employees of the Cooperative Exempt from Personal Liability. No recourse under or upon any obligation, covenant or agreement of this Agreement or the Notes or for any claim based thereon or otherwise in respect thereof, shall be had against any member of the Cooperative, or any officer, agent or employee, as such, of the Cooperative past, present or future, it being expressly understood (a) that the obligation of the Cooperative under this Agreement and the Notes is solely a corporate one, (b) that no personal liability whatsoever shall attach to, or is or shall be incurred by, any member of the Cooperative, or the officers, agents, or employees, as such, of the Cooperative, or any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom, and (c) that any and all such personal liability of, and any and all such rights and claims against, every such member of the Cooperative, and every officer, agent, or employee, as such, of the Cooperative under or by reason of the obligations, covenants or agreements contained in this Agreement, or implied therefrom, are waived and released as a condition of, and as a consideration for, the execution of this Agreement and the issuance of the Notes on the part of the Cooperative.

Section 3.09. Notes Mutilated, Destroyed, Stolen or Lost. In case a Note shall become mutilated, or be destroyed, stolen or lost, the Cooperative shall issue and deliver a new Note of like tenor as the Note so mutilated, destroyed, stolen or lost, in exchange and in substitution for such mutilated Note, or in lieu of and in substitution for the Note destroyed, stolen or lost and upon the Owner furnishing the Cooperative proof of ownership thereof and indemnity reasonably satisfactory to the Cooperative and complying with such other reasonable regulations and conditions as the Cooperative may prescribe and paying such expenses as the Cooperative may incur. The Note so surrendered shall be canceled.

#### **ARTICLE IV CONDITIONS OF LENDING**

The obligation of the Lender to lend hereunder are subject to the following conditions precedent:

Section 4.01. Representations and Warranties. The representations and warranties set forth in the Loan Documents are and shall be true and correct on and as of the Delivery Date.

Section 4.02. No Default. On the Delivery Date, the Cooperative shall be in compliance with all the terms and provisions set forth in the Loan Documents and the Resolution on its part to be observed or performed, and no Default or Event of Default, shall have occurred and be continuing at such time.

Section 4.03. Financial Status. There has been no event or circumstance since September 30, 2022 that has or could be reasonably expected to have a material and adverse impact on the financial condition of the Cooperative or the ability of the Cooperative to perform its obligations hereunder.

Section 4.04. Supporting Documents. On or prior to the Delivery Date, the Lender shall have received the following documents, all of which shall be satisfactory in form and substance to the Lender (such satisfaction to be evidenced by the purchase of the Notes by the Lender):

(a) Delivery by the Cooperative to the Lender of an executed counterpart of this Agreement and the Notes and a certified copy of the Resolution, the Supplemental Resolution, the Interlocal Agreement and the Implementation Agreement;

(b) The opinion of counsel to the Cooperative, regarding the due authorization, execution, delivery, validity and enforceability of this Agreement and the Notes, in form and substance satisfactory to the Lender;

(c) The opinion of Holland & Knight LLP, in its capacity as Note Counsel to the Cooperative, dated of even date herewith addressed to the Cooperative and the Lender, relating to the exclusion of the interest on the Tax-Exempt Note from gross income of the holder thereof for purposes of federal income taxation, the validity and enforceability of this Agreement and the Notes, all in customary form;

(d) A certificate of the Cooperative, dated the Delivery Date, certifying as to the information set forth in Sections 4.01, 4.02 and 4.03 hereof;

(e) A certificate of the Cooperative, dated the Delivery Date, and executed by an authorized representative certifying the names and signatures of the persons authorized to sign, on behalf of the Cooperative, this Agreement, the Notes, requisitions for Advances and the other documents to be delivered by it hereunder or thereunder;

(f) Evidence satisfactory to the Lender that the Cooperative's Revenue Note (Phase I Project), Series 2017 and the related Amended and Restated Loan Agreement between the Cooperative and the Bank dated May 16, 2022, have been paid in full and terminated; and

(g) Such additional supporting documents as the Lender may reasonably request.

Section 4.05. Payment of Fees and Expenses. Kutak Rock LLP, as counsel to the Lender, shall have received payment of its legal fees and expenses incurred in connection with preparation, review, execution and delivery of this Agreement and the other Loan Documents in an amount not to exceed \$20,000.

**ARTICLE V**  
**THE LOAN; COOPERATIVE'S OBLIGATION; DESCRIPTION AND PAYMENT**  
**TERMS; ADVANCES; ADJUSTMENT TO INTEREST RATE**

Section 5.01. The Loan. The Lender hereby agrees to make Advances to the Cooperative from time to time in amounts such that the aggregate principal amount of Advances at any one time outstanding shall not exceed the Maximum Commitment Amount to finance the Costs of the 2023 Project upon the terms and conditions set forth in the Bond Resolution and in this Agreement. Amounts may be Advanced under either the Tax-Exempt Note or the Taxable Note as so designated by the Cooperative. The Cooperative agrees to repay the principal amount borrowed plus interest thereon, upon the terms and conditions set forth in this Agreement and the Notes. The Maximum Commitment Amount may be reduced at the written request of the Cooperative, together with amounts, if any, payable under Section 5.05 herein. At any time that the Loan exceeds the Maximum Commitment Amount, due to a reduction in the Maximum Commitment Amount or otherwise, the Cooperative shall promptly repay to the Lender principal in such amount that the Loan will no longer exceed the Maximum Commitment Amount.

Section 5.02. Adjustment to Interest Rate.

(a) In the event of a Determination of Taxability, the Tax-Exempt Interest Rate shall be adjusted to the Taxable Rate, effective retroactively to the date on which such Determination of Taxability occurred and such retroactive amounts shall be due and payable on the next succeeding Interest Payment Date.

(b) The Lender shall promptly notify the Cooperative in writing of any notice given or made by the Internal Revenue Service or the Department of Treasury to the holder of the Tax-Exempt Note as to the loss of tax-exempt status of the Tax-Exempt Note and the date on which the Lender believes the interest rate on the Tax-Exempt Note has converted to the Taxable Rate. The Cooperative shall promptly notify the Lender in writing of any notice given or made by the Internal Revenue Service or the Department of Treasury to the Cooperative as to the loss of tax-exempt status of the Tax-Exempt Note.

(c) Upon the occurrence and during the continuance of an Event of Default, the Interest Rate may be adjusted to the Default Rate to the extent and in the manner set forth in Section 6.02(b) hereof.

Section 5.03. Notes Not to be General Obligation. The Notes shall not be deemed to constitute a general obligation or a pledge of the faith and credit of the Cooperative, any party of the Interlocal Agreement or Implementation Agreement, the State or any other political subdivision thereof within the meaning of any constitutional, legislative or charter provision or limitation, but shall be payable from and secured solely by a lien upon and a pledge of the Pledged Revenues, in the manner and to the extent provided in the Bond Resolution. No Owner shall ever have the right, directly or indirectly, to require or compel the exercise of the ad valorem taxing power of the State or of any party of the Interlocal Agreement or Implementation Agreement or any political subdivision of the State or taxation in any form on any real or personal property for any purpose, including, without limitation, for the payment of principal of and interest on the Loan, nor shall any Owner be entitled to payment of such principal and interest from any other funds of

the Cooperative other than the Pledged Revenues, all in the manner and to the extent provided for in the Bond Resolution. The Cooperative has no ad valorem taxing power. The Notes and the indebtedness evidenced thereby shall not constitute a lien upon any real or personal property of the Cooperative, or any part thereof, or any other tangible personal property of or in the Cooperative, but shall constitute a lien only on the Pledged Revenues, all in the manner and to the extent provided for in the Bond Resolution.

Section 5.04. Description and Payment Terms of the Notes.

(a) To evidence the Loan, the Cooperative shall issue and deliver to the Lender the Notes in the forms attached hereto as Exhibit A-1 and Exhibit A-2.

(b) All Advances evidenced by the Notes shall bear interest at the applicable Interest Rate, subject to adjustment as set forth herein.

(c) Unless repaid earlier pursuant to the terms hereof, the Loan shall be repaid in full on the Final Maturity Date. The interest on the Loan shall be paid on each Interest Payment Date. If the date for payment of the principal of or interest on the Loan shall be a day other than a Business Day, payment may be made on the next Business Day and shall have the same force and effect as if made on the nominal date of payment.

(d) The Interest Rate borne by each Note may never exceed the Maximum Rate. If, due to the limitation of the Maximum Rate, the Lender receives less interest during any Interest Period than it would be otherwise entitled to receive hereunder or under the Notes but for the limitation of the Maximum Rate, during any subsequent Interest Period in which the Lender is otherwise entitled hereunder or under the Notes to be paid interest and such interest is calculated at a rate which is less than the Maximum Rate, the Lender shall instead receive interest for such Interest Period computed at a rate equal to the Maximum Rate until the Lender has received, in the aggregate, the amount of interest due such Lender hereunder and under the Notes but for the limitation of the Maximum Rate.

Section 5.05. Right of Prepayment.

(a) The Notes may be prepaid prior to the Final Maturity Date, in whole or in part on any Business Day, without premium, subject to paragraphs (b), (c) and (d) of this Section 5.05.

(b) If this Agreement is terminated for any reason (other than the replacement of this Agreement with a similar agreement with the Lender) prior to the first anniversary of the Delivery Date, on the date of such termination, the Cooperative will pay (i) all amounts then due and owing to the Lender hereunder and under the Notes and (ii) a termination fee in an amount equal to the product of (1) 30 basis points (0.30%), (2) the Maximum Commitment Amount on the date of termination and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such termination to and including the first anniversary of the Delivery Date and the denominator of which is 360.

(c) If at the written request of the Cooperative the Maximum Commitment Amount is permanently reduced prior to the first anniversary of the Delivery Date (other than the

replacement of this Agreement with a similar agreement with the Lender), the Cooperative will pay a reduction fee in an amount equal to the product of (1) 30 basis points (0.30%), (2) the difference between the Maximum Commitment Amount immediately prior to such reduction and the Maximum Commitment Amount immediately after such reduction and (3) a fraction, the numerator of which is equal to the number of days from and including the date of termination to and including the first anniversary of the Delivery Date and the denominator of which is 360.

(d) In the event the Lender shall incur any loss, cost, or expense (including, without limitation, any loss, cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired or contracted to be acquired by the Lender to make Advances or hold the Notes or the relending or reinvesting of such deposits or other funds or amounts paid or prepaid to the Lender) as a result of any prepayment of the Notes on a date other than an Interest Payment Date (the "Breakage Expenses") for any reason, whether before or after an Event of Default, and whether or not such payment is required by any provision of this Agreement, then upon the demand of the Lender, the Cooperative shall pay to the Lender a prepayment premium in such amount as will reimburse the Lender for such Breakage Expenses. If the Lender requests such prepayment premium it shall provide to the Cooperative a certificate setting forth the computation of the Breakage Expenses giving rise to the request for such prepayment premium in reasonable detail and such certificate shall be conclusive if reasonably determined.

#### Section 5.06. Requisitions for Advances; Other Conditions.

(a) Upon five (5) days' written notice to the Lender, the Cooperative may borrow an aggregate principal amount from time to time up to the Maximum Commitment Amount of the Notes, by requesting Advances hereunder and under the Notes, provided that no Advance will be made after the Final Maturity Date and provided further that except upon approval of the Lender, not more than four Advances may be made during any calendar month. Amounts Advanced and repaid may be re-advanced, provided, however, at no time shall the Loan exceed the Maximum Commitment Amount. Each Advance must be in an amount in an integral multiple of \$5,000 and equal to or greater than \$100,000 or such lesser amount equal to the Available Commitment Amount. The Cooperative's obligation to pay the principal of, and interest on the Advances made hereunder shall be evidenced by the Tax-Exempt Note and the Taxable Note, as applicable, and the records of the Lender, updated for each Advance and each principal repayment, which shall be conclusive absent manifest error. Any request for any Advance received by the Lender after 2:00 p.m. Eastern time shall be deemed received on the next Business Day.

(b) The Lender shall not be obligated to Advance any funds unless (i) no Event of Default has occurred and is continuing and no event has occurred which, with the passage of time or giving of notice or both, would constitute an Event of Default; and (ii) the Cooperative delivers to the Lender a written request for such Advance, in substantially the form attached as Exhibit B hereto, executed by the Chair or the Secretary or the Chief Executive Officer, indicating the amount of the Advance requested and whether the Advance shall be funded under the Tax-Exempt Note or the Taxable Note, the date on which such Advance is to be made, the amount of cumulative Advances and wire instructions and certifying that (x) the representations and warranties in this Agreement shall be true and correct on the date of such Advance; and (y) no Default or Event of Default has occurred and is continuing as of the date of such Advance.

(c) Upon the satisfaction of the applicable conditions set forth herein, the Lender will make the proceeds of each Advance available to the Cooperative on the date specified in the applicable request for an Advance by effecting a wire transfer of such amount by the Lender's close of business of the date of such Advance in immediately available funds to an account designated in writing by the Cooperative to the Lender, or in such other manner as requested in the request for the Advance.

(d) Notwithstanding anything to the contrary herein, upon the Delivery Date, an initial Advance may be requested in any amount up to the Maximum Commitment Amount pursuant to a written direction, including a closing memorandum, executed by the Chair or the Secretary or the Chief Executive Officer, indicating the amount of the Advance requested and whether the Advance shall be funded under the Tax-Exempt Note or the Taxable Note.

Section 5.07. Computation of Interest and Fees: Application of Payments. All computations of interest and fees hereunder shall be made on the basis of a year of 360 days for the actual number of days elapsed. All payments made on the Notes shall be applied first to interest accrued to the date of payment and next to the unpaid principal balance.

Section 5.08. Fees.

(a) The Cooperative shall pay to the Lender an unused commitment fee in the amount of 30 basis points (0.30%) per annum for the period commencing on the Delivery Date and at all times thereafter, on the daily Available Amount during the preceding fiscal quarter (the "Undrawn Fee"); provided that, for any day on which the aggregate outstanding principal amount of Advances is less than or equal to fifty percent (50%) of the Maximum Commitment Amount, the rate per annum for the Undrawn Fee for such day shall be equal to 35 basis points (0.35%). The Undrawn Fee shall be due and payable quarterly in arrears, upon demand by the Lender but no earlier than 30 days from the date the Cooperative is notified in writing of such amount by the Lender and determined based on a 360-day year and actual days elapsed. Upon the written request of the Cooperative and fifteen days' notice to the Lender, subject to Section 5.05, the Maximum Commitment Amount may be permanently reduced for the next quarter to reduce or avoid future Undrawn Fees.

(b) In connection with each amendment of this Agreement or any Loan Document, or consent or waiver by the Lender under this Agreement or any Loan Document, the Cooperative shall pay to the Lender an amendment fee or transfer fee in a minimum amount of \$2,500, plus associated legal expenses.

Section 5.09. Benchmark Replacement Provisions. Notwithstanding anything to the contrary contained in this Agreement or in any related Loan Document:

(a) *Benchmark Replacement.* If a Benchmark Transition Event occurs, the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes under this Agreement or under any related Loan Document. Any Benchmark Replacement will become effective on the applicable Benchmark Replacement Date without any further action or consent of the Cooperative.



(b) *Benchmark Replacement Conforming Changes.* The Lender will have the right to make Benchmark Replacement Conforming Changes from time to time and any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of the Cooperative.

(c) *Notices; Standards for Decisions and Determinations.* The Lender will promptly notify the Cooperative of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Lender pursuant to these Benchmark Replacement Provisions, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and will be made in its sole discretion and without the Cooperative's consent.

(d) *Certain Defined Terms.* As used in this Agreement, each of the following capitalized terms has the meaning given to such term below:

"Benchmark" means, initially, Daily Simple SOFR; provided, however, that if a Benchmark Transition Event has occurred with respect to Daily Simple SOFR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has become effective pursuant to the provisions of this Agreement.

"Benchmark Administrator" means, initially, the SOFR Administrator, or any successor administrator of the then-current Benchmark or any insolvency or resolution official with authority over such administrator.

"Benchmark Replacement" means the sum of: (A) the alternate rate of interest that has been selected by the Lender as the replacement for the then-current Benchmark; and (B) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Lender, in each case, giving due consideration to (x) any selection or recommendation by the Relevant Governmental Body at such time for a replacement rate, the mechanism for determining such a rate, the methodology or conventions applicable to such rate, or the spread adjustment, or method for calculating or determining such spread adjustment, for such rate, or (y) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the then-current Benchmark, the methodology or conventions applicable to such rate, or the spread adjustment, or method for calculating or determining such spread adjustment, for such alternate rate for U.S. dollar-denominated syndicated or bilateral credit facilities at such time; provided, however, that if the Benchmark Replacement as determined as provided above would be less than the Benchmark Floor, then Benchmark Replacement shall be deemed to be the Benchmark Floor, subject to any other applicable floor rate provision.

"Benchmark Replacement Conforming Changes" means any technical, administrative or operational changes (including, without limitation, changes to the definition of "U.S. Government Securities Business Day," the timing and frequency of determining rates and making payments of interest, prepayment provisions and other technical, administrative or operational matters) that the Lender decides may be appropriate to reflect the adoption and implementation of a Benchmark Replacement and to permit the administration thereof by the Lender.

"Benchmark Replacement Date" means the date specified by the Lender in a notice to the Cooperative following a Benchmark Transition Event.

"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to the then-current Benchmark: a public statement or publication of information by or on behalf of the Benchmark Administrator or a regulatory supervisor for the Benchmark Administrator announcing that (A) the Benchmark Administrator has ceased or will cease to provide the Benchmark permanently or indefinitely or (B) the Benchmark is no longer, or as of a specified future date will no longer be, representative of underlying markets.

"Relevant Governmental Body" means the Board of Governors of the Federal Reserve System and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System and/or the Federal Reserve Bank of New York or any successor thereto.

Section 5.10. Inability to Determine Interest Rates; Illegality. Subject to the Benchmark Replacement Provisions above, if the Lender determines (any determination of which shall be conclusive and binding on the Cooperative) that either (i) Daily Simple SOFR cannot be determined pursuant to the definition thereof other than as a result of a Benchmark Transition Event (an "Inability Determination") or (ii) any law has made it unlawful, or that any governmental authority has asserted that it is unlawful, for the Lender to make or maintain an Advance based on SOFR or Daily Simple SOFR, or to determine or charge interest rates based upon SOFR or Daily Simple SOFR (an "Illegality Determination"), then the Lender will so notify the Cooperative. The outstanding principal balance of the Loan shall bear interest (computed on the basis of a 360-day year, actual days elapsed) at a fluctuating rate per annum determined by the Lender substituting the SOFR or Daily Simple SOFR with Prime Rate as the variable rate index hereunder plus the applicable margin, from the date of an Inability Determination or an Illegality Determination until the Lender revokes such Inability Determination or notifies the Cooperative that the circumstances giving rise to such Illegality Determination no longer exist, as applicable. When interest is determined in relation to the Prime Rate, each change in the rate of interest hereunder shall become effective on the date each Prime Rate change is announced within the Lender. Notwithstanding any of the foregoing to the contrary, if a Benchmark Replacement is subsequently determined in accordance with applicable Benchmark Replacement Provisions, that Benchmark Replacement, plus any applicable margin, will become effective on the Benchmark Replacement Date and will then supersede the Prime Rate and margin determined in accordance with this provision.

Section 5.11. 2023 Construction Accounts. Pursuant to Section 7.01 of the Resolution, there is hereby created and established accounts to be held by the Cooperative to be designated the "Taxable 2023 Project Construction Account" (the "Taxable 2023 Construction Account") and the "Tax-Exempt 2023 Project Construction Account" (the "Tax-Exempt 2023 Construction Account" and together with the Taxable 2023 Construction Account, each a "2023 Construction Account" and collectively the "2023 Construction Accounts") within the Construction Fund (as defined in the Resolution). The 2023 Construction Accounts shall be kept separate and apart from all other funds and accounts of the Cooperative and the moneys on deposit therein shall be withdrawn, used and applied by the Cooperative solely for the payment of Costs of the 2023 Project. Proceeds of the Taxable Note shall be deposited into the Taxable 2023 Construction Account and proceeds of the Tax-Exempt Note shall be deposited into the Tax-Exempt 2023 Construction Account.

Any funds on deposit in the 2023 Construction Accounts that, in the opinion of the Cooperative, are not immediately necessary for expenditure, as herein provided, may be invested and reinvested in Permitted Investments pursuant to Section 10.02 of the Resolution. All income derived from investment of funds in a 2023 Construction Account shall be deposited into the respective 2023 Construction Account and shall be used to pay Costs of the 2023 Project.

The Cooperative covenants to commence the acquisition and construction of the 2023 Project promptly upon delivery of the Notes and to thereafter work with due diligence to complete it. Upon completion thereof, any amounts then remaining in the Taxable 2023 Construction Account and not reserved by the Cooperative for the payment of any remaining parts of the Costs of the 2023 Project may be deposited into the Revenue Fund and used to pay debt service on the Notes or to redeem the Notes in the manner that the Notes are permitted to be redeemed under the terms of the Resolution or may be used for any other lawful purpose, and any amounts then remaining in the Tax-Exempt 2023 Construction Account and not reserved by the Cooperative for the payment of any remaining parts of the Costs of the 2023 Project may be deposited into the Revenue Fund and used to pay debt service on the Tax-Exempt Note or to redeem the Tax-Exempt Note in the manner that the Tax-Exempt Note is permitted to be redeemed under the terms of the Resolution or may be used for any other lawful purpose.

## **ARTICLE VI EVENTS OF DEFAULT**

Section 6.01. General. An "Event of Default" shall be deemed to have occurred under this Agreement if:

(a) The Cooperative shall fail to make (i) any payment of the principal of or interest on any Loan or the Notes after the same shall become due and payable under the terms hereof or (ii) any other amount due under this Agreement within three (3) Business Days after the same shall become due and payable under the terms hereof; or

(b) Any representation or warranty made by or on behalf of the Cooperative in this Agreement shall be incorrect or untrue in any material respect when made or deemed to have been made or delivered; or

(c) The Cooperative shall fail to perform or observe any covenant set forth in Section 3.01(b), 3.01(c), 3.01(e), 3.01(h) or Section 3.02; or

(d) The Cooperative shall default in the performance of or compliance with any term or covenant contained in the Loan Documents, other than a term or covenant in Section 3.06 or which is dealt with in any other subsection of this Section 6.01, which default or non-compliance shall continue and not be cured within thirty (30) days after the earlier of (i) written notice thereof to the Cooperative by the Lender or (ii) actual knowledge of such breach by a responsible officer of the Cooperative, or such longer period as may be reasonably necessary to cure such default, as long as the Cooperative initiates curative action within such 30-day period and diligently prosecutes such action until the cure has been achieved but not to exceed 90 days; or

(e) The Cooperative admits in writing its inability to pay its debts generally as they become due or files a petition in bankruptcy or makes an assignment for the benefit of its creditors or consents to the appointment of a receiver or trustee for itself; or

(f) The Cooperative is adjudged insolvent by a court of competent jurisdiction, or it is adjudged bankrupt on a petition in bankruptcy filed by or against the Cooperative, or an order, judgment or decree is entered by any court of competent jurisdiction appointing, without the consent of the Cooperative, a receiver or trustee of the Cooperative or of the whole or any part of its property, and if the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof; or

(g) The Cooperative shall file a petition or answer seeking reorganization or any arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or the State; or

(h) The Cooperative shall (i) default on the payment of the principal of or interest on any indebtedness for borrowed money aggregating in excess of \$100,000, beyond the period of grace, if any, provided in the instrument or agreement under which such indebtedness was created or incurred; or (ii) default in the observance or performance of any agreement or condition relating to any indebtedness for borrowed money in a principal amount in excess of \$100,000, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event shall occur or condition exist with respect to indebtedness for borrowed money in a principal amount in excess of \$100,000; or

(i) (i) The Cooperative shall impose a debt moratorium, debt restructuring, debt adjustment or comparable extraordinary restriction on the repayment when due and payable of the principal of or interest on the Loan or any indebtedness of the Cooperative, or (ii) any Governmental Authority having appropriate jurisdiction over the Cooperative shall impose a debt moratorium, debt restructuring, debt adjustment or comparable extraordinary restriction on the repayment when due and payable of the principal of or interest on the Loan or any indebtedness of the Cooperative; or

(j) (i) Any provision relating to the payment of principal of or interest on the Loan or the security created under this Agreement or any other Loan Document shall at any time for any reason cease to be valid and binding on the Cooperative as a result of any legislative or

administrative action by a Governmental Authority with competent jurisdiction or shall be declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid, or unenforceable, or the validity or enforceability thereof shall be contested in a judicial or administrative proceeding; or (ii) (A) any Governmental Authority with jurisdiction to rule on the validity or enforceability of this Agreement, the Notes or the Act shall find or rule, in a judicial or administrative proceeding, that any provision of this Agreement, the Notes or the Act, as the case may be, relating to (1) the ability or the obligation of the Cooperative to pay, when due, the principal of or interest on the Loan or (2) the pledge of the Pledged Revenues securing the Notes not valid or not binding on, or enforceable against, the Cooperative; or (B) an authorized officer for the Cooperative (1) makes a claim in a judicial or administrative proceeding that the Cooperative has no further liability or obligation hereunder, under the Notes or the Act to pay, when due, the principal of or interest on the Loan or (2) contests in a judicial or administrative proceeding the validity or enforceability of any provision of this Agreement, the Notes or the Act relating to or otherwise affecting the Cooperative's ability or obligation to pay, when due, the principal of or interest on the Loan; or

(k) An Event of Default under the Bond Resolution shall have occurred.

Section 6.02. Remedies of Lender. Upon the occurrence and during the continuance of any Event of Default, the Lender may take one or more of the following actions at any time and from time to time (regardless of whether the actions are taken at the same or different times):

(a) by written notice to the Cooperative, declare the obligation of the Lender to make Advances hereunder to be terminated, whereupon such commitment and obligation shall be terminated;

(b) by written notice to the Cooperative, increase the Interest Rate on the Notes to the Default Rate;

(c) by written notice to the Cooperative, declare the outstanding amount of the Advances and the Notes to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived;

(d) cure any Default, Event of Default or event of nonperformance hereunder or under any Loan Document; *provided, however*, that the Lender shall have no obligation to effect such a cure; and

(e) exercise, or cause to be exercised, any and all remedies as it may have hereunder or under the Notes and as otherwise available at Law and at equity.

Notwithstanding clause (c) of this Section 6.02, in the event that amounts outstanding under the SRF Loan Agreements cannot be accelerated or otherwise demanded immediately due and payable after an event of default thereunder and no other credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement or similar facility of the Cooperative includes an acceleration right, or otherwise has the ability to demand such facility be immediately due and payable after an event of default thereunder, the Lender agrees it shall not have the right to accelerate the Notes. The Cooperative shall provide evidence of such other bank facility to the Lender of such facility upon the reasonable request of the Lender.

Notwithstanding anything herein to the contrary, a breach or a default of any of the covenants contained in Section 3.05 hereof or Sections 10.03 or 10.04 of the Bond Resolution shall not be an Event of Default hereunder and the sole remedy of the Lender shall be an adjustment to the Interest Rate on the Tax-Exempt Note to the Taxable Rate to the extent and in the manner described herein and in the Note.

Nothing in this Section shall be construed to prohibit the Cooperative from taking any action, to the extent permitted by applicable law, to remedy any Event of Default.

## **ARTICLE VII MISCELLANEOUS**

Section 7.01. No Waiver: Cumulative Remedies. No failure or delay on the part of the Lender in exercising any right, power, remedy hereunder, or under the Notes shall operate as a waiver of the Lender's rights, powers and remedies hereunder, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof; or the exercise of any other right, power or remedy hereunder or thereunder. The remedies herein and therein provided are cumulative and not exclusive of any remedies provided by law or in equity.

Section 7.02. Amendments, Changes or Modifications to the Agreement. This Agreement shall not be amended, changed or modified without the prior written consent of the Lender and the Cooperative. The Lender shall receive a Favorable Opinion of Note Counsel as a condition to any amendment that modifies the Final Maturity Date or the Interest Rate on the Tax-Exempt Note.

Section 7.03. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement, and, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 7.04. Severability. If any clause, provision or section of this Agreement shall be held illegal or invalid by any court, the invalidity of such clause, provision or section shall not affect any other provisions or sections hereof; and this Agreement shall be construed and enforced to the end that the transactions contemplated hereby be effected and the obligations contemplated hereby be enforced, as if such illegal or invalid clause, provision or section had not been contained herein.

Section 7.05. Term of Agreement. Except as otherwise specified in this Agreement, this Agreement and all representations, warranties, covenants and agreements contained herein or made in writing by the Cooperative in connection herewith shall be in full force and effect from the Delivery Date and shall continue in effect until as long as the Notes are outstanding and unpaid.

Section 7.06. Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by telecopy, electronic telephone line facsimile transmission or other similar electronic or digital transmission method (provided customary evidence of receipt is obtained); the day after it is sent, if sent by overnight common carrier service; and five days after it is sent, if mailed, certified mail, return receipt requested, postage prepaid. In each case, notice shall be sent to:

If to the Cooperative: Polk Regional Water Cooperative  
Attn: Chief Executive Officer  
330 West Church Street  
Bartow, Florida 33831

If to the Lender: Wells Fargo Bank, National Association  
100 South Ashley Drive, 8th Floor  
Tampa, Florida 33602  
Attention: Linda A. Hallowell, Senior Vice President  
Telephone: (609) 216-4685  
Fax: (866) 409-7671  
Email: linda.a.hallowell@wellsfargo.com

or to such other address as either party may have specified in writing to the other using the procedures specified above in this Section 7.06.

Section 7.07. Applicable Law. This Agreement, the Notes and transactions contemplated herein, shall be construed pursuant to and governed by the substantive laws of the State.

Section 7.08. Binding Effect: Assignment. This Agreement shall be binding upon and inure to the benefit of the successors in interest and permitted assigns of the parties. The Cooperative shall have no rights to assign any of their rights or obligations hereunder without the prior written consent of the Lender.

Section 7.09. Conflict. In the event any conflict arises between the terms of this Agreement and the terms of any other Loan Document, the terms of this Agreement shall govern in all instances of such conflict.

Section 7.10. No Third-Party Beneficiaries. It is the intent and agreement of the parties hereto that this Agreement is solely for the benefit of the parties hereto and no other person shall have any rights or privileges hereunder.

Section 7.11. No Advisory or Fiduciary Relationship. In connection with all aspects of the transactions contemplated by this Agreement and the Notes (including in connection with any amendment, waiver or other modification of this Agreement or the Notes), the Cooperative acknowledges that: (a)(i) any arranging, structuring and other services regarding this Agreement and the Notes provided by the Lender are arm's length commercial transactions between the Cooperative on the one hand, and the Lender on the other hand, (ii) the Cooperative has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) the Cooperative is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement and the Notes; (b)(i) the Lender is and has been acting solely as a principal and has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Cooperative or any other Person and (ii) the Lender does not have any obligation to the Cooperative with respect to the transactions contemplated by this Agreement and the Notes, except those obligations expressly set forth herein; and (c) the Lender may be engaged in a broad range of transactions that involve interests that differ from those of the

Cooperative, and the Lender does not have any obligation to disclose any of such interests to the Cooperative.

Section 7.12. Entire Agreement. Except as otherwise expressly provided, this Agreement, the Bond Resolution and the other Loan Documents embody the entire agreement and understanding between the parties hereto and supersede all prior agreements and understandings relating to the subject matter hereof.

Section 7.13. Further Assurances. The parties to this Agreement will execute and deliver, or cause to be executed and delivered, such additional or further documents, agreements or instruments and shall cooperate with one another in all respects for the purpose of carrying out the transactions contemplated by this Agreement.

Section 7.14. Jurisdiction; Venue; Waiver of Jury Trial. In the event that any action, suit or other proceeding is brought in connection with this Agreement, the parties hereto hereby (i) irrevocably consent to the exercise of jurisdiction over them and, to the extent permitted by applicable laws, their property, by the United States District Court for the Middle District of Florida, Tampa Division or the Circuit Court of Polk County, Florida, and (ii) irrevocably waive any objection they or either of them might now or hereafter have or assert to the venue of any such proceeding in any court described in clause (i) above.

THE LENDER AND THE COOPERATIVE EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE NOTES OR ANY DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY.

Section 7.15. Successors and Assigns.

(a) *Generally*. This Agreement is a continuing obligation and shall be binding upon the Cooperative, its successors, transferees and assigns and shall inure to the benefit of the Lender and each Transferee and their respective permitted successors, transferees and assigns. The Cooperative may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender. The Lender and each Transferee may, in its sole discretion and in accordance with applicable law, from time to time assign, sell or transfer in whole and not in part, this Agreement and its interest in the Notes in accordance with the provisions of subsections (b) or (c) below and the Notes may only be assigned, sold or transferred together so there is always a single Owner of both Notes. The Lender and each Transferee may at any time and from time to time pledge or assign a certain security interest in accordance with the provisions of subsection (d) below and enter into participation agreements in accordance with the provisions of subsection (e) below.

(b) *Sales and Transfers to a Bank Transferee*. Without limitation of the foregoing generality, the Lender may at any time sell or otherwise transfer to one or more transferees the Notes in whole and not in part to a Person that is (i) an Affiliate of the Lender or



(ii) a trust or other custodial arrangement established by the Lender or an Affiliate of the Lender, the owners of any beneficial interest in which are limited to Qualified Institutional Buyers (each, a "Bank Transferee"). From and after the date of such sale or transfer, Wells Fargo Bank, National Association (and its successors) shall continue to have all of the rights of the Lender hereunder as if no such transfer or sale had occurred; provided, however, that (A) no such sale or transfer referred to in clause (i) or (ii) of this subsection shall in any way affect the obligations of the Lender hereunder, (B) the Cooperative shall be required to deal only with the Lender with respect to any matters under this Agreement and (C) in the case of a sale or transfer referred to in clause (i) or (ii) of this subsection, only the Lender shall be entitled to enforce the provisions of this Agreement against the Cooperative.

(c) *Sales and Transfers to a Non-Bank Transferee.* (i) Without limitation of the foregoing generality, the Lender or any Owner may at any time sell or otherwise transfer to a transferee which is not a Bank Transferee but which constitute a Qualified Holder (each a "Non-Bank Transferee") in the Notes in whole and not in part if (A) written notice of such sale or transfer, including that such sale or transfer is to a Non-Bank Transferee, together with addresses and related information with respect to the Non-Bank Transferee, shall have been given to the Cooperative by such selling Owner, and (B) the Non-Bank Transferee shall have delivered to the Lender and the selling Owner, an investment letter in substantially the form attached as Exhibit C hereto (except for paragraph 10 which shall be delivered only by the Initial Purchaser) (the "Investor Letter"). (ii) From and after the date the Cooperative and the selling Owner have received written notice and an executed Investor Letter, (A) the Non-Bank Transferee thereunder shall be a party hereto and shall have the rights and obligations of an Owner hereunder, and any reference to the assigning Owner hereunder and under this Agreement shall thereafter refer to the Non-Bank Transferee, and (B) the assigning Owner shall relinquish its rights and be released from its obligations hereunder.

(d) *Certain Pledges.* The Lender may at any time pledge or grant a security interest in all or any portion of its rights under this Agreement and the Notes to secure obligations of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto.

(e) *Participations.* The Lender shall have the right to grant participations in all or a portion of the Lender's interest in this Agreement and the Notes to one or more Participants, and such Participants shall, except as set forth in the clause (ii) of this subsection, be entitled to the benefits of the this Agreement and the Notes to the same extent as if they were a direct party to this Agreement; provided, however, that (i) no such participation by any such Participant shall in any way affect the obligations of the Lender hereunder and (ii) the Cooperative shall be required to deal only with the Lender with respect to any matters under this Agreement and the Notes and no such Participant shall be entitled to enforce against the Cooperative any provision hereunder.

Section 7.16. USA Patriot Act Notification; Government Regulation. (a) The Lender hereby notifies the Cooperative that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107 56 (signed into law October 26, 2001)) (as amended from time to time, the "Patriot Act"), the Lender may be required to obtain, verify and record information that identifies the Cooperative, which information may include the name and address of the Cooperative and other information that will allow the Lender to identify the Cooperative in accordance with the Patriot

Act, and the Cooperative hereby agrees to take any action necessary to enable the Lender to comply with the requirements of the Patriot Act.

(b) The Cooperative shall (i) ensure that no Person who owns a controlling interest in or otherwise controls the Cooperative is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, that prohibits or limits the Lender from making any advance or extension of credit to the Cooperative or from otherwise conducting business with the Cooperative and (ii) ensure that the proceeds of the Notes have not been, and shall not be, used to violate any of the regulations administered and enforced by OFAC or any enabling statute or Executive Order relating thereto. Further, the Cooperative shall comply, and cause any of its affiliates to comply, with all applicable Bank Secrecy Act laws and regulations, as amended. The Cooperative agrees to provide documentary and other evidence of the Cooperative's identity as may be reasonably requested by the Cooperative at any time to enable the Lender to verify the Cooperative's identity or to comply with any applicable law or regulation including, without limitation, Section 326 of the Patriot Act.

Section 7.17. Expenses. The Cooperative shall pay all out of pocket expenses of the Lender, including fees and disbursements of counsel or other reasonably required consultant for the Lender, in connection with the preparation of this Agreement and the Loan Documents, any waiver or consent hereunder or any amendment hereof or any Default or Event of Default or alleged Default or Event of Default hereunder; provided, however, any request for payment under Sections 7.17 must be requested from the Cooperative in writing within 90 days from the later of the termination of this Agreement or the payment of the Notes held by the Lender in full.

Section 7.18. Survival of Representations and Warranties. All agreements, covenants, representations and warranties contained in this Agreement and in any certificate delivered pursuant hereto shall survive the execution and delivery of this Agreement.

Section 7.19. Indemnity

(a) *Indemnification by the Cooperative*. The Cooperative shall indemnify the Lender and each Related Party of the Lender (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, and shall pay or reimburse any such Indemnitee for, any and all losses, claims (including, without limitation, any environmental claims), penalties, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Cooperative), arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) the Advances or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of hazardous materials on or from any property owned or operated by the Cooperative or any subsidiary thereof, or any environmental claim related in any way to the Cooperative or any subsidiary, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Cooperative or any subsidiary thereof, and regardless

of whether any Indemnitee is a party thereto, or (v) any claim (including, without limitation, any environmental claims), investigation, litigation or other proceeding (whether or not the Lender is a party thereto) and the prosecution and defense thereof, arising out of or in any way connected with the Advances, this Agreement, any other Loan Document, or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby, including without limitation, reasonable attorneys and consultant's fees, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(b) *Waiver of Consequential Damages, Etc.* To the fullest extent permitted by applicable Law, the Cooperative shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, the Advances or the use of the proceeds thereof.

(c) *Payments.* All amounts due under this Section shall be payable promptly after demand therefor.

(d) *Survival.* Each party's obligations under this Section shall survive the termination of the Loan Documents and payment of the obligations hereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective between them as of the date of first set forth above.

POLK REGIONAL WATER COOPERATIVE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Secretary/Treasurer

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Name: Linda A. Hallowell  
Title: Senior Vice President

EXHIBIT A-1

Issue Date: [\_\_\_\_\_] [\_\_\_], 2023

Not to Exceed  
\$15,000,000

THIS NOTE IS SUBJECT TO TRANSFER RESTRICTIONS, AS MORE FULLY  
DESCRIBED IN THE LOAN AGREEMENT.

POLK REGIONAL WATER COOPERATIVE  
REVOLVING REVENUE NOTE,  
SERIES 2023A

The Polk Regional Water Cooperative (the "Cooperative"), a public agency and unit of special purpose government of the State, for value received, promises to pay, but solely from the sources hereinafter provided, to the order of Wells Fargo Bank, National Association or registered assigns (hereinafter, the "Owner"), the principal sum of Fifteen Million Dollars (\$15,000,000) or such lesser amount as shall have been advanced and shall be outstanding hereunder, together with interest on the principal balance outstanding at the rate per annum hereinafter set forth. All computations of interest and fees hereunder shall be made on the basis of a year of 360 days for the actual number of days elapsed.

All terms used herein in capitalized form, unless otherwise defined herein, shall have the meanings ascribed to such terms by the Loan Agreement, dated as of January \_\_\_, 2023 (as amended, restated or otherwise modified from time to time, the "Agreement"), between the Cooperative and the Owner. In the event of any inconsistencies as between the Agreement and this Note, the terms and provisions of the Agreement shall control.

As used in this Note:

"Advance" means a borrowing of money under this Note, pursuant to Section 5.06 of the Agreement.

"Available Amount" means, for any day, the Maximum Commitment Amount net of the aggregate amount of Advances outstanding at such time.

"Benchmark Floor" means a rate of interest equal to zero percent (0%).

"Business Day" means (a) for all purposes other than as set forth in clause (b) below, any day other than a Saturday, Sunday or legal holiday on which banks in Polk County, Florida or New York, New York, are authorized by law to close and (b) with respect to all notices and determinations in connection with, and payments of principal and interest on, any Loan bearing interest at Daily Simple SOFR, any day that is a Business Day described in clause (a) and that is also a Federal Reserve Business Day.

"Daily Simple SOFR" means, with respect to any day (a "SOFR Rate Day"), a rate per annum equal to SOFR for the day (such day, the "SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S.

Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's Website; provided, however, that if Daily Simple SOFR determined as provided above would be less than the Benchmark Floor, then Daily Simple SOFR shall be deemed to be the Benchmark Floor. If by 5:00 p.m. (New York City time) on the second (2<sup>nd</sup>) U.S. Government Securities Business Day immediately following any SOFR Determination Day, SOFR in respect of such SOFR Determination Day has not been published on the SOFR Administrator's Website and a Benchmark Replacement Date with respect to Daily Simple SOFR has not occurred, then SOFR for such SOFR Determination Day will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which SOFR was published on the SOFR Administrator's Website; provided that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days.

"Default Rate" means the greatest of (i) the Prime Rate plus 4.00%, (ii) the Federal Funds Rate plus 5.00% or (iii) 10.00%.

"Determination of Taxability" means a final decree or judgment of any federal court or a final determination of the Internal Revenue Service or of the United States Treasury Department concluding that any interest payable on the Tax-Exempt Note is includable in the gross income of the Noteholder due to an action or inaction of the Cooperative. No such decree or determination shall be considered final for the purposes of this paragraph unless the Cooperative has been given written notice thereof and, if it is so desired by the Cooperative and the Cooperative has exhausted or waived all legal or administrative rights available to it to contest such decree or determination.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that: (a) if such day is not a Business Day, then the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; and (b) if no such rate is so published on such next succeeding Business Day, then the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of one-hundredth of one percent) charged to the Lender on such day on such transactions as determined by the Lender. Each determination of the Federal Funds Rate by the Lender shall be conclusive and binding on the Cooperative. If the Federal Funds Rate determined as provided above would be less than zero percent (0%), then the Federal funds Rate shall be deemed to be zero percent (0%).

"Federal Reserve Business Day" means any day that is not a Saturday, Sunday or other day on which the Federal Reserve Bank of New York is closed.

"Final Maturity Date" means January \_\_\_\_, 2025, or such later date which this Note may be extended or renewed in the sole discretion of the Lender by written notice from the Lender to the Cooperative, together with a Favorable Opinion of Note Counsel.

"Interest Rate" means initially the Tax-Exempt Adjusted Daily Simple SOFR Rate, provided however, such rate may be adjusted upon a Determination of Taxability and an Event of Default as provided herein.

"Margin Rate Factor" means the greater of (a) 1.0, and (b) the product of (i) one minus the then current Maximum Federal Corporate Tax Rate in effect on the date of calculation multiplied by (ii) the quotient of (A) one divided by (B) one minus the Maximum Federal Corporate Tax Rate on the MRF Effective Date. The effective date of any change in the Margin Rate Factor shall be the effective date of the decrease or increase (as applicable) in the Maximum Federal Corporate Tax Rate resulting in such change.

"Maximum Commitment Amount" means, for any day, \$15,000,000, and as the same may hereafter be modified in accordance with the terms of this Agreement.

"Maximum Federal Corporate Tax Rate" shall mean the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, determined without regard to tax rate or tax benefit make-up provisions such as the last two sentences of Section 11(b)(1) of the Code, as in effect from time to time (or, if as a result of a change in the Code the rate of income taxation imposed on corporations shall not be applicable to the Lender, the maximum statutory rate of federal income taxation which could apply to the Lender).

"Maximum Rate" means an interest rate per annum equal to the lesser of the maximum rate permitted by law and twenty percent (20%) per annum.

"MRF Effective Date" means initially the Delivery Date, and thereafter the date of any amendment on which the Tax-Exempt Applicable Spread or the Tax-Exempt Adjusted Daily Simple SOFR Rate is modified.

"Prime Rate" means on any day, the rate of interest per annum then most recently established by the Initial Purchaser as its "prime rate." Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by the Initial Purchaser to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and the Initial Purchaser may make various business or other loans at rates of interest having no relationship to such rate. If the Initial Purchaser ceases to exist or to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported. If the Prime Rate determined as provided above would be less than zero percent (0%), then the Prime Rate shall be deemed to be zero percent (0%).

"SOFR" means a rate per annum equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"Tax-Exempt Adjusted Daily Simple SOFR Rate" means the product of (a) the sum of (i) the product of 80% times Daily Simple SOFR and (ii) the Tax-Exempt Applicable Spread, multiplied by (b) the Margin Rate Factor, rounded to the fifth decimal place.

"Tax-Exempt Applicable Spread" means 46 basis points (0.46%).

"Taxable Rate" means an interest rate per annum equal to the Interest Rate otherwise borne by the Note multiplied by the Taxable Rate Factor.

"Taxable Rate Factor" means, for each day that the Taxable Rate is determined, the quotient of (i) one divided by (ii) one minus the Maximum Federal Corporate Tax Rate in effect as of such day.

"U.S. Government Securities Business Day" means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association, or any successor thereto, recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

Principal of and interest on this Note are payable in lawful money of the United States of America at such place as the Owner may designate to the Cooperative.

Interest shall be payable monthly in arrears on the first Business Day of each month, commencing on February 1, 2023 (each an "Interest Payment Date").

If the date for payment of the principal of or interest on this Note shall be a day other than a Business Day, payment on the next Business Day shall have the same force and effect as if made on the nominal date of payment.

Upon the occurrence and during the continuance of an Event of Default, the Interest Rate on this Note will increase to the Default Rate.

The entire unpaid principal balance, together with all accrued and unpaid interest hereon, shall be due and payable in full on the Final Maturity Date, or such later date which the Agreement may be extended or renewed in the sole discretion of the Lender by written notice from the Lender to the Cooperative, together with a Favorable Opinion of Note Counsel. All payments by the Cooperative pursuant to this Note shall apply first to accrued interest, then to other charges due the Owner, and the balance thereof shall apply to the principal sum due.

The principal of and interest on this Note as the same shall become due shall be paid solely from the Pledged Revenues identified in the Agreement, to the extent and in the manner provided in the Agreement.

The principal of this Note may be prepaid at the option of the Cooperative in whole or in part at any time subject to the conditions set forth in the Agreement.



This Note is a revolving line of credit. Principal amounts advanced and repaid under this Note may be readvanced; provided, however, the principal amount outstanding at any given time hereunder together with the principal amount outstanding under the Revolving Revenue Note, Series 2023B (Federally Taxable) (the "Taxable Note") shall not exceed the Maximum Commitment Amount.

The Cooperative to the extent permitted by law hereby waives presentment, demand, protest and notice of dishonor.

In the event of a Determination of Taxability, the interest rate shall be adjusted to the Taxable Rate, effective retroactively to the date on which the interest on this Note was not excludable to the holder of this Note for federal income tax purposes.

The Note shall not be deemed to constitute a general obligation or a pledge of the faith and credit of the Cooperative, any Participating Member, the State or any other political subdivision thereof within the meaning of any constitutional, legislative or charter provision or limitation, but shall be payable from and secured solely by a lien upon and a pledge of the Pledged Revenues, in the manner and to the extent provided in the Agreement and herein. No Owner shall ever have the right, directly or indirectly, to require or compel the exercise of the ad valorem taxing power of the State or of any Participating Member or any political subdivision of the State or taxation in any form on any real or personal property for any purpose, including, without limitation, for the payment of principal of and interest on such Note, nor shall any Owner be entitled to payment of such principal and interest from any other funds of the Cooperative other than the Pledged Revenues, all in the manner and to the extent herein provided. The Cooperative has no ad valorem taxing power. The Note and the indebtedness evidenced thereby shall not constitute a lien upon any real or personal property of the Cooperative, or any part thereof, or any other tangible personal property of or in the Cooperative, but shall constitute a lien only on the Pledged Revenues, all in the manner and the extent provided herein.

This Note is issued pursuant Resolution No. 2022-05 duly adopted by the Cooperative on July 13, 2022, as supplemented by Resolution No. 2023-\_\_\_\_\_ duly adopted by the Cooperative on January 18, 2023 (collectively, the "Bond Resolution"), and the Agreement, and is subject to all the terms and conditions of the Agreement. All terms, conditions and provisions of the Agreement are by this reference thereto incorporated herein as a part of this Note. This Note is being issued as an Additional Bond within the meaning of the Bond Resolution. This Note is a limited, special obligation of the Cooperative, payable from and secured solely by a lien upon and pledge of certain Pledged Revenues, as defined and described and in the manner provided in the Agreement. The pledge of the Pledged Revenues to the payment of this Note is on a parity (except as otherwise provided in the Agreement) with the Bonds and any Additional Bonds hereafter issued.

This Note is subject to acceleration to the extent and in the manner provided in the Agreement.

It is hereby certified, recited and declared that all acts, conditions and prerequisites required to exist, happen and be performed precedent to and in the execution, delivery and the issuance of this Note do exist, have happened and have been performed in due time, form and manner as

required by law, and that the issuance of this Note is in full compliance with and does not exceed or violate the Act or any constitutional or statutory limitation.

IN WITNESS WHEREOF, the Polk Regional Water Cooperative has caused this Note to be executed in its name by the manual signature of its Chair and attested by the manual signature of its Secretary/Treasurer, and its seal to be impressed hereon, all as of this [\_\_\_] day of [\_\_\_\_], 2023.

POLK REGIONAL WATER COOPERATIVE

(SEAL)

By: \_\_\_\_\_  
Chair

ATTEST:

By: \_\_\_\_\_  
Secretary/Treasurer

EXHIBIT A-2

Issue Date: January 18, 2023

Not to Exceed  
\$15,000,000

THIS NOTE IS SUBJECT TO TRANSFER RESTRICTIONS, AS MORE FULLY  
DESCRIBED IN THE LOAN AGREEMENT.

POLK REGIONAL WATER COOPERATIVE  
REVOLVING REVENUE NOTE,  
SERIES 2023B (FEDERALLY TAXABLE)

The Polk Regional Water Cooperative (the "Cooperative"), a public agency and unit of special purpose government of the State, for value received, promises to pay, but solely from the sources hereinafter provided, to the order of Wells Fargo Bank, National Association or registered assigns (hereinafter, the "Owner"), the principal sum of Fifteen Million Dollars (\$15,000,000) or such lesser amount as shall have been advanced and shall be outstanding hereunder, together with interest on the principal balance outstanding at the rate per annum hereinafter set forth. All computations of interest and fees hereunder shall be made on the basis of a year of 360 days for the actual number of days elapsed.

All terms used herein in capitalized form, unless otherwise defined herein, shall have the meanings ascribed to such terms by the Loan Agreement, dated as of January 18, 2023 (as amended, restated or otherwise modified from time to time, the "Agreement"), between the Cooperative and the Owner. In the event of any inconsistencies as between the Agreement and this Note, the terms and provisions of the Agreement shall control.

As used in this Note:

"Available Amount" means, for any day, the Maximum Commitment Amount net of the aggregate amount of Advances outstanding at such time.

"Benchmark Floor" means a rate of interest equal to zero percent (0%).

"Business Day" means (a) for all purposes other than as set forth in clause (b) below, any day other than a Saturday, Sunday or legal holiday on which banks in Polk County, Florida or New York, New York, are authorized by law to close and (b) with respect to all notices and determinations in connection with, and payments of principal and interest on, any Loan bearing interest at Daily Simple SOFR, any day that is a Business Day described in clause (a) and that is also a Federal Reserve Business Day.

"Daily Simple SOFR" means, with respect to any day (a "SOFR Rate Day"), a rate per annum equal to SOFR for the day (such day, the "SOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's Website; provided, however, that if Daily Simple

SOFR determined as provided above would be less than the Benchmark Floor, then Daily Simple SOFR shall be deemed to be the Benchmark Floor. If by 5:00 p.m. (New York City time) on the second (2<sup>nd</sup>) U.S. Government Securities Business Day immediately following any SOFR Determination Day, SOFR in respect of such SOFR Determination Day has not been published on the SOFR Administrator's Website and a Benchmark Replacement Date with respect to Daily Simple SOFR has not occurred, then SOFR for such SOFR Determination Day will be SOFR as published in respect of the first preceding U.S. Government Securities Business Day for which SOFR was published on the SOFR Administrator's Website; provided that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days.

"Default Rate" means the greatest of (i) the Prime Rate plus 4.00%, (ii) the Federal Funds Rate plus 5.00% or (iii) 10.00%.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that: (a) if such day is not a Business Day, then the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; and (b) if no such rate is so published on such next succeeding Business Day, then the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of one-hundredth of one percent) charged to the Lender on such day on such transactions as determined by the Lender. Each determination of the Federal Funds Rate by the Lender shall be conclusive and binding on the Cooperative. If the Federal Funds Rate determined as provided above would be less than zero percent (0%), then the Federal funds Rate shall be deemed to be zero percent (0%).

"Federal Reserve Business Day" means any day that is not a Saturday, Sunday or other day on which the Federal Reserve Bank of New York is closed.

"Final Maturity Date" means January 18, 2025, or such later date which this Note may be extended or renewed in the sole discretion of the Lender by written notice from the Lender to the Cooperative, together with a Favorable Opinion of Note Counsel.

"Interest Rate" means initially the Taxable Adjusted Daily Simple SOFR Rate, provided however, such rate may be adjusted upon an Event of Default as provided herein.

"Maximum Commitment Amount" means, for any day, \$15,000,000, and as the same may hereafter be modified in accordance with the terms of this Agreement.

"Maximum Rate" means an interest rate per annum equal to the lesser of the maximum rate permitted by law and twenty percent (20%) per annum.

"Prime Rate" means on any day, the rate of interest per annum then most recently established by the Initial Purchaser as its "prime rate." Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by the Initial Purchaser to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and the

Initial Purchaser may make various business or other loans at rates of interest having no relationship to such rate. If the Initial Purchaser ceases to exist or to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported. If the Prime Rate determined as provided above would be less than zero percent (0%), then the Prime Rate shall be deemed to be zero percent (0%).

"SOFR" means a rate per annum equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"Taxable Adjusted Daily Simple SOFR Rate" means the sum of (i) Daily Simple SOFR and (ii) the Taxable Applicable Spread, rounded to the fifth decimal place.

"Taxable Applicable Spread" means 65 basis points (0.65%).

"U.S. Government Securities Business Day" means any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association, or any successor thereto, recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

Principal of and interest on this Note are payable in lawful money of the United States of America at such place as the Owner may designate to the Cooperative.

Interest shall be payable monthly in arrears on the first Business Day of each month, commencing on February 1, 2023 (each an "Interest Payment Date").

If the date for payment of the principal of or interest on this Note shall be a day other than a Business Day, payment on the next Business Day shall have the same force and effect as if made on the nominal date of payment.

Upon the occurrence and during the continuance of an Event of Default, the Interest Rate on this Note will increase to the Default Rate.

The entire unpaid principal balance, together with all accrued and unpaid interest hereon, shall be due and payable in full on the Final Maturity Date, as such date may be extended or renewed in the sole discretion of the Lender by written notice from the Lender to the Cooperative, together with a Favorable Opinion of Note Counsel. All payments by the Cooperative pursuant to this Note shall apply first to accrued interest, then to other charges due the Owner, and the balance thereof shall apply to the principal sum due.

The principal of and interest on this Note as the same shall become due shall be paid solely from the Pledged Revenues identified in the Agreement, to the extent and in the manner provided in the Agreement.

The principal of this Note may be prepaid at the option of the Cooperative in whole or in part at any time subject to the conditions set forth in the Agreement.

This Note is a revolving line of credit. Principal amounts advanced and repaid under this Note may be readvanced; provided, however, the principal amount outstanding at any given time hereunder together with the principal amount outstanding under the Revolving Revenue Note, Series 2023A (the "Tax-Exempt Note") shall not exceed the Maximum Commitment Amount.

The Cooperative to the extent permitted by law hereby waives presentment, demand, protest and notice of dishonor.

The Note shall not be deemed to constitute a general obligation or a pledge of the faith and credit of the Cooperative, any Participating Member, the State or any other political subdivision thereof within the meaning of any constitutional, legislative or charter provision or limitation, but shall be payable from and secured solely by a lien upon and a pledge of the Pledged Revenues, in the manner and to the extent provided in the Agreement and herein. No Owner shall ever have the right, directly or indirectly, to require or compel the exercise of the ad valorem taxing power of the State or of any Participating Member or any political subdivision of the State or taxation in any form on any real or personal property for any purpose, including, without limitation, for the payment of principal of and interest on such Note, nor shall any Owner be entitled to payment of such principal and interest from any other funds of the Cooperative other than the Pledged Revenues, all in the manner and to the extent herein provided. The Cooperative has no ad valorem taxing power. The Note and the indebtedness evidenced thereby shall not constitute a lien upon any real or personal property of the Cooperative, or any part thereof, or any other tangible personal property of or in the Cooperative, but shall constitute a lien only on the Pledged Revenues, all in the manner and the extent provided herein.

This Note is issued pursuant Resolution No. 2022-05 duly adopted by the Cooperative on July 13, 2022, as supplemented by Resolution No. 2023-\_\_\_\_ duly adopted by the Cooperative on January 18, 2023 (collectively, the "Bond Resolution"), and the Agreement, and is subject to all the terms and conditions of the Agreement. All terms, conditions and provisions of the Agreement are by this reference thereto incorporated herein as a part of this Note. This Note is being issued as an "Additional Bond" within the meaning of the Bond Resolution. This Note is a limited, special obligation of the Cooperative, payable from and secured solely by a lien upon and pledge of certain Pledged Revenues, as defined and described and in the manner provided in the Agreement. The pledge of the Pledged Revenues to the payment of this Note is on a parity (except as otherwise provided in the Agreement) with the Bonds and any Additional Bonds hereafter issued.

This Note is subject to acceleration to the extent and in the manner provided in the Agreement.

It is hereby certified, recited and declared that all acts, conditions and prerequisites required to exist, happen and be performed precedent to and in the execution, delivery and the issuance of

this Note do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Note is in full compliance with and does not exceed or violate the Act or any constitutional or statutory limitation.

IN WITNESS WHEREOF, the Polk Regional Water Cooperative has caused this Note to be executed in its name by the manual signature of its Chair and attested by the manual signature of its Secretary/Treasurer, and its seal to be impressed hereon, all as of this [\_\_\_] day of [\_\_\_\_], 2023.

POLK REGIONAL WATER COOPERATIVE

(SEAL)

By: \_\_\_\_\_  
Chair

ATTEST:

By: \_\_\_\_\_  
Secretary/Treasurer

EXHIBIT B

REQUISITION NO. \_\_\_\_

POLK REGIONAL WATER COOPERATIVE  
Revolving Revenue Note, Series 2023A  
and  
Revolving Revenue Note, Series 2023B (Federally Taxable)

REQUISITION FOR ADVANCES

Polk Regional Water Cooperative (the "Cooperative"), pursuant to that certain Loan Agreement (as amended, restated or otherwise modified from time to time, the "Agreement") dated as of [\_\_\_\_] [\_\_], 2023, between the Cooperative and [\_\_\_\_\_] (the "Lender"), does hereby make application to the Lender under the Agreement for disbursement of funds to pay a portion of the Costs of the 2023 Project (all terms used herein in capitalized form having the meanings given to those terms in the Agreement) in the following manner:

Amount Requested: \$\_\_\_\_\_

Date Advance to be made: \_\_\_\_\_

Advance Requested under the Revolving Revenue Note, Series 2023A	\$
Advance Requested under the Revolving Revenue Note, Series 2023B (Federally Taxable)	\$
Aggregate amount of Advances under the Agreement, including the Amount Requested	\$

Proceeds of the Advance to be distributed as follows:

- Wire Transfer (Account Number \_\_\_\_\_, Routing Number \_\_\_\_\_)
- Check sent to Polk Regional Water Cooperative, \_\_\_\_\_, \_\_\_\_\_ or such other address as attached hereto.
- Account Transfer (Account Number \_\_\_\_\_)

All representations and statements made herein are for the benefit of the Lender and the other parties related to the issuance of the Note and may not be relied upon by third parties.



The undersigned certifies that:

- (i) No Event of Default under the Agreement has occurred and is continuing and there exists no event or condition which, with the giving of notice or the passage of time, or both, would constitute an Event of Default under the Agreement;
- (ii) All representations and warranties of the Cooperative contained in the Agreement are true and correct as of the date hereof; and
- (iii) All Proceeds Advanced will be used to pay Costs of the 2023 Project.

Not more than \$[250,000,000] has in the aggregate been advanced under the Revolving Revenue Note, Series 2023A unless a Favorable Opinion of Note Counsel shall have been delivered.

Dated as of \_\_\_\_\_, 20\_\_.

POLK REGIONAL WATER  
COOPERATIVE

By: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED:  
[\_\_\_\_\_]

By: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT C

FORM OF INVESTOR LETTER

January 18, 2023

Polk Regional Water Cooperative  
Attn: Chief Executive Officer  
Bartow, Florida

Holland & Knight LLP  
Lakeland, Florida

[\$15,000,000]

Polk Regional Water Cooperative  
Revolving Revenue Note, Series 2023A  
and  
Revolving Revenue Note, Series 2023B (Federally Taxable)

Ladies and Gentlemen:

This letter is to provide you with certain representations and agreements with respect to our purchase of all of the Polk Regional Water Cooperative Revolving Revenue Note, Series 2023A (the "2023A Note") and the Polk Regional Water Cooperative Revolving Revenue Note, Series 2023B (Federally Taxable) (the "2023B Note" and together with the 2023A Note, the "Notes"), dated their dates of issuance. The Notes were issued under and secured in the manner set forth pursuant to the Loan Agreement dated as of January \_\_\_, 2023, between the Polk Regional Water Cooperative (the "*Cooperative*") and Wells Fargo Bank, National Association (the "*Lender*," the "*undersigned*," "*us*" or "*we*," as applicable) (the "*Loan Agreement*"). We hereby represent and warrant to you and agree with you as follows:

1. We understand that the Notes have not been registered pursuant to the Securities Act of 1933, as amended (the "*1933 Act*"), the securities laws of any state nor has the Loan Agreement been qualified pursuant to the Trust Indenture Act of 1939, as amended, in reliance upon certain exemptions set forth therein. We acknowledge that the Note (i) is not being registered or otherwise qualified for sale under the "blue sky" laws and regulations of any state and (ii) will not be listed on any securities exchange.
2. We have not offered, offered to sell, offered for sale or sold the Note by means of any form of general solicitation or general advertising, and we are not an underwriter of the Note within the meaning of Section 2(11) of the 1933 Act.
3. We have sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Note.
4. We have authority to own the Note and to execute this letter and any other instruments and documents required to be executed by the Lender in connection with the ownership of the Note.

5. The undersigned is a duly appointed, qualified and acting representative of the Lender and is authorized to cause the Lender to make the certifications, representations and warranties contained herein by execution of this letter on behalf of the Lender.

6. The Lender is a "qualified institutional buyer" as defined in Rule 144A promulgated under the 1933 Act.

7. The undersigned understands that no official statement, prospectus, offering circular, or other comprehensive offering statement is being provided with respect to the Note. The undersigned has made its own inquiry and analysis with respect to the Cooperative, the Note and the security therefor, and other material factors affecting the security for and payment of the Note.

8. The undersigned acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, regarding the Cooperative, to which a reasonable investor would attach significance in making investment decisions, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Cooperative, the Note and the security therefor, so that as a reasonable investor, it has been able to make its decision to purchase the Note.

9. The Note is being acquired by the Lender for its own account and not with a present view toward resale or distribution; provided, however, that the Lender reserves the right to sell, transfer or redistribute the Note pursuant to the Loan Agreement.

10. We are not acting as an Underwriter (as defined below) with respect to the Note. We have not contracted with any person pursuant to a written agreement to have such person participate in the initial sale of the Note and we have not agreed with the Cooperative pursuant to a written agreement to sell the Note to persons other than ourselves or parties related to ourselves.

Defined Terms:

(a) "Public" means any person (including an individual, trust, estate, partnership, association or corporation) other than an Underwriter or a related party. The term "related party" for purposes of this Certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(b) "Underwriter" means (i) any person that agrees pursuant to a written contract with the Cooperative (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Note to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Note to the Public (including a member of the selling group or a party to a retail distribution agreement participating in the initial sale of the Note to the Public).

[SIGNATURE PAGE TO FOLLOW]

Very truly yours,

WELLS FARGO BANK, NATIONAL  
ASSOCIATION

By: \_\_\_\_\_

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

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CERTIFICATE AS TO PUBLIC MEETINGS  
AND NO CONFLICT OF INTEREST

COUNTY OF POLK

STATE OF FLORIDA

Each of the undersigned members of the Board of Directors (the "Board") of the Polk Regional Water Cooperative (the "Issuer"), recognizing that Wells Fargo Bank, National Association (the "Purchaser") will have purchased the Issuer's principal amount outstanding at any one time not to exceed in the aggregate \$15,000,000 Revolving Revenue Note, Series 2023A and Revolving Revenue Note, Series 2023B (Federally Taxable) (collectively, the "Notes") issued under a Loan Agreement between the Issuer and the Purchaser in reliance upon this certificate, HEREBY CERTIFIES that:

(1) He or she has not, meeting together with any other member or members of the Board other than at public meetings of the Board, reached any conclusion as to the actions taken by the Board with regard to the Notes, the security therefor or the application of the proceeds therefrom, or any other material matters in regard to the Notes;

(2) He or she does not have or hold any employment with or any contractual relationship with the Purchaser that would constitute a prohibited conflict of interest under Part III, Chapter 112, Florida Statutes.

IN WITNESS WHEREOF, we have hereunto affixed our official signatures as of the 18th day of January, 2023.

\_\_\_\_\_  
George Lindsey III, Chair  
Polk County

\_\_\_\_\_  
H. William Mutz, Vice Chair  
City of Lakeland

\_\_\_\_\_  
Nathaniel Birdsong, Jr., Secretary/Treasurer  
City of Winter Haven

\_\_\_\_\_  
Keith Cowie  
City of Auburndale

\_\_\_\_\_  
Daniel Williams  
City of Lake Wales

\_\_\_\_\_  
Randy Billings  
City of Eagle Lake

\_\_\_\_\_  
Austin Gravely  
City of Frostproof

\_\_\_\_\_  
Tom Fellows  
City of Davenport

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Bertram Goddard  
City of Dundee

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Morris West  
City of Haines City

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Joe LaCascia  
City of Polk City

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Jack Dearmin  
City of Lake Alfred

---

Steve Githens  
City of Bartow

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Collins Smith  
City of Mulberry

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Mike Kehoe  
Town of Lake Hamilton

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James Watts  
City of Ft. Meade

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## SUBJECT

Adopt Resolution 2023-03 and Approval of an Amendment to the State Revolving Fund (SRF) loan DW532001 for the SE Wellfield - Action Item

## DESCRIPTION

This item provides a planned update to the total design loan for the SE Wellfield. The SRF loans have annual funding caps and funds availability considerations. To manage multiple requests and the annual fluctuations to available dollars, the agency holds a priority meeting in August with subsequent meetings held quarterly until the fiscal year's funds are exhausted. The PRWC existing SE Wellfield design loan agreement reflects the available funds for 2020 fiscal year's expenditures. In August 2022, the Florida Department of Environmental Protection held its annual priority meeting and PRWC received the remaining \$7 million dollars necessary to complete the SE wellfield design.

The existing SRF SE Wellfield design loan is \$14,859,774 and the amendment increases the total loan to \$21,906,290, as presented to this Board in previous Business Plan updates. The agreement also includes a recognition of master bond resolution, which eliminated the need for previous acceleration language. Attached for reference is the resolution to approve the amendment to the existing SRF SE Wellfield design loan.

## RECOMMENDATION

Adopt Resolution 2023-03 to approve existing SRF design loan amendment.

## FISCAL IMPACT

The SRF Loan will increase by \$7,046,516.

## CONTACT INFORMATION

Robert Beltran



## POLK REGIONAL WATER COOPERATIVE

### Resolution 2023-03

**A RESOLUTION OF THE POLK REGIONAL COOPERATIVE, AN INDEPENDENT SPECIAL DISTRICT OF THE STATE OF FLORIDA, RELATING TO THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION DRINKING WATER STATE REVOLVING FUND LOAN PROGRAM; MAKING FINDINGS; AUTHORIZING AN AMENDMENT TO DESIGN LOAN DW532001 AGREEMENT TO INCREASE THE LOAN AMOUNT TO \$21,906,290.00 (EXCLUDING CAPITALIZED INTEREST) AND TO MAKE CERTAIN OTHER TECHNICAL AMENDMENTS; APPROVING THE FORM OF AMENDMENT 1 TO THE LOAN AGREEMENT; REAFFIRMING PLEDGED REVENUES; DESIGNATING AUTHORIZED REPRESENTATIVES; DELEGATING CERTAIN MATTERS TO THE CHAIRMAN OR THE VICE CHAIRMAN; PROVIDING FOR CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE**

The Board of Directors of the Polk Regional Water Cooperative (“Cooperative”), created pursuant to Section 373.713, Florida Statutes, and an Interlocal Agreement pursuant to Section 163.01, Florida Statutes, in lawful session and in regular order of business properly presented, finds that:

**WHEREAS**, Florida Statutes provide for the State of Florida Department of Environmental Protection (“Department”) Drinking Water State Revolving Fund (“State Revolving Fund”) to make loans to local government agencies to finance the construction of drinking water facilities; and

**WHEREAS**, the Florida Administrative Code requires authorization to apply for loans, to establish pledged revenues, to designate an authorized representative, to provide assurances of compliance with the loan program requirements, and to enter into a loan agreement; and

**WHEREAS**, on January 19, 2022, the Cooperative Board of Directors authorized staff to apply to the Department for a State Revolving Fund Loan in the amount \$26,700,000.00 for funding the construction of test production wells and sixty (60%) percent design and other related activities associated with the Southeast Wellfield (the “Project”); and

**WHEREAS**, the State Revolving Fund loan priority list designates Project No. DW532001 as eligible for available funding in the amount of \$21,906,290.00 for the work described above; and

**WHEREAS**, since the Department’s State Revolving Fund Program has a \$20,000,00.00 per year cap limit, the loan was divided into a loan agreement in the amount \$14,859,774.00 for Fiscal Year 2022 and a loan agreement amendment in the amount \$7,046,516.00 for Fiscal Year 2023; and

**WHEREAS**, on or about August 9, 2022 the Cooperative and the Department entered into Design Loan Agreement No. DW532001 authorizing the Loan (the “Loan Agreement”); and

**WHEREAS**, on or about July 13, 2022, the Cooperative Board of Directors adopted a Water Revenue Bond Resolution No. 2022-05 (the “Master Bond Resolution”) to provide for the issuance of water revenue bonds secured by certain “Pledged Revenues” (as defined therein) to finance and refinance the Cooperative’s water projects; and

**WHEREAS**, the Department has agreed to amend the Loan Agreement to (a) increase the amount of the Loan by \$7,046,516 to \$21,906,290.00 (excluding capitalized interest, which will be added to the Loan principal amount), (b) add technical provisions and approvals necessary to coordinate with the Master Bond Resolution, which will secure the Loan as an Additional Bond on parity with other Bonds (as defined in the Master Bond Resolution) issued thereunder, and (c) remove the Department’s remedy of acceleration in the event the Cooperative defaults on the Loan; and

**WHEREAS**, the Cooperative intends to enter into Amendment 1 to the Loan Agreement in substantially the form attached hereto as Exhibit “A” (the “Loan Agreement Amendment No. 1”) for financing the planning related activities associated with the Project.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE POLK REGIONAL WATER COOPERATIVE AS FOLLOWS:**

**Section 1.** The foregoing findings are incorporated herein by reference and made a part hereof.

**Section 2.** The Cooperative is authorized to apply for and accept an amendment to the Loan to increase the amount to \$21,906,290.00 (the “Amended Loan”).

**Section 3.** The Cooperative is authorized to pledge for the repayment of the Amended Loan the “Pledged Revenues” as defined in the Master Bond Resolution on parity with Bonds issued thereunder in accordance with the terms thereof. Such Pledged Revenues include the payments of the Water Charge that the Project Participants are obligated to make to the Cooperative under Sections 13 and 14 of the Amended and Restated Implementation Agreement for the Southeast Wellfield, as amended from time to time (“SEWF Implementation Agreement”). The Amended Loan will constitute a Series of Bonds (as such capitalized terms are defined in the Master Bond Resolution) issued under the Master Bond Resolution, entitled to all the security and benefits thereof. The Amended Loan will not be entered into unless the Cooperative complies with the requirements of Section 12.02 of the Bond Resolution or the holders of the outstanding Bonds waive such requirements. The Amended Loan will not be secured by the Composite Reserve Account or by any special account in the Reserve Fund. The Amended Loan will not be entered into unless the Cooperative complies with the requirements of Section 12.02 of the Bond Resolution or the holders of the outstanding Bonds waive such requirements.

**Section 4.** Each of the Chairman and the Vice-Chairman, acting individually, is hereby designated as an authorized representative and signatory of the Cooperative (each an “Authorized Signatory”) to provide the assurances and commitments required by the Amended Loan.

**Section 5.** The Cooperative is authorized to execute Loan Agreement Amendment No. 1 with the State Revolving Fund in substantially the form attached hereto as Exhibit "A. The form and terms of Loan Agreement Amendment No. 1 attached hereto and any related documents (collectively, the “Amended Loan Documents”) are hereby approved, and the Authorized Signatories are authorized to execute and deliver the same, with such changes, insertions, omissions and filling of blanks as may be approved by the Authorized Signatory executing the same, such approval to be conclusively evidenced by the execution thereof by such Authorized Signatory, and there is hereby delegated to the Authorized Signatories the authority to establish the principal amount of the Amended Loan in an amount not to exceed \$21,906,290.00, execution of the Loan Agreement Amendment No. 1 to constitute conclusive evidence of the establishment of such amount. The Authorized Signatories are hereby authorized to execute and deliver on behalf of the Cooperative the Amended Loan Documents as provided hereby and the Secretary is hereby authorized to attest any such signatures on any such documents and to affix the Cooperative's seal thereto to the extent required by such documents. All officials and employees of the Cooperative, including, without limitation, the Authorized Signatories, are authorized and empowered, collectively or individually, to take all other actions and steps and to execute all instruments, documents, and contracts on behalf of the Cooperative as they shall deem necessary or desirable in connection with the Amended Loan and the carrying out of the intention of this Resolution, including, without limitation, paying costs related hereto. The Chairman is authorized to delegate responsibility to appropriate Cooperative staff to carry out technical, financial, and administrative activities associated with the Loan Agreement Amendment No. 1.

**Section 6.** The legal authority to incur debt, liabilities or obligations, as necessary to construct this Project consists of Article VIII, Section 1 and 2, Constitution of the State of Florida, Sections 163.01(7) and 373.713(2), Florida Statutes (2022), Section 2.04 of the Interlocal Agreement Relating to the Establishment of the Polk Regional Water Cooperative and Section 15 of the SEWF Implementation Agreement.

**Section 7.** All resolutions or part of resolutions in conflict with any of this Resolution are hereby repealed. All prior actions of officials and employees of the Cooperative, including, without limitation, the Authorized Signatories, with respect to the Amended Loan are hereby ratified, confirmed and approved.

**Section 8.** If a section or portion of a section of this Resolution proves to be invalid, unlawful or unconstitutional, it shall not be held to invalidate or impair the validity, force or effect of any other section or part of this Resolution.

**Section 9.** The Resolution shall become effective immediately upon its passage and adoption.

DONE at Auburndale, Florida this 18<sup>th</sup> day of January, 2023

Board of Directors of the Polk Regional Water Cooperative:

\_\_\_\_\_

Chair

\_\_\_\_\_

Executive Director

Approved as to Form:

\_\_\_\_\_

Edward P. de la Parte  
Legal Counsel

# EXHIBIT A

## STATE REVOLVING FUND AMENDMENT 1 TO LOAN AGREEMENT DW532001 POLK REGIONAL WATER COOPERATIVE

This amendment is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and the POLK REGIONAL WATER COOPERATIVE, FLORIDA, (Project Sponsor) existing as an independent special district created pursuant to Chapter 189 Florida Statutes, Section 373.1962, Florida Statutes, and the Interlocal Agreement creating the Polk Regional Water Cooperative (“Interlocal Agreement”) entered into on June 1, 2016 pursuant to Chapter 163.01, Florida Statutes. Collectively, the Department and the Project Sponsor shall be referred to as “Parties” or individually as “Party”.

The Department and the Project Sponsor entered into a Drinking Water State Revolving Fund Loan Agreement, Number DW532001, authorizing a Loan amount of \$14,859,774, excluding Capitalized Interest; and

The Project Sponsor is entitled to additional financing in the amount of \$7,046,516, excluding Capitalized Interest; and

Certain provisions of the Agreement need revision

The Parties hereto agree as follows:

1. Section 1.01 of the Agreement is amended to include the following definition:

“Master Bond Resolution” shall mean the Polk Regional Water Cooperative Resolution No. 2022-05 providing for the issuance of water revenue bonds, additional bonds, and payment of such bonds, as well as guarantee of repayment of this loan, from revenues as specified within the resolution.

2. Subsection 1.01.(20) of the Agreement is deleted and replaced as follows:

(20) “Pledged Revenues” shall mean the specific revenues pledged as security for repayment of the Loan and shall be the Project Sponsor’s Net Revenues allocable to the Debt Service Cost under the Implementation Agreement; provided, however, that upon adoption of the Project Sponsor’s master bond resolution, “Pledged Revenues” shall have the meaning set forth in the master bond resolution.

3. Subsection 2.03(1) of the Agreement is deleted and replaced as follows:

(1) The financial assistance authorized pursuant to this Loan Agreement consists of the following:

State Resources Awarded to the Project Sponsor Pursuant to this Agreement Consist of the Following:					
State Program Number	Funding Source	CSFA Number	CSFA Title or Fund Source Description	Funding Amount	State Appropriation Category
Original Agreement	Drinking Water Revolving Loan TF	37.076	Drinking Water Facility Construction	\$21,906,290	140129

4. Section 3.01 of the Agreement is deleted and replaced as follows:

3.01. LOAN DEBT SERVICE ACCOUNT.

(1) General Provisions. The Project Sponsor shall establish a Loan Debt Service Account with a Depository for the purposes set forth in this section. Moneys in the Loan Debt Service Account shall be kept separate and apart from all other funds and accounts of the Project Sponsor. All such funds shall be and constitute trust funds for such purposes, and there is hereby created a lien upon such funds in favor of the Department, such other pari-passu liens approved in writing by the Department, and so long as the Project Sponsor has not adopted a master bond resolution, the holders of bonds and other parity obligations of the Project Sponsor, until such funds are applied as herein provided. Any funds on deposit in the Loan Debt Service Account that, in the opinion of the Project Sponsor, are not immediately necessary for expenditure, as herein provided, may be invested and reinvested in investments that are lawfully permitted and that shall mature or be redeemable at not less than par on or before the dates on which such funds are estimated to be needed. All income derived from investment of funds in the Loan Debt Service Account shall be deposited therein and shall be used to as provided herein. Moneys in the Loan Debt Service Account shall be secured at all times in the manner prescribed by the laws of the State relating to the securing of public funds and as may be provided by resolution of the Project Sponsor. The Semiannual Loan Payments are described in Section 10 hereof.

(2) RESERVED.

(3) Deposits Pursuant to the Master Bond Resolution. All Gross Revenues received by the Project Sponsor from Participants, including Debt Service Costs, shall be deposited as provided in such master bond resolution, and the Project Sponsor shall only deposit the Monthly Loan Deposits into the Loan Debt Service Account. In such event, beginning six months prior to each Semiannual Loan Payment, the Project Sponsor shall make six Monthly Loan Deposits. The first five deposits each shall be at least equal to one-sixth of the Semiannual Loan Payment. The sixth Monthly Loan Deposit shall be at least equal to the amount required to make the total on deposit in the Loan Debt Service Account equal to the Semiannual Loan Payment amount, taking into consideration investment earnings credited to the account pursuant to Section 3.02.

Any month in which the Project Sponsor fails to make a required Monthly Loan Deposit,

the Project Sponsor's Authorized Representative shall notify the Department of such failure. In addition, the Project Sponsor agrees to budget, by amendment if necessary, payment to the Department from other legally available non-ad valorem funds all sums becoming due before the same become delinquent. This requirement shall not be construed to give superiority to the Department's claim on any revenues over prior claims of general creditors of the Project Sponsor, nor shall it be construed to give the Department the power to require the Project Sponsor to levy and collect any revenues other than Pledged Revenues. All Gross Revenues received by the Project Sponsor from Participants, including Debt Service Costs, shall be deposited as provided in Master Bond Resolution, and the Project Sponsor shall only deposit the Monthly Loan Deposits into the Loan Debt Service Account.

5. Section 6.02 of the Agreement is deleted and replaced as follows:

All rights, remedies, and powers conferred in this Agreement and the transaction documents are cumulative and are not exclusive of any other rights or remedies, and they shall be in addition to every other right, power, and remedy that Department may have, whether specifically granted in this Agreement or any other transaction document, or existing at law, in equity, or by statute. Any and all such rights and remedies may be exercised from time to time and as often and in such order as Department may deem expedient. Upon any of the Events of Default and subject to the rights of others having prior liens on the Pledged Revenues, the Department may enforce its rights by, inter alia, any of the following remedies:

(1) By mandamus or other proceeding at law or in equity, cause to establish rates and collect fees and charges for use of the Utility System, and to require the Project Sponsor to fulfill this Agreement.

(2) By action or suit in equity, require the Project Sponsor to account for all moneys received from the Department or from the ownership of the Utility System and to account for the receipt, use, application, or disposition of the Pledged Revenues.

(3) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the Department.

(4) By applying to a court of competent jurisdiction, cause to appoint a receiver to manage the Utility System, establish and collect fees and charges and apply the revenues as provided herein.

(5) By certifying to the Auditor General and the Chief Financial Officer delinquency on loan repayments, the Department may intercept the delinquent amount plus six percent, expressed as an annual interest rate, penalty of the amount due to the Department from any unobligated funds due to the Project Sponsor under any revenue or tax sharing fund established by the State, except as otherwise provided by the State Constitution or State law. Penalty interest shall accrue on any amount due and payable beginning on the 30th day following the date upon which payment is due.

(6) By notifying financial market credit rating agencies and potential creditors.

(7) By suing for payment of amounts due with interest on overdue payments together with all costs of collection, including attorneys' fees.

(8) By increasing the interest rate on the unpaid principal of the Loan to as much as 1.667 times the Loan interest rate for a default under Subsection 6.01(1).

(9) Make demand upon Guarantors' for amounts due up to the guaranteed amount specified in their guaranty agreement.

6. Section 7.01 of the Agreement is deleted and replaced as follows:

From and after the effective date of this Agreement, the Department shall have a lien on the Pledged Revenues, which along with any other Department State Revolving Fund liens on the Pledged Revenues, on equal priority subject to Section 7.02, will be prior and superior to any other lien, pledge or assignment. All obligations of the Project Sponsor under this Agreement shall be junior, inferior, and subordinate in all respects in right of payment and security to any additional senior obligations issued with the Department's consent pursuant to Section 7.02. The Department may release its lien on such Pledged Revenues in favor of the Department if the Department makes a determination in its sole discretion, based upon facts deemed sufficient by the Department, that the remaining Pledged Revenues will, in each Fiscal Year, equal or exceed 1.15 times the debt service coming due in each Fiscal Year under the terms of this Agreement.

7. Section 8.01 of the Agreement is deleted and replaced as follows:

The Department consents to the issuance of this Loan as a senior lien obligation pursuant to Section 7.02 of the Drinking Water State Revolving Fund Design Loan Agreement DW532001 dated August 9, 2022 (the "SE Wellfield Agreement") between the Department and the Project Sponsor. The Department and the Project Sponsor agree that the Loan hereunder shall be an Additional Bond under the Master Bond Resolution. The Department, in connection with the issuance of the Loan hereunder and as the sole holder of all obligations outstanding under the Master Bond Resolution, agrees to waive the requirements under Section 12.02 of the Master Bond Resolution for the issuance of Additional Bonds. The parties agree that the loan under the SE Wellfield Agreement is also an Additional Bond under the Master Bond Resolution.

All Semiannual Loan payments required to be made under this Agreement shall be cumulative and any deficiencies in any Fiscal Year shall be added to the payments due in the succeeding year and all years thereafter until fully paid. Payments shall continue to be secured by this Agreement until all of the payments required shall be fully paid to the Department. If at any time the Project Sponsor shall have paid, or shall have made provision for the timely payment of, the entire principal amount of the Loan and interest, the pledge of, and lien on, the Pledged Revenues to the Department shall be no longer in effect. Deposit of sufficient cash, securities, or investments, authorized by law, from time to time, may be made to effect defeasance of this Loan. However, the deposit shall be made in irrevocable trust with a banking institution or trust company for the sole benefit of the Department. There shall be no penalty imposed by the Department for early retirement of this Loan.



8. Additional financing in the amount of \$7,046,516, excluding Capitalized Interest, is hereby awarded to the Project Sponsor.

9. An interest rate of 1.64 percent per annum is established for the additional financing amount awarded in this amendment

10. The estimated principal amount of the Loan is hereby revised to \$22,166,190, which consists of \$21,906,290 authorized for disbursement to the Project Sponsor and \$259,900 of Capitalized Interest.

11. An additional Loan Service Fee in the amount of \$140,930, for a total of \$438,125, is hereby estimated. The fee represents two percent of the Loan amount excluding Capitalized Interest; that is, two percent of \$21,906,290.

12. The Semiannual Loan Payment amount is hereby revised and shall be in the amount of \$1,230,043. Such payments shall be received by the Department on September 15, 2024 and semiannually thereafter on March 15 and September 15 of each year until all amounts due hereunder have been fully paid. Until this Agreement is further amended, each Semiannual Loan Payment will be proportionally applied, after deduction of the Loan Service Fee is complete, toward repayment of the amounts owed on each incremental Loan amount at the date such payment is due.

The Semiannual Loan Payment amount is based on the total amount owed of \$22,604,315, which consists of the Loan principal plus the estimated Loan Service Fee.

13. The Project Sponsor and the Department acknowledge that the actual cost of the Project has not been determined. Project cost adjustments may be made as a result of mutually agreed upon Project changes. Capitalized Interest will be recalculated based on actual dates and amounts of Loan disbursements. If the Project Sponsor receives other governmental financial assistance for this Project, the costs funded by such other governmental assistance will not be financed by this Loan. The Department shall establish the final Project costs after its final inspection of the Project records. Changes in Project costs may also occur as a result of an audit.

The estimated Project costs are revised as follows:

<u>CATEGORY</u>	<u>PROJECT COSTS (\$)</u>
Design Activities	21,906,290
Capitalized Interest	259,900
TOTAL (Loan Principal Amount)	22,166,190

14. Subsection 10.07(4) of the Agreement is revised as follows:

(4) The first Semiannual Loan Payment in the amount of \$1,230,043 shall be due September 15, 2024.

15. All other terms and provisions of the Loan Agreement shall remain in effect.

This Amendment 1 to Loan Agreement DW532001 may be executed in two or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

IN WITNESS WHEREOF, the Department has caused this amendment to the Loan Agreement to be executed on its behalf by the Secretary or Designee and the Project Sponsor has caused this amendment to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this amendment shall be as set forth below by the Department.

for  
**POLK REGIONAL WATER COOPERATIVE**

\_\_\_\_\_  
Chairman

Attest:

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Attorney

SEAL

for  
**STATE OF FLORIDA**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

\_\_\_\_\_  
Secretary or Designee

\_\_\_\_\_  
Date



**SUBJECT**

Approval of the Transfer Agreement Between Polk Regional Water Cooperative and Polk County (“Transfer Agreement”) (ACTION ITEM)

**DESCRIPTION**

The Transfer Agreement will transfer title to (a) a 25-acre tract known as the “Southeast Wellfield Water Treatment Plant Site” on which Test Production Well No. 2 is located and upon which the Southeast Wellfield Treatment will be constructed, (b) a 5-acre tract known as “Well Site No. 1” on which Test Production Well No. 1 is located, and (c) a 1.4 acre tract known as the “Cypresswood Drive Well Site” on which Test Production Well No. 3 is located from Polk County to the Cooperative. In addition, the Transfer Agreement will transfer all tangible and intangible property associated with those three sites to the Cooperative. Finally, the Transfer Agreement will transfer all water rights and water supply development rights held by Polk County in connection with the Southeast Wellfield including, but not limited to South Florida Water Management District Water Use Permit 53-00293-W, which was issued to Polk County on or about April 28, 2014.

In return the Cooperative will pay Polk County \$4,004,937.57 for these properties. This is the amount of money described in Section 1.42 of the Second Amended and Restated Implementation Agreement Southeast Wellfield (“Implementation Agreement”) as the “Southeast Wellfield Refund Cost.” These were the costs incurred by Polk County in developing and permitting the Southeast Wellfield, as detailed in Exhibit “A” that Agreement. The Implementation Agreement contemplates the Cooperative paying Polk County this amount. Source of funds for this amount is a state grant received by the Cooperative.

**RECOMMENDATION**

Approve the Transfer Agreement

**FISCAL IMPACT**

No fiscal impact for this item. The source of funds will be a state grant received by the Cooperative.

**CONTACT INFORMATION**

Ed de la Parte  
Eric DeHaven

**TRANSFER AGREEMENT  
BETWEEN  
POLK REGIONAL WATER COOPERATIVE  
AND  
POLK COUNTY**

THIS TRANSFER AGREEMENT (the “Agreement”) shall be effective as of \_\_\_ day of \_\_\_\_\_ 20\_\_, and is being entered into by and between the Polk Regional Water Cooperative (“Cooperative”), whose address is P.O. Box 9005, Bartow, Florida 33831 and Polk County (“Polk County”), a charter county and political subdivision of the State of Florida, whose address is P.O. Box 9005, Bartow, Florida 33831, individually also referred to as a “Party” and collectively referred to as the “Parties.”

**THE PURPOSE** of this Agreement is to implement the Implementation Agreement entered into by the Parties and other members of the Cooperative with regard to the Southeast Wellfield Refund Cost.

**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 Transfer Agreement, as it may be amended or restated from time to time.

**1.2 “Bill of Sale”** means an instrument generally in that format which is attached hereto and identified as **Exhibit F**.

**1.3 “Implementation Agreement”** mean the Second Amended and Restated Project Implementation Agreement for the Southeast Wellfield entered into by 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 and Polk County on or about July 13, 2022.

**1.4** “**Cooperative**” shall have the same meaning as in the Implementation Agreement.

**1.5** “**County Deed**” shall mean the instrument by which Polk County intends to convey fee simple title to the Real Property to the Cooperative and shall generally be in the format as reflected in **Exhibit E**.

**1.6** “**Real Property**” means the Southeast Wellfield Water Treatment Plant Site, Well Site No. 1, Cypresswood Drive Well Site, and all associated easements, licenses and other legal interests owned by Polk County

**1.7** “**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 by SFWMD.

**1.8** “**Southeast Wellfield Water Treatment Plant Site**” means a tract of real property of approximately 25 acres in size owned by Polk County on which Test Production Well No. 2 is located and upon which the Southeast Wellfield water treatment plant will be located in the future, as described in **Exhibit D**.

**1.9** “**Tangible Property**” means Test Production Well Nos. 1, together with the 3 associated monitoring wells and all other appurtenant facilities and tangible property owned by Polk County subject to this Agreement as set forth in the Bill of Sale.

**1.10** “**Transferred Assets**” means the Real Property, Tangible Property, Water Rights and Water Supply Development Rights to be transferred by Polk County to the Cooperative under this Agreement.

**1.11 “SFWMD”** means the South Florida Water Management District.

**1.12 “SFWMD Permit”** means SFWMD Water Use Permit No. 53-00293-W, which was issued by SFWMD to Polk County on or about April 28, 2014, as amended, a copy of which is attached hereto as **Exhibit A**.

**1.13 “Southeast Wellfield Refund Cost”** means those costs incurred by Polk County in developing and permitting the Southeast Wellfield in the amount of Four Million For Thousand Nine Hundred and Thirty Seven Dollars and Fifty Seven Cents (\$4,004,937.57), as detailed in Exhibit “A” to the Implementation Agreement.

**1.14 “Water Rights”** means all water withdrawals and related activities authorized under the SFWMD Permit, and any other water rights of any nature whatsoever that Polk County claims to possess in connection with the Southeast Wellfield, together with any after acquired right or interest therein, except those rights arising from or related to the Implementation Agreement and those associated with Polk County’s membership in the Cooperative.

**1.15 “Water Supply Development Rights”** means all rights which Polk County claims to possess in connection with the Southeast Wellfield which are necessary for, or incidental to, the efficient and effective operation of the Southeast Wellfield for the development of water supplies, except those rights arising from or related to the implementation Agreement and those associated with Polk County’s membership in the Cooperative. The term shall include, but not be limited to, the right to plan, design, construct, operate and maintain all existing and future facilities at the Southeast Wellfield for water collection, production and transmission; the right to explore for, test, develop and withdraw additional water suppliers from the Southeast Wellfield; the right to modify any existing or future facilities or activity at the Southeast Wellfield in order to meet the Cooperative’s obligations to supply water to the Project Participants under the Implementation

Agreement and the right to apply for, obtain, modify, renew and act in accordance with any permit required by law for activities conducted at the Southeast Wellfield.

**1.16 “Well Site No. 1”** means a tract of real property of approximately 5.0 acres in size owned by Polk County on which Test Production Well No. 1 is located, identified as Parcel ID No. 293121-000000-041010, as described in **Exhibit B**.

**1.17 “Cypresswood Drive Well Site”** means tracts of real property totaling approximately 1.4 acres owned by Polk County, identified as Parcel ID Nos. 293029-992880-011020/012010/012020, as described in **Exhibit C**.

**2. 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.

**3. 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):

**3.1 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.

**3.2 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.

**3.3 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.

**3.4 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.

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

**5. TRANSFER PROCESS.** The Cooperative and the County do hereby agree to the following steps and procedures that they will follow to carry out the transfer of the Transferred Assets and the SFWMD Permit from Polk County to the Cooperative. Part of the consideration for the



Transferred assets is the payment of the Southeast Wellfield Refund Cost by the Cooperative to Polk County.

**5.1 Polk County's Obligations.** Within thirty (30) days of the Effective Date, Polk County does hereby agree to the following conditions and obligations required to effectuate the transfer of the Transferred Assets and the SFWMD Permit to the Cooperative .

**5.1.1** Polk County shall convey the Real Property via the County Deeds, the Assignment of Easement, and the Utility Easement forms specified in **Exhibit E** to the Cooperative and record same in the official records of Polk County, bearing all costs associated with this action.

**5.1.2** Polk County shall execute and deliver a Bill of Sale for the Tangible Assets to the Cooperative, which shall be substantially in accordance with the format reflected in **Exhibit F**.

**5.1.3** Upon conveyance of the Real Property to the Cooperative, recordation of same in the official records of Polk County and the transfer of the SFWMD Permit to the Cooperative, the Water Rights and Water Supply Development Rights shall be deemed transferred by Polk County to the Cooperative.

**5.1.4** Following the conveyance of the Real Property to the Cooperative and recordation of the County Deed and the execution and delivery of the Bill of Sale to the Cooperative, Polk County shall promptly provide notice to SFWMD of the above transfers and submit any forms required to transfer the SFWMD Permit to the Cooperative.

**5.2 The Cooperative's Obligations.** Within thirty (30) days of the Effective Date, the Cooperative does hereby agree to the following conditions and obligations required to effectuate the transfer of the Transferred Assets and the SFWMD Permit to the Cooperative.

**5.2.1** The Cooperative shall accept the conveyance of the Real Property via the County Deed specified in **Exhibit E** to the Cooperative.

**5.2.2** Cooperative shall accept the delivery of a Bill of Sale for the Tangible Assets, which shall be substantially in accordance with the format reflected in **Exhibit F**. Upon receipt of the Bill of Sale, the Cooperative shall thereafter be solely responsible for the operation, maintenance, repair and replacement of the Tangible Assets.

**5.2.3** Upon conveyance of the Real Property to the Cooperative, recordation of same in the official records of Polk County and the transfer of the SFWMD Permit to the Cooperative, the Cooperative shall be deemed to accept the Water Rights and Water Supply Development Rights.

**5.2.4** The Cooperative shall cooperate and assist Polk County in the transfer of the SFWMD Permit to the Cooperative. Upon transfer of the SFWMD Permit, the Cooperative shall be solely responsible for compliance with the terms and conditions of the permit.

**5.2.5** Upon conveyance of the Real Property to the Cooperative and recordation of same in the official records of Polk County, delivery of the Bill of Sale for the Tangible Property and the transfer of the SFWMD Permit, the Cooperative shall pay Polk County the Southeast Wellfield Refund Cost.

**6. 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.

**7. 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.

**8. NOTICES.**

**8.1** 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 at their respective addresses shown below or such other addresses as a Party may designate by prior notice given in accordance with this provision:

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  
863-534-6444

**8.2** Any Party, may, by notice in writing given to the other Party, 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.

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

**10. 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.

**11. 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.

**12. 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.

**13. 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.

**14. 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.

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

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

*[Signatures begin on the following pages]*

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: \_\_\_\_\_  
George Lindsey III, Chairman  
Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

Dated and signed by the Chairman: \_\_\_\_\_

Reviewed as to form and legal sufficiency:

County Attorney's Office

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by George Lindsey III as Chairman of the Board of County Commissioners of Polk County, on its behalf. He [] is personally known to me, or [] has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

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

POLK REGIONAL WATER COOPERATIVE

By: \_\_\_\_\_  
George Lindsey III, Chair

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Secretary/Treasurer

APPROVED AS TO FORM AND CORRECTNESS:

Edward P. de la Parte, Legal Counsel

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of the Polk Regional Water Cooperative, on its behalf. He [] is personally known to me, or [] has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

**Exhibit A to Contract**  
**SFWMD Water Use Permit 53-00293-W**

[See Attached 134 Pages]





FORM #0229  
Rev. 07/09

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
WATER USE PERMIT NO. 53-00293-W  
NON-ASSIGNABLE  
REVISED**

**Date Issued:** April 28, 2014

**Expiration Date:** April 28, 2054

**Authorizing:** THE NEW USE OF GROUNDWATER FROM THE LOWER FLORIDAN AQUIFER FOR THE POLK COUNTY UTILITIES PROPOSED PUBLIC WATER SUPPLY WELLFIELD WITH AN ANNUAL ALLOCATION OF 13,688 MILLION GALLONS.

**Located In:** Polk County, S21/T31S/R29E

**Issued To:** POLK COUNTY BOARD OF COUNTY COMMISSIONERS  
(POLK COUNTY SOUTHEAST WELLFIELD)  
330 WEST CHURCH STREET,  
BARTOW, FL 33830

This Permit is issued pursuant to Application No. 110712-7, dated July 12, 2011, for the use of water as specified above and subject to the Special Conditions set forth below. Permittee agrees to hold and save the South Florida Water Management District and its successors harmless from any and all damages, claims or liabilities which may arise by reason of the construction, maintenance or use of activities authorized by this permit. Said application, including all plans and specifications attached thereto, is by reference made a part here of.

Upon written notice to permittee, this permit may be temporarily modified, or restricted under a Declaration of Water Shortage or a Declaration of Emergency due to Water Shortage in accordance with provisions of Chapter 373, Fla. Statutes, and applicable rules and regulations of the South Florida Water Management District.

This Permit may be permanently or temporarily revoked, in whole or in part, for the violation of the conditions of the permit or for the violation of any provision of the Water Resources Act and regulations thereunder.

This Permit does not convey to the permittee any property rights nor any privileges other than those specified herein, nor relieve the permittee from complying with any law, regulation, or requirement affecting the rights of other bodies or agencies.

**LIMITING CONDITIONS ARE AS FOLLOWS:**

SEE PAGES 2 - 9 OF 9 (42 LIMITING CONDITIONS)

SOUTH FLORIDA MANAGEMENT DISTRICT, BY ITS EXECUTIVE DIRECTOR

On April 28, 2014

By *Jessite A.*  
DEPUTY CLERK

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

### LIMITING CONDITIONS

1. This permit shall expire on April 28, 2054.
2. Application for a permit modification may be made at any time.

3. Water use classification:

Public water supply

4. Source classification is:

Ground Water from:  
Lower Floridan Aquifer

5. Annual allocation shall not exceed 13688 MG.

Maximum monthly allocation shall not exceed 1162.5 MG.

6. Pursuant to Rule 40E-1.6105, F.A.C., Notification of Transfer of Interest in Real Property, within 30 days of any transfer of interest or control of the real property at which any permitted facility, system, consumptive use, or activity is located, the permittee must notify the District, in writing, of the transfer giving the name and address of the new owner or person in control and providing a copy of the instrument effectuating the transfer, as set forth in Rule 40E-1.6107, F.A.C.

Pursuant to Rule 40E-1.6107 (4), until transfer is approved by the District, the permittee shall be liable for compliance with the permit. The permittee transferring the permit shall remain liable for all actions that are required as well as all violations of the permit which occurred prior to the transfer of the permit.

Failure to comply with this or any other condition of this permit constitutes a violation and pursuant to Rule 40E-1.609, Suspension, Revocation and Modification of Permits, the District may suspend or revoke the permit.

This Permit is issued to:

Polk County Board of County Commissioners  
330 West Church Street  
Bartow, FL 33830

7. Withdrawal Facilities:

Ground Water - Proposed:

- 4 - 18" X 1860' X 1800 GPM Wells Cased To 1530 Feet
- 5 - 18" X 1875' X 1800 GPM Wells Cased To 1530 Feet
- 5 - 18" X 1860' X 1800 GPM Wells Cased To 1520 Feet

Ground Water - Existing:

- 1 - 18" X 2140' X 1800 GPM Well Cased To 1400 Feet



8. Permittee shall mitigate interference with existing legal uses that was caused in whole or in part by the permittee's withdrawals, consistent with the approved mitigation plan. As necessary to offset the interference, mitigation will include pumpage reduction, replacement of the impacted individual's equipment, relocation of wells, change in withdrawal source, or other means.

Interference to an existing legal use is defined as an impact that occurs under hydrologic conditions equal to or less severe than a 1 in 10 year drought event that results in the:

(A) Inability to withdraw water consistent with provisions of the permit, such as when remedial structural or operational actions not materially authorized by existing permits must be taken to address the interference; or

(B) Change in the quality of water pursuant to primary State Drinking Water Standards to the extent that the water can no longer be used for its authorized purpose, or such change is imminent.

9. Permittee shall mitigate harm to existing off-site land uses caused by the permittee's withdrawals, as determined through reference to the conditions for permit issuance. When harm occurs, or is imminent, the District will require the permittee to modify withdrawal rates or mitigate the harm. Harm caused by withdrawals, as determined through reference to the conditions for permit issuance, includes:

(A) Significant reduction in water levels on the property to the extent that the designed function of the water body and related surface water management improvements are damaged, not including aesthetic values. The designed function of a water body is identified in the original permit or other governmental authorization issued for the construction of the water body. In cases where a permit was not required, the designed function shall be determined based on the purpose for the original construction of the water body (e.g. fill for construction, mining, drainage canal, etc.)

(B) Damage to agriculture, including damage resulting from reduction in soil moisture resulting from consumptive use; or

(C) Land collapse or subsidence caused by reduction in water levels associated with consumptive use.

10. Permittee shall mitigate harm to the natural resources caused by the permittee's withdrawals, as determined through reference to the conditions for permit issuance. When harm occurs, or is imminent, the District will require the permittee to modify withdrawal rates or mitigate the harm. Harm, as determined through reference to the conditions for permit issuance includes:

(A) Reduction in ground or surface water levels that results in harmful lateral movement of the fresh water/salt water interface,

(B) Reduction in water levels that harm the hydroperiod of wetlands,

(C) Significant reduction in water levels or hydroperiod in a naturally occurring water body such as a lake or pond,

(D) Harmful movement of contaminants in violation of state water quality standards, or

(E) Harm to the natural system including damage to habitat for rare or endangered species.

11. If any condition of the permit is violated, the permit shall be subject to review and possible modification, enforcement action, or revocation.

12. Authorized representatives of the District, with advance notice to the permittee, shall be permitted to enter, inspect, and



observe the permitted system to determine compliance with permit conditions.

Where the permittee does not hold the permitted site(s) in fee simple, District access across private property may be limited to ingress and egress to the site of the permitted system for inspection and observation of same.

13. The Permittee is advised that this permit does not relieve any person from the requirement to obtain all necessary federal, state, local and special district authorizations.
14. The permit does not convey any property right to the Permittee, nor any rights and privileges other than those specified in the Permit and Chapter 40E-2, Florida Administrative Code.
15. The permittee shall submit all data as required by the implementation schedule for each of the limiting conditions to: South Florida Water Management District (District), Regulatory Support Bureau, P.O. Box 24680, West Palm Beach, FL 33416- 4680 and, where specifically referenced, to Southwest Florida Water Management District (SWFWMD), Division of Resource Regulation, 2379 Broad Street, Brooksville, FL 34604-6899.
16. In the event of a declared water shortage, water withdrawal reductions will be ordered by the District in accordance with the Water Shortage Plan, Chapter 40E-21, F.A.C. The Permittee is advised that during a water shortage, pumpage reports shall be submitted as required by Chapter 40E-21, F.A.C.
17. Prior to the use of any proposed water withdrawal facility authorized under this permit, unless otherwise specified, the Permittee shall equip each facility with a District-approved operating water use accounting system and submit a report of calibration to the District, pursuant to Section 4.1, Basis of Review for Water Use Permit Applications.

In addition, the Permittee shall submit a report of recalibration for the water use accounting system for each water withdrawal facility (existing and proposed) authorized under this permit every five years from each previous calibration, continuing at five-year increments.

18. Monthly withdrawals for each withdrawal facility shall be submitted to the District and SWFWMD quarterly. The water accounting method and means of calibration shall be stated on each report.
19. The permittee shall notify the District and SWFWMD within 30 days of any change in water supply contracts/participation agreements (See Limiting Condition 34) or service area boundary. Updated water supply contracts/participation agreements and service area boundaries shall be provided within 30 days of execution. If the permittee will not serve a demand within the service area for which the annual allocation was calculated, the annual allocation may then be subject to modification and reduction.
20. The permittee shall determine unaccounted for transmission system losses. Losses shall be determined for the entire transmission system on a monthly basis. Permittee shall define the manner in which unaccounted-for losses are calculated. Data collection shall begin within six months of Permit issuance. Loss reporting shall be submitted to the District on a yearly basis on April 1st of each year.
21. Permittee shall maintain an accurate flow meter at the intake of the water treatment plant for the purpose of measuring daily inflow of water.

The permittee shall submit a report of calibration of this flow meter to the District, pursuant to Section 4.1, Basis of Review for Water Use Permit Applications. In addition, the Permittee shall submit a report of recalibration for this flow meter every five years from each previous calibration, continuing at five-year increments.

22. Pursuant to Section 373.236(4), F.S., every ten years from the date of permit issuance, the permittee shall submit a water use compliance report for review and approval by District staff to SFWMD at [www.sfwmd.gov/ePermitting](http://www.sfwmd.gov/ePermitting), or the Regulatory Support Bureau at P.O. Box 24680, West Palm Beach, FL 33416-4680.

23. The water conservation plan required by Section 2.6.1 of the BOR and described in the Application documents shall be implemented by the permittee.
24. If at any time there is an indication that the well casing, valves, or controls leak or have become inoperative, repairs or replacement shall be made to restore the system to an operating condition. Failure to make such repairs shall be cause for filling and abandoning the well, in accordance with procedures outlined in Chapter 40E-3, Florida Administrative Code.
25. The permittee shall submit to the District an updated Well Description Table (Table A) within one month of completion of each proposed well identifying the actual total and cased depths, pump manufacturer and model numbers, pump types, intake depths and type of meters.
26. Prior to the installation of any proposed wells, the permittee shall submit an ownership document or easement to the District.
27. Within one month of initiating wellfield production, the permittee shall implement the saline intrusion monitoring program described as follows:

The permittee shall monitor and report to the District the chloride concentration from all wells on a quarterly basis. If the chloride concentration in any well in the wellfield exceeds 500 mg/L, the Permittee shall notify the District in writing within 30 days and provide reasonable assurances that the conditions of Section 3.4.1 of the BOR will continue to be met, which may include modification of this permit.

28. The permittee shall implement the following wellfield operating plan for the baseload facility:

Wellfield Operating Plan Phase 1: Phase 1 of the wellfield operating plan includes construction and operation of 5 supply wells (withdrawal facilities). Based on projected demand and anticipated productivity of the withdrawal facilities, it is expected that all 5 wells will pump the planned 10 MGD finished water quantity to be used as a base supply by permittee's water customers.

Wellfield Operating Plan Phase 2: Phase 2 of the wellfield operating plan includes construction and operation of 5 additional withdrawal facilities. Based on demand and anticipated productivity of the withdrawal facilities, it is expected that all 10 withdrawal facilities will pump the planned 20 MGD finished water quantity to be used as a base supply by permittee's water customers.

Wellfield Operating Plan Phase 3: Phase 3 of the wellfield operating plan includes construction and operation of 5 additional withdrawal facilities. Based on demand and anticipated productivity of the withdrawal facilities, it is expected that all 15 withdrawal facilities will pump the planned 30 MGD finished water quantity to be used as a base supply by permittee's water customers.

Backup or Maintenance Mode Operations: The wellfield will be operated such that the withdrawal facilities can follow regular maintenance schedules, while minimizing service disruptions. This schedule will be implemented in a cycle such that on an annual basis each pump is maintained/inspected at least once.

Permittee may add a sixth withdrawal facility to Wellfield Operating Plan Phase 1 or an eleventh withdrawal facility to Wellfield Operating Plan Phase 2 for standby use, provided that withdrawals do not exceed the planned 10 MGD finished water quantity for Wellfield Operating Plan Phase 1 or the planned 20 MGD finished water quantity for Wellfield Operating Plan Phase 2 and that the total number of wells does not exceed 15.

If the permittee seeks a change in the wellfield operating plan, the permittee shall submit an application for permit modification to the District.

29. The permittee plans on financing this facility using grant funds and multiple bond issues. Pursuant to Section



373.236(3), Florida Statutes, no later than 90 days following each bond issuance, the permittee shall provide the District with a copy of the bonds issued to finance the construction of the water treatment plant and associated waterworks which states the retirement dates.

30. An environmental monitoring program shall be completed in accordance with the tasks as indicated in Exhibit 12 (page 12 of the EMP) and the milestone dates provided below. Any proposed changes to the wetland monitoring program, work schedule, or site locations shall be submitted to the District for review and Staff approval 30 days prior to the scheduled completion date. The request shall include documentation substantiating the request.
  - a. On or before January 31, 2015, the permittee shall secure legal and formal access to all of the proposed monitoring sites and provide documentation of same. In the event the permittee is unable to obtain or maintain legal access to any of the proposed monitoring site(s) or the permittee wishes to propose an alternative site with better access or information, the permittee shall submit a written request to the District no later than 30 days prior to the due date of January 31, 2015. In either event, the permittee must identify the alternative site(s) where access can be obtained and submit corrective action plan in writing within 60 days of January 31, 2015 to modify the monitoring network. This plan must include a schedule for the well construction and equipment placement where necessary. Such a corrective action plan is subject to prior District approval and a description of how the alternative site will provide adequate monitoring data.
  - b. On or before January 31, 2021, the permittee shall install transects, hydrologic monitoring devices, and perform the topographic survey in accordance with Exhibit 12.
  - c. On or before February 28, 2021, the permittee shall initiate the performance of baseline data collection prior to the anticipated wellfield startup in 2023. Baseline monitoring shall begin two years before well field operations startup, which is anticipated in 2023. In the event that startup is delayed or advanced, the permittee shall provide written notification of the advancement or delay and the length of the same to the District. In no event shall initiation of wellfield operation begin until at least 2 years of baseline monitoring data has been collected and provided to the District.
  - d. On or before April 1, 2023, the permittee shall submit the baseline monitoring report as described in Exhibit 12 for District Staff review and written approval only as to completeness prior to groundwater withdrawals; provided, however, the District's failure to act within 45 days of submission shall be deemed approval of the baseline monitoring report.
  - e. Regular data collection may begin on or before February 28, 2023 in accordance with the District-approved baseline monitoring report and Exhibit 12. Ongoing data collection will be conducted in accordance with Exhibit 12.
  - f. On or before April 1, 2024, the permittee shall submit the first annual Environmental Monitoring Report. The Permittee shall submit annual Environmental Monitoring Reports on April 1st of each year thereafter through Year 5 of the Project's maximum withdrawals unless the District's review of the environmental monitoring program indicates additional monitoring is necessary.
  - g. Upon completion of the environmental monitoring program, the District will review the monitoring results, inclusive of additional available monitoring data, and determine if additional monitoring or wetland mitigation may be required, or if the monitoring program may be discontinued.
31. In the event the District determines that harm to wetlands or other surface waters is occurring or imminently is expected to occur, upon notice, the permittee, in partnership with other permittees or by itself, shall implement appropriate avoidance measures identified in the Environmental Harm Contingency Plan attached hereto as Exhibit 18.
32. If the District determines the projected implementation of the Environmental Harm Contingency Plan is expected to be insufficient to eliminate or reduce the harm, the permittee shall submit an application to modify this permit within 30 days of notification by the District.
33. At least 90 days prior to initiating any withdrawals for this Project, except as specified in Limiting Condition 38, the

permittee shall submit a notice of intent to initiate the wellfield production. Well production may occur unless the District provides written notice that the permittee is not in compliance with any Permit Limiting Condition within 45 days of receipt of the notice of intent to initiate wellfield production.

34. Within 12 months of permit issuance, the permittee shall submit executed copies of all participation agreements or other similar contracts to the District. The participation agreements or other similar contracts shall, at a minimum, specify the amount of finished water, on an annual basis, that this wellfield project will provide to each of its participants, per construction Phase and through the permit duration.

If the total volume of finished water specified for the vested partners, including treatment and distribution losses, to be provided by this wellfield project does not equal 13,688 MGY of raw water, the permittee shall, within 3 months of submittal of copies to the District, submit an application to modify this Permit to reflect demand demonstrated by participation agreements.

35. The permittee proposes to implement this project in multiple phases as follows:

a. Consistency with SWFWMD and Entity Financial Commitments:

i. On or before December 31, 2016, the permittee shall submit the fully-executed Central Florida Partnership Agreement between the water supply entity and SWFWMD.

ii. On or before December 31, 2020, the permittee shall provide documentation of the financial commitment from SWFWMD of approximately \$110 million and issuance of bonds by permittee (of approximately \$110 million) for all of Phase 1 of the project. In the event this documentation is not timely provided, then the provisions of Limiting Condition 37 shall apply.

iii. On or before December 31, 2025, the permittee shall provide documentation of the financial commitment from SWFWMD of approximately \$32 million and issuance of bonds by permittee (of approximately \$32 million) for this portion of the project. In the event this documentation is not timely provided, then the provisions of Limiting Condition 37 shall apply.

iv. On or before December 31, 2042, the permittee shall provide documentation of the financial commitment from SWFWMD of approximately \$17 million and issuance of bonds by permittee (of approximately \$17 million) for this portion of the project. In the event this documentation is not timely provided, then the provisions of Limiting Condition 37 shall apply.

b. Wellfield Operating Plan Phase 2:

Prior to implementation of withdrawals associated with Wellfield Operating Plan Phase 2, the Project Status Verification Report (Limiting Condition 36) shall assess Wellfield Operating Plan Phase 1 withdrawals to verify this wellfield project is not causing unanticipated, harmful impacts to wetlands, lakes, other surface water bodies, or water resources. District staff shall review the Project Status Verification Report within 60 days of submittal and notify the permittee as to whether or not unanticipated, harmful impacts are occurring or are imminent. In the event staff determines unanticipated, harmful impacts are occurring or are imminent, the provisions of Limiting Condition 31 shall immediately be implemented and withdrawals from Wellfield Operating Plan Phase 2 shall be delayed until a modification of this permit is issued.

c. Wellfield Operating Plan Phase 3:

Prior to implementation of withdrawals associated with Wellfield Operating Plan Phase 3, the Project Status Verification Report (Limiting Condition 36) shall assess Wellfield Operating Plan Phases 1 and 2 withdrawals to verify this wellfield project is not causing unanticipated, harmful impacts to wetlands, lakes, other surface water bodies, or water resources. District staff shall review the Project Status Verification Report within 60 days of submittal and notify the permittee as to whether or not unanticipated, harmful impacts are occurring. In the event staff determines unanticipated, harmful



impacts are occurring, the provisions of Limiting Condition 31 shall immediately be implemented and withdrawals from Wellfield Operating Plan Phase 3 shall be delayed until a modification of this permit is issued.

36. Beginning on April 1, 2015, and continuing on April 1st every year thereafter, the permittee shall submit an annual Project Status Verification Report for the prior calendar year describing: 1) the progress made to comply with permit Limiting Conditions; and 2) an assessment of whether this wellfield project and associated requirements is on schedule; an explanation, if the wellfield has fallen behind schedule, of how the Permittee will put the wellfield project back on schedule. If the Permittee has exercised due diligence to meet the required deadlines in limiting conditions herein but cannot meet one or more of them because of factors beyond its control, then the Permittee may seek an extension of the deadlines by submitting a request to modify the permit to the District, and providing documentation for the basis of the request. The annual Project Status Verification Report may also include unaccounted-for transmission line losses as required in Limiting Condition 20 and the annual Environmental Monitoring Report as required in Limiting Condition 30.
37. The allocations in this permit are subject to revocation, reduction, or other modification after (1) District review of each ten year compliance report (see Limiting Condition 22), (2) District review of the Project Status Verification Report(s) (see Limiting Condition 36), (3) failure to timely provide the District with the documentation concerning project implementation requirements (see Limiting Condition 35), or (4) at any other time during the term of this permit, upon reasonable notice to the permittee including a statement of facts upon which the District based its determination, to address commitments and/or abate harmful impacts that are observed or projected to occur because of the permittee's authorized withdrawals, based on updated modeling tools and additional data collected during the term of the permit.
38. With the District's prior written approval, the permittee may test/operate one or more withdrawal facilities for the purpose of collecting hydrogeologic information.
39. All limiting conditions are intended to address resources and existing legal users located within the District, the SWFWMD, and the surrounding area.
40. This project is located in the Central Florida Water Initiative (CFWI) area, an area with on-going impacts to water resources which are being addressed by the CFWI. If the District determines that adverse impacts to water resources or existing legal users are occurring or are projected to occur because of the Permittee's authorized withdrawals over the permit duration, the District, upon reasonable notice to the permittee and including a statement of facts upon which the District based its determination, may modify quantities permitted or other conditions of the permit, as appropriate, to address the impact, but only after an opportunity for the permittee to resolve or mitigate the impact or to request a hearing. Such modification, if any, will consider such factors as the permittee's relative contribution to the water resource impact being addressed due to groundwater withdrawals, the timing of this permit issuance compared to presently existing legal use of water, and other considerations identified by the CFWI Solutions Planning and Regulatory Teams. Modifications may include mitigation of impacts and / or reconsideration of allocations or requirements to timely implement required actions that are consistent with the long-term, regional water supply solutions as implemented by rules. Such actions may include the development of alternative water supplies, the implementation of water resource and / or water supply development projects, the application of impact offsets or substitution credits, operating plans, heightened water conservation or other appropriate actions. Nothing in this condition is intended to abrogate the rights of the Governing Board or of any other person under Section 373.233, Fla. Stat.
41. The Central Florida Water Initiative documented existing water resource environmental impacts within its boundaries. This Initiative remains underway and is, in part, crafting long-term water supply solutions for the region. As a component of immediate, interim measures the permittee is encouraged to participate in the District's on-going, heightened water conservation public education program. Given the permittee's use class, opportunities may include such activities as participation in water conservation public service announcements, demonstrations of irrigation efficiency at community gardens, posting water conservation information or links on the permittee's website. Please contact Nicholas Vitani, P.G. at [nvitani@sfwmd.gov](mailto:nvitani@sfwmd.gov) to discuss opportunities for participation in this important District effort.



42. On or before January 31, 2021, the permittee shall construct one Upper Floridan aquifer monitor well located within the delineated area identified in Exhibit 9-E. The well shall be constructed according to the general specifications set forth for Well SE-UFA-MW1 in the Construction and Testing Report Southeast Deep Exploratory Well by Post Buckley, Schuh and Jernigan dated April 2010, which was submitted by the permittee to the District during the permit application process. By March 31, 2021 and each calendar quarter thereafter, the permittee shall sample the Upper Floridan aquifer monitor well once for water level, chloride and total dissolved solids and report the results to the District pursuant to Limiting Condition 15 and in writing to Gold Coast Utilities Corporation, 2340 N.E. Dixie Highway, Jensen Beach, Florida 34957. The specified monitoring of the Upper Floridan aquifer monitor well and the reporting of data shall continue for the duration of the permit, unless modified or discontinued by the District.

Last Date for Agency Action:  
February 7, 2014

Revised Staff Report  
April 25, 2014

**WATER USE STAFF REPORT**

**Application Number:** 110712-7  
**Permit Number:** 53-00293-W  
**Project Name:** POLK COUNTY SOUTHEAST WELLFIELD  
**Water Use Permit Status:** PROPOSED

**FINAL APPROVED BY  
EXECUTIVE DIRECTOR  
APRIL 28, 2014**

**Location:** POLK COUNTY, S21/T31S/R29E

**Applicant's Name and Address:** POLK COUNTY BOARD OF COUNTY COMMISSIONERS  
330 WEST CHURCH STREET  
BARTOW, FL 33830

**Water Use Classification:** Public Water Supply

**Sources:** **Ground Water from:** Lower Floridan Aquifer

**Authorized Allocation:**

**Annual Allocation:** 13,688 Million Gallons (MG)  
**Maximum Monthly Allocation:** 1,162.5 Million Gallons (MG)

**Existing Withdrawal Facilities - Ground Water**

Source: Lower Floridan Aquifer  
1 - 18" X 2140' X 1800 GPM Well Cased to 1400 Feet

**Proposed Withdrawal Facilities - Ground Water**

Source: Lower Floridan Aquifer  
4 - 18" X 1860' X 1800 GPM Wells Cased to 1530 Feet  
5 - 18" X 1875' X 1800 GPM Wells Cased to 1530 Feet  
5 - 18" X 1860' X 1800 GPM Wells Cased to 1520 Feet

**Rated Capacity**

<u>Source</u>	<u>Status Code</u>	<u>GPM</u>	<u>MGM</u>	<u>MGY</u>
Lower Floridan Aquifer	E	1,800	78.8	946
Lower Floridan Aquifer	P	25,200	1,103.2	13,245
<b>Totals:</b>		<b>27,000</b>	<b>1,182.0</b>	<b>14,191</b>

**PURPOSE**

The Polk County Board of County Commissioners (Applicant) has submitted this application to obtain a water use permit (WUP) for public water supply for Polk County Utilities. The wellfield will partially meet the requested demands of the 11 "Project Partners" identified by the Applicant for use in 13 service areas. The proposed withdrawals are from the Lower Floridan aquifer (LFA).



## **PROJECT DESCRIPTION**

The Polk County Southeast Wellfield (Project) is a proposed public water supply wellfield located in southeast Polk County (Exhibits 1 and 2). The Project is anticipated to supply water to up to 13 service areas, which corresponds to the 11 Project Partners identified by the Applicant. The service areas include: the cities of Auburndale, Davenport, Eagle Lake, Frostproof, Haines City, Lake Alfred, Lake Wales, Winter Haven, the Town of Dundee, the Town of Lake Hamilton, the Polk County East Regional Utility Service Area (ERUSA), the Polk County Northeast Regional Utility Service Area (NERUSA), and the Polk County Southeast Regional Utility Service Area (SERUSA). A map showing the service areas supplied by this Project are shown on Exhibit 3.

The Project withdrawals are from the uppermost permeable zone of the LFA via 1 existing and 14 proposed withdrawal facilities. The withdrawal facility details are shown on Exhibit 4.

The wellfield infrastructure will be completed in three phases, with five wells constructed per phase, as further discussed below. Phase 1 construction, anticipated to begin in 2014, will be capable of producing a minimum of 10 million gallons per day (mgd) of treated water (12.5 mgd of raw water withdrawn) by approximately 2023. Phase 1 construction includes the acquisition of well sites and right-of-way, design and installation of five wells, a raw water pipeline from the production wells to a regional treatment facility, treatment facilities, and transmission pipelines to deliver the treated water. Phase 2 construction includes the acquisition of well sites and right-of-way, installation of an additional five wells, additional raw water pipeline from the wells to the existing raw water pipeline constructed in Phase 1, and treatment facilities to provide a total treated water capacity of 20 mgd (25 mgd of raw water withdrawn). Phase 2 is estimated by the Applicant to be completed by 2032. Phase 3 construction includes the acquisition of well sites and right-of-way, installation of an additional five wells, completion of all raw water pipelines from the wells to the existing raw water pipeline constructed under Phase 2, and completion of treatment facilities to provide a total treated water capacity of 30 mgd (37.5 mgd raw water withdrawn). Phase 3 is anticipated for completion by 2048.

The Applicant may add a sixth withdrawal facility to Phase 1 or an eleventh withdrawal facility to Phase 2 for standby use, provided that withdrawals do not exceed the planned 10 MGD finished water quantity for Phase 1 or the planned 20 MGD finished water quantity for Phase 2 and that the total number of wells does not exceed 15.

The Applicant has indicated that the raw water withdrawn will be conveyed to a regional treatment facility for advanced treatment (low pressure membrane reverse osmosis). Concentrate from the treatment process will be disposed of via deep well injection. The treated water will then be distributed through transmission pipelines to each of the Project Partners listed above via a series of interconnects. The proposed wellfield interconnects provided by the Applicant is shown in Exhibit 3

The Applicant has indicated that a regional water supply entity will be formed between all or part of the Project Partners mentioned above. Parallel to the wellfield construction and operating phases discussed above, the multiple phases of the Project will be linked to financial commitments between the future regional water supply entity and the Southwest Water Management District (SWFWMD). Documentation of the proposed financial commitments of the entity itself and of SWFWMD are to be provided to the District by the milestones as outlined in Limiting Condition 35.

## **BACKGROUND**

Polk County identified the need to develop additional, non-traditional water supplies due to increasing needs and to support the sustainability of the traditional water supply of the Upper Floridan aquifer (UFA). As an inland county, additional water supply options are limited in source and quantity. Given these limitations, Polk County partnered with the South Florida Water Management District (referred to hereafter



**PROJECT DESCRIPTION (CONTINUED)**

as "SWFMD" or "District") and SWFWMD to develop the 2009 Polk County Comprehensive Water Supply Plan (PCCWSP). The Project is one of several regional water supply projects identified in the PCCWSP and in the 2010 SWFWMD Regional Water Supply Plan to provide additional water supply sources to meet future increased demands within Polk County. Page 56 of the SWFWMD's 2010 Update of the Regional Water Supply Plan for the Heartland Planning Region states, "Brackish groundwater is defined as groundwater having impurity concentrations greater than drinking water standards (total dissolved solids [TDS] concentration greater than 500 milligrams per liter (mg/L) but less than seawater (TDS equal to or greater than 35,000 mg/L). Utilities that utilize brackish groundwater for water supply typically use source water that slightly or moderately exceeds potable water standards." Water quality sampling at the subject wellfield indicates TDS of over 1,000 mg/L as further described below in the Saline Water Intrusion Section. The Legislature declared brackish groundwater to be an alternative water supply and eligible for state and district funding (See sections 373.019 and 373.707, F.S.). Polk County has sought funding from SWFWMD for this project; SWFWMD has indicated its intent to assist the applicant, Polk County, in development of this wellfield as an alternative water supply project. To this end, SWFWMD and Polk County are currently negotiating a water supply development agreement.

**PROJECTED WATER USE DEMANDS**

The Applicant provided detailed information on past and projected water demands for each of its Project Partners through the year 2053. The Applicant has indicated that Project Partners will utilize the project as a baseload facility with finished water as a first on / last off source. The demands for each Project Partner service area were calculated based on 2053 population projections using the 2010 SWFWMD Regional Water Supply Plan, SWFWMD's GIS Model, historic growth rates, and a 10-year unadjusted gallons per capita day (gpcd) historic use methodology as described in detail in the Applicant's submittal documents. This resulted in a weighted average per capita use rate (PCUR) of 147 gpcd for the entire Project. This PCUR meets the goals established by SFWMD and SWFWMD.

Based on the above population projections and the PCUR, the finished water demand for the Project is 30 mgd. The Project's raw water demand is therefore 37.5 mgd based on a proposed treatment efficiency of 80%. The system is proposed to operate continuously at this volume at Project buildout. Using the raw water demand of 37.5 mgd results in annual and maximum monthly allocations for the Project are 13,687.5 million gallons (mg) and 1,162.5 mg, respectively.

Letters of Intent to participate in the Project were submitted by each of the municipalities mentioned above. These letters indicate the intention to participate in this Project and the maximum quantity of water that each municipality could be receiving. Based on the 2053 deficits projected by the Applicant (Exhibit 5) and the Letters of Intent, the finished water may be distributed as follows:

- 1) Polk County ERUSA.....up to 0.06 mgd
- 2) Polk County NERUSA.....up to 10.84 mgd
- 3) Polk County SERUSA.....up to 0.18 mgd
- 4) Winter Haven.....up to 10.00 mgd
- 5) Haines City.....up to 4.00 mgd
- 6) Auburndale.....up to 1.00 mgd
- 7) Lake Wales.....up to 2.37 mgd
- 8) Frostproof.....up to 0.15 mgd
- 9) Lake Alfred.....up to 0.40 mgd
- 10) Davenport.....up to 1.00 mgd

TOTAL up to 30 mgd



## **PROJECTED WATER USE DEMANDS (CONTINUED)**

The Town of Dundee, the Town of Lake Hamilton, and the City of Eagle Lake are Project Partners and have submitted Letters of Intent expressing their support of the Project. They may have the opportunity to receive water from this Project in the future.

The actual quantities to be received by each municipality will be reflected in participation agreements, water supply contracts, or other similar contracts which are required to be submitted to the District within 12 months of permit issuance (Limiting Condition 34). If the total volume of finished water specified for the Project Partners, including treatment and distribution losses, to be provided by this wellfield project does not equal 13,688 MGY of raw water, the permittee shall, within 3 months of submittal of copies to the District, submit an application to modify this permit to reflect demand demonstrated by participation agreements.

## **HYDROLOGIC MODELING**

### **Groundwater Vistas (Modflow)**

In order to provide reasonable assurances that conditions for permit issuance are met, the Applicant provided a calibrated numerical model [Modflow, United States Geological Survey (USGS), 1996] utilizing Groundwater Vistas v.6 interface (Environmental Solutions Inc., 2000). The model development is consistent with the criteria for numerical impact assessments set forth in Section 1.7.5.2.B of the Basis for Review for Water Use Permit Applications (BOR).

### **Model Construction**

The Applicant developed the model [Polk County Utilities Southeast Wellfield Model Description and Results, August 2012 (PCSEWM)] for this Project based on the District's revised (2009) East Central Florida Transient (ECFT) Model, District Wide Regulation Model (DWRM 2.1, 2009) developed by the Southwest Florida Water Management District (SWFWMD), and the Cypress Lake Model (WUP 49-02051-W) developed by Tetra Tech (2011). A hydro-stratigraphic section of the deep exploratory well completed for this Project (Well SE-DEW) showing the model layers is depicted on Exhibit 6. Model documentation (conceptualization, construction, and parameterization) is contained in the application file.

### **Model Results**

Drawdown contours for the model simulations are included in Exhibit 7 through 10. Withdrawals of the recommended project allocation from the LFA were simulated for both individual and cumulative impacts according to Section 1.7.5.2 of the BOR. The Project's individual withdrawals resulted in a maximum drawdown of approximately 0.5 feet in the surficial aquifer system (SAS)(Exhibit 10-B), approximately 1.5 feet in the Upper Floridan aquifer (UFA)(Exhibit 9-B), approximately 2 feet in the Avon Park Permeable Zone (APPZ)(Exhibit 8-B), and approximately 84 feet in the LFA (Exhibit 7-B). A cumulative simulation was also performed inclusive of existing legal uses and pending applications for the LFA located within the Project's cone of influence. The maximum drawdowns in the Project area as a result of cumulative withdrawals was simulated to be 0.7 feet in the SAS (Exhibit 10-D), 4.5 feet in the UFA (Exhibit 9-D), 5.5 feet in the APPZ (Exhibit 8-D), and approximately 87 feet in the LFA (at the wellheads) as shown on Exhibit 7-D.

## **IMPACT ASSESSMENTS**

### **Water Resource Availability Lower Floridan Aquifer**

#### **LFA**

The average land surface elevation at the Project is approximately 70 feet referenced to the National



## **IMPACT ASSESSMENTS (CONTINUED)**

Geodetic Vertical Datum (NGVD) based on USGS topographic maps for the area. A generalized cross-section for the area beneath the project is given on Exhibit 6A. A detailed hydro-stratigraphic cross-section along with the construction detail of the test well SE-DEW is given on Exhibit 6B. According to the "Construction and Testing Report for Southeast Polk County Deep Exploratory Well, Frostproof, Florida, April 2010" at FX-Bar Ranch (Well SE-DEW), the top of the LFA at the Project location is approximately at -1,350 feet NGVD. The uppermost permeable zone of the LFA (Model Layer LF1) occurs from -1,350 feet NGVD to -1,800 feet NGVD. The water level in Well SE-DEW (February 2009) for the LF1 production zone was approximately 68 feet NGVD. Based on the modeling results (Exhibit 7-D), the predicted maximum cumulative drawdown as a result of the Project's maximum allocation and cumulative uses is approximately 87 feet (near Well W-10). The total available drawdown from the top of the LFA is approximately 1,331 feet. Therefore, the potential for harm to occur to the water resource availability of the LFA as a result of the withdrawal of the project's recommended allocation is considered minimal.

### **APPZ**

The top of the APPZ at the Project location is approximately at -800 feet NGVD (Exhibit 6-A). The water level in well SE-DEW (January 2009), completed in the APPZ, was approximately 70.5 feet NGVD. Based on the modeling results, the predicted maximum drawdown in the APPZ as a result of the withdrawals of the project's recommended maximum allocation and cumulative uses is approximately 5.5 feet (Exhibit 8-D). The total available drawdown from the top of the APPZ is approximately 865 feet. Therefore, the potential for harm to occur to the water resource availability of the APPZ as a result of the withdrawal of the project's recommended allocation is considered minimal.

### **UFA**

The top of the UFA at the Project location is approximately at -150 feet NGVD (Exhibit 6-A). The lowest water level in USGS Well ROMP-44 (located approximately 6 miles west of the project) during the last 10 years (2003-2013) for the UFA is approximately 80.5 feet NGVD. Based on the modeling results, the predicted maximum drawdown in the UFA as a result of the withdrawals of the project's recommended maximum allocation and cumulative uses is approximately 4.5 feet (Exhibits 9-D). The total available drawdown from the top of the UFA is approximately 226 feet. Therefore, the potential for harm to occur to the water resource availability of the UFA as a result of the withdrawal of the project's recommended allocation is considered minimal.

## **Existing Legal Users**

### **Lower Floridan Aquifer**

#### **LFA**

The nearest existing legal user of the LFA within the Project's cone of influence is the Cypress Lake Wellfield (Water Use Permit 49-02051-W), located 22 miles northeast of the Project. The maximum cumulative drawdown at the nearest withdrawal facilities of Cypress Lake Wellfield (wells CL-8 and CL-9) is about 24 feet, of which this Project's contribution is less than 4 feet (Exhibits 7-D and 7-B). According to the "Construction and Testing Report for the Exploratory Well at Chapman Site", the water level at Cypress Lake Well TPW-A1 in December 2009 was approximately 49 feet NGVD. The intake pump elevation for wells of Cypress Lake Wellfield is approximately 70 feet below land surface or about -5 feet NGVD. As a result of the cumulative drawdown, the water column above the pump intake within the nearest wells of the Cypress Lake Wellfield is expected to be about 30 feet or more. Therefore, the potential for harm to occur to existing legal users of the LFA as a result of the withdrawals of the project's recommended allocation from the LFA is considered minimal.

#### **APPZ**

The nearest existing legal user within the Project's cone of influence that withdraws from the APPZ is the FX Bar Grove (Water Use Permit 53-00272-W), located about one mile east of the Project. The



## **IMPACT ASSESSMENTS (CONTINUED)**

drawdown at well W-1 of FX Bar Grove location as a result of the Project withdrawals is approximately 0.8-foot. As mentioned above, the water level in Well SE-DEW (January 2009) for the APPZ was approximately 70.5 feet NGVD. The intake pump elevation for W-1 of FX Bar Grove is about 60 feet below land surface or approximately 10 feet NGVD. As a result of the cumulative drawdown (5.5 feet), the water column above the pump intake within the FX Bar Grove Well W-1 is expected to be about 55 feet or more. Therefore, the potential for harm to occur to existing legal users of the APPZ as a result of the withdrawals of the project's recommended allocation from the LFA is considered minimal.

### **UFA**

The nearest existing legal users within the Project's cone of influence which withdraw from the UFA are the Fewox Grove (Water Use Permit 53-00281-W) located adjacent to southern Project boundary and Gold Coast Utilities (Water Use Permit 53-00030-W) located one mile east of the Project boundary. As mentioned above, the potentiometric head elevation in UFA near this location is about 80.5 feet and the maximum cumulative drawdown in the UFA is 4.5 feet. Model results indicate that the Applicant's impact contribution is less than 0.3-foot (Exhibit 9-B) at these existing legal users. The intake pump elevation for well W-1 of the Fewox Grove is approximately 60 feet below land surface or approximately 10 feet NGVD and for the Gold Coast Utilities the intake pump elevation in both wells of this user is at about 70 feet below land surface or approximately 0 feet NGVD. As a result of the cumulative drawdown, the water column above the pump intake within Well W-1 of Fewox Grove is expected to be about 66 feet or more and, near the wells of Gold Coast Utilities the water column above the pump intakes is expected to be about 76 feet (or more). The permittee will be constructing an Upper Floridan aquifer monitoring well in the shaded area shown in Exhibit 9-E for monitoring of water level, chloride, and total dissolved solids in the area of the Gold Coast Utilities wells, as detailed in Limiting Condition 42. Therefore, the potential for harm to occur to existing legal users of the UFA as a result of the withdrawals of the project's recommended allocation from LFA is considered minimal.

### **Saline Water Intrusion Lower Floridan Aquifer**

The nearest source of surface saline water is approximately 51 miles east of this Project. Multiple confining layers separate the LFA from the land surface. According to the Construction and Testing Report for Exploratory Well SE-DEW (PBS&J, April 2010) the dissolved chloride concentration of the groundwater in the LFA is approximately 35 mg/L or less. A water sample was collected by District staff on July 31, 2013 from Well SE-DEW and the chloride concentration was determined to be 9.3 mg/L. Water quality testing within the test well has routinely found total dissolved solids (TDS) in excess of 1,000 mg/L.

The Applicant's upconing analysis (Schmorak-Mercado, 1969) indicates a 42-foot rise of the interface after 20 years of continuous withdrawals at the Project's maximum allocation (37.5 mgd), which is beyond the requested 40-year permit duration requested. The chloride concentration immediately below the interface is approximately 400 mg/L, corresponding to an elevation of -2,336 feet NGVD. The bottom of the proposed wells is expected to be at an elevation of -1,794 feet NGVD. As a result, there still will be a separation of about 500 feet between the bottom of the wells and the interface. A map that shows concentrations of TDS, which corresponds directly to the concentration of dissolved chlorides, for the LFA is provided as Exhibit 11.

To provide additional assurances and verify the Applicant's upconing analysis, Limiting Condition 27 requires the Permittee to monitor and report to the District the chloride concentration from all withdrawal facilities of the wellfield on a quarterly basis. If the chloride concentration in any well in the wellfield exceeds 500 mg/L, the Permittee shall notify the District in writing within 30 days and provide reasonable assurances that the conditions of Section 3.4.1 of the BOR will continue to be met.



## **IMPACT ASSESSMENTS (CONTINUED)**

### **Wetlands**

#### **Lower Floridan Aquifer**

The Applicant conducted groundwater modeling (described above) as part of the analysis of the proposed withdrawals on the SAS. Section 3.3.4.2 of the BOR states that unless site specific considerations identified pursuant to Section 3.3.4.3 of the BOR exist indicating the numeric threshold for Category 2 wetlands is not applicable, the water use shall not be considered harmful when the modeled drawdown resulting from cumulative withdrawals beneath a wetland is less than 1 foot. As indicated above, the maximum drawdown of the SAS in the Project area using the cumulative withdrawals was predicted to be 0.7-foot. Based on the results of the groundwater modeling, the potential for harm to occur to wetlands as a result of the Project withdrawals is considered minimal. However, to demonstrate that the conditions of Permit issuance continue to be met throughout the duration of the Project, the Applicant has proposed to implement an environmental monitoring program as described below.

The proposed monitoring plan will be implemented in accordance with the tasks outlined in Exhibit 12, page 12 of the Environmental Monitoring Plan (EMP) and the schedule shown in Limiting Condition 30. The area of potential maximum drawdown beneath wetlands in the Project's modeled cone of influence is located between Lake Livingston and Lake Jackson as indicated in Exhibit 13. The wetland inventory maps (Exhibits 14-1 through 14-14) identify wetlands within the 0.5-foot drawdown contour of the SAS (cumulative drawdown). There are 352 category 2 and 3 wetlands (as defined in Section 3.3.3.B of the BOR) totaling approximately 3,322 acres. The wetlands within the 0.5-foot drawdown contours of the SAS are further classified and quantified by the applicant in the Wetland table contained in Exhibit 15.

The EMP include sites that monitor the water resources of both SFWMD and SWFWMD. Currently, baseline data is being collected at 11 of the 20 proposed monitoring sites. The remaining sites will be monitored to collect baseline data for at least two years prior to initiation of pumping. The Applicant has proposed five vegetative and water level data monitoring sites, four reference sites for vegetative and water level monitoring, eight water level monitoring sites (four for treatment and four for reference), two UFA water level monitoring sites (one reference and one treatment) and two rainfall monitoring sites (see Exhibits 16-1 through 16-21 for table and maps). All but one of these sites are accessible through Polk County Utilities ownership, State ownership, USGS control, SFWMD control, or National Oceanic Atmospheric Administration control. Access to the Little Red Water Lake vegetative monitoring site is being negotiated, although the water level monitoring site at that location is under SWFWMD control. The inclusion of reference wetland and water level monitoring sites are proposed to assess regional effects such as climate and land uses separately from potential water use effects from this project. The environmental monitoring requirements are included in Limiting Condition 30 and outlined in Exhibit 17.

### **Source Of Pollution**

#### **Lower Floridan Aquifer**

While the LFA is confined in the vicinity of the wellfield, the degree of confinement between the LFA and the water table aquifer varies across the area of influence of the proposed allocation. The Applicant submitted hydrological modeling described above which assessed the impact of the proposed allocation upon the SAS. There are three dry cleaning sites and numerous petroleum pollution sources within the Project's cone of influence. The maximum drawdown on these pollution sites does not exceed 0.2 feet. In addition, all of the dry cleaning and petroleum pollution sites requiring clean-up action are located within Highland County Brownfield Area (ID # BF280601000). According to a Florida Department of Environmental Protection (FDEP) document (December 22, 2008) this Brownfield Area is being addressed pursuant to the "Brownfield Site Rehabilitation Agreement" between FDEP and a selected



## **IMPACT ASSESSMENTS (CONTINUED)**

firm that will complete the clean-up activities (Ridgewood Imports, LLC). Therefore, due to a very small predicted drawdown and ongoing clean-up activities the potential for the induced movement of contaminants from sources of pollution to occur as a result of the withdrawal of the project's recommended allocation is considered minimal.

### **Other Impacts**

#### **Lower Floridan Aquifer**

Pursuant to Section 3.6.2 of the BOR, the use is not expected to result in significant reductions in water levels on the property of an existing off-site land use to the extent that the designed function of a water body and related surface water management improvements are damaged (not including aesthetic values), damage to agriculture, including damage resulting from reduction in soil moisture resulting from water use; or land collapse or subsidence caused by reduction in water levels associated with water use.

## **ADDITIONAL INFORMATION**

### **DEMONSTRATION OF NEED:**

Compatible Land Use:

Public water supply is a compatible land use throughout the Applicant's service areas.

### **Legal Control Over Project Site and Withdrawal Facilities:**

The Permittee has submitted documentation of ownership of the property (FX Ranch property) where the existing well is located, along with a contract option to purchase additional property owned by FX Ranch for one or more additional wells. In addition, Polk County Utilities has eminent domain authority which may be used to acquire additional parcels for the remainder of the wellfield. Limiting Condition 26 requires the Permittee to provide ownership documentation or easements to the District prior to installation of any proposed wells.

### **WATER USE ACCOUNTING SYSTEM:**

Pursuant to Limiting Condition 17, prior to the use of any existing or proposed water withdrawal facility authorized under this permit, unless otherwise specified, the Permittee shall equip each facility with a District-approved operating water use accounting system and submit a report of calibration to the District. In addition, the Permittee shall submit a report of recalibration for the water use accounting system for each water withdrawal facility (existing and proposed) authorized under this permit every five years from each previous calibration, continuing at five-year increments.

Monthly withdrawals for each withdrawal facility shall be submitted to the District and SWFWMD quarterly. The water accounting method and means of calibration shall be stated on each report. These are required in Limiting Condition 18.

### **RECLAIMED WATER PRODUCTION:**

Each Project Partner for this water use permit is committed to implementing the use of reclaimed water in their service areas. The Applicant has indicated that Polk County Utilities and the cities of Auburndale, Lake Wales, and Winter Haven currently provide reclaimed water to customers. In addition, each Project Partner is required by their existing WUPs to continue to evaluate the feasibility of providing reclaimed water to their customers. This is also one of the components of conservation measures for each Project Partner. The Applicant estimates that approximately 15% of this permit allocation will be recovered as reclaimed water.



**ADDITIONAL INFORMATION (CONTINUED)**

**WELLFIELD OPERATING PLAN:**

The Permittee proposes to implement the following wellfield operating plan during the three phases of the Project as follows:

Wellfield Operating Plan Phase 1 of the wellfield operating plan includes construction and operation of 5 supply wells (withdrawal facilities). Based on projected demand and anticipated productivity of the withdrawal facilities, it is expected that all five wells will pump the planned 10 MGD finished water quantity to be used as a base supply by the permittee's water customers.

Wellfield Operating Plan Phase 2 of the wellfield operating plan includes construction and operation of five additional withdrawal facilities. Based on demand and anticipated productivity of the withdrawal facilities, it is expected that all 10 withdrawal facilities will pump the planned 20 MGD finished water quantity to be used as a base supply by the permittee's water customers.

Wellfield Operating Plan Phase 3 includes construction and operation of five additional withdrawal facilities. Based on demand and anticipated productivity of the withdrawal facilities, it is expected that all 15 withdrawal facilities will pump the planned 30 MGD finished water quantity to be used as a base supply by the permittee's water customers.

Backup or Maintenance Mode Operations: The wellfield will be operated such that the withdrawal facilities can follow regular maintenance schedules, while minimizing service disruptions. This schedule will be implemented in a cycle such that on an annual basis each pump is maintained/inspected at least once.

The permittee may add a sixth withdrawal facility to Wellfield Operating Plan Phase 1 or an eleventh withdrawal facility to Wellfield Operating Plan Phase 2 for standby use, provided that withdrawals do not exceed the planned 10 MGD finished water quantity for Wellfield Operating Plan Phase 1 or the planned 20 MGD finished water quantity for Wellfield Operating Plan Phase 2 and that the number of wells does not exceed 15.

If the permittee seeks a change in the wellfield operating plan, the permittee shall submit an application for permit modification to the District.

**PUBLIC INTEREST AND TRANSPORT AND USE OF WATER ACROSS WMD BOUNDARIES:**

Pursuant to Section 373.223(1)(c), F.S., Staff evaluated whether the applicant's proposed use of water is consistent with the public interest. In determining consistency with the public interest, Staff considered the Florida Legislature's intent to promote the development and proper utilization of water sources as well as assure the availability of sufficient water for all existing and future reasonable-beneficial uses, natural systems, and the health, safety, and general welfare of the people of this state. Given the Legislature's direction, it was necessary to examine the unique public interest considerations associated with the subject application.

Polk County and numerous municipalities within Polk County currently provide public water supplies via a network of water supply systems. This existing system will not provide sufficient water to meet future demands and lacks the economies of scale associated with regional, multijurisdictional water supply development. Recognizing there was not a viable, regional solution to meet future demands of the region, Polk County engaged in a joint water supply planning effort with SFWMD and SWFWMD. The resulting Polk County Comprehensive Water Supply Plan was finalized in 2009. In summary, the Plan, and companion research efforts, explored the viability of several water supply sources as well as regional partnership opportunities. Exploratory wells were jointly funded and constructed to further assess non-traditional source options. In regard to the regional partnership opportunities, relationships between a



**ADDITIONAL INFORMATION (CONTINUED)**

coalition of Polk County municipalities and Polk County were forged. The County and municipal partners intend to construct an interconnected treatment and water delivery system throughout Polk County. This Polk County coalition also sought partnership with SWFWMD, primarily for funding purposes. It is through this comprehensive and inclusive effort that plans to develop the LFA at the proposed Southeast Polk County Wellfield were developed.

Parallel to consideration of this water use permit application, SWFWMD and Polk County are in the process of finalizing an agreement regarding Central Florida Water Resource Development, including this wellfield project. The agreement will specifically address funding for this wellfield Project and formation of the multijurisdictional entity responsible for its development. The partnership to be formed through this agreement represents a substantial State commitment to assuring sustainable, certain water supplies for this region of Florida. Regionalization of water supply development will have significant benefits for Polk County by providing certainty and availability of supply for the individual partners through regional treatment and distribution infrastructure. The regional infrastructure is complimented by remote location and proposed use of the LFA. The proposed Southeast Polk County Wellfield is situated in a comparatively undeveloped part of Polk County and proposes use of the Lower Floridan Aquifer. This location and aquifer are geared toward sustainable water resource development, as discussed in this staff recommendation.

There is an additional component of the public interest test that must be considered when the withdrawal and use of groundwater is from a point within one water management district for use outside the boundaries of that district but within the same county. Subsection 373.2295(4), Florida Statutes (F.S.), provides: "In determining if an application is consistent with the public interest as required by s. 373.223 Florida Statutes, the projected populations, as contained in the future land use elements of the comprehensive plans adopted pursuant to chapter 163 by the local governments within which the withdrawal areas and the proposed use areas are located, will be considered together with other evidence presented on future needs of those areas. If the proposed interdistrict transfer of groundwater meets the requirements of this chapter [373], and if the needs of the area where the use will occur and the specific area from which the groundwater will be withdrawn can be satisfied, the permit for the [interdistrict] transfer and use shall be issued."

This application proposes, in part, to transfer water across water management district boundaries, from the wellfield located in SFWMD to meet demands located in SWFWMD. While the application proposes a transfer across district boundaries, it does not propose to transfer water beyond Polk County. As an intracounty transfer of water across district boundaries, the application must meet the provisions of Section 373.2295(4), (11), and (13), Florida Statutes, noted above.

After reviewing comprehensive plans and available water resources, the future needs of the area where the groundwater will be withdrawn can be satisfied. The proposed withdrawal location is in a remote area and proposes to use the deeper and relatively undeveloped Lower Floridan Aquifer. Exhibit 7C identifies the Cypress Lake Wellfield (WUP49-02051-W) as the only existing legal user of the Lower Floridan Aquifer in the area around the proposed wellfield. These existing, permitted demands are the only future demands that are reasonably anticipated for this area of the District. Staff also considered other evidence of future needs of the area by examining the District's 2006 Kissimmee Basin Regional Water Supply Plan, the 2009 Polk County Comprehensive Water Supply Plan and the 2010 SWFWMD Regional Water Supply Plan. These plans do not identify any other proposed development of the Lower Floridan Aquifer in this region. Hence, additional demands from the Lower Florida Aquifer in this area are not presently anticipated nor are substantial, unpermitted demands projected to exist.

Demand and population numbers supplied by the Applicant for the respective service areas are consistent with comprehensive plans and other evidence presented by the applicants on future needs.



### **ADDITIONAL INFORMATION (CONTINUED)**

The Applicant provided updated population projections through the year 2053. Based on staff's technical analysis, the needs of the specific area from which the groundwater will be withdrawn can be satisfied throughout the duration of this water use permit. The needs of the area where the water will be used will be partially met by this Project. Therefore, the Applicant has provided reasonable assurances that the needs of the area where the use will occur and the specific area from which the groundwater will be withdrawn can be satisfied.

It is for these reasons that staff concludes this application is consistent with the public interest.

#### **WATER MANAGEMENT DISTRICT COORDINATION:**

A copy of the water use permit application, all District Requests for Additional Information, all Applicant responses, and all supporting documents to the Application were transmitted to the SWFWMD. The District requested comments on the same. SWFWMD comments are contained in the application file. In addition to these written comments, both water management districts have closely coordinated the review of this Application. The Permit has been conditioned to require monitoring of the water resources of SFWMD and SWFWMD. Based on these communications, it is the understanding of SFWMD that SWFWMD staff does not have any outstanding concerns associated with this Application or this staff recommendation.

#### **PERMIT DURATION:**

Pursuant to Section 1.7.2.2.E of the BOR and Section 373.236, F.S., the District may authorize a long-term water use permit duration where such period is required to provide for the retirement of bonds for the construction of waterworks and waste disposal facilities. A 40-year Financial Feasibility Analysis of the Project was submitted by the Applicant in support of the requested permit duration. Due to the regional nature of this Project, several years of lead time between each of the Project phases will be required due to the construction of the necessary infrastructure (regional water treatment plant and transmission pipelines) to allow for treatment and delivery of water to the service areas. Therefore, District Staff recommends a 40-year duration.

#### **REGIONAL ISSUES:**

The proposed water use is located within the area of the Central Florida Water Initiative (CFWI). The CFWI is a collaborative regional water supply endeavor to protect, conserve, and restore water resources in the area by working to accomplish the goals presented in the CFWI Guidance Document. These goals include crafting long-term water supply solutions for the Central Florida region. The CFWI effort may also result in specific regulatory requirements. While the scope and content of these regulatory requirements are unknown at this time, it is possible they may include requirements that are related to the permittee's relative contribution to the water resource impact being addressed, the timing of permit issuance compared to other existing legal users, and/or include other considerations identified by the CFWI Solutions Planning and Regulatory Teams. Therefore, this permit includes Limiting Condition 40 that provides specific notification that the permit may be modified during the term of the permit to address unanticipated harm or impacts to existing legal users that is occurring or is projected to occur from the permittee's authorized withdrawal over the permit duration.

Since this application is located within the CFWI area, it is necessary for the applicant to consider implementing the heightened water conservation requirements defined in Limiting Condition 41.

The applicant is advised to carefully consider its infrastructure investments in light of the on-going Central Florida Water Initiative.

**ADDITIONAL INFORMATION (CONTINUED)**

ENVIRONMENTAL RESOURCE PERMIT STATUS:

Not Applicable.

RIGHT OF WAY PERMIT STATUS:

Not Applicable

RECOMMENDATIONS

Project Name: POLK COUNTY SOUTHEAST WELLFIELD  
Application Number: 110712-7  
Permit Number: 53-00293-W

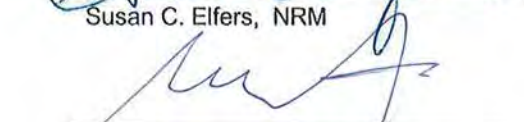
RECOMMENDATION TO EXECUTIVE DIRECTOR

Authorizing: The new use of groundwater from the Lower Floridan aquifer for the Polk County Utilities proposed public water supply wellfield with an annual allocation of 13,688 MG.


STAFF EVALUATION

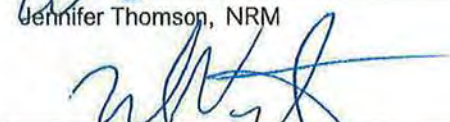
REVIEWER

  
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Susan C. Elfers, NRM

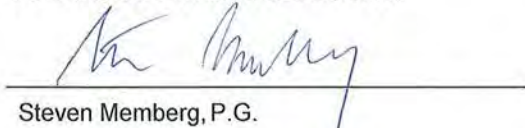
  
\_\_\_\_\_  
Nexhip Maska, P.G., WU

SUPERVISOR

  
\_\_\_\_\_  
Jennifer Thomson, NRM

  
\_\_\_\_\_  
Nicholas M. Vitani, P.G., WU

CONSULTING HYDROGEOLOGIST:

  
\_\_\_\_\_  
Steven Memberg, P.G.

Date: 4/25/14

WATER USE BUREAU CHIEF:

  
\_\_\_\_\_  
Maria C. Clemente, P.E.

Date: 4/25/14



## Limiting Conditions

1. This permit shall expire on April 28, 2054.
2. Application for a permit modification may be made at any time.

3. Water use classification:

Public water supply

4. Source classification is:

Ground Water from:  
Lower Floridan Aquifer

5. Annual allocation shall not exceed 13688 MG.

Maximum monthly allocation shall not exceed 1162.5 MG.

6. Pursuant to Rule 40E-1.6105, F.A.C., Notification of Transfer of Interest in Real Property, within 30 days of any transfer of interest or control of the real property at which any permitted facility, system, consumptive use, or activity is located, the permittee must notify the District, in writing, of the transfer giving the name and address of the new owner or person in control and providing a copy of the instrument effectuating the transfer, as set forth in Rule 40E-1.6107, F.A.C.

Pursuant to Rule 40E-1.6107 (4), until transfer is approved by the District, the permittee shall be liable for compliance with the permit. The permittee transferring the permit shall remain liable for all actions that are required as well as all violations of the permit which occurred prior to the transfer of the permit.

Failure to comply with this or any other condition of this permit constitutes a violation and pursuant to Rule 40E-1.609, Suspension, Revocation and Modification of Permits, the District may suspend or revoke the permit.

This Permit is issued to:

Polk County Board of County Commissioners  
330 West Church Street  
Bartow, FL 33830

7. Withdrawal Facilities:

Ground Water - Proposed:

- 4 - 18" X 1860' X 1800 GPM Wells Cased To 1530 Feet
- 5 - 18" X 1875' X 1800 GPM Wells Cased To 1530 Feet
- 5 - 18" X 1860' X 1800 GPM Wells Cased To 1520 Feet

Ground Water - Existing:

## Limiting Conditions

### 1 - 18" X 2140' X 1800 GPM Well Cased To 1400 Feet

8. Permittee shall mitigate interference with existing legal uses that was caused in whole or in part by the permittee's withdrawals, consistent with the approved mitigation plan. As necessary to offset the interference, mitigation will include pumpage reduction, replacement of the impacted individual's equipment, relocation of wells, change in withdrawal source, or other means.

Interference to an existing legal use is defined as an impact that occurs under hydrologic conditions equal to or less severe than a 1 in 10 year drought event that results in the:

(A) Inability to withdraw water consistent with provisions of the permit, such as when remedial structural or operational actions not materially authorized by existing permits must be taken to address the interference; or

(B) Change in the quality of water pursuant to primary State Drinking Water Standards to the extent that the water can no longer be used for its authorized purpose, or such change is imminent.

9. Permittee shall mitigate harm to existing off-site land uses caused by the permittee's withdrawals, as determined through reference to the conditions for permit issuance. When harm occurs, or is imminent, the District will require the permittee to modify withdrawal rates or mitigate the harm. Harm caused by withdrawals, as determined through reference to the conditions for permit issuance, includes:

(A) Significant reduction in water levels on the property to the extent that the designed function of the water body and related surface water management improvements are damaged, not including aesthetic values. The designed function of a water body is identified in the original permit or other governmental authorization issued for the construction of the water body. In cases where a permit was not required, the designed function shall be determined based on the purpose for the original construction of the water body (e.g. fill for construction, mining, drainage canal, etc.)

(B) Damage to agriculture, including damage resulting from reduction in soil moisture resulting from consumptive use; or

(C) Land collapse or subsidence caused by reduction in water levels associated with consumptive use.

10. Permittee shall mitigate harm to the natural resources caused by the permittee's withdrawals, as determined through reference to the conditions for permit issuance. When harm occurs, or is imminent, the District will require the permittee to modify withdrawal rates or mitigate the harm. Harm, as determined through reference to the conditions for permit issuance includes:

(A) Reduction in ground or surface water levels that results in harmful lateral movement of the fresh water/salt water interface,

(B) Reduction in water levels that harm the hydroperiod of wetlands,

(C) Significant reduction in water levels or hydroperiod in a naturally occurring water body such as a lake or pond,



### Limiting Conditions

(D) Harmful movement of contaminants in violation of state water quality standards, or

(E) Harm to the natural system including damage to habitat for rare or endangered species.

11. If any condition of the permit is violated, the permit shall be subject to review and possible modification, enforcement action, or revocation.
12. Authorized representatives of the District, with advance notice to the permittee, shall be permitted to enter, inspect, and observe the permitted system to determine compliance with permit conditions. Where the permittee does not hold the permitted site(s) in fee simple, District access across private property may be limited to ingress and egress to the site of the permitted system for inspection and observation of same.
13. The Permittee is advised that this permit does not relieve any person from the requirement to obtain all necessary federal, state, local and special district authorizations.
14. The permit does not convey any property right to the Permittee, nor any rights and privileges other than those specified in the Permit and Chapter 40E-2, Florida Administrative Code.
15. The permittee shall submit all data as required by the implementation schedule for each of the limiting conditions to: South Florida Water Management District (District), Regulatory Support Bureau, P.O. Box 24680, West Palm Beach, FL 33416- 4680 and, where specifically referenced, to Southwest Florida Water Management District (SWFWMD), Division of Resource Regulation, 2379 Broad Street, Brooksville, FL 34604-6899.
16. In the event of a declared water shortage, water withdrawal reductions will be ordered by the District in accordance with the Water Shortage Plan, Chapter 40E-21, F.A.C. The Permittee is advised that during a water shortage, pumpage reports shall be submitted as required by Chapter 40E-21, F.A.C.
17. Prior to the use of any proposed water withdrawal facility authorized under this permit, unless otherwise specified, the Permittee shall equip each facility with a District-approved operating water use accounting system and submit a report of calibration to the District, pursuant to Section 4.1, Basis of Review for Water Use Permit Applications.

In addition, the Permittee shall submit a report of recalibration for the water use accounting system for each water withdrawal facility (existing and proposed) authorized under this permit every five years from each previous calibration, continuing at five-year increments.

18. Monthly withdrawals for each withdrawal facility shall be submitted to the District and SWFWMD quarterly. The water accounting method and means of calibration shall be stated on each report.
19. The permittee shall notify the District and SWFWMD within 30 days of any change in water supply contracts/participation agreements (See Limiting Condition 34) or service area boundary. Updated water supply contracts/participation agreements and service area boundaries shall be provided within 30 days of execution. If the permittee will not serve a demand within the service area for which the annual allocation was calculated, the annual allocation may then be subject to modification and reduction.
20. The permittee shall determine unaccounted for transmission system losses. Losses shall be determined for the entire transmission system on a monthly basis. Permittee shall define the manner

## Limiting Conditions

in which unaccounted-for losses are calculated. Data collection shall begin within six months of Permit issuance. Loss reporting shall be submitted to the District on a yearly basis on April 1st of each year.

21. Permittee shall maintain an accurate flow meter at the intake of the water treatment plant for the purpose of measuring daily inflow of water.

The permittee shall submit a report of calibration of this flow meter to the District, pursuant to Section 4.1, Basis of Review for Water Use Permit Applications. In addition, the Permittee shall submit a report of recalibration for this flow meter every five years from each previous calibration, continuing at five-year increments.

22. Pursuant to Section 373.236(4), F.S., every ten years from the date of permit issuance, the permittee shall submit a water use compliance report for review and approval by District staff to SFWMD at [www.sfwmd.gov/ePermitting](http://www.sfwmd.gov/ePermitting), or the Regulatory Support Bureau at P.O. Box 24680, West Palm Beach, FL 33416-4680.
23. The water conservation plan required by Section 2.6.1 of the BOR and described in the Application documents shall be implemented by the permittee.
24. If at any time there is an indication that the well casing, valves, or controls leak or have become inoperative, repairs or replacement shall be made to restore the system to an operating condition. Failure to make such repairs shall be cause for filling and abandoning the well, in accordance with procedures outlined in Chapter 40E-3, Florida Administrative Code.
25. The permittee shall submit to the District an updated Well Description Table (Table A) within one month of completion of each proposed well identifying the actual total and cased depths, pump manufacturer and model numbers, pump types, intake depths and type of meters.
26. Prior to the installation of any proposed wells, the permittee shall submit an ownership document or easement to the District.
27. Within one month of initiating wellfield production, the permittee shall implement the saline intrusion monitoring program described as follows:

The permittee shall monitor and report to the District the chloride concentration from all wells on a quarterly basis. If the chloride concentration in any well in the wellfield exceeds 500 mg/L, the Permittee shall notify the District in writing within 30 days and provide reasonable assurances that the conditions of Section 3.4.1 of the BOR will continue to be met, which may include modification of this permit.

28. The permittee shall implement the following wellfield operating plan for the baseload facility:

Wellfield Operating Plan Phase 1: Phase 1 of the wellfield operating plan includes construction and operation of 5 supply wells (withdrawal facilities). Based on projected demand and anticipated productivity of the withdrawal facilities, it is expected that all 5 wells will pump the planned 10 MGD finished water quantity to be used as a base supply by permittee's water customers.

Wellfield Operating Plan Phase 2: Phase 2 of the wellfield operating plan includes construction and operation of 5 additional withdrawal facilities. Based on demand and anticipated productivity of the withdrawal facilities, it is expected that all 10 withdrawal facilities will pump the planned 20 MGD finished water quantity to be used as a base supply by permittee's water customers.

Wellfield Operating Plan Phase 3: Phase 3 of the wellfield operating plan includes construction and



## Limiting Conditions

operation of 5 additional withdrawal facilities. Based on demand and anticipated productivity of the withdrawal facilities, it is expected that all 15 withdrawal facilities will pump the planned 30 MGD finished water quantity to be used as a base supply by permittee's water customers.

Backup or Maintenance Mode Operations: The wellfield will be operated such that the withdrawal facilities can follow regular maintenance schedules, while minimizing service disruptions. This schedule will be implemented in a cycle such that on an annual basis each pump is maintained/inspected at least once.

Permittee may add a sixth withdrawal facility to Wellfield Operating Plan Phase 1 or an eleventh withdrawal facility to Wellfield Operating Plan Phase 2 for standby use, provided that withdrawals do not exceed the planned 10 MGD finished water quantity for Wellfield Operating Plan Phase 1 or the planned 20 MGD finished water quantity for Wellfield Operating Plan Phase 2 and that the total number of wells does not exceed 15.

If the permittee seeks a change in the wellfield operating plan, the permittee shall submit an application for permit modification to the District.

29. The permittee plans on financing this facility using grant funds and multiple bond issues. Pursuant to Section 373.236(3), Florida Statutes, no later than 90 days following each bond issuance, the permittee shall provide the District with a copy of the bonds issued to finance the construction of the water treatment plant and associated waterworks which states the retirement dates.
30. An environmental monitoring program shall be completed in accordance with the tasks as indicated in Exhibit 12 (page 12 of the EMP) and the milestone dates provided below. Any proposed changes to the wetland monitoring program, work schedule, or site locations shall be submitted to the District for review and Staff approval 30 days prior to the scheduled completion date. The request shall include documentation substantiating the request.
  - a. On or before January 31, 2015, the permittee shall secure legal and formal access to all of the proposed monitoring sites and provide documentation of same. In the event the permittee is unable to obtain or maintain legal access to any of the proposed monitoring site(s) or the permittee wishes to propose an alternative site with better access or information, the permittee shall submit a written request to the District no later than 30 days prior to the due date of January 31, 2015. In either event, the permittee must identify the alternative site(s) where access can be obtained and submit corrective action plan in writing within 60 days of January 31, 2015 to modify the monitoring network. This plan must include a schedule for the well construction and equipment placement where necessary. Such a corrective action plan is subject to prior District approval and a description of how the alternative site will provide adequate monitoring data.
  - b. On or before January 31, 2021, the permittee shall install transects, hydrologic monitoring devices, and perform the topographic survey in accordance with Exhibit 12.
  - c. On or before February 28, 2021, the permittee shall initiate the performance of baseline data collection prior to the anticipated wellfield startup in 2023. Baseline monitoring shall begin two years before well field operations startup, which is anticipated in 2023. In the event that startup is delayed or advanced, the permittee shall provide written notification of the advancement or delay and the length of the same to the District. In no event shall initiation of wellfield operation begin until at least 2 years of baseline monitoring data has been collected and provided to the District.



### Limiting Conditions

d. On or before April 1, 2023, the permittee shall submit the baseline monitoring report as described in Exhibit 12 for District Staff review and written approval only as to completeness prior to groundwater withdrawals; provided, however, the District's failure to act within 45 days of submission shall be deemed approval of the baseline monitoring report.

e. Regular data collection may begin on or before February 28, 2023 in accordance with the District-approved baseline monitoring report and Exhibit 12. Ongoing data collection will be conducted in accordance with Exhibit 12.

f. On or before April 1, 2024, the permittee shall submit the first annual Environmental Monitoring Report. The Permittee shall submit annual Environmental Monitoring Reports on April 1st of each year thereafter through Year 5 of the Project's maximum withdrawals unless the District's review of the environmental monitoring program indicates additional monitoring is necessary.

g. Upon completion of the environmental monitoring program, the District will review the monitoring results, inclusive of additional available monitoring data, and determine if additional monitoring or wetland mitigation may be required, or if the monitoring program may be discontinued.

31. In the event the District determines that harm to wetlands or other surface waters is occurring or imminently is expected to occur, upon notice, the permittee, in partnership with other permittees or by itself, shall implement appropriate avoidance measures identified in the Environmental Harm Contingency Plan attached hereto as Exhibit 18.
32. If the District determines the projected implementation of the Environmental Harm Contingency Plan is expected to be insufficient to eliminate or reduce the harm, the permittee shall submit an application to modify this permit within 30 days of notification by the District.
33. At least 90 days prior to initiating any withdrawals for this Project, except as specified in Limiting Condition 38, the permittee shall submit a notice of intent to initiate the wellfield production. Well production may occur unless the District provides written notice that the permittee is not in compliance with any Permit Limiting Condition within 45 days of receipt of the notice of intent to initiate wellfield production.
34. Within 12 months of permit issuance, the permittee shall submit executed copies of all participation agreements or other similar contracts to the District. The participation agreements or other similar contracts shall, at a minimum, specify the amount of finished water, on an annual basis, that this wellfield project will provide to each of its participants, per construction Phase and through the permit duration.

If the total volume of finished water specified for the vested partners, including treatment and distribution losses, to be provided by this wellfield project does not equal 13,688 MGY of raw water, the permittee shall, within 3 months of submittal of copies to the District, submit an application to modify this Permit to reflect demand demonstrated by participation agreements.

35. The permittee proposes to implement this project in multiple phases as follows:

a. Consistency with SWFWMD and Entity Financial Commitments:

i. On or before December 31, 2016, the permittee shall submit the fully-executed Central Florida Partnership Agreement between the water supply entity and SWFWMD.



## Limiting Conditions

ii. On or before December 31, 2020, the permittee shall provide documentation of the financial commitment from SWFWMD of approximately \$110 million and issuance of bonds by permittee (of approximately \$110 million) for all of Phase 1 of the project. In the event this documentation is not timely provided, then the provisions of Limiting Condition 37 shall apply.

iii. On or before December 31, 2025, the permittee shall provide documentation of the financial commitment from SWFWMD of approximately \$32 million and issuance of bonds by permittee (of approximately \$32 million) for this portion of the project. In the event this documentation is not timely provided, then the provisions of Limiting Condition 37 shall apply.

iv. On or before December 31, 2042, the permittee shall provide documentation of the financial commitment from SWFWMD of approximately \$17 million and issuance of bonds by permittee (of approximately \$17 million) for this portion of the project. In the event this documentation is not timely provided, then the provisions of Limiting Condition 37 shall apply.

### b. Wellfield Operating Plan Phase 2:

Prior to implementation of withdrawals associated with Wellfield Operating Plan Phase 2, the Project Status Verification Report (Limiting Condition 36) shall assess Wellfield Operating Plan Phase 1 withdrawals to verify this wellfield project is not causing unanticipated, harmful impacts to wetlands, lakes, other surface water bodies, or water resources. District staff shall review the Project Status Verification Report within 60 days of submittal and notify the permittee as to whether or not unanticipated, harmful impacts are occurring or are imminent. In the event staff determines unanticipated, harmful impacts are occurring or are imminent, the provisions of Limiting Condition 31 shall immediately be implemented and withdrawals from Wellfield Operating Plan Phase 2 shall be delayed until a modification of this permit is issued.

### c. Wellfield Operating Plan Phase 3:

Prior to implementation of withdrawals associated with Wellfield Operating Plan Phase 3, the Project Status Verification Report (Limiting Condition 36) shall assess Wellfield Operating Plan Phases 1 and 2 withdrawals to verify this wellfield project is not causing unanticipated, harmful impacts to wetlands, lakes, other surface water bodies, or water resources. District staff shall review the Project Status Verification Report within 60 days of submittal and notify the permittee as to whether or not unanticipated, harmful impacts are occurring. In the event staff determines unanticipated, harmful impacts are occurring, the provisions of Limiting Condition 31 shall immediately be implemented and withdrawals from Wellfield Operating Plan Phase 3 shall be delayed until a modification of this permit is issued.

36. Beginning on April 1, 2015, and continuing on April 1st every year thereafter, the permittee shall submit an annual Project Status Verification Report for the prior calendar year describing: 1) the progress made to comply with permit Limiting Conditions; and 2) an assessment of whether this wellfield project and associated requirements is on schedule; an explanation, if the wellfield has fallen behind schedule, of how the Permittee will put the wellfield project back on schedule. If the Permittee has exercised due diligence to meet the required deadlines in limiting conditions herein but cannot meet one or more of them because of factors beyond its control, then the Permittee may seek an extension of the deadlines by submitting a request to modify the permit to the District, and providing documentation for the basis of the request. The annual Project Status Verification Report may also include unaccounted-for transmission line losses as required in Limiting Condition 20 and the annual Environmental Monitoring Report as required in Limiting Condition 30.



### Limiting Conditions

37. The allocations in this permit are subject to revocation, reduction, or other modification after (1) District review of each ten year compliance report (see Limiting Condition 22), (2) District review of the Project Status Verification Report(s) (see Limiting Condition 36), (3) failure to timely provide the District with the documentation concerning project implementation requirements (see Limiting Condition 35), or (4) at any other time during the term of this permit, upon reasonable notice to the permittee including a statement of facts upon which the District based its determination, to address commitments and/or abate harmful impacts that are observed or projected to occur because of the permittee's authorized withdrawals, based on updated modeling tools and additional data collected during the term of the permit.
38. With the District's prior written approval, the permittee may test/operate one or more withdrawal facilities for the purpose of collecting hydrogeologic information.
39. All limiting conditions are intended to address resources and existing legal users located within the District, the SWFWMD, and the surrounding area.
40. This project is located in the Central Florida Water Initiative (CFWI) area, an area with on-going impacts to water resources which are being addressed by the CFWI. If the District determines that adverse impacts to water resources or existing legal users are occurring or are projected to occur because of the Permittee's authorized withdrawals over the permit duration, the District, upon reasonable notice to the permittee and including a statement of facts upon which the District based its determination, may modify quantities permitted or other conditions of the permit, as appropriate, to address the impact, but only after an opportunity for the permittee to resolve or mitigate the impact or to request a hearing. Such modification, if any, will consider such factors as the permittee's relative contribution to the water resource impact being addressed due to groundwater withdrawals, the timing of this permit issuance compared to presently existing legal use of water, and other considerations identified by the CFWI Solutions Planning and Regulatory Teams. Modifications may include mitigation of impacts and / or reconsideration of allocations or requirements to timely implement required actions that are consistent with the long-term, regional water supply solutions as implemented by rules. Such actions may include the development of alternative water supplies, the implementation of water resource and / or water supply development projects, the application of impact offsets or substitution credits, operating plans, heightened water conservation or other appropriate actions. Nothing in this condition is intended to abrogate the rights of the Governing Board or of any other person under Section 373.233, Fla. Stat.
41. The Central Florida Water Initiative documented existing water resource environmental impacts within its boundaries. This Initiative remains underway and is, in part, crafting long-term water supply solutions for the region. As a component of immediate, interim measures the permittee is encouraged to participate in the District's on-going, heightened water conservation public education program. Given the permittee's use class, opportunities may include such activities as participation in water conservation public service announcements, demonstrations of irrigation efficiency at community gardens, posting water conservation information or links on the permittee's website. Please contact Nicholas Vitani, P.G. at [nvitani@sfwmd.gov](mailto:nvitani@sfwmd.gov) to discuss opportunities for participation in this important District effort.
42. On or before January 31, 2021, the permittee shall construct one Upper Floridan aquifer monitor well located within the delineated area identified in Exhibit 9-E. The well shall be constructed according to the general specifications set forth for Well SE-UFA-MW1 in the Construction and Testing Report Southeast Deep Exploratory Well by Post Buckley, Schuh and Jernigan dated April 2010, which was submitted by the permittee to the District during the permit application process. By March 31, 2021 and each calendar quarter thereafter, the permittee shall sample the Upper Floridan aquifer monitor

### Limiting Conditions

well once for water level, chloride and total dissolved solids and report the results to the District pursuant to Limiting Condition 15 and in writing to Gold Coast Utilities Corporation, 2340 N.E. Dixie Highway, Jensen Beach, Florida 34957. The specified monitoring of the Upper Floridan aquifer monitor well and the reporting of data shall continue for the duration of the permit, unless modified or discontinued by the District.

## LIST OF EXHIBITS

EXHIBIT 1	Location of Project
EXHIBIT 2	Location of Project
EXHIBIT 3	Public Water Supply Service Area Map
EXHIBIT 4	Table A: Well Information
EXHIBIT 5	Table 1 Anticipated Demands by Service Area
EXHIBIT 6	Well log- Well DEW
EXHIBIT 7	LFA drawdown maps
EXHIBIT 8	APPZ drawdown maps
EXHIBIT 9	UFA drawdown maps/ <u>Proposed UFA Monitoring Well Location</u>
EXHIBIT 10	SAS drawdown maps
EXHIBIT 11	Chloride map
EXHIBIT 12	Environmental Monitoring Plan
EXHIBIT 13	Wetland map with drawdowns- key map
EXHIBIT 14	Wetland drawdown maps (14-1 through 14-14)
EXHIBIT 15	Wetland table (8 pages)
EXHIBIT 16	Table- monitoring sites and Maps-monitoring sites (16-1 through 16-21)
EXHIBIT 17	Summary of LC Compliance Requirements
EXHIBIT 18	Environmental Harm Contingency Plan
EXHIBIT 19	Distribution List

The Exhibits to the Permit are Available for Review Upon Request from the PRWC



**Exhibit B to Contract**  
**Legal Description of Well Site No. 1**

THAT PART OF SECTION 21, TOWNSHIP 31 SOUTH, RANGE 29 EAST, POLK COUNTY, FLORIDA, BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 21 AND RUN SOUTH 00°32'28" EAST ALONG THE WEST LINE OF SAID NORTHWEST 1/4 OF THE SOUTHWEST 1/4 A DISTANCE OF 1245.32 FEET TO THE NORTH RIGHT OF WAY LINE OF COUNTY ROAD 630 (FORMERLY SR 630) AS SHOWN ON STATE ROAD DEPARTMENT RIGHT OF WAY MAPS FOR PROJECTS 1615-1218, 1615-104, AND 16150-2502; THENCE NORTH 89°42'25" EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 825.97 FEET TO THE POINT OF BEGINNING, SAID POINT BEING THE INTERSECTION OF SAID RIGHT OF WAY LINE AND THE SURVEY BASELINE FOR A DRAINAGE EASEMENT, SAID INTERSECTION BEING 80.00 FEET LEFT OF CENTERLINE STATION 410+70.00, AS SHOWN ON SAID STATE ROAD DEPARTMENT RIGHT OF WAY MAPS; THENCE NORTH 21°12'25" EAST ALONG SAID DRAINAGE EASEMENT SURVEY BASELINE, (SAID DRAINAGE EASEMENT BEING 60.00 FEET IN WIDTH, 20.00 FEET RIGHT AND 40.00 FEET LEFT OF SAID SURVEY BASELINE) A DISTANCE OF 327.77 FEET; THENCE NORTH 89°33'36" EAST, A DISTANCE OF 660.07 FEET; THENCE SOUTH 01°00'20" EAST, A DISTANCE OF 306.68 FEET, TO SAID NORTH RIGHT OF WAY LINE OF COUNTY ROAD 630; THENCE SOUTH 59°42'25" WEST, ALONG SAID NORTH RIGHT OF WAY LINE OF COUNTY ROAD 630 A DISTANCE OF 784.01 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 5.07 ACRES MORE OR LESS.

**Exhibit C to Contract**  
**Legal Description of Cypresswood Drive Well Site**

**Lot 2 of Block “K” and Lots 1 and 2 of Block “L”, WALK-IN-WATER LAKE ESTATES PAHSE THREE UNIT ONE, according to the map or plat thereof as recorded in Plat Book 67, at Page 22, Public Records of Polk County, Florida.**

**Being the same property as described in that certain Escheatment Tax Deed recorded in O.R. Book 9457, at Page 1016 (as to Lot 2 Block K) and in that certain Escheatment Tax Deed recorded in O.R. Book 9457, at Page 1017 (as to Lot 1 Block L) and in that certain Warranty Deed recorded in O.R. Book 10547, at Pages 176 and 177 (as to Lot 2 Block L), all of the Public Records of Polk County, Florida.**

**Exhibit D to Contract**  
**Legal Description of Southeast Wellfield Water Treatment Plant Site**

Project Name: Nalcrest PRWC  
Tax Folio Number: 29-30-08-000000-033010

Project Number: 0908E22-1A

**DESCRIPTION**

The North 3/4 of the Northwest 1/4 of the Northwest 1/4 of Section 08, Township 30 South, Range 29 East, Polk County, Florida; LESS AND EXCEPT Boy Scout Road right-of-way, as described in Official Records Book 455, page 389, Public Records of Polk County, Florida

AND INCLUDING

**BEGIN** at a 5/8" iron rod and cap stamped "PLS 3381", marking the Southeast corner of said North 3/4 of the Northwest 1/4 of the Northwest 1/4; thence South 00°16'41" East, along the east line of said Northwest 1/4 of the Northwest 1/4, a distance of 22.57 feet; thence South 89°38'16" West, parallel with the south line of said North 3/4 of the Northwest 1/4 of the Northwest 1/4, a distance of 1284.68 feet, to the east right-of-way line of Boy Scout Road per Official Records Book 455, page 389, of said Public Records; thence North 00°17'25" West, along said east right-of-way line, 22.57 feet, to said south line of the North 3/4 of the Northwest 1/4 of the Northwest 1/4; thence North 89°38'16" East along said south line, 1284.68 feet to the **POINT OF BEGINNING**.

LESS AND EXCEPT the following:

A parcel of land being a portion of a parcel as described in Official Records Book 10453, Page 04, Public Records of Polk County, Florida, lying in the Northwest 1/4 of Section 08, Township 30 South, Range 29 East, Polk County, Florida, being more particularly described as follows:

**Commence** at the Northwest corner of said Section 8; thence South 00°17'25" East, along the west line of said Section 08, a distance of 994.37 feet to the south line of the North 3/4 of the Northwest 1/4 of the Northwest 1/4 of said Section 8; thence North 89°38'16" East, along said south line, 40.00 feet to the east right-of-way line of Boy Scout Road as described in Official Records Book 455, Page 389 of said Public Records, and the **Point of Beginning**; thence North 00°17'25" West, along said east right-of-way line, 317.43 feet; thence North 89°38'16" East, 640.60 feet; thence South 00°17'25" East, 317.43 feet to said south line of the North 3/4 of the Northwest 1/4 of the Northwest 1/4; thence continue South 00°17'25" East, 22.57 feet to the south line of said parcel described in Official Records Book 10453, Page 04; thence South 89°38'16" West, along said south line, 640.60 feet, to said east right-of-way line; thence North 00°17'25" West, along said east right-of-way line, 22.57 feet to the **Point of Beginning**.

**Exhibit E to Contract**  
**County Deeds, Assignment of Easement and Utility Easement**

[See Attached 11 Pages]

This instrument prepared under  
The direction of:  
R. Wade Allen, Administrator  
Polk County Real Estate Services  
P. O. Box 9005, Drawer RE 01  
Bartow, Florida 33831-9005  
By: Scott C. Lowery

PRWC – Southeast Wellfield (Plant Site)

Parent Parcel I.D. No.: 293008-000000-033010

**COUNTY DEED**

**THIS DEED**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by **POLK COUNTY**, a political subdivision of the State of Florida, Grantor, to **POLK REGIONAL WATER COOPERATIVE**, a public agency and unit of special purpose government created pursuant to Chapter 189, Florida Statutes, Section 373.173, Florida Statutes, and an Interlocal Agreement with Effective Date of June 1, 2016, whose address is P.O. Box 9005, Bartow, Florida 33831, Grantee.

**WITNESSETH:** That the Grantor, for and in consideration of the sum of \$1.00, to them in hand paid by the Grantee, receipt whereof is hereby acknowledged, has granted, bargained, and sold to Grantee, its successors and assigns forever, all the right, title, interest, including interests, if any, in rights which may have been reserved by operation of Section 270.11 Florida Statutes, claim, and demand, which the Grantor has in and to the following described land lying and being in Polk County, Florida, to wit:

**SEE ATTACHMENT "A"**

Being a portion of the same property as described in that certain Warranty Deed recorded in O.R. Book 10453, at Pages 4 through 6, Public Records of Polk County, Florida.

SUBJECT TO that certain condition regarding an existing Access Easement as stated in the above-described Warranty Deed.

**IN WITNESS WHEREOF**, said Grantor has caused these presents to be executed in its name by its Board of County Commissioners, acting by the Chair or Vice-Chair of said board, the day and year aforesaid.

**ATTEST:**  
**Stacy M. Butterfield**  
**Clerk to the Board**

**GRANTOR:**  
**Polk County, a political subdivision**  
**of the State of Florida**

By: \_\_\_\_\_  
**Deputy Clerk**  
**(Seal)**

By: \_\_\_\_\_  
**George Lindsey III, Chairman**  
**Board of County Commissioners**

## Attachment "A" - Sheet 1 of 2

Project Name: Nalcrest PRWC  
 Tax Folio Number: 29-30-08-000000-033010

Project Number: 0908E22-1A

**DESCRIPTION**

The North 3/4 of the Northwest 1/4 of the Northwest 1/4 of Section 08, Township 30 South, Range 29 East, Polk County, Florida; LESS AND EXCEPT Boy Scout Road right-of-way, as described in Official Records Book 455, page 389, Public Records of Polk County, Florida

AND INCLUDING

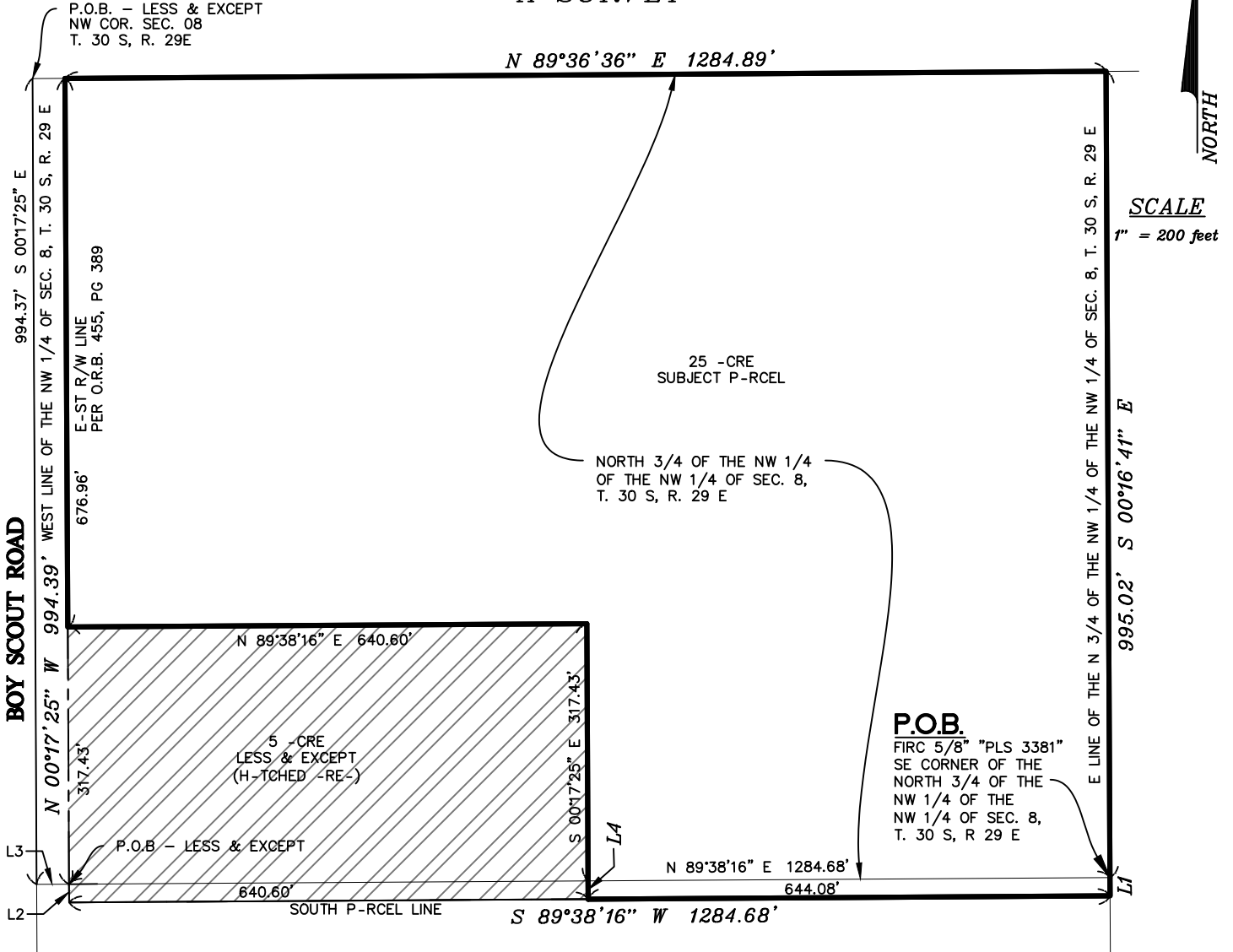
**BEGIN** at a 5/8" iron rod and cap stamped "PLS 3381", marking the Southeast corner of said North 3/4 of the Northwest 1/4 of the Northwest 1/4; thence South 00°16'41" East, along the east line of said Northwest 1/4 of the Northwest 1/4, a distance of 22.57 feet; thence South 89°38'16" West, parallel with the south line of said North 3/4 of the Northwest 1/4 of the Northwest 1/4, a distance of 1284.68 feet, to the east right-of-way line of Boy Scout Road per Official Records Book 455, page 389, of said Public Records; thence North 00°17'25" West, along said east right-of-way line, 22.57 feet, to said south line of the North 3/4 of the Northwest 1/4 of the Northwest 1/4; thence North 89°38'16" East along said south line, 1284.68 feet to the **POINT OF BEGINNING**.

LESS AND EXCEPT the following:

A parcel of land being a portion of a parcel as described in Official Records Book 10453, Page 04, Public Records of Polk County, Florida, lying in the Northwest 1/4 of Section 08, Township 30 South, Range 29 East, Polk County, Florida, being more particularly described as follows:

**Commence** at the Northwest corner of said Section 8; thence South 00°17'25" East, along the west line of said Section 08, a distance of 994.37 feet to the south line of the North 3/4 of the Northwest 1/4 of the Northwest 1/4 of said Section 8; thence North 89°38'16" East, along said south line, 40.00 feet to the east right-of-way line of Boy Scout Road as described in Official Records Book 455, Page 389 of said Public Records, and the **Point of Beginning**; thence North 00°17'25" West, along said east right-of-way line, 317.43 feet; thence North 89°38'16" East, 640.60 feet; thence South 00°17'25" East, 317.43 feet to said south line of the North 3/4 of the Northwest 1/4 of the Northwest 1/4; thence continue South 00°17'25" East, 22.57 feet to the south line of said parcel described in Official Records Book 10453, Page 04; thence South 89°38'16" West, along said south line, 640.60 feet, to said east right-of-way line; thence North 00°17'25" West, along said east right-of-way line, 22.57 feet to the **Point of Beginning**.

THIS IS NOT  
A SURVEY



BOY SCOUT ROAD

NORTH

SCALE  
1" = 200 feet

**LEGEND**

- (C) = C-LCUL-TED
- (P) = PL-T
- COR. = CORNER
- M.B. = M-P BOOK
- M/R/W = M-INT-INED RIGHT-OF-W-Y
- O.R.B. = OFFICI-L RECORDS BOOK
- P.B. = PL-T BOOK
- PG(S). = P-GE(S)
- POB = POINT OF BEGINNING
- POC = POINT OF COMMENCEMENT
- P.S.M. = PROFESSION-L SURVEYOR -ND M-PPER
- R = R-NGE
- R/W = RIGHT-OF-W-Y
- SEC = SECTION
- T = TOWNSHIP

Line Table		
LINE #	DIRECTION	LENGTH
L1	S 0°16'41" E	22.57'
L2	N 0°17'25" W	22.57'
L3	N 89°38'16" E	40.00'
L4	S 0°17'25" E	22.57'

**SURVEYOR'S NOTES.**

BE-RINGS -ND DIST-NCES -RE B-SED ON THE FLORID-ST-TE PL-NE COORDIN-TE SYSTEM, FLORID- WEST ZONE, NORTH -MERIC-N D-TUM OF 1983, -DJUSTMENT OF 2011.

SEE SHEET 1 OF 2 FOR DESCRIPTION.

DATE  
08/31/22

JOHN RICHARD NOLAND, JR. P.S.M.  
FLORIDA REGISTRATION #5923  
SURVEYING & MAPPING MANAGER  
SURVEYING AND MAPPING SECTION

**DESCRIPTION SKETCH**  
LOCATED IN SECTION 08,  
TOWNSHIP 30 SOUTH, RANGE 29  
EAST, POLK COUNTY, FLORIDA.

**POLK COUNTY ROADS AND DRAINAGE**

3000 SHEFFIELD ROAD,  
WINTER HAVEN, FL 33880

PHONE: (863) 535-2200 F-X: (863) 519-8117

Sheet No. 2 of 2	Drawn by: MSK	Checked by: JRN	Check Date: 08/31/22
Parcel Number: N/-	PREP-RED FOR: RE-L EST-TE SERVICES		File Name: 0908E22-1-



THIS SKETCH IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL SEAL OF A LICENSED SURVEYOR AND MAPPING MANAGER.



This instrument prepared under  
The direction of:  
R. Wade Allen, Administrator  
Polk County Real Estate Services  
P. O. Box 9005, Drawer RE 01  
Bartow, Florida 33831-9005  
By: Scott C. Lowery

PRWC – Southeast Wellfield (Wellsite 1)

Parcel I.D. No.: 293121-000000-041010

**COUNTY DEED**

**THIS DEED**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by **POLK COUNTY**, a political subdivision of the State of Florida, Grantor, to **POLK REGIONAL WATER COOPERATIVE**, a public agency and unit of special purpose government created pursuant to Chapter 189, Florida Statutes, Section 373.173, Florida Statutes, and an Interlocal Agreement with Effective Date of June 1, 2016, whose address is P.O. Box 9005, Bartow, Florida 33831, Grantee.

**WITNESSETH:** That the Grantor, for and in consideration of the sum of \$1.00, to them in hand paid by the Grantee, receipt whereof is hereby acknowledged, has granted, bargained, and sold to Grantee, its successors and assigns forever, all the right, title, interest, including interests, if any, in rights which may have been reserved by operation of Section 270.11 Florida Statutes, claim, and demand, which the Grantor has in and to the following described land lying and being in Polk County, Florida, to wit:

**SEE ATTACHMENT "A"**

**Being the same property as described in those certain Warranty Deeds recorded in O.R. Book 8099, at Page 1829 and in O.R. Book 8099, at Page 1830, both of the Public Records of Polk County, Florida.**

**IN WITNESS WHEREOF**, said Grantor has caused these presents to be executed in its name by its Board of County Commissioners, acting by the Chair or Vice-Chair of said board, the day and year aforesaid.

**ATTEST:**  
**Stacy M. Butterfield**  
**Clerk to the Board**

**GRANTOR:**  
**Polk County, a political subdivision**  
**of the State of Florida**

By: \_\_\_\_\_  
**Deputy Clerk**  
(Seal)

By: \_\_\_\_\_  
**George Lindsey III, Chairman**  
**Board of County Commissioners**

ATTACHMENT "A"

THAT PART OF SECTION 21, TOWNSHIP 31 SOUTH, RANGE 29 EAST, POLK COUNTY, FLORIDA, BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 21 AND RUN SOUTH 00°32'28" EAST ALONG THE WEST LINE OF SAID NORTHWEST 1/4 OF THE SOUTHWEST 1/4 A DISTANCE OF 1245.32 FEET TO THE NORTH RIGHT OF WAY LINE OF COUNTY ROAD 630 (FORMERLY SR 630) AS SHOWN ON STATE ROAD DEPARTMENT RIGHT OF WAY MAPS FOR PROJECTS 1615-1218, 1615-104, AND 16150-2502; THENCE NORTH 89°42'25" EAST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 825.97 FEET TO THE POINT OF BEGINNING, SAID POINT BEING THE INTERSECTION OF SAID RIGHT OF WAY LINE AND THE SURVEY BASELINE FOR A DRAINAGE EASEMENT, SAID INTERSECTION BEING 80.00 FEET LEFT OF CENTERLINE STATION 410+70.00, AS SHOWN ON SAID STATE ROAD DEPARTMENT RIGHT OF WAY MAPS; THENCE NORTH 21°12'25" EAST ALONG SAID DRAINAGE EASEMENT SURVEY BASELINE, (SAID DRAINAGE EASEMENT BEING 60.00 FEET IN WIDTH, 20.00 FEET RIGHT AND 40.00 FEET LEFT OF SAID SURVEY BASELINE) A DISTANCE OF 327.77 FEET; THENCE NORTH 89°33'36" EAST, A DISTANCE OF 660.07 FEET; THENCE SOUTH 01°00'20" EAST, A DISTANCE OF 306.68 FEET, TO SAID NORTH RIGHT OF WAY LINE OF COUNTY ROAD 630; THENCE SOUTH 59°42'25" WEST, ALONG SAID NORTH RIGHT OF WAY LINE OF COUNTY ROAD 630 A DISTANCE OF 784.01 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 5.07 ACRES MORE OR LESS.

This instrument prepared under  
The direction of:  
R. Wade Allen, Administrator  
Polk County Real Estate Services  
P. O. Box 9005, Drawer RE 01  
Bartow, Florida 33831-9005  
By: Scott C. Lowery

PRWC – Southeast Wellfield (Cypresswood Dr Wellsite)

Parcel I.D. Nos.: 293029-992880-011020/012010/012020

**COUNTY DEED**

**THIS DEED**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by **POLK COUNTY**, a political subdivision of the State of Florida, Grantor, to **POLK REGIONAL WATER COOPERATIVE**, a public agency and unit of special purpose government created pursuant to Chapter 189, Florida Statutes, Section 373.173, Florida Statutes, and an Interlocal Agreement with Effective Date of June 1, 2016, whose address is P.O. Box 9005, Bartow, Florida 33831, Grantee.

**WITNESSETH:** That the Grantor, for and in consideration of the sum of \$1.00, to them in hand paid by the Grantee, receipt whereof is hereby acknowledged, has granted, bargained, and sold to Grantee, its successors and assigns forever, all the right, title, interest, including interests, if any, in rights which may have been reserved by operation of Section 270.11 Florida Statutes, claim, and demand, which the Grantor has in and to the following described land lying and being in Polk County, Florida, to wit:

**Lot 2 of Block “K” and Lots 1 and 2 of Block “L”, WALK-IN-WATER LAKE ESTATES PAHSE THREE UNIT ONE, according to the map or plat thereof as recorded in Plat Book 67, at Page 22, Public Records of Polk County, Florida.**

**Being the same property as described in that certain Escheatment Tax Deed recorded in O.R. Book 9457, at Page 1016 (as to Lot 2 Block K) and in that certain Escheatment Tax Deed recorded in O.R. Book 9457, at Page 1017 (as to Lot 1 Block L) and in that certain Warranty Deed recorded in O.R. Book 10547, at Pages 176 and 177 (as to Lot 2 Block L), all of the Public Records of Polk County, Florida.**

**IN WITNESS WHEREOF**, said Grantor has caused these presents to be executed in its name by its Board of County Commissioners, acting by the Chair or Vice-Chair of said board, the day and year aforesaid.

**ATTEST:**  
**Stacy M. Butterfield**  
**Clerk to the Board**

**GRANTOR:**  
**Polk County, a political subdivision**  
**of the State of Florida**

By: \_\_\_\_\_  
**Deputy Clerk**  
**(Seal)**

By: \_\_\_\_\_  
**George Lindsey III, Chairman**  
**Board of County Commissioners**

This instrument prepared under the direction of:  
R. Wade Allen, Administrator  
Polk County Real Estate Services  
PO Box 9005, Drawer RE-01  
Bartow, FL 33831-9005  
By: Scott C. Lowery

**ASSIGNMENT OF EASEMENT**

THIS ASSIGNMENT OF EASEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2022, between **POLK COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as "Assignor", and **POLK REGIONAL WATER COOPERATIVE**, a public agency and unit of special purpose government created pursuant to Chapter 189, Florida Statutes, Section 373.173, Florida Statutes, and an Interlocal Agreement with Effective Date of June 1, 2016, whose address is P.O. Box 9005, Bartow, Florida 33831, hereinafter referred to as "Assignee".

**WITNESSETH**

**WHEREAS**, Assignor is the Grantee under that certain Utility Easement, dated April 12, 2018, by and between Goff Properties, LLC, a Florida Limited Liability Company, and Polk County, a political subdivision of the State of Florida, recorded in Official Record Book 10453, at Pages 7 through 9, of the Public Records of Polk County, Florida, hereinafter referred to as the "Easement"; and

**WHEREAS**, Assignor desires to assign all of its right, title and interest under the Easement to Assignee, its successors and assigns; and

**WHEREAS**, Assignee desires to accept and assume all of the right, title, interest and conditions of Assignor under the Easement.

**NOW, THEREFORE**, in consideration of the sum of one dollar and other good and valuable consideration in hand paid and delivered by Assignee to Assignor, the receipt and sufficiency of which is hereby acknowledged, the Assignor hereby grants, conveys, and assigns without covenant or warranty to Assignee, its successors and assigns, all of Assignor's right, title and interest in and to said Easement, together with any improvements and appurtenances thereon and thereto owned by the Assignor and Assignee hereby accepts and assumes all right, title and interest in and to said Easement and all obligations and responsibilities thereunder.

**TO HAVE AND TO HOLD** Assignor's interest in, to and under the Easement, unto Assignee, its successors and assigns, forever.

**IN WITNESS WHEREOF**, the Assignor has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chairperson of said Board, the day and year aforesaid.

**ATTEST:**  
Stacy M. Butterfield  
Clerk to the Board

**Polk County, a political subdivision of the State of Florida**

By: \_\_\_\_\_  
**Deputy Clerk**

By: \_\_\_\_\_  
**George Lindsey III, Chairman  
Board of County Commissioners**

This Instrument prepared under the direction of  
R. Wade Allen, Administrator  
Polk County Real Estate Services  
P.O. Box 9005, Drawer RE-01  
Bartow, Florida 33831-9005  
By: Scott C. Lowery

PRWC – Southeast WPF

Parent Parcel ID No.: 293008-000000-033010

## UTILITY EASEMENT

**THIS EASEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2022, between **POLK COUNTY**, a political subdivision of the State of Florida, whose mailing address is P.O. Box 988, Bartow, Florida 33831, Grantor, and the **POLK REGIONAL WATER COOPERATIVE**, a public agency and unit of special purpose government created pursuant to Chapter 189, Florida Statutes, Section 373.173, Florida Statutes, and an Interlocal Agreement with Effective Date of June 1, 2016, whose address is P.O. Box 9005, Bartow, Florida 33831, Grantee.

**WITNESSETH**, that the said Grantor, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations paid, the receipt of which is hereby acknowledged, does hereby grant unto the Grantee, its successors and assigns forever, a perpetual utility easement for the purpose of clearing, excavating, constructing, inspecting, improving, repairing and maintaining underground water utility facilities under, across and through the following described land in the County of Polk, State of Florida, to-wit:

SEE ATTACHMENT "A"

TO HAVE AND TO HOLD THE SAME, together with the reasonable right to enter and depart over and upon adjoining lands of the Grantor for the purpose of exercising the rights herein granted.

Grantor covenants with the Grantee that it is lawfully seized of said lands and that it has good, right and lawful authority to grant this easement.

**THIS UTILITY EASEMENT IS FOR THE SPECIFIC USE OF GRANTEE ONLY AND IS NOT TO BE CONSTRUED AS A PUBLIC UTILITY EASEMENT.**

[SIGNATURE PAGE FOLLOWS]

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, said Grantor has caused these presents to be executed in its name by its Board of County Commissioners, acting by the Chair or Vice-Chair of said board, the day and year aforesaid.

Signed, Sealed and Delivered in the Presence of:  
(Signature of Two Witnesses Required by Florida Law)

**GRANTOR:**

**POLK COUNTY**, a political subdivision organized and existing in the State of Florida

By: \_\_\_\_\_  
George Lindsey III, Chairman  
Board of County Commissioners

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed Name

STATE OF FLORIDA  
COUNTY OF POLK

The foregoing instrument was acknowledged before me by means of physical presence this \_\_\_\_ day of \_\_\_\_\_, 2022 by George Lindsey III, as Chairman of the Polk County Board of County Commissioners, on behalf of the Board. She is  personally known to me or  has produced \_\_\_\_\_ as identification.

(Affix Notary Seal)

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Commission Expiration Date

Attachment "A" - Sheet 1 of 2

Project Name: Nalcrest Fire Station Easement  
Tax Folio Number: 29-30-08-000000-033010

Project Number: 0908E22-1C

**DESCRIPTION**

The East 40.00 feet of the West 75.00 feet of the following described parcel:

A parcel of land being a portion of a parcel as described in Official Records Book 10453, Page 04, Public Records of Polk County, Florida, lying in the Northwest 1/4 of Section 08, Township 30 South, Range 29 East, Polk County, Florida, being more particularly described as follows:

**Commence** at the Northwest corner of said Section 8; thence South  $00^{\circ}17'25''$  East, along the west line of said Section 08, a distance of 994.37 feet to the south line of the North 3/4 of the Northwest 1/4 of the Northwest 1/4 of said Section 8; thence North  $89^{\circ}38'16''$  East, along said south line, 40.00 feet to the east right-of-way line of Boy Scout Road as described in Official Records Book 455, Page 389 of said Public Records, and the **Point of Beginning**; thence North  $00^{\circ}17'25''$  West, along said east right-of-way line, 317.43 feet; thence North  $89^{\circ}38'16''$  East, 640.60 feet; thence South  $00^{\circ}17'25''$  East, 317.43 feet to said south line of the North 3/4 of the Northwest 1/4 of the Northwest 1/4; thence continue South  $00^{\circ}17'25''$  East, 22.57 feet to the south line of said parcel described in Official Records Book 10453, Page 04; thence South  $89^{\circ}38'16''$  West, along said south line, 640.60 feet, to said east right-of-way line; thence North  $00^{\circ}17'25''$  West, along said east right-of-way line, 22.57 feet to the **Point of Beginning**.



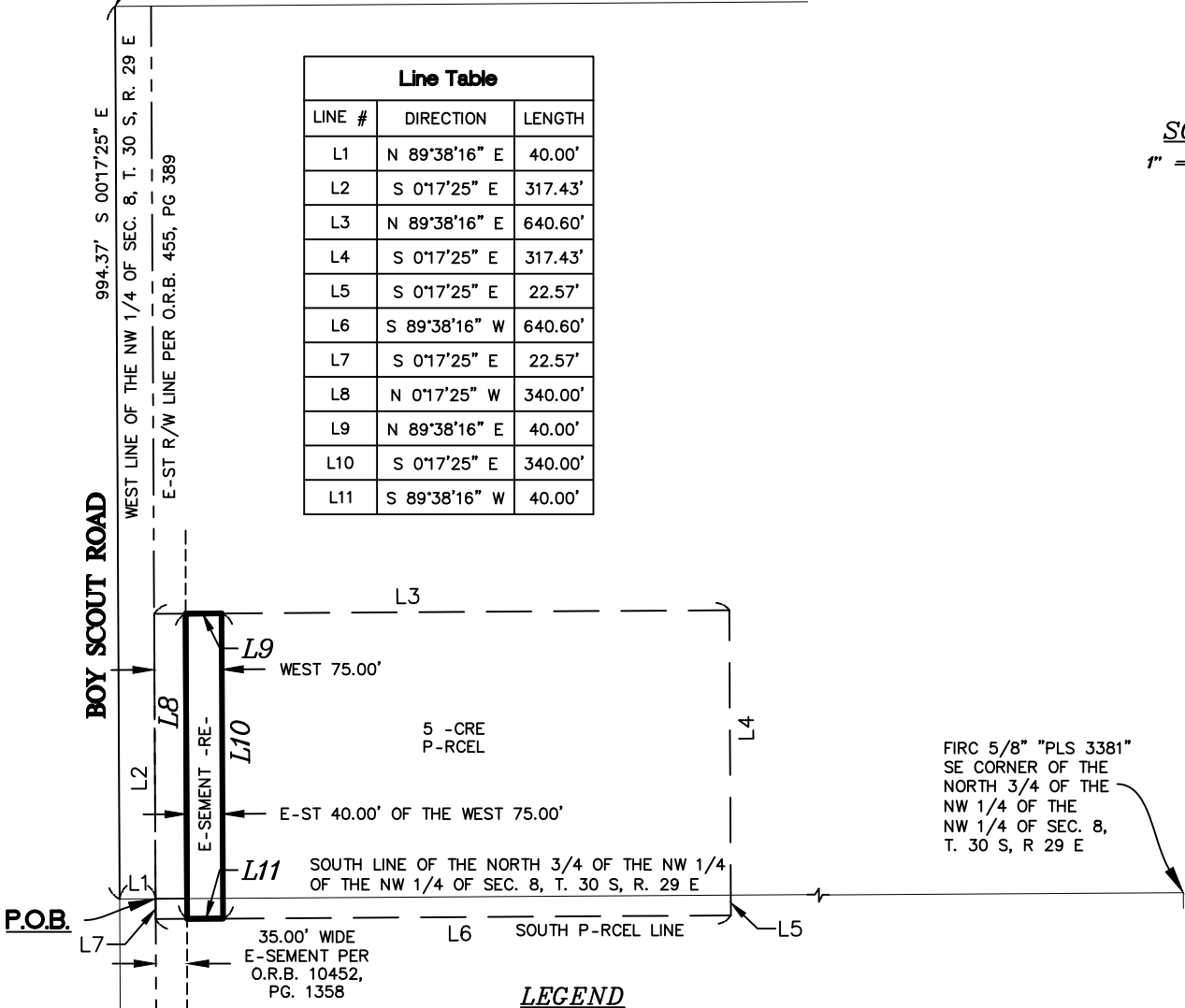
THIS IS NOT  
A SURVEY



**P.O.C**  
NW COR. SEC. 08  
T. 30 S, R. 29E

Line Table		
LINE #	DIRECTION	LENGTH
L1	N 89°38'16" E	40.00'
L2	S 0°17'25" E	317.43'
L3	N 89°38'16" E	640.60'
L4	S 0°17'25" E	317.43'
L5	S 0°17'25" E	22.57'
L6	S 89°38'16" W	640.60'
L7	S 0°17'25" E	22.57'
L8	N 0°17'25" W	340.00'
L9	N 89°38'16" E	40.00'
L10	S 0°17'25" E	340.00'
L11	S 89°38'16" W	40.00'

SCALE  
1" = 200 feet



**LEGEND**

- (C) = C-LCUL-TED
- (P) = PL-T
- COR. = CORNER
- M.B. = M-P BOOK
- M/R/W = M-INT-INED RIGHT-OF-W-Y
- O.R.B. = OFFICI-L RECORDS BOOK
- P.B. = PL-T BOOK
- PG(S). = P-GE(S)
- POB = POINT OF BEGINNING
- POC = POINT OF COMMENCEMENT
- P.S.M. = PROFESSION-L SURVEYOR -ND M-PPER
- R = R-NGE
- R/W = RIGHT-OF-W-Y
- SEC = SECTION
- T = TOWNSHIP

**SURVEYOR'S NOTES.**

BE-RINGS -ND DIST-NCES -RE B-SED ON THE FLORID-ST-TE PL-NE COORDIN-TE SYSTEM, FLORID- WEST ZONE, NORTH -MERIC-N D-TUM OF 1983, -DJUSTMENT OF 2011.

SEE SHEET 1 OF 2 FOR DESCRIPTION.

DATE  
08/31/22

JOHN RICHARD NOLAND, JR. P.S.M.  
FLORIDA REGISTRATION #5923  
SURVEYING & MAPPING MANAGER  
SURVEYING AND MAPPING SECTION

**DESCRIPTION SKETCH**  
LOCATED IN SECTION 08,  
TOWNSHIP 30 SOUTH, RANGE 29  
EAST, POLK COUNTY, FLORIDA.

**POLK COUNTY ROADS AND DRAINAGE**

3000 SHEFFIELD ROAD,  
WINTER HAVEN, FL 33880

PHONE: (863) 535-2200 F-X: (863) 519-8117

THIS SKETCH IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL SE-L OF -LICENSED SURVEYOR -ND M-PPER.

REVISION	D-TE	BY

Sheet No. 2 of 2	Drawn by: MSK	Checked by: JRN	Check Date: 08/31/22
Parcel Number: N/-	PREP-RED FOR: RE-L EST-TE SERVICES		File Name: 0908E22-1C



**Exhibit F to Contract**  
**Bill of Sale to the Cooperative**

[See Attached 7 Pages]

**BILL OF SALE**  
**TO**  
**POLK REGIONAL WATER COOPERATIVE**

KNOW ALL MEN BY THESE PRESENTS that Polk County, a charter county and political subdivision of the State of Florida, whose address is 330 West Church Street, Bartow, FL 33830 (hereinafter referred to as “County”), for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration to it paid by the Polk Regional Water Cooperative, whose address is 330 West Church Street, Bartow, FL 33830 (hereinafter referred to as “Cooperative”), the receipt of which is hereby acknowledged, has granted, bargained, sold, transferred, set over and delivered, and by these presents does hereby grant, bargain, sell transfer, set over and deliver unto the Cooperative, its successors and assign, all those Test Production Wells and Monitoring Wells and the respective components thereof depicted and described on the attached Exhibit “A”

TO HAVE AND TO HOLD the same unto the Cooperative, its successors and assigns forever.

And the County, for itself and its successors, hereby covenants to and with the Cooperative, its successors and assigns, that it is the lawful owner of the said goods and chattels, and they are free from all liens and encumbrances, that it has good right to sell the same as aforesaid, and that it will warrant and defend the same against the lawful claims and demands of all persons whomsoever.

In addition, the County does hereby assign to the Cooperative any and all warranties and guarantees that it has received from the contractor which constructed and installed the goods and chattels which are more completely described in the attached **Exhibit “A.”**

*[signature page follows]*

IN WITNESS WHEREOF, the County has caused its name to be hereunto subscribed this \_\_\_\_ day of \_\_\_\_\_, 2022.

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: \_\_\_\_\_  
George Lindsey III, Chairman  
Board of County Commissioners

Dated and signed by the Chairman: \_\_\_\_\_

Reviewed as to form and legal sufficiency:

County Attorney's Office

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by George Lindsey III as Chairman of the Board of County Commissioner of Polk County, on its behalf. He  is personally known to me, or  has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

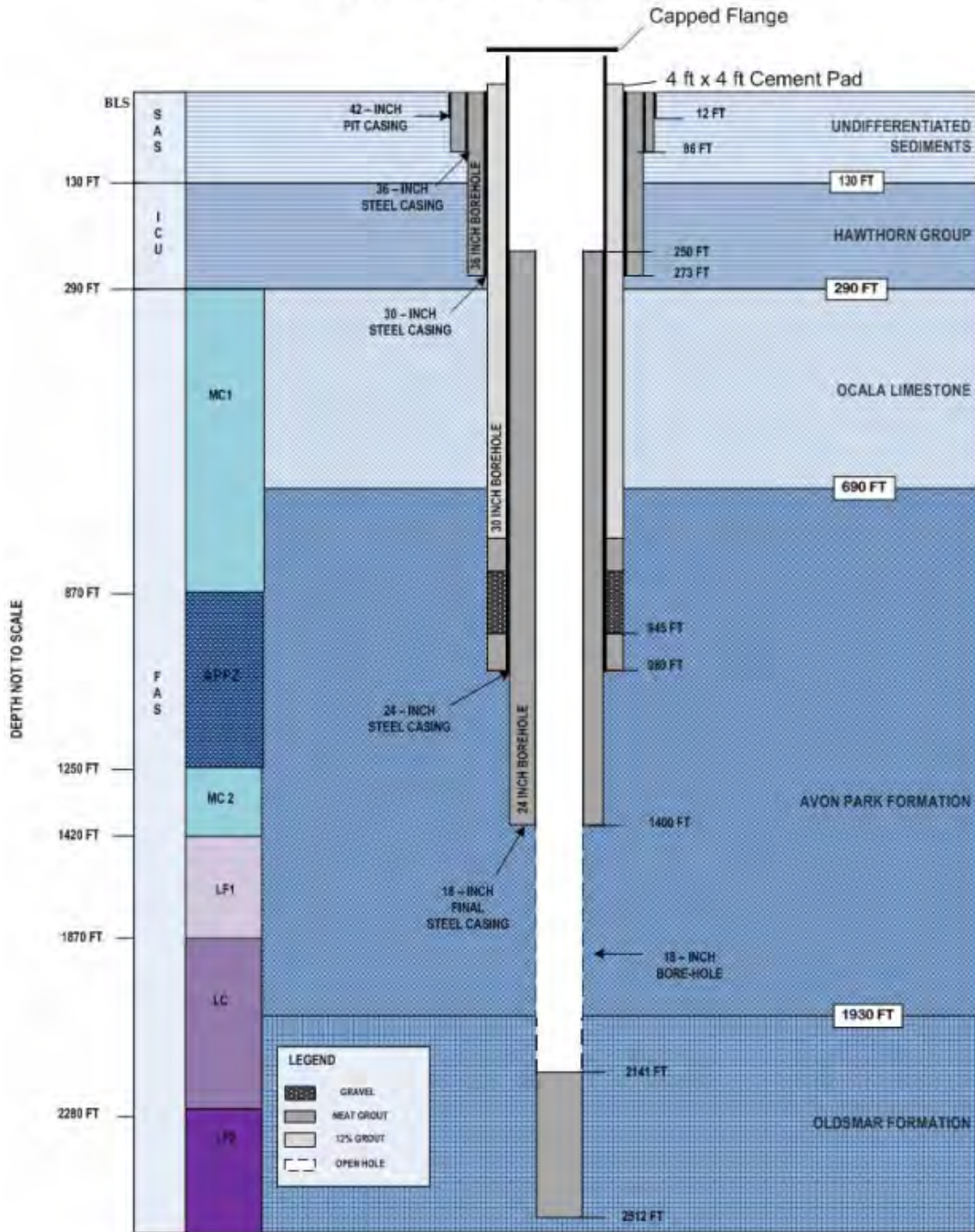
**EXHIBIT A**

**LIST OF TANGIBLE ASSETS**

**TEST PRODUCTION WELL NO. 1 AND MONITORING WELLS (See Exhibit A-1)**

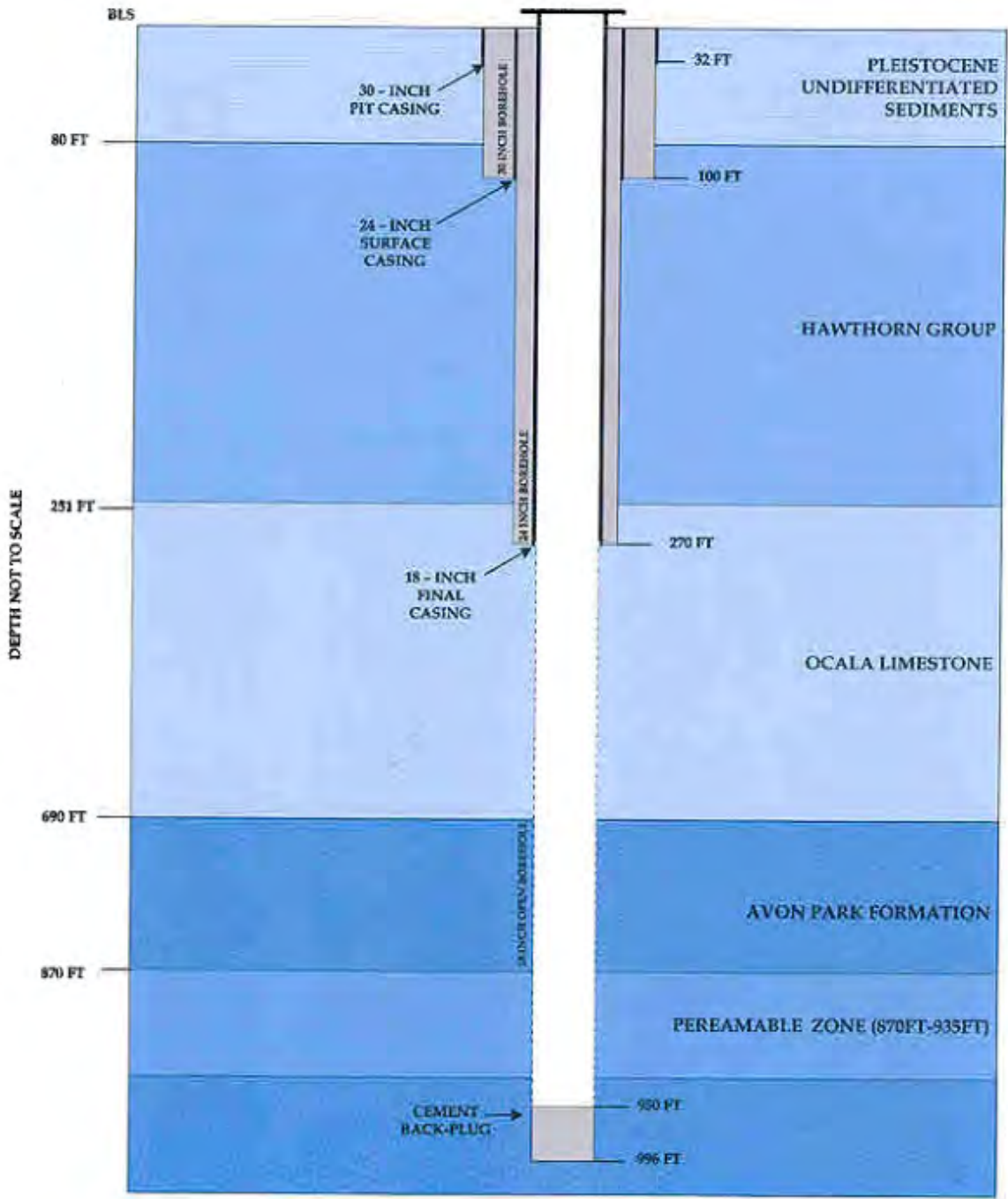
1. SE-TPW-1 (a/k/a SE-DEW-1)
2. SE-UFA-MW1
3. SE-SA-MW1
4. SE-DZ-MW1

# EXHIBIT A-1



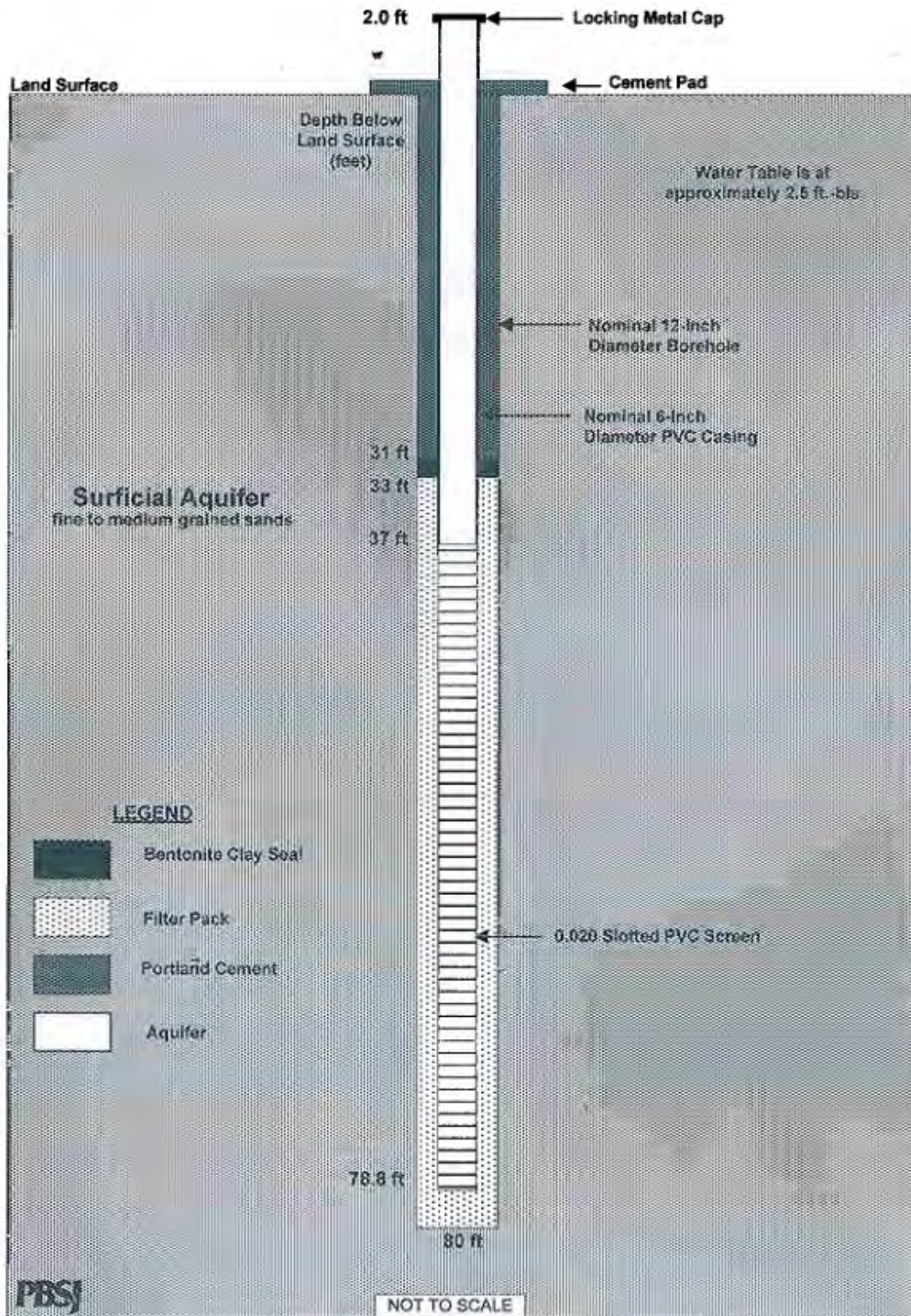
SE-TPW-1 (A.K.A. SE-DEW-1)

As-built Diagram



SE-UFA-MW1  
As-built Diagram

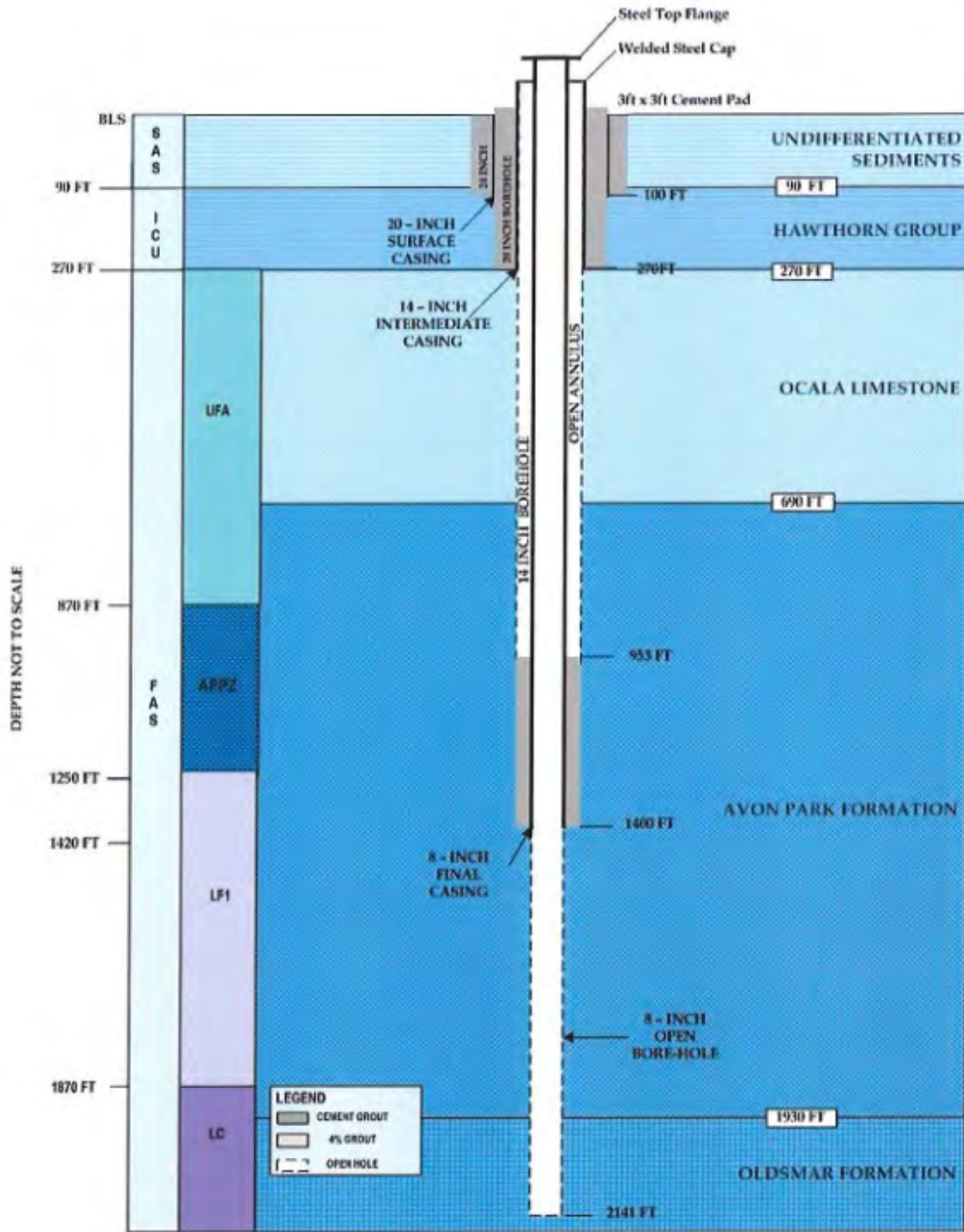




SE-SA-MW1

As-built Diagram





SE-DZ-MW1

As-built Diagram



## SUBJECT

Status of the pipeline design and approval of final Points of Connection for the Southeast Transmission Project (Action Item).

## DESCRIPTION

Section 12.1 of the July 21, 2022 Second Amended and Restated Implementation Agreement requires that the Points of Connection (POC's) and the location of meters used for the delivery of Project Water to the Project Participants be identified by the Cooperative no later than January 1, 2023. The Cooperative, through consultation with the PRWC Technical Advisory Committee (TAC) and meetings with individual members, have identified the final POC's for the Southeast Wellfield Project Participants. The determination of the POC's considered a number of factors, including transmission system routing, location of existing/proposed member facilities, hydraulic capacity of member systems, and future service area growth for each member. Maps showing planned transmission system alignments, along with maps of final POC's for each Project Participant are included with this agenda item. This agenda item will also include a status report of the transmission main design.

## RECOMMENDATION

Approve final Points of Connection for the Southeast Transmission Project.

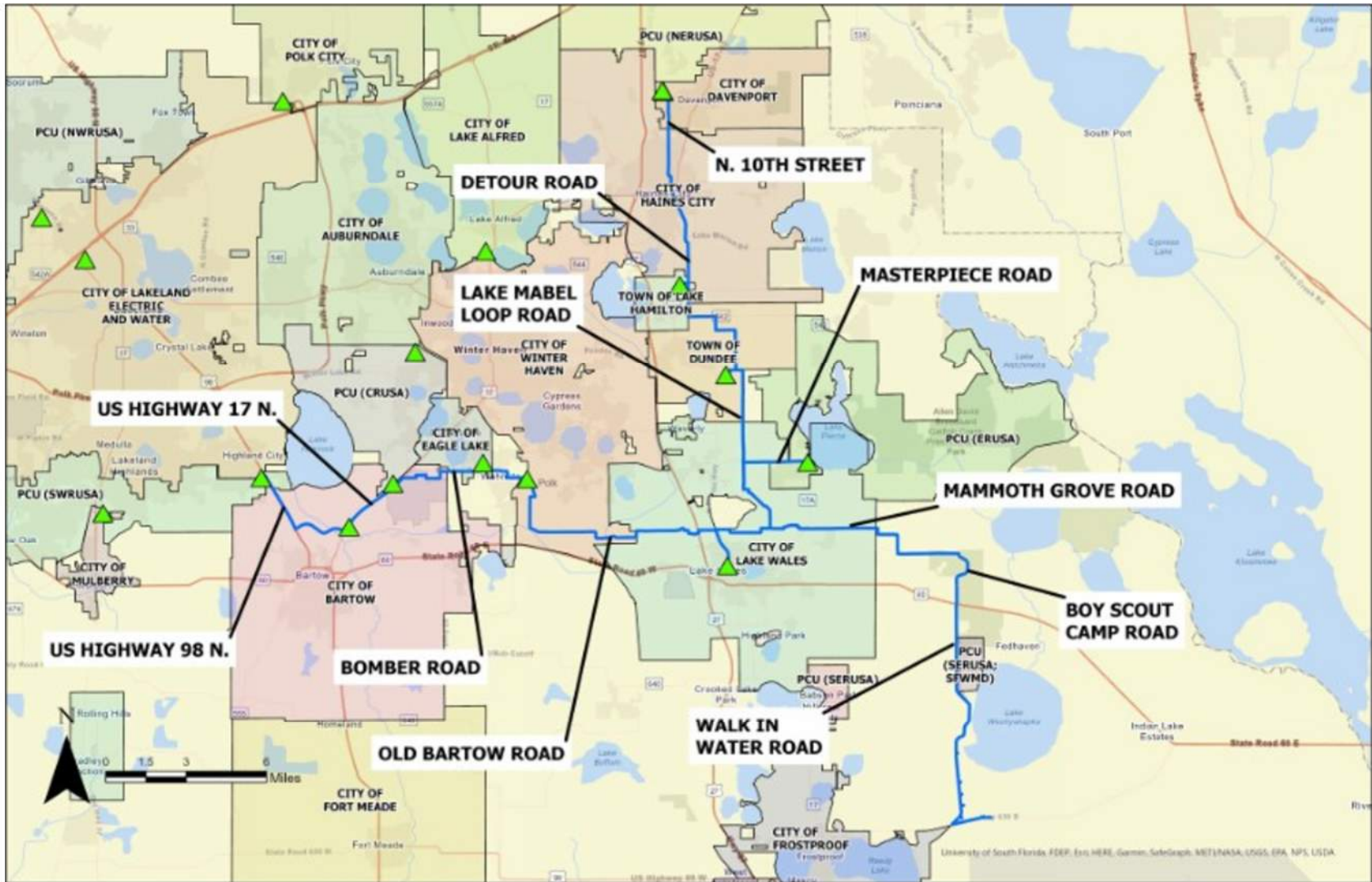
## FISCAL IMPACT

There is no fiscal impact associated with this item.

## CONTACT INFORMATION

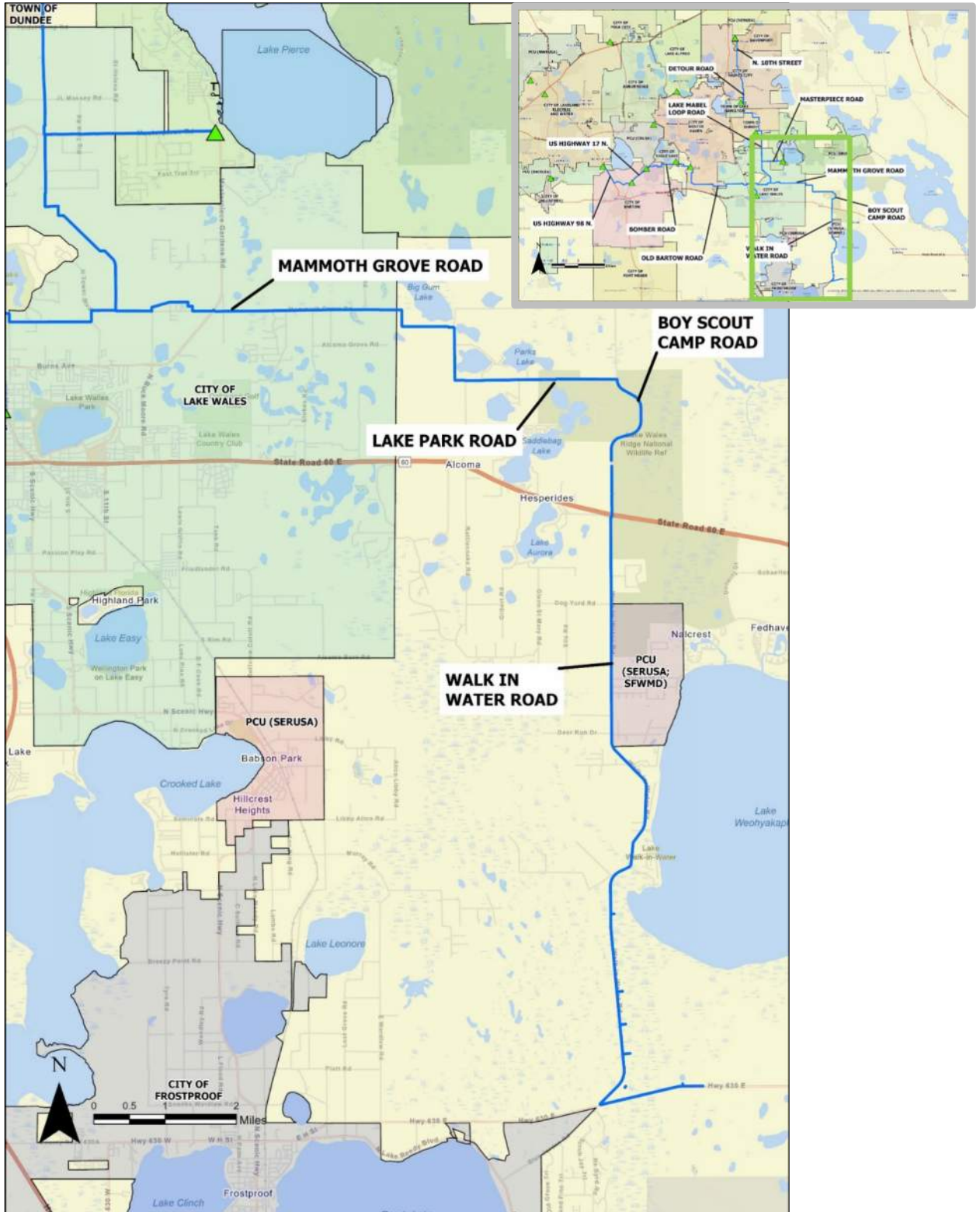
Mark Addison, P.E.

Polk Regional Water Cooperative  
DRAFT Southeast Wellfield Transmission Pipeline Alignment  
Prepared 1/4/2023

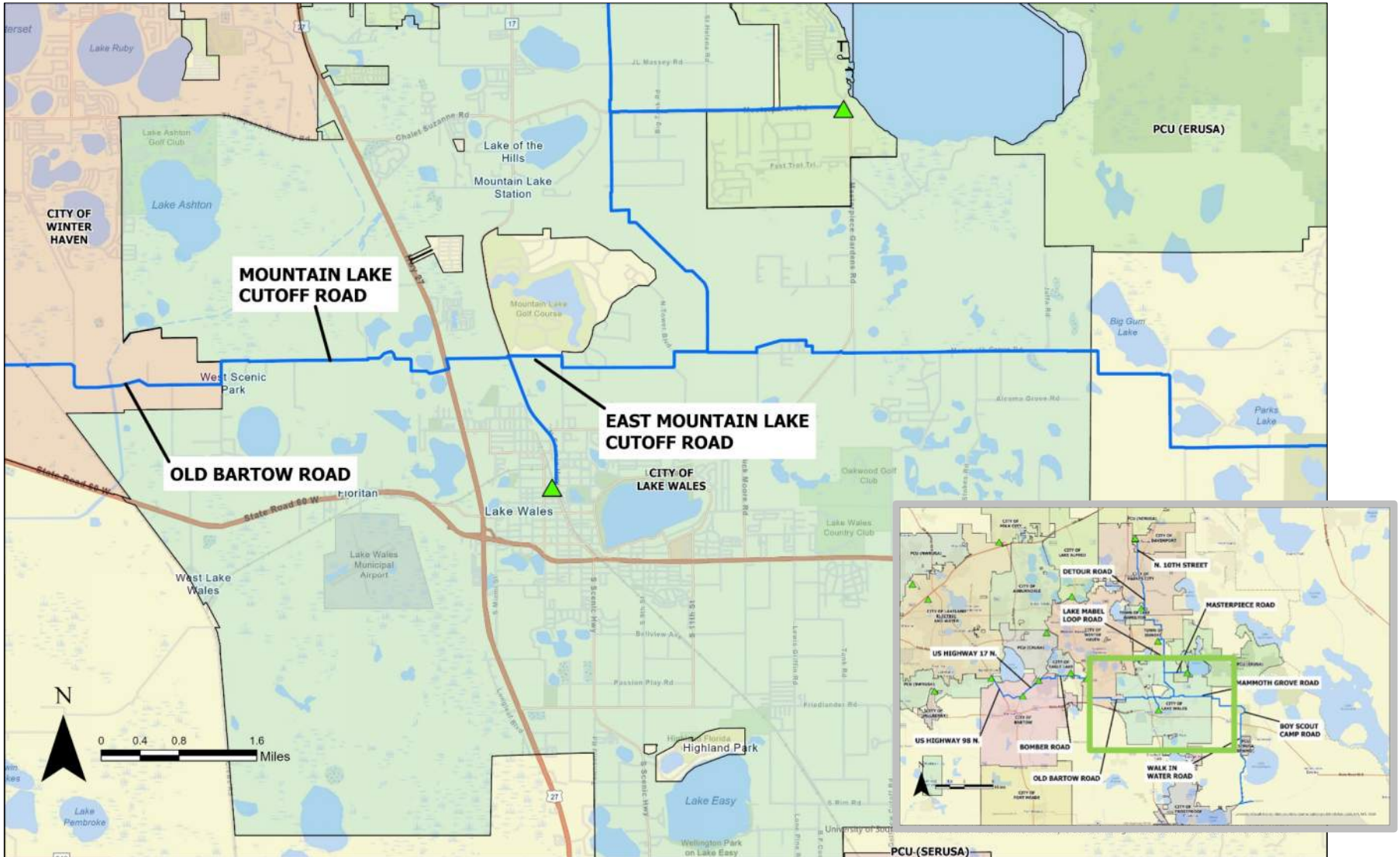




Polk Regional Water Cooperative  
 DRAFT Southeast Wellfield Transmission Pipeline Alignment  
 Prepared 1/4/2023

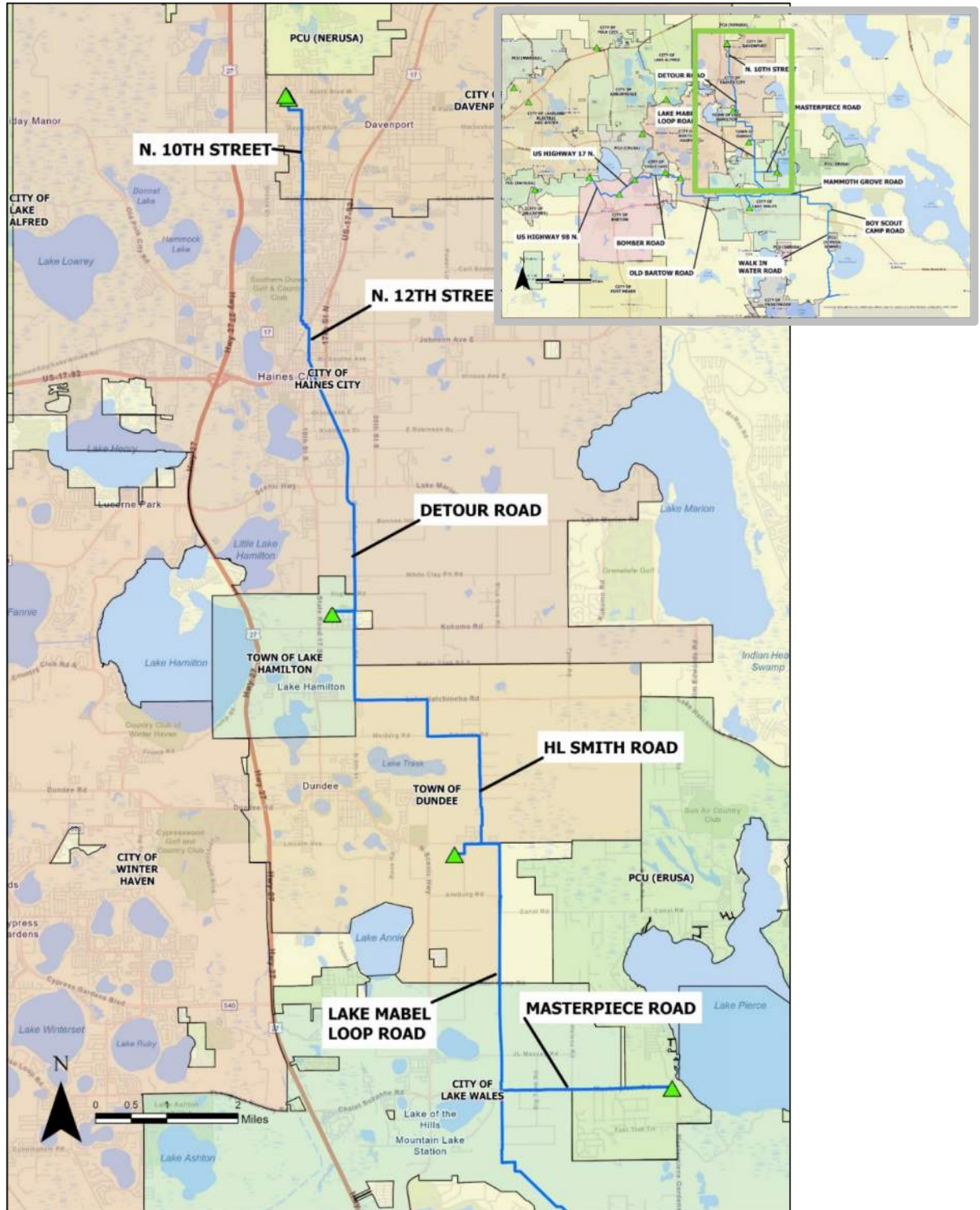


**Polk Regional Water Cooperative**  
**DRAFT Southeast Wellfield Transmission Pipeline Alignment**  
**Prepared 1/4/2023**





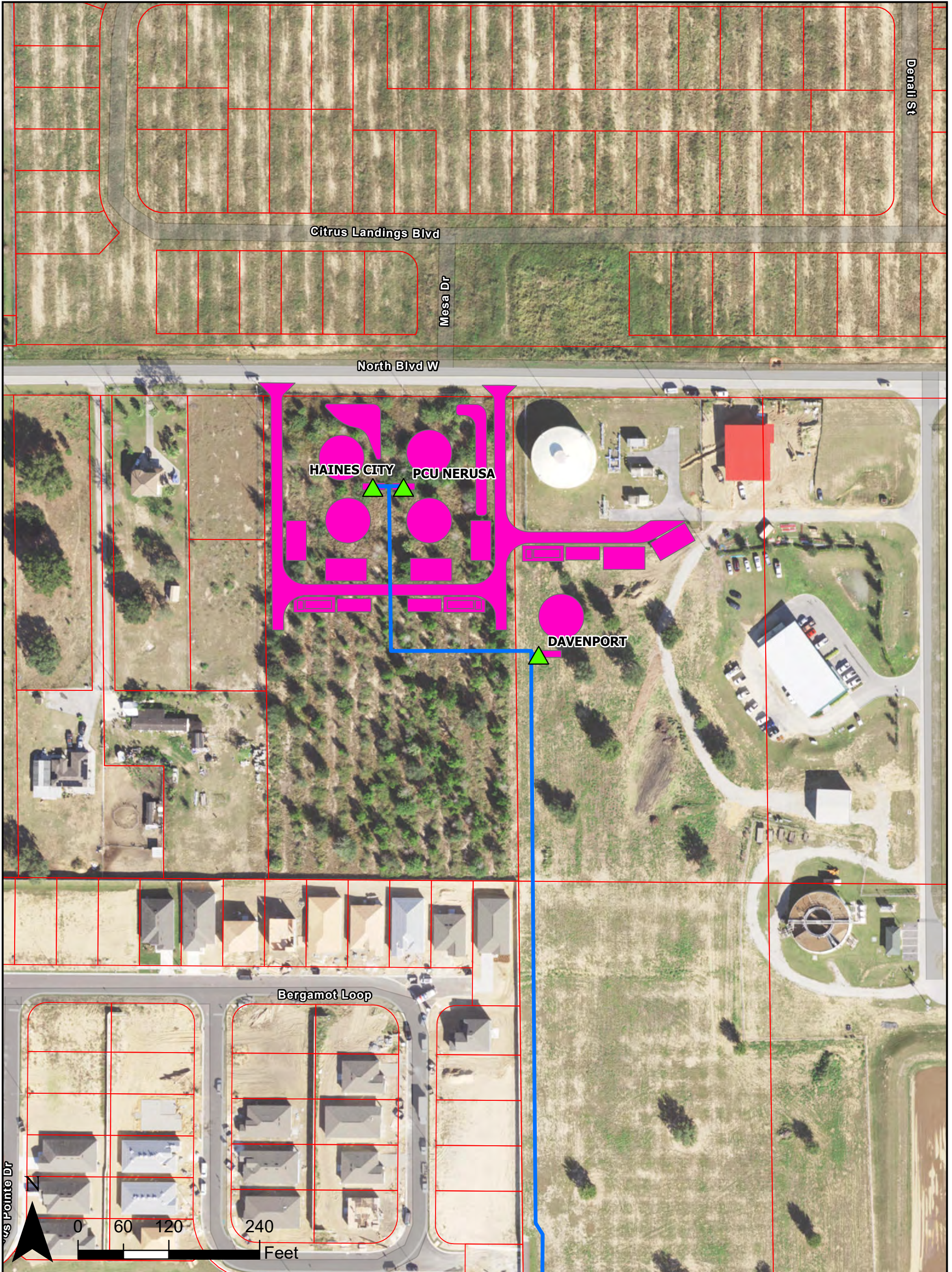
**Polk Regional Water Cooperative**  
**DRAFT Southeast Wellfield Transmission Pipeline Alignment**  
**Prepared 1/4/2023**











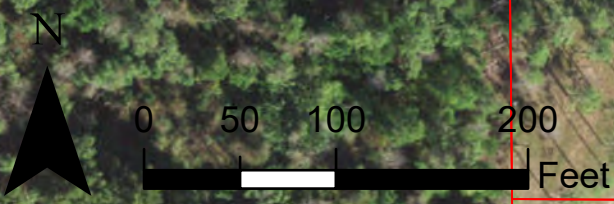
- 1- Project No.: 50152542
- 2- Data Source - ESRI
- 3- This map is intended to be used for planning purposes only. It is not a survey.

### Legend

- PARCEL
- ▲ POINT OF CONNECTION
- PRWC ROUTE
- NERUSA/DAVENPORT/HAINES CITY SITE FEATURES

**FIGURE 1**  
**DAVENPORT/HAINES CITY/**  
**PCU NERUSA**  
**POINT OF CONNECTION**  
**PRWC**  
**POLK COUNTY**  
**FLORIDA**





- 1- Project No.: 50152542
- 2- Data Source - ESRI
- 3- This map is intended to be used for planning purposes only. It is not a survey.

### Legend

- PARCEL
- ▲ POINT OF CONNECTION
- PRWC ROUTE

**FIGURE 2  
LAKE HAMILTON  
POINT OF CONNECTION  
PRWC  
POLK COUNTY  
FLORIDA**





- 1- Project No.: 50152542
- 2- Data Source - ESRI
- 3- This map is intended to be used for planning purposes only. It is not a survey.

### Legend

- PARCEL
- ▲ POINT OF CONNECTION
- PRWC ROUTE

**FIGURE 3  
DUNDEE  
POINT OF CONNECTION  
PRWC  
POLK COUNTY  
FLORIDA**





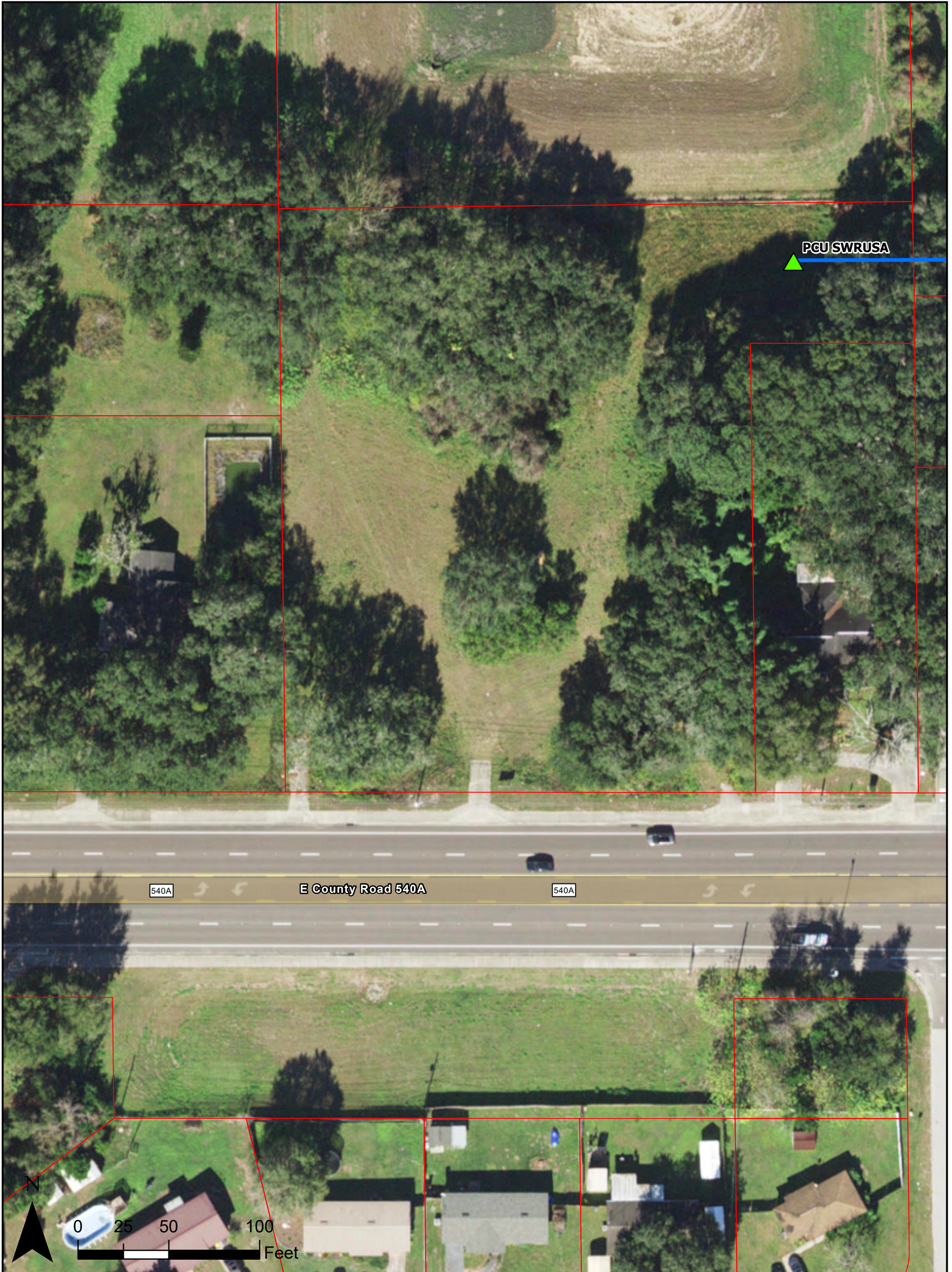
- 1- Project No.: 50152542
- 2- Data Source - ESRI
- 3- This map is intended to be used for planning purposes only. It is not a survey.

### Legend

- PARCEL
- ▲ POINT OF CONNECTION
- PRWC ROUTE

**FIGURE 4**  
**PCU ERUSA**  
**POINT OF CONNECTION**  
**PRWC**  
**POLK COUNTY**  
**FLORIDA**





- 1- Project No.: 50152542
- 2- Data Source - ESRI
- 3- This map is intended to be used for planning purposes only. It is not a survey.

### Legend

- PARCEL
- ▲ POINT OF CONNECTION
- PRWC ROUTE

**FIGURE 5**  
**PCU SWRUSA**  
**POINT OF CONNECTION**  
**PRWC**  
**POLK COUNTY**  
**FLORIDA**





- 1- Project No.: 50152542
- 2- Data Source - ESRI
- 3- This map is intended to be used for planning purposes only. It is not a survey.

### Legend

- PARCEL
- ▲ POINT OF CONNECTION
- PRWC ROUTE

**FIGURE 6  
BARTOW  
POINT OF CONNECTION  
PRWC  
POLK COUNTY  
FLORIDA**





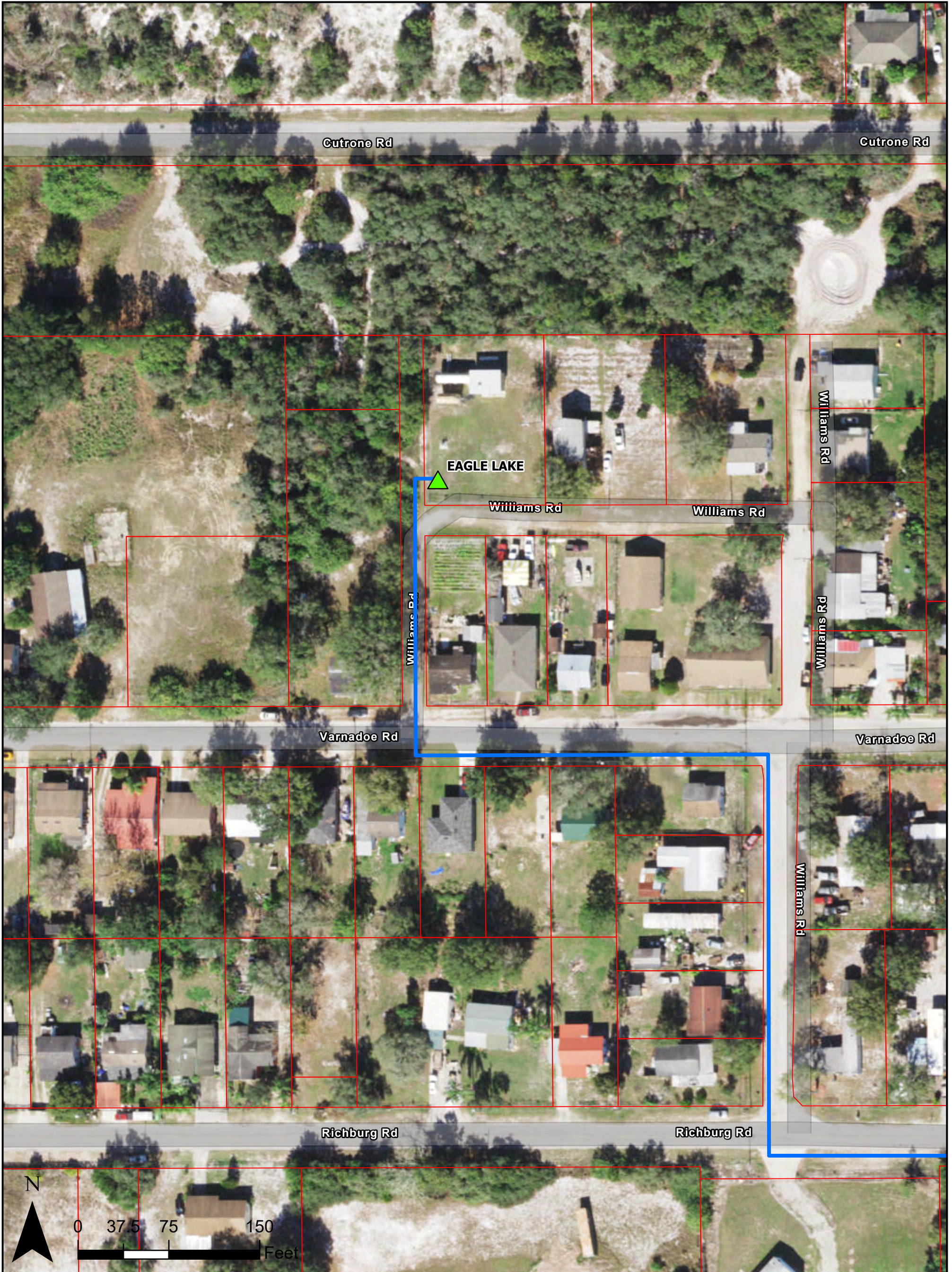
- 1- Project No.: 50152542
- 2- Data Source - ESRI
- 3- This map is intended to be used for planning purposes only. It is not a survey.

### Legend

- PARCEL
- ▲ POINT OF CONNECTION
- PRWC ROUTE

**FIGURE 7  
PCU CRUSA  
POINT OF CONNECTION  
PRWC  
POLK COUNTY  
FLORIDA**





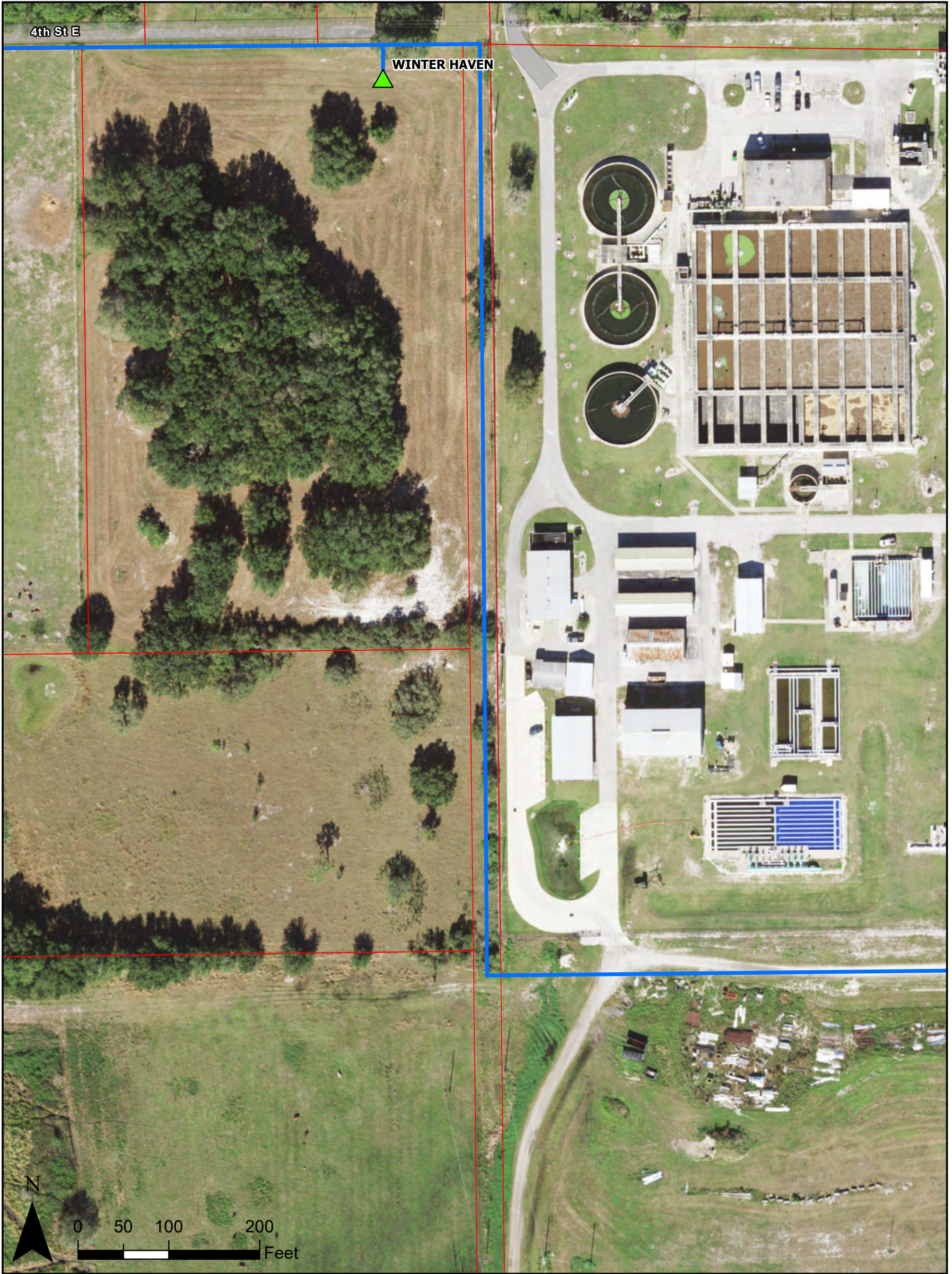
- 1- Project No.: 50152542
- 2- Data Source - ESRI
- 3- This map is intended to be used for planning purposes only. It is not a survey.

### Legend

- PARCEL
- ▲ POINT OF CONNECTION
- PRWC ROUTE

**FIGURE 8  
EAGLE LAKE  
POINT OF CONNECTION  
PRWC  
POLK COUNTY  
FLORIDA**





1- Project No.: 50152542  
 2- Data Source - ESRI  
 3- This map is intended to be used for planning purposes only. It is not a survey.

### Legend

- PARCEL
- ▲ POINT OF CONNECTION
- PRWC ROUTE

**FIGURE 9  
 WINTER HAVEN  
 POINT OF CONNECTION  
 PRWC  
 POLK COUNTY  
 FLORIDA**





- 1- Project No.: 50152542
- 2- Data Source - ESRI
- 3- This map is intended to be used for planning purposes only. It is not a survey.

### Legend

- PARCEL
- ▲ POINT OF CONNECTION
- PRWC ROUTE

**FIGURE 10  
AUBURNDALE  
POINT OF CONNECTION  
PRWC  
POLK COUNTY  
FLORIDA**





- 1- Project No.: 50152542
- 2- Data Source - ESRI
- 3- This map is intended to be used for planning purposes only. It is not a survey.

### Legend

- PARCEL
- ▲ POINT OF CONNECTION

**FIGURE 11  
MULBERRY  
POINT OF CONNECTION  
PRWC  
POLK COUNTY  
FLORIDA**





- 1- Project No.: 50152542
- 2- Data Source - ESRI
- 3- This map is intended to be used for planning purposes only. It is not a survey.

### Legend

- PARCEL
- ▲ POINT OF CONNECTION
- PRWC ROUTE

**FIGURE 12  
LAKE WALES  
POINT OF CONNECTION  
PRWC  
POLK COUNTY  
FLORIDA**





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**SUBJECT**

Adopt Resolution 2023-02 to Approve the Revolving Line of Credit Loan Agreement with Wells Fargo Bank - Action Item

**DESCRIPTION**

On October 18, 2017, the PRWC approved Resolution 17-03 authorizing a loan agreement with Wells Fargo Bank, National Association ("Wells") to provide a line of credit ("LOC") in a principal amount not to exceed \$6,000,000 for cash flow purposes, to bridge the gap on project invoice disbursement and receiving reimbursements. The LOC was subsequently modified to, among other things, reduce the commitment amount to \$5.0 million to more closely reflect project needs. The current LOC matures on May 16, 2023.

In advance of the LOC expiring, PRWC and its Financial Advisor requested term sheets from Wells and Truist Bank to replace the existing LOC with a two-year revolving line of credit (the "2023 LOC") in an aggregate principal amount not to be outstanding at any time in excess of \$15,000,000. Wells Fargo was determined to have the lowest cost and is recommended as the provider of the 2023 LOC pursuant to the terms of a Loan Agreement between the PRWC and Wells (the "2023 Loan Agreement"). The 2023 Loan Agreement will be issued under the master bond Resolution No. 2022-05 adopted by the PRWC on July 13, 2022. Draws upon the 2023 LOC will be evidenced by two notes (each a "Note" and collectively, the "Notes") and draws can be made either on a tax-exempt or taxable basis up to an aggregate principal amount outstanding of not to exceed \$15,000,000. The Notes will mature two years from their date of issuance and the interest rate applicable to each Note is based upon a variable rate of interest calculated utilizing the secured overnight financing rate plus a spread. There will be an unused fee of 0.35% for the amounts committed but not drawn under the 2023 LOC, which rate will reduce to 0.30% when the balance on the line exceeds 50% of the commitment amount.

**RECOMMENDATION**

Staff recommends approval of the resolution authorizing the 2023 LOC, as described above.

**FISCAL IMPACT**

The fiscal impacts of the 2023 Loan Agreement and the 2023 LOC are unable to be determined at this time due to the flexibility of the timing and amounts of future draws on the 2023 LOC and the variable interest rate.

CONTACT INFORMATION

Julie Santamaria





George Lindsey, Chair  
**Polk County**

Bill Mutz, Vice Chair  
**City of Lakeland**

Nathaniel Birdsong, Jr.,  
**Secretary/Treasurer**  
**City of Winter Haven**

Keith Cowie  
**City of Auburndale**

Steve Githens  
**City of Bartow**

Tom Fellows  
**City of Davenport**

Bert Goddard  
**Town of Dundee**

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**

Daniel Williams  
**City of Lake Wales**

Collins Smith  
**City of Mulberry**

Joe LaCascia  
**City of Polk City**

330 W. Church Street  
Drawer CA01  
Bartow, Florida 33830

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

**Please refer to item H.1 for the exhibit.**



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Agenda Item I.2.

1/18/2023

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**SUBJECT**

Adopt Resolution 2023-04 and Approval of the State Revolving Fund (SRF) loan DW532002 for the West Polk Final Design - Action Item

**DESCRIPTION**

This item provides information for board approval of the West Polk final design SRF loan. The West Polk design loan will cover costs for the 60% and 90% design of a 2.5 MGD Phase 1 reverse osmosis water production facility, raw water wellfield (4 wells) and approximately 5 miles of transmission system, 1 injection well, and approximately 1 mile of transmission pipeline.

The SRF West Polk final design loan is \$14,370,666. Attached for reference is Resolution 2023-04.

**RECOMMENDATION**

Adopt Resolution 2023-04 to approve SRF West Polk design loan.

**FISCAL IMPACT**

The SRF loan will provide \$14,370,666 for the West Polk Wellfield final design

**CONTACT INFORMATION**

Robert Beltran

**POLK REGIONAL WATER COOPERATIVE**

**Resolution 2023-04**

**A RESOLUTION OF THE POLK REGIONAL COOPERATIVE, AN INDEPENDENT SPECIAL DISTRICT OF THE STATE OF FLORIDA, RELATING TO THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION DRINKING WATER STATE REVOLVING FUND LOAN PROGRAM; MAKING FINDINGS; AUTHORIZING THE LOAN APPLICATION; AUTHORIZING A LOAN OF UP TO \$14,370,666.00 (EXCLUDING CAPITALIZED INTEREST); APPROVING THE FORM OF THE LOAN AGREEMENT; ESTABLISHING PLEDGED REVENUES; DESIGNATING AUTHORIZED REPRESENTATIVES; DELEGATING CERTAIN MATTERS TO THE CHAIRMAN OR THE VICE CHAIRMAN; PROVIDING FOR CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE**

The Board of Directors of the Polk Regional Water Cooperative (“Cooperative”), created pursuant to Section 373.713, Florida Statutes, and an Interlocal Agreement pursuant to Section 163.01, Florida Statutes, in lawful session and in regular order of business properly presented, finds that:

**WHEREAS**, Florida Statutes provide for the State of Florida Department of Environmental Protection (“Department”) Drinking Water State Revolving Fund (“State Revolving Fund”) to make loans to local government agencies to finance the construction of drinking water facilities; and

**WHEREAS**, the Florida Administrative Code requires authorization to apply for loans, to establish pledged revenues, to designate an authorized representative, to provide assurances of compliance with the loan program requirements, and to enter into a loan agreement; and

**WHEREAS**, the Cooperative Board of Directors authorized staff to apply to the Department for State Revolving Loan for funding the construction of test production wells and sixty (60%) percent design and other related activities associated with the West Polk Lower Florida Aquifer Wellfield (the “Project”); and

**WHEREAS**, the State Revolving Fund loan priority list designates Project No. DW532002 as eligible for available funding in the amount of \$14,370,666.00 for the work described above (the “Loan”); and

**WHEREAS**, the Cooperative intends to enter into a loan agreement with the Department under the State Revolving Fund for financing of design and construction activities associated with the Project; and

**WHEREAS**, on or about July 13, 2022, the Cooperative Board of Directors adopted a Water Revenue Bond Resolution No. 2022-05 (the “Master Bond Resolution”) to provide for the issuance of water revenue bonds secured by certain “Pledged Revenues” (as defined therein) to finance and refinance the Cooperative’s water projects; and

**WHEREAS**, the Loan will be secured as an Additional Bond under the Master Bond Resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE POLK REGIONAL WATER COOPERATIVE AS FOLLOWS:**

**Section 1.** The foregoing findings are incorporated herein by reference and made a part hereof.

**Section 2.** The Cooperative is authorized to apply for the Loan from the State Revolving Fund to finance the Project.

**Section 3.** The Cooperative is authorized to pledge for the repayment of the Loan the “Pledged Revenues” as defined in the Master Bond Resolution on a parity with Bonds (as defined in the Master Bond Resolution) issued thereunder in accordance with the terms thereof. Such Pledged Revenues include the payments of the Water Charge that the Project Participants are obligated to make to the Cooperative under Sections 13 and 14 of the Amended and Restated Implementation Agreement for the West Polk Lower Floridan Aquifer Wellfield, as amended from time to time (“WPLFA Implementation Agreement”). The Loan will constitute a Series of Bonds (as such capitalized terms are defined in the Master Bond Resolution) issued under the Master Bond Resolution, entitled to all the security and benefits thereof. The Loan will not be secured by the Composite Reserve Account or by any special account in the Reserve Fund. The Loan will not be entered into unless the Cooperative complies with the requirements of Section 12.02 of the Bond Resolution or the holders of the outstanding Bonds waive such requirements.

**Section 4.** Each of the Chairman and the Vice-Chairman, acting individually, is hereby designated as an authorized representative and signatory of the Cooperative (each an “Authorized Signatory”) to provide the assurances and commitments required by the Loan application.

**Section 5.** The Cooperative is authorized to execute a loan agreement with the State Revolving Fund in substantially the form attached hereto as Exhibit "A" (the “Loan Agreement”). The form and terms of the Loan Agreement attached hereto and any related documents (collectively, the "Loan Documents") are hereby approved, and the Authorized Signatories are authorized to execute and deliver the same, with such changes, insertions, omissions and filling of blanks as may be approved by the Authorized Signatory executing the same, such approval to be conclusively evidenced by the execution thereof by such Authorized Signatory, and there is hereby delegated to the Authorized Signatories the authority to establish the principal amount of the Loan in an amount not to exceed \$14,370,666.00 (plus capitalized interest), execution of the Loan Agreement to constitute conclusive evidence of the establishment of such amount. The



Authorized Signatories are hereby authorized to execute and deliver on behalf of the Cooperative the Loan Documents as provided hereby and the Secretary is hereby authorized to attest any such signatures on any such documents and to affix the Cooperative's seal thereto to the extent required by such documents. All officials and employees of the Cooperative, including, without limitation, the Authorized Signatories, are authorized and empowered, collectively or individually, to take all other actions and steps and to execute all instruments, documents, and contracts on behalf of the Cooperative as they shall deem necessary or desirable in connection with the Loan and the carrying out of the intention of this Resolution, including, without limitation, paying costs related hereto. The Chairman is authorized to delegate responsibility to appropriate Cooperative staff to carry out technical, financial, and administrative activities associated with the Loan Agreement.

**Section 6.** The legal authority to incur debt, liabilities or obligations, as necessary to construct this Project consists of Article VIII, Section 1 and 2, Constitution of the State of Florida, Sections 163.01(7) and 373.713(2), Florida Statutes (2022), Section 2.04 of the Interlocal Agreement Relating to the Establishment of the Polk Regional Water Cooperative and Section 15 of the WPLFA Implementation Agreement.

**Section 7.** All resolutions or part of resolutions in conflict with any of this Resolution are hereby repealed. All prior actions of officials and employees of the Cooperative, including, without limitation, the Authorized Signatories, with respect to the Loan are hereby ratified, confirmed and approved.

**Section 8.** If a section or portion of a section of this Resolution proves to be invalid, unlawful or unconstitutional, it shall not be held to invalidate or impair the validity, force or effect of any other section or part of this Resolution.

**Section 9.** The Resolution shall become effective immediately upon its passage and adoption.

DONE at Auburndale, Florida this 18<sup>th</sup> day of January, 2023

Board of Directors of the Polk Regional Water Cooperative:

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Secretary/Treasurer

Approved as to Form:

\_\_\_\_\_  
Edward P. de la Parte  
Legal Counsel

# EXHIBIT A

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**AND**

**POLK REGIONAL WATER COOPERATIVE, FLORIDA**

**DRINKING WATER STATE REVOLVING FUND  
DESIGN LOAN AGREEMENT**

**DW532002**

Florida Department of Environmental Protection  
State Revolving Fund Program  
Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard, MS 3505  
Tallahassee, Florida 32399-3000

# DRINKING WATER STATE REVOLVING FUND DESIGN LOAN AGREEMENT

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# DRINKING WATER STATE REVOLVING FUND DESIGN LOAN AGREEMENT

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**DRINKING WATER STATE REVOLVING FUND**  
**DESIGN LOAN AGREEMENT**  
**DW532002**

THIS AGREEMENT is executed by the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (Department) and POLK REGIONAL WATER COOPERATIVE (Project Sponsor) existing as an independent special district created pursuant to Chapter 189 Florida Statutes, Section 373.1962, Florida Statutes, and the Interlocal Agreement creating the Polk Regional Water Cooperative (“Interlocal Agreement”) entered into on June 1, 2016, pursuant to Chapter 163.01, Florida Statutes. Collectively, the Department and the Project Sponsor shall be referred to as “Parties” or individually as “Party”.

**RECITALS**

Pursuant to Section 403.8532, Florida Statutes and Chapter 62-552, Florida Administrative Code, the Department is authorized to make loans to finance the planning, design and construction of public water systems; and

The Project Sponsor applied for the financing of Design Activities, and the Department has determined that all requirements for a Loan have been met.

**AGREEMENT**

In consideration of the Department loaning money to the Project Sponsor, in the principal amount and pursuant to the covenants set forth below, it is agreed as follows:

**ARTICLE I - DEFINITIONS**

**1.01. WORDS AND TERMS.**

Words and terms used herein shall have the meanings set forth below:

- (1) “Agreement” or “Loan Agreement” shall mean this agreement.
- (2) “Authorized Representative” shall mean the official of the Project Sponsor authorized by ordinance or resolution to sign documents associated with the Loan.
- (3) “Capitalized Interest” shall mean the interest accruing on Loan proceeds from the time of disbursement until six months before the first Semiannual Loan Payment is due. Capitalized Interest is financed as part of the Loan principal.
- (4) “Depository” shall mean a bank or trust company, having a combined capital and unimpaired surplus of not less than \$50 million, authorized to transact commercial banking or savings and loan business in the State of Florida and insured by the Federal Deposit Insurance Corporation.
- (5) “Design Activities” shall mean the design of work defined in the approved planning

document that will result in plans and specifications, ready for permitting and bidding, for an eligible construction project.

(6) “Final Amendment” shall mean the final agreement executed between the parties that establishes the final terms for the Loan such as the final Loan amount, the interest rate, Loan Service Fee, amortization schedule and Semiannual Loan Payment amount.

(7) “Final Unilateral Amendment” shall mean the Loan Agreement unilaterally finalized by the Department after Loan Agreement and Project abandonment under Section 8.06 that establishes the final amortization schedule for the Loan.

(8) “Gross Revenues” shall mean all income or earnings received by the Project Sponsor pursuant to the Implementation Agreement from the Participants’ ownership or operation of the Participants’ Water System including investment income, all as calculated in accordance with generally accepted accounting principles.

(9) “Implementation Agreement” shall mean the agreement established on April 19, 2021, and amended and restated on March 16, 2022, as may be amended from time to time, by the Project Sponsor, City of Auburndale, City of Bartow, City of Fort Meade, City of Lake Alfred, City of Lakeland, City of Mulberry, City of Polk City, City of Winter Haven, Town of Dundee, Town of Lake Hamilton, and Polk County.

(10) “Interlocal Agreement” shall mean the agreement established on June 1, 2016 by the following members: City of Auburndale, City of Bartow, City of Davenport, City of Eagle Lake, City of Fort Meade, City of Frostproof, City of Haines City, City of Lake Alfred, City of Lakeland, City of Lake Wales, City of Mulberry, City of Polk City, City of Winter Haven, Town of Dundee and Town of Lake Hamilton and Polk County, a charter county and political subdivision of the State of Florida.

(11) “Loan” shall mean the amount of money to be loaned pursuant to this Agreement and subsequent amendments.

(12) “Loan Application” shall mean the completed form which provides all information required to support obtaining loan financial assistance from the Department.

(13) “Loan Debt Service Account” shall mean an account, or a separately identified component of a pooled cash or liquid account, with a Depository established by the Project Sponsor for the purposes set forth in Section 3.01.

(14) “Loan Service Fee” shall mean an origination fee which shall be paid to the Department by the Project Sponsor.

(15) “Local Governmental Entity” means a county, municipality, or special district.

(16) “Master Bond Resolution” shall mean the Polk Regional Water Cooperative Resolution No. 2022-05 providing for the issuance of water revenue bonds, additional bonds, and payment of such bonds, as well as guarantee of repayment of this loan, from revenues as specified within the resolution.

(17) “Monthly Loan Deposit” shall mean the monthly deposit to be made by the Project Sponsor to the Loan Debt Service Account pursuant to Section 3.01(3).

(18) “Net Revenues” means Gross Revenues less Operation and Maintenance Expenses.

(19) “Operation and Maintenance Expense” shall mean the costs of operating and maintaining the Utility System determined pursuant to generally accepted accounting principles, exclusive of interest on any debt payable from Gross Revenues, depreciation, and any other items not requiring the expenditure of cash.

(20) “Participants” shall mean the Project Participants as defined in the Implementation Agreement.

(21) “Pledged Revenues” shall mean the specific revenues pledged as security for repayment of the Loan and shall be the Project Sponsor’s Net Revenues allocable to the Debt Service Cost under the Project Sponsor’s Master Bond Resolution.

(22) “Project” shall mean the Design Activities for the West Polk Wellfield/Drinking Water Treatment Plant.

(23) “Semiannual Loan Payment” shall mean the payment due from the Project Sponsor to the Department at six-month intervals.

(24) “Utility System” shall mean all water system devices and facilities owned by the Project Sponsor.

(25) “Water System” shall mean all facilities owned by a Participant for supplying and distributing water for residential, commercial, industrial, and governmental use.

## 1.02. CORRELATIVE WORDS.

Words of the masculine gender shall be understood to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural and the word “person” shall include corporations and associations, including public entities, as well as natural persons.

## ARTICLE II - WARRANTIES, REPRESENTATIONS AND COVENANTS

### 2.01. WARRANTIES, REPRESENTATIONS AND COVENANTS.

The Project Sponsor warrants, represents and covenants that:

(1) The Project Sponsor has full power and authority to enter into this Agreement and to comply with the provisions hereof.

(2) The Project Sponsor currently is not the subject of bankruptcy, insolvency, or reorganization proceedings and is not in default, or otherwise subject to any agreement or any law, administrative regulation, judgment, decree, note, resolution, charter or ordinance which



would currently restrain or enjoin it from entering into, or complying with, this Agreement.

(3) There is no material action, suit, proceeding, inquiry or investigation, at law or in equity, before any court or public body, pending or, to the best of the Project Sponsor's knowledge, threatened, which seeks to restrain or enjoin the Project Sponsor from entering into or complying with this Agreement.

(4) The Project Sponsor shall undertake the Project on its own responsibility, to the extent permitted by law.

(5) To the extent permitted by law, the Project Sponsor shall release and hold harmless the State, its officers, members, and employees from any claim arising in connection with the Project Sponsor's actions or omissions in its Design Activities financed by this Loan.

(6) All Project Sponsor representations to the Department, pursuant to the Loan Application and Agreement, were true and accurate as of the date such representations were made. The financial information delivered by the Project Sponsor to the Department was current and correct as of the date such information was delivered. The Project Sponsor shall comply with Chapter 62-552, Florida Administrative Code, and all applicable State and Federal laws, rules, and regulations which are identified in the Loan Application or Agreement. To the extent that any assurance, representation, or covenant requires a future action, the Project Sponsor shall take such action to comply with this agreement.

(7) The Project Sponsor shall maintain records using generally accepted accounting principles generally consistent with the Governmental Accounting Standards Board. As part of its bookkeeping system, the Project Sponsor shall keep accurate records of all revenues, expenses, and expenditures relating to the Pledged Revenues, Loan disbursement receipts, and Loan Debt Service Account.

(8) The Project Sponsor hereby confirms that the Department is a third party beneficiary of the Implementation Agreement pursuant to Section 27 thereof. The Project Sponsor shall deliver to the Department a copy of any executed amendment, modification or supplement to the Implementation Agreement promptly after the execution thereof.

(9) Pursuant to Section 216.347 of the Florida Statutes, the Project Sponsor shall not use the Loan proceeds for the purpose of lobbying the Florida Legislature, the Judicial Branch, or a State agency.

(10) The Project Sponsor agrees to complete the Design Activities in accordance with the schedule set forth in Section 10.07. Delays incident to strikes, riots, acts of God, and other events beyond the reasonable control of the Project Sponsor are excepted. However, there shall be no resulting diminution or delay in the Semiannual Loan Payment or the Monthly Loan Deposit.

(11) The Project Sponsor covenants that this Agreement is entered into for the purpose of completing Design Activities in order to construct facilities which will, in all events, serve a public purpose.

2.02. LEGAL AUTHORIZATION.

Upon signing this Agreement, the Project Sponsor’s legal counsel hereby expresses the opinion, subject to laws affecting the rights of creditors generally, that:

(1) This Agreement has been duly authorized by the Project Sponsor and shall constitute a valid and legal obligation of the Project Sponsor enforceable in accordance with its terms upon execution by both parties; and

(2) This Agreement identifies the revenues pledged for repayment of the Loan, and the pledge is valid and enforceable.

(3)

2.03. AUDIT AND MONITORING REQUIREMENTS.

The Project Sponsor agrees to the following audit and monitoring requirements.

(1) The financial assistance authorized pursuant to this Loan Agreement consists of the following:

State Resources Awarded to the Project Sponsor Pursuant to this Agreement Consist of the Following:					
State Program Number	Funding Source	C SFA Number	CSFA Title or Fund Source Description	Funding Amount	State Appropriation Category
Original Agreement	Drinking Water Revolving Loan TF	3 7.076	Drinking Water Facility Construction	\$14,370,666	140129

(2) Audits.

(a) In the event that the Project Sponsor expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such Project Sponsor, the Project Sponsor must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. In determining the state financial assistance expended in its fiscal year, the Project Sponsor shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

(b) In connection with the audit requirements addressed in the preceding paragraph (a); the Project Sponsor shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined

by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

(c) If the Project Sponsor expends less than \$750,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. The Project Sponsor shall inform the Department of findings and recommendations pertaining to the State Revolving Fund in audits conducted by the Project Sponsor in which the \$750,000 threshold has not been met. In the event that the Project Sponsor expends less than \$750,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the Project Sponsor's resources obtained from other than State entities).

(d) The Project Sponsor is hereby advised that the Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a Project Sponsor should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa> for assistance.

(3) Report Submission.

(a) Copies of financial reporting packages shall be submitted by or on behalf of the Project Sponsor directly to each of the following:

(i) The Department at one of the following addresses:

By Mail:

**Audit Director**

Florida Department of Environmental Protection  
Office of the Inspector General  
3900 Commonwealth Boulevard, MS 40  
Tallahassee, Florida 32399-3123

or

Electronically:

[FDEPSingleAudit@dep.state.fl.us](mailto:FDEPSingleAudit@dep.state.fl.us)

(ii) The Auditor General's Office at the following address:

State of Florida Auditor General  
Room 401, Claude Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32399-1450

(iii) Copies of reports or management letters shall be submitted by or on behalf of the Project Sponsor directly to the Department at either of the following addresses:

By Mail:

**Audit Director**

Florida Department of Environmental Protection  
Office of the Inspector General  
3900 Commonwealth Boulevard, MS 40  
Tallahassee, Florida 32399-3123

or

Electronically:

[FDEPSingleAudit@dep.state.fl.us](mailto:FDEPSingleAudit@dep.state.fl.us)

(b) Any reports, management letters, or other information required to be submitted to the Department pursuant to this Agreement shall be submitted timely in accordance with Florida Statutes, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

(c) Project Sponsors, when submitting financial reporting packages to the Department for audits done in accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Project Sponsor in correspondence accompanying the reporting package.

(4) Record Retention.

The Project Sponsor shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date of the Final Amendment, and shall allow the Department, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The Project Sponsor shall ensure that working papers are made available to the Department, or its designee, Chief Financial Officer, or Auditor General upon request for a period of five years from the date of the Final Amendment, unless extended in writing by the Department.

(5) Monitoring.

In addition to reviews of audits conducted in accordance with Section 215.97, F.S., as revised monitoring procedures may include, but not be limited to, on-site visits by Department staff and/or other procedures. By entering into this Agreement, the Project Sponsor agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the Project Sponsor is appropriate, the Project Sponsor agrees to comply with any additional instructions provided by the Department to the Project Sponsor regarding such audit. The Project Sponsor understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. The Project Sponsor will comply with this duty and ensure that any subcontracts issued under this Agreement will impose this requirement, in writing, on its subcontractors.



## ARTICLE III - LOAN REPAYMENT ACCOUNT

### 3.01. LOAN DEBT SERVICE ACCOUNT.

(1) General Provisions. The Project Sponsor shall establish a Loan Debt Service Account with a Depository for the purposes set forth in this section. Moneys in the Loan Debt Service Account shall be kept separate and apart from all other funds and accounts of the Project Sponsor. All such funds shall be and constitute trust funds for such purposes, and there is hereby created a lien upon such funds in favor of the Department, such other pari-passu liens approved in writing by the Department, and so long as the Project Sponsor has not adopted a master bond resolution, the holders of bonds and other parity obligations of the Project Sponsor, until such funds are applied as herein provided. Any funds on deposit in the Loan Debt Service Account that, in the opinion of the Project Sponsor, are not immediately necessary for expenditure, as herein provided, may be invested and reinvested in investments that are lawfully permitted and that shall mature or be redeemable at not less than par on or before the dates on which such funds are estimated to be needed. All income derived from investment of funds in the Loan Debt Service Account shall be deposited therein and shall be used to as provided herein. Moneys in the Loan Debt Service Account shall be secured at all times in the manner prescribed by the laws of the State relating to the securing of public funds and as may be provided by resolution of the Project Sponsor. The Semiannual Loan Payments are described in Section 10 hereof.

(2) RESERVED.

(3) Deposits Pursuant to the Master Bond Resolution. All Gross Revenues received by the Project Sponsor from Participants, including Debt Service Costs, shall be deposited as provided in such master bond resolution, and the Project Sponsor shall only deposit the Monthly Loan Deposits into the Loan Debt Service Account. In such event, beginning six months prior to each Semiannual Loan Payment, the Project Sponsor shall make six Monthly Loan Deposits. The first five deposits each shall be at least equal to one-sixth of the Semiannual Loan Payment. The sixth Monthly Loan Deposit shall be at least equal to the amount required to make the total on deposit in the Loan Debt Service Account equal to the Semiannual Loan Payment amount, taking into consideration investment earnings credited to the account pursuant to Section 3.02.

Any month in which the Project Sponsor fails to make a required Monthly Loan Deposit, the Project Sponsor's Authorized Representative shall notify the Department of such failure. In addition, the Project Sponsor agrees to budget, by amendment if necessary, payment to the Department from other legally available non-ad valorem funds all sums becoming due before the same become delinquent. This requirement shall not be construed to give superiority to the Department's claim on any revenues over prior claims of general creditors of the Project Sponsor, nor shall it be construed to give the Department the power to require the Project Sponsor to levy and collect any revenues other than Pledged Revenues. All Gross Revenues received by the Project Sponsor from Participants, including Debt Service Costs, shall be deposited as provided in Master Bond Resolution, and the Project Sponsor shall only deposit the Monthly Loan Deposits into the Loan Debt Service Account.

### 3.02. INVESTMENT OF LOAN DEBT SERVICE ACCOUNT MONEYS.

Moneys on deposit in the Loan Debt Service Account shall be invested pursuant to the laws of the State of Florida. Such moneys may be pooled for investment purposes. The maturity or redemption date of investments shall be not later than the date upon which such moneys may be needed to make Semiannual Loan Payments and the payments described in Section 3.01. The investment earnings shall be credited to the Loan Debt Service Account and applied toward the Monthly Loan Deposit and other payment requirements.

### 3.03. LOAN DEBT SERVICE ACCOUNT WITHDRAWALS.

The withdrawal of moneys from the Loan Debt Service Account shall be for the purposes set forth in Section 3.01.

### 3.04. ASSETS HELD IN TRUST.

The assets in all accounts created under this Loan Agreement shall be held in trust for the purposes provided herein and used only for the purposes and in the manner prescribed in this Agreement; and, pending such use, said assets shall be subject to a lien and charge as set forth in Section 3.01.

## ARTICLE IV - PROJECT INFORMATION

### 4.01. PROJECT CHANGES.

After the Department's environmental review has been completed, the Project Sponsor shall promptly notify the Department, in writing, of any Project change that would require a modification to the environmental information document.

### 4.02. CLOSE-OUT.

The Department shall conduct a final inspection of the Design Activities records. Following the inspection, deadlines for submitting additional disbursement requests, if any, shall be established, along with deadlines for uncompleted Loan requirements, if any. Deadlines shall be incorporated into the Loan Agreement by amendment. After the Department establishes the final costs to be financed by the Loan, the itemized costs will be adjusted by amendment. The Loan principal shall be reduced by any excess over the amount required to pay all approved costs. As a result of such adjustment, the Semiannual Loan Payment shall be reduced accordingly, as addressed in Section 10.05.

### 4.03. DISBURSEMENTS.

Disbursements shall be made only by the State Chief Financial Officer and only when the requests for such disbursements are accompanied by a Department certification that such withdrawals are proper expenditures. Disbursements shall be made directly to the Project Sponsor for reimbursement of the incurred design costs and related services. Disbursements for materials, labor, or services shall be made upon receipt of the following:

(1) A completed disbursement request form signed by the Authorized Representative. Such requests must be accompanied by sufficiently itemized summaries of the materials, labor, or services to identify the nature of the work performed; the cost or charges for such work; and the person providing the service or performing the work; and proof of payment.

(2) A certification signed by the Authorized Representative as to the current estimated costs of the Project; that the materials, labor, or services represented by the invoice have been satisfactorily purchased, performed, or received.

(3) Such other certificates or documents by engineers, attorneys, accountants, contractors, or suppliers as may reasonably be required by the Department.

Requests by the Project Sponsor for disbursements of the design funds shall be made using the Department's disbursement request form. The Department reserves the right to retain 25% of the funds until the information necessary for the Department to prepare the Environmental Information Document as described in Rule 62-552.680, Florida Administrative Code, has been provided.

## ARTICLE V - RATES AND USE OF THE UTILITY SYSTEM

### 5.01. RATE COVERAGE.

The Project Sponsor shall maintain rates and charges for the services furnished by the Utility System which will be sufficient to provide, in each Fiscal Year, Pledged Revenues equal to or exceeding 1.15 times the sum of the Semiannual Loan Payments due in such Fiscal Year.

### 5.02. NO FREE SERVICE.

The Project Sponsor shall not permit connections to, or furnish any services afforded by, the Utility System without making a charge therefore based on the Project Sponsor's schedule of rates, fees, and charges as provided for in the Implementation Agreement.

### 5.03. NO COMPETING SERVICE.

The Project Sponsor shall take action to ensure the Participants shall not allow any person to provide any services which would compete with their Water System, to the extent permitted by law, so as to materially adversely affect Gross Revenues or as otherwise provided by the Participants bond resolution or ordinance; provided, however, that this subsection shall not affect the vested rights of any persons, firms, or corporations now owning or operating such facilities; further provided that this provision shall not be deemed to require a Participant to provide service where to do so would be uneconomical.

### 5.04. MAINTENANCE OF THE UTILITY SYSTEM.

The Project Sponsor shall operate and maintain the Utility System and shall take action to ensure the Participants shall operate and maintain their Water Systems, all in a proper, sound and economical manner and the Project Sponsor and the Participants shall make all necessary repairs, renewals and replacements to their respective systems.

#### 5.05. ADDITIONS AND MODIFICATIONS.

The Project Sponsor is not required under the Implementation Agreement from prohibiting the Participants from making any additions, modifications or improvements to their Water System which they deem desirable and which do not materially reduce the operational integrity of any part of their Water System. All such renewals, replacements, additions, modifications and improvements shall become part of the Participants' Water System.

#### 5.06. COLLECTION OF REVENUES.

The Project Sponsor shall take action to ensure the Participants shall use their best efforts to collect all rates, fees and other charges due to them. The Project Sponsor shall ensure that the Participants shall establish liens on premises served by their Water System for the amount of all delinquent rates, fees and other charges where such action is permitted by law. The Project Sponsor shall ensure the Participants shall, to the full extent permitted by law, cause to discontinue the services of the Water System and use their best efforts to shut off waterservice furnished to persons who are delinquent beyond customary grace periods (or repayment plans or deferrals) in the payment of Water System rates, fees and other charges. This section shall not require action during a state of emergency.

### ARTICLE VI - DEFAULTS AND REMEDIES

#### 6.01. EVENTS OF DEFAULT.

Upon the occurrence of any of the following events (the Events of Default) all obligations on the part of Department to make any further disbursements hereunder shall, if Department elects, terminate. The Department may, at its option, exercise any of its remedies set forth in this Agreement, but Department may make any disbursements or parts of disbursements after the happening of any Event of Default without thereby waiving the right to exercise such remedies and without becoming liable to make any further disbursement:

- (1) Failure to make any Monthly Loan Deposit or to make any installment of the Semiannual Loan Payment when it is due and such failure shall continue for a period of 30 days.
- (2) Except as otherwise provided in Section 6.01 failure to comply with the provisions of this Agreement or failure in the performance or observance of any of the covenants or actions required by this Agreement and such failure shall continue for a period of 60 days after written notice thereof to the Project Sponsor by the Department or the Suspension of this Agreement by the Department pursuant to Section 8.11 below.
- (3) Any warranty, representation or other statement by, or on behalf of, the Project Sponsor contained in this Agreement or in any information furnished in compliance with, or in reference to, this Agreement, which is false or misleading, or if Project Sponsor shall fail to keep, observe or perform any of the terms, covenants, representations or warranties contained in this Agreement, the Note, or any other document given in connection with the Loan (provided, that with respect to non-monetary defaults, Department shall give written notice to Project Sponsor, which shall have 30 days to cure any such default), or is unable or unwilling to meet its



obligations thereunder.

(4) An order or decree entered, with the acquiescence of the Project Sponsor, appointing a receiver of any part of the Utility System or Gross Revenues thereof; or if such order or decree, having been entered without the consent or acquiescence of the Project Sponsor, shall not be vacated or discharged or stayed on appeal within 60 days after the entry thereof.

(5) Any proceeding instituted, with the acquiescence of the Project Sponsor, for the purpose of effecting a composition between the Project Sponsor and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are payable from Gross Revenues of the subject Utility System.

(6) Any bankruptcy, insolvency or other similar proceeding instituted by, or against, the Project Sponsor under federal or state bankruptcy or insolvency law now or hereafter in effect and, if instituted against the Project Sponsor, is not dismissed within 60 days after filing.

(7) Any charge is brought alleging violations of any criminal law in the implementation of the Project or the administration of the proceeds from this Loan against one or more officials of the Project Sponsor by a State or Federal law enforcement authority, which charges are not withdrawn or dismissed within 60 days following the filing thereof.

(8) Failure of the Project Sponsor to give immediate written notice of its knowledge of an Event of Default or default that with the passage of time or the giving of notice, or both, would be an Event of Default, hereunder, to the Department and such failure shall continue for a period of 30 days.

#### 6.02. REMEDIES.

All rights, remedies, and powers conferred in this Agreement and the transaction documents are cumulative and are not exclusive of any other rights or remedies, and they shall be in addition to every other right, power, and remedy that Department may have, whether specifically granted in this Agreement or any other transaction document, or existing at law, in equity, or by statute. Any and all such rights and remedies may be exercised from time to time and as often and in such order as Department may deem expedient. Upon any of the Events of Default and subject to the rights of others having prior liens on the Pledged Revenues, the Department may enforce its rights by, *inter alia*, any of the following remedies:

(1) By mandamus or other proceeding at law or in equity, cause to establish rates and collect fees and charges for use of the Utility System, and to require the Project Sponsor to fulfill this Agreement.

(2) By action or suit in equity, require the Project Sponsor to account for all moneys received from the Department or from the ownership of the Utility System and to account for the receipt, use, application, or disposition of the Pledged Revenues.

(3) By action or suit in equity, enjoin any acts or things which may be unlawful or in

violation of the rights of the Department.

(4) By applying to a court of competent jurisdiction, cause to appoint a receiver to manage the Utility System, establish and collect fees and charges and apply the revenues as provided herein.

(5) By certifying to the Auditor General and the Chief Financial Officer delinquency on loan repayments, the Department may intercept the delinquent amount plus six percent, expressed as an annual interest rate, penalty of the amount due to the Department from any unobligated funds due to the Project Sponsor under any revenue or tax sharing fund established by the State, except as otherwise provided by the State Constitution or State law. Penalty interest shall accrue on any amount due and payable beginning on the 30th day following the date upon which payment is due.

(6) By notifying financial market credit rating agencies and potential creditors.

(7) By suing for payment of amounts due with interest on overdue payments together with all costs of collection, including attorneys' fees.

(8) By increasing the interest rate on the unpaid principal of the Loan to as much as 1.667 times the Loan interest rate for a default under Subsection 6.01(1).

(9) Make demand upon Guarantors' for amounts due up to the guaranteed amount specified in their guaranty agreement.

#### 6.03. DELAY AND WAIVER.

No course of dealing between Department and Project Sponsor, or any failure or delay on the part of Department in exercising any rights or remedies hereunder, shall operate as a waiver of any rights or remedies of Department, and no single or partial exercise of any rights or remedies hereunder shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder. No delay or omission by the Department to exercise any right or power accruing upon Events of Default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised as often as may be deemed expedient. No waiver or any default under this Agreement shall extend to or affect any subsequent Events of Default, whether of the same or different provision of this Agreement, or shall impair consequent rights or remedies.

### ARTICLE VII - THE PLEDGED REVENUES

#### 7.01. SUPERIORITY OF THE PLEDGE TO THE DEPARTMENT.

From and after the effective date of this Agreement, the Department shall have a lien on the Pledged Revenues, which along with any other Department State Revolving Fund liens on the Pledged Revenues, on equal priority subject to Section 7.02, will be prior and superior to any other lien, pledge or assignment. All obligations of the Project Sponsor under this Agreement shall be junior, inferior, and subordinate in all respects in right of payment and security to any

additional senior obligations issued with the Department's consent pursuant to Section 7.02. The Department may release its lien on such Pledged Revenues in favor of the Department if the Department makes a determination in its sole discretion, based upon facts deemed sufficient by the Department, that the remaining Pledged Revenues will, in each Fiscal Year, equal or exceed 1.15 times the debt service coming due in each Fiscal Year under the terms of this Agreement.

#### 7.02. ADDITIONAL DEBT OBLIGATIONS.

The Project Sponsor may issue additional debt obligations on a parity with, or senior to, the lien of the Department on the Pledged Revenues provided the Department's written consent is obtained. Such consent may be granted if the Project Sponsor demonstrates at the time of such issuance that the Pledged Revenues, which may take into account reasonable projections of growth of the Water System and revenue increases, plus revenues to be pledged to the additional proposed debt obligations will, during the period of time Semiannual Loan Payments are to be made under this Agreement, equal or exceed the annual combined debt service requirements of this Agreement and the obligations proposed to be issued by the Project Sponsor and will satisfy the coverage requirements of all other debt obligations secured by the Pledged Revenues.

### ARTICLE VIII - GENERAL PROVISIONS

#### 8.01. DISCHARGE OF OBLIGATIONS.

The Department consents to the issuance of this Loan as a senior lien obligation pursuant to Section 7.02 of the Drinking Water State Revolving Fund Design Loan Agreement DW532001 dated August 9, 2022 (the "SE Wellfield Agreement") between the Department and the Project Sponsor. The Department and the Project Sponsor agree that the Loan hereunder shall be an Additional Bond under the Master Bond Resolution. The Department, in connection with the issuance of the Loan hereunder and as the sole holder of all obligations outstanding under the Master Bond Resolution, agrees to waive the requirements under Section 12.02 of the Master Bond Resolution for the issuance of Additional Bonds. The parties agree that the loan under the SE Wellfield Agreement is also an Additional Bond under the Master Bond Resolution.

All Semiannual Loan payments required to be made under this Agreement shall be cumulative and any deficiencies in any Fiscal Year shall be added to the payments due in the succeeding year and all years thereafter until fully paid. Payments shall continue to be secured by this Agreement until all of the payments required shall be fully paid to the Department. If at any time the Project Sponsor shall have paid, or shall have made provision for the timely payment of, the entire principal amount of the Loan and interest, the pledge of, and lien on, the Pledged Revenues to the Department shall be no longer in effect. Deposit of sufficient cash, securities, or investments, authorized by law, from time to time, may be made to effect defeasance of this Loan. However, the deposit shall be made in irrevocable trust with a banking institution or trust company for the sole benefit of the Department. There shall be no penalty imposed by the Department for early retirement of this Loan.

#### 8.02. PROJECT RECORDS AND STATEMENTS.

Books, records, reports, engineering documents, contract documents, and papers shall be available to the authorized representatives of the Department for inspection at any reasonable time

after the Project Sponsor has received a disbursement and until five years after the Final Amendment date.

#### 8.03. ACCESS TO PROJECT SITE.

The Project Sponsor shall provide access to offices and other sites where Design Activities or Project work (if financed by this Loan) is ongoing, or has been performed, to authorized representatives of the Department at any reasonable time. The Project Sponsor shall cause its engineers and contractors to provide copies of relevant records and statements for inspection.

#### 8.04. ASSIGNMENT OF RIGHTS UNDER AGREEMENT.

The Department may assign any part of its rights under this Agreement after notification to the Project Sponsor. The Project Sponsor shall not assign rights created by this Agreement without the written consent of the Department.

#### 8.05. AMENDMENT OF AGREEMENT.

This Agreement may be amended in writing, except that no amendment shall be permitted which is inconsistent with statutes, rules, regulations, executive orders, or written agreements between the Department and the U.S. Environmental Protection Agency (EPA). A Final Amendment establishing the final costs financed by this Loan and the actual Loan Service Fee shall be completed after the Department's final inspection of relevant documents and records.

#### 8.06. ABANDONMENT, TERMINATION OR VOLUNTARY CANCELLATION.

Failure of the Project Sponsor to actively prosecute or avail itself of this Loan (including e.g. described in para 1 and 2 below) shall constitute its abrogation and abandonment of the rights hereunder, and the Department may then, upon written notification to the Project Sponsor, suspend or terminate this Agreement.

(1) Failure of the Project Sponsor to draw Loan proceeds within eighteen months after the effective date of this Agreement, or by the date set in Section 10.07 to establish the Loan Debt Service Account, whichever date occurs first.

(2) Failure of the Project Sponsor, after the initial Loan draw, to draw any funds under the Loan Agreement for twenty-four months, without approved justification or demonstrable progress on the Project.

Upon a determination of abandonment by the Department, the Loan will be suspended, and the Department will implement administrative close out procedures (in lieu of those in Section 4.02) and provide written notification of Final Unilateral Amendment to the Project Sponsor.

In the event that following the execution of this Agreement, the Project Sponsor decides not to proceed with this Loan, this Agreement can be cancelled by the Project Sponsor, without penalty, if no funds have been disbursed.



#### 8.07. SEVERABILITY CLAUSE.

If any provision of this Agreement shall be held invalid or unenforceable, the remaining provisions shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

#### 8.08. USE AS MATCHING FUNDS.

The EPA has provided a class deviation from the provisions of 40 CFR 35.3125(b)(1) to allow these second-tier funds to be used as local matching requirements for most EPA grant funded treatment works projects, including special Appropriations Act projects.

#### 8.09. PUBLIC RECORDS ACCESS.

(1) The Project Sponsor shall comply with Florida Public Records law under Chapter 119, F.S. Records made or received in conjunction with this Agreement are public records under Florida law, as defined in Section 119.011(12), F.S. The Project Sponsor shall keep and maintain public records required by the Department to perform the services under this Agreement.

(2) This Agreement may be unilaterally canceled by the Department for refusal by the Project Sponsor to either provide to the Department upon request, or to allow inspection and copying of all public records made or received by the Project Sponsor in conjunction with this Agreement and subject to disclosure under Chapter 119, F.S., and Section 24(a), Article I, Florida Constitution.

**(3) IF THE PROJECT SPONSOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROJECT SPONSOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS AT (850)245-2118, by email at [public.services@dep.state.fl.us](mailto:public.services@dep.state.fl.us), or at the mailing address below:**

**Department of Environmental Protection  
ATTN: Office of Ombudsman and Public Services  
Public Records Request  
3900 Commonwealth Blvd, MS 49  
Tallahassee, FL 32399**

#### 8.10. SCRUTINIZED COMPANIES.

(1) The Project Sponsor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Project Sponsor or its subcontractors are found to have submitted a false certification; or if the Project Sponsor, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in

the boycott of Israel during the term of the Agreement.

(2) If this Agreement is for more than one million dollars, the Project Sponsor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Project Sponsor, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Project Sponsor, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

(3) The Project Sponsor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

(4) As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

#### 8.11. SUSPENSION.

The Department may suspend any or all of its obligations to Loan or provide financial accommodation to the Project Sponsor under this Agreement in the following events, as determined by the Department:

- (1) The Project Sponsor abandons or discontinues the Project before its completion,
- (2) The commencement, prosecution, or timely completion of the Project by the Project Sponsor is rendered improbable or the Department has reasonable grounds to be insecure in Project Sponsor's ability to perform, or
- (3) The implementation of the Project is determined to be illegal, or one or more officials of the Project Sponsor in responsible charge of, or influence over, the Project is charged with violating any criminal law in the implementation of the Project or the administration of the proceeds from this Loan.

The Department shall notify the Project Sponsor of any suspension by the Department of its obligations under this Agreement, which suspension shall continue until such time as the event or condition causing such suspension has ceased or been corrected, or the Department has re-instated the Agreement.

Project Sponsor shall have no more than 30 days following notice of suspension hereunder to remove or correct the condition causing suspension. Failure to do so shall constitute a default under this Agreement.

Following suspension of disbursements under this Agreement, the Department may require reasonable assurance of future performance from Project Sponsor prior to re-instating the

Loan. Such reasonable assurance may include, but not be limited to, a payment mechanism using two party checks, escrow or obtaining a Performance Bond for the work remaining.

Following suspension, upon failure to cure, correct or provide reasonable assurance of future performance by Project Sponsor, the Department may exercise any remedy available to it by this Agreement or otherwise and shall have no obligation to fund any remaining Loan balance under this Agreement.

## ARTICLE IX – RESERVED

### ARTICLE X - DETAILS OF FINANCING

#### 10.01. PRINCIPAL AMOUNT OF LOAN.

The principal amount of the Loan is \$14,663,566, which includes \$14,370,666 to be disbursed to the Project Sponsor and \$292,900 of Capitalized Interest.

Capitalized Interest is not disbursed to the Project Sponsor, but is amortized via periodic Loan repayments to the Department as if it were actually disbursed. Capitalized Interest is computed at the interest rate, or rates, set for the Loan. It accrues and is compounded annually from the time when disbursements are made until six months before the first Semiannual Loan Payment is due. Capitalized Interest is estimated prior to establishment of the schedule of actual disbursements.

#### 10.02. LOAN SERVICE FEE.

The Loan Service Fee is estimated as \$287,413 for the Loan amount authorized to date. The fee represents two percent of the Loan amount excluding Capitalized Interest; that is, two percent of \$14,370,666. The Loan Service Fee is estimated at the time of execution of the loan agreement and shall be revised with any increase or decrease amendment. The Loan Service Fee is based on actual Project costs and will be assessed in the final Loan amendment. The Project Sponsor shall pay the Loan Service Fee from the first available repayments following the Final Amendment.

#### 10.03. INTEREST RATE.

The rate of interest on the unpaid principal of the Loan amount specified in Section 10.01 is 1.78 percent per annum. However, if this Agreement is not executed by the Project Sponsor and returned to the Department before January 1, 2023, the interest rate may be adjusted.

#### 10.04. LOAN TERM.

The Loan term shall be 10 years.

#### 10.05. REPAYMENT SCHEDULE.

Repayments shall be made semiannually (twice per year). The Semiannual Loan Payment shall be computed based upon the principal amount of the Loan plus the estimated Loan Service

Fee and the principle of level debt service. The Semiannual Loan Payment amount may be adjusted, by amendment of this Agreement, based upon revised information. After the final disbursement of Loan proceeds, the Semiannual Loan Payment shall be based upon the actual Project costs, the actual Loan Service Fee and Loan Service Fee capitalized interest, if any, and actual dates and amounts of disbursements, taking into consideration any previous payments. Actual Project costs shall be established after the Department's inspection of the completed Project and associated records. The Department will deduct the Loan Service Fee and any associated interest from the first available repayments following the Final Amendment.

Each Semiannual Loan Payment shall be in the amount of \$819,367 until the payment amount is adjusted by amendment. The interest portion of each Semiannual Loan Payment shall be computed on the unpaid balance of the principal amount of the Loan, which includes Capitalized Interest. Interest also shall be computed on the unpaid balance of the Loan Service Fee. Interest on the unpaid balance shall be computed as of the due date of each Semiannual Loan Payment.

Unless repayment is deferred by an amendment to this Agreement, Semiannual Loan Payments shall be received by the Department beginning on September 15, 2025 and semiannually thereafter on March 15 and September 15 of each year until all amounts due hereunder have been fully paid. Funds transfer shall be made by electronic means.

The Semiannual Loan Payment amount is based on the total amount owed of \$14,950,979 which consists of the Loan principal and the estimated Loan Service Fee.

10.06. PROJECT COSTS.

The Project Sponsor and the Department acknowledge that actual Project costs have not been determined as of the effective date of this Agreement. An adjustment may be made due to a reduction in the scope of work proposed for Loan funding as a result of the facilities planning process. Capitalized Interest will be recalculated based on actual dates and amounts of Loan disbursements. The final costs shall be established in the final amendment. Changes in costs may also occur as a result of the Project Sponsor's audit or the Department's audit.

The Project Sponsor agrees to the following estimates of the Project costs:

CATEGORY	PROJECT COSTS (\$)
Design Activities	14,370,666
Capitalized Interest	292,900
TOTAL (Loan Principal Amount)	<u>14,663,566</u>

10.07. SCHEDULE.

All Design Activities shall be completed no later than the completion dates set forth below to enable the Department to accept the engineering documents.

(1) This Agreement shall be effective on August 31, 2022. Invoices submitted for work conducted on or after this date shall be eligible for reimbursement.



(2) Completion of Design Activities funded by this Loan Agreement for Project facilities proposed for loan funding no later than March 15, 2025.

(3) Unless deferred by amendment, establish the Loan Debt Service Account and, to the extent not depositing all moneys received by the Project Sponsor from its members which constitute Debt Service Costs, begin Monthly Loan Deposits no later than March 15, 2025.

(4) The first Semiannual Loan Payment in the amount of \$819,367 shall be due September 15, 2025.

#### 10.08. SPECIAL CONDITION.

Prior to execution of this Agreement, a signed contract between the engineering consulting firm and the Project Sponsor with specific details of the design work to be completed must be submitted.

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ARTICLE XI - EXECUTION OF AGREEMENT

This Loan Agreement DW532002 may be executed in two or more counterparts, any of which shall be regarded as an original and all of which constitute but one and the same instrument.

IN WITNESS WHEREOF, the Department has caused this Agreement to be executed on its behalf by the Secretary or Designee and the Project Sponsor has caused this Agreement to be executed on its behalf by its Authorized Representative and by its affixed seal. The effective date of this Agreement shall be as set forth below by the Department.

for  
**POLK REGIONAL WATER COOPERATIVE**

\_\_\_\_\_  
Chairman

Attest:

I attest to the opinion expressed in  
Section 2.02, entitled Legal Authorization.

\_\_\_\_\_  
Clerk  
SEAL

\_\_\_\_\_  
Attorney

for  
**STATE OF FLORIDA**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

\_\_\_\_\_  
Secretary or Designee

\_\_\_\_\_  
Date



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**SUBJECT**

Approve the SWFWMD Cooperative Funding Agreement for the West Polk LFA Project - Action Item

**DESCRIPTION**

In 2021, the PRWC BOD ratified the submission of the Southwest Florida Water Management District (SWFWMD) Cooperative Funding Initiative application for the design, permitting and construction of the West Polk LFA Water Production Facility (WPF) and Transmission Main (TM). This application was approved by the SWFWMD for their FY2023 funding cycle. PRWC and the SWFWMD together have been developing the Cooperative Funding Agreement (CFA) for the West Polk LFA WPF and TM. This agreement would provide funding for nearly half of the project costs and would be applied as follows:

Q308 - West Polk Wellfield final design, permitting and construction:

- Total eligible project costs of \$214,104,000 (not including land and other non-reimbursable expenses)
- District share is \$107,052,000

**RECOMMENDATION**

Staff recommends approving the District CFA for the amounts stated above.

**FISCAL IMPACT**

This agreement will allow for grant disbursements to be made in the amount of up to \$107,052,000 for the West Polk LFA project.

**CONTACT INFORMATION**

Tom Mattiacci

COOPERATIVE FUNDING AGREEMENT (Type 2)  
BETWEEN THE  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT AND  
POLK REGIONAL WATER COOPERATIVE FOR  
POLK REGIONAL WATER COOPERATIVE WEST POLK WELLFIELD  
(Q308)

THIS COOPERATIVE FUNDING AGREEMENT (Agreement) is made and entered into by and between the SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, a public corporation of the State of Florida, whose address is 2379 Broad Street, Brooksville, Florida 34604-6899, hereinafter referred to as the "DISTRICT," and the POLK REGIONAL WATER COOPERATIVE, a regional water supply authority of the State of Florida, whose address is 330 West Church Street, Bartow, Florida 33831, hereinafter referred to as the "COOPERATOR."

WITNESSETH:

WHEREAS, the COOPERATOR proposed a project to the DISTRICT for funding consideration under the DISTRICT'S cooperative funding program; and

WHEREAS, the COOPERATOR is a legal entity created by an Interlocal Agreement pursuant to Sections 163.01(7)(g) and 373.713, Florida Statutes (F.S.), and is comprised of the member governments admitted to membership through the Interlocal Agreement; and

WHEREAS, the DISTRICT and the COOPERATOR entered into Cooperative Funding Agreement No. 17CF0000846 effective July 1, 2017, for design, permitting and construction of a Lower Floridan aquifer (LFA) test/production well and necessary monitoring/observation wells, aquifer yield and water quality testing, pilot testing, and the conceptual and preliminary (30%) design of an estimated 15 mgd wellfield, water treatment facility (WTF), concentrate disposal well(s) and finished water regional transmission systems, and preliminary rate analysis and a third-party review performed on the 30% design package; and

WHEREAS, the DISTRICT'S Governing Board was presented with the third-party review for the conceptual and preliminary designs on September 24, 2019 and April 26, 2022, respectively, and approved the continued funding of the West Polk Wellfield Project; and

WHEREAS, the continued project under this Agreement consists of the post-30% design services, permitting and construction of the West Polk Wellfield Project, hereinafter referred to as the "PROJECT"; and

WHEREAS, the PROJECT will be permitted and constructed in Phases as set forth in the Project Plan, with the First Phase consisting of post-30% design services, permitting and construction of the West Polk Wellfield Project with a 10 million gallons per day (MGD) capacity; and

WHEREAS, the DISTRICT considers the resource benefits to be achieved by the PROJECT worthwhile and desires to assist the COOPERATOR in funding the PROJECT.

NOW THEREFORE, the DISTRICT and the COOPERATOR, in consideration of the mutual terms, covenants and conditions set forth herein, agree as follows:



1. PROJECT CONTACTS AND NOTICES.

Each party hereby designates the individual set forth below as its prime contact for matters relating to this Agreement. Notices shall be sent to the attention of each party's prime contact as set forth herein by U.S. mail, postage paid, by nationally recognized overnight courier, or personally to the parties' addresses as set forth below. Notice is effective upon receipt.

Contract Manager for the DISTRICT:  
George A. Schlutermann, P.G., Senior Hydrogeologist  
Southwest Florida Water Management District  
2379 Broad Street  
Brooksville, Florida 34604

Project Manager for the COOPERATOR:  
Tom Mattiacci  
Polk Regional Water Cooperative  
330 West Church Street  
Bartow, Florida 33831

Any changes to the above contact information must be provided to the other party in writing.

Unless otherwise indicated in this Agreement, reports required under this Agreement may be provided to the DISTRICT'S Contract Manager via email.

- 1.1 The DISTRICT'S Contract Manager is authorized to approve requests to extend a PROJECT task deadline set forth in the Project Plan. Such approval must be in writing, explain the reason for the extension and be signed by the DISTRICT'S Contract Manager and his or her Bureau Chief, or Director if the Bureau Chief is the DISTRICT's Contract Manager, unless the DISTRICT'S Signature Authority provides otherwise. The DISTRICT'S Signature Authority supersedes the approval requirements provided in this Subparagraph. The DISTRICT'S Contract Manager is not authorized to approve any time extension which will result in an increased cost to the DISTRICT or which will exceed the expiration date set forth in this Agreement.
- 1.2 The DISTRICT'S Contract Manager is authorized to adjust a line item amount of the Project Budget set forth in the Project Plan, or, if applicable, the refined budget as set forth in Subparagraph 3.6. The authorization must be in writing, explain the reason for the adjustment, and be signed by all appropriate DISTRICT staff in accordance with the DISTRICT'S Signature Authority. The DISTRICT'S Contract Manager is not authorized to make changes to the Scope of Work and is not authorized to approve any increase in the amounts set forth in the Funding Paragraph of this Agreement.

2. SCOPE OF WORK.

Upon receipt of written notice to proceed from the DISTRICT, the COOPERATOR shall perform the services necessary to complete the PROJECT in accordance with the Project Plan. Any changes to this Agreement, except as provided herein, must be mutually agreed to in a formal written amendment approved by the DISTRICT and the COOPERATOR prior to being performed by the COOPERATOR. The COOPERATOR shall be solely responsible for managing and controlling the PROJECT, both during and after construction and during and after the operation and maintenance of the PROJECT, including the hiring and supervising of any consultants or contractors it engages.

The parties agree that time is of the essence in the performance of each obligation under this Agreement.

3. FUNDING.

The parties anticipate that the total cost of the PROJECT will be Two Hundred Fourteen Million One Hundred Four Thousand Dollars (\$214,104,000). The DISTRICT agrees to fund PROJECT costs as appropriated by the DISTRICT in accordance with Subparagraph 3.1 and anticipates funding PROJECT costs up to One Hundred Seven Million Fifty Two Thousand Dollars (\$107,052,000), subject to the subparagraphs in this Funding Paragraph, and shall have no obligation to pay any costs beyond this anticipated maximum amount. The COOPERATOR agrees to provide all remaining funds necessary for the satisfactory completion of the PROJECT.

- 3.1 The DISTRICT'S performance and payment pursuant to this Agreement are contingent upon the DISTRICT'S Governing Board appropriating funds in its approved budget for the PROJECT in each fiscal year of this Agreement. The COOPERATOR recognizes that the DISTRICT has approved \$1,064,308 for the PROJECT through Fiscal Year 2023. The additional funds identified in this Agreement are contingent upon approval of such amounts by the DISTRICT'S Governing Board, in its sole discretion, in its annual budgets for future fiscal years.
- 3.2 The DISTRICT'S performance and payment pursuant to this Agreement are contingent upon the COOPERATOR entering into an agreement to participate in the funding and development of the PROJECT (Implementation Agreement) with those member governments, who wish to be Project Participants. The Implementation Agreement shall provide that any action taken by the West Polk Wellfield Lower Floridan Aquifer Project Board must be approved by a majority vote of a quorum of the Project Board using the Weighted Vote Method, as described in said Implementation Agreement, which vote includes at least a majority of the Project Participants.
- 3.3 The COOPERATOR shall pay PROJECT costs prior to requesting reimbursement from the DISTRICT. The DISTRICT shall reimburse the COOPERATOR for the DISTRICT'S share of allowable PROJECT costs in accordance with the Project Budget set forth in the Project Plan. The DISTRICT shall reimburse the COOPERATOR for fifty percent (50%) of all allowable costs in each DISTRICT approved invoice received from the COOPERATOR after the application of outside funding in accordance with Subparagraph 3.5 and the Project Budget, but at no point in time will the DISTRICT'S expenditure amounts under this Agreement exceed expenditures made by the COOPERATOR. The parties acknowledge that the DISTRICT'S reimbursement percentage stated above is subject to change if the percentage of the DISTRICT'S anticipated funding amount is changed due to subsequent Governing Board approvals, but amounts approved by the DISTRICT in its annual budget shall not be reduced after the COOPERATOR has paid PROJECT costs of incurred obligations approved by the DISTRICT pursuant to Subparagraph 3.6 and are otherwise reimbursable by the DISTRICT under this Agreement.
- 3.4 Reimbursement for expenditures of contingency funds is contingent upon the DISTRICT'S approval and determination, in its sole discretion, that the expenditures were necessary to achieve the resource benefit of the PROJECT and were not in excess

of what was reasonably necessary to complete the PROJECT. The term “contingency funds” shall include funds that are allocated for unanticipated or extra work needed to complete the PROJECT. Items not considered for reimbursement include those unrelated to the resource benefit or resulting from design errors and defects in the work. The COOPERATOR may submit up to 5% of the anticipated total cost of the PROJECT for contingency reimbursement. The DISTRICT’S total reimbursement obligation of contingency expenses is limited to its funding percentage identified in Subparagraph 3.3. If an invoice includes expenditures of contingency funds, the COOPERATOR shall complete and submit the Contingency Funds Justification Form exhibit to explain the basis of each line item expenditure.

- 3.5 Unless otherwise provided in the Project Plan or otherwise specified by law, any federal or state appropriations or grant monies received by the COOPERATOR for the PROJECT shall be applied to equally reduce each party’s share of the PROJECT costs. Additionally, any repayment obligation on a loan obtained by the COOPERATOR for the PROJECT that is subsequently forgiven, in whole or in part, shall be applied to equally reduce each party’s share of the PROJECT costs. The COOPERATOR shall provide the DISTRICT with written documentation detailing its allocation of any such non-exempt funds appropriated for the PROJECT. If the DISTRICT provides funding for the PROJECT in excess of the DISTRICT’S share after all non-exempt federal or state appropriations or grant monies or loan forgiveness amounts have been applied as provided in this Agreement, the COOPERATOR shall promptly refund such overpaid amounts to the DISTRICT. This Subparagraph shall survive the expiration or termination of this Agreement.
- 3.6 The COOPERATOR shall comply with applicable procurement laws when procuring consultants and contractors to accomplish the PROJECT. The DISTRICT shall only be obligated to reimburse the COOPERATOR for costs incurred under contracts for PROJECT work that are included in the Project Plan and is necessary to achieve the resource benefits of the PROJECT, to be determined by the DISTRICT in its sole discretion. Additionally, the DISTRICT shall only be obligated to reimburse the COOPERATOR for costs that are reasonable, to be determined by the DISTRICT in its sole discretion. In order for the DISTRICT to make the above-determinations, the COOPERATOR shall provide all solicitations to the DISTRICT prior to posting, and contracts prior to execution, unless the solicitation has been posted or contract has been executed before the parties’ execution of this Agreement, in which case, the documents must be provided within 30 days of execution of this Agreement. The DISTRICT shall provide a written response to the COOPERATOR within thirty (30) days of receipt of the solicitation or contract. Upon written DISTRICT approval, the budget amounts for the PROJECT work set forth in a contract shall refine the Project Budget and be incorporated herein by reference. The DISTRICT shall not reimburse the COOPERATOR for costs incurred under consultant and contractor contracts until the requirements of this Subparagraph are satisfied.
- 3.7 Payment shall be made to the COOPERATOR within forty-five (45) days of receipt of an invoice with adequate supporting documentation to satisfy auditing purposes. If necessary for audit purposes, the COOPERATOR shall provide additional supporting information as required to document invoices. Invoices shall be submitted to the DISTRICT every two (2) months electronically at [invoices@WaterMatters.org](mailto:invoices@WaterMatters.org), or at the following address:

Accounts Payable Section  
Southwest Florida Water Management District  
Post Office Box 15436  
Brooksville, Florida 34604-5436

The above-referenced payment due date shall not apply to that portion of an invoice that includes expenditures of contingency funds. The DISTRICT agrees to reimburse the COOPERATOR for expenditures of contingency funds within a reasonable time to accommodate the process provided for in Subparagraph 3.4.

In addition to sending an original invoice to the DISTRICT'S Accounts Payable Section as required above, copies of invoices may also be submitted to the DISTRICT'S Contract Manager in order to expedite the review process. Failure of the COOPERATOR to submit invoices to the DISTRICT in the manner provided herein shall relieve the DISTRICT of its obligation to pay within the aforementioned timeframe.

The DISTRICT makes payments electronically through the Automated Clearing House (ACH) process. The COOPERATOR agrees to complete the DISTRICT'S *Vendor Registration Form and Vendor Electronic Payment Authorization Form* to enable payments to be sent to the COOPERATOR electronically. The forms may be downloaded from the DISTRICT'S website at [www.watermatters.org](http://www.watermatters.org) under Business & Finance – Contracts and Procurement. Any questions regarding electronic payments may be directed to the DISTRICT'S Accounts Payable Lead at 352-796-7211, extension 4108.

- 3.8 The parties acknowledge that the PROJECT was approved for funding by the DISTRICT based upon the resource benefits expected to be achieved by each PROJECT Phase (Measurable Benefit). The parties also acknowledge that the COOPERATOR is solely responsible for implementing the PROJECT in such a manner that the expected resource benefits are achieved. The COOPERATOR shall ensure that the quantities of water made available by each PROJECT Phase, identified as the Measurable Benefit in the Project Plan, are reasonably and beneficially used by the member governments before utilization of any permitted groundwater quantities from the Upper Florida aquifer. If at any point during the progression of each PROJECT Phase, the DISTRICT determines that it is likely that the Measurable Benefit for that PROJECT Phase, as set forth in the Project Plan will not be achieved, the DISTRICT shall provide the COOPERATOR with fifteen (15) days advance written notice that the DISTRICT shall withhold payments to the COOPERATOR until such time as the COOPERATOR demonstrates that the PROJECT shall achieve the required resource benefits, to provide the COOPERATOR with an opportunity to cure the deficiencies.
- 3.9 Any travel expenses which may be authorized under this Agreement shall be paid in accordance with Section 112.061, F.S., as may be amended from time to time. The DISTRICT shall not reimburse the COOPERATOR for any purpose not specifically identified in the Scope of Work Paragraph. Surcharges added to third party invoices are not considered an allowable cost under this Agreement. Costs associated with in-kind services provided by the COOPERATOR are not reimbursable by the DISTRICT and may not be included in the COOPERATOR'S share of funding contributions under this Agreement.
- 3.10 The COOPERATOR shall evaluate the cost benefit of utilizing owner direct purchases



for the PROJECT and shall advise the DISTRICT as to the reason the COOPERATOR did or did not choose to utilize owner direct purchase for major PROJECT components.

- 3.11 The DISTRICT has no obligation and shall not reimburse the COOPERATOR for any costs under this Agreement until the Notice to Proceed with construction has been issued to the COOPERATOR'S contractor.
- 3.12 Each COOPERATOR invoice must include the following certification, and the COOPERATOR hereby delegates authority by virtue of this Agreement to its Project Manager to affirm said certification:

"I hereby certify that the costs requested for reimbursement and the COOPERATOR'S matching funds, as represented in this invoice, are directly related to the performance under the Polk Regional Water Cooperative West Polk Wellfield (Q308) agreement between the Southwest Florida Water Management District and the Polk Regional Water Cooperative (Agreement No. 23CF0004097), are allowable, allocable, properly documented, and are in accordance with the approved Project Budget. This invoice includes \$\_\_\_\_\_ of contingency funds expenditures. The COOPERATOR has been allocated a total of \$\_\_\_\_\_ in non-exempt federal or state appropriations, or grant monies, as specified in Subparagraph 3.5, for the PROJECT (not including DISTRICT funds) and \$\_\_\_\_\_ has been allocated to this invoice, reducing the DISTRICT'S and COOPERATOR'S share to \$\_\_\_\_\_/ \$\_\_\_\_\_ respectively."

- 3.13 In the event any dispute or disagreement arises during the course of the PROJECT, including whether expenses are reimbursable under this Agreement, the COOPERATOR will continue to perform the PROJECT work in accordance with the Project Plan. The COOPERATOR is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute by providing the details and basis of the dispute to the DISTRICT'S Contract Manager no later than ten (10) days after the precipitating event. If not resolved by the DISTRICT'S Contract Manager, in consultation with his or her Bureau Chief, within ten (10) days of receipt of notice, the dispute will be forwarded to the DISTRICT'S Assistant Executive Director. The DISTRICT'S Assistant Executive Director in consultation with the DISTRICT'S Office of General Counsel will issue the DISTRICT'S final determination. The COOPERATOR'S continuation of the PROJECT work as required under this Subparagraph shall not constitute a waiver of any legal remedy available to the COOPERATOR concerning the dispute.

#### 4. COMPLETION DATES.

The COOPERATOR shall commence and complete the PROJECT in phases and meet the task deadlines for each phase in accordance with the Project Schedule set forth in the Project Plan, including any extensions of time provided by the DISTRICT in accordance with Subparagraph 1.1. In the event of hurricanes, tornados, floods, acts of God, acts of war, or other such catastrophes, or other man-made emergencies such as labor strikes or riots, which are beyond the control of the COOPERATOR, the COOPERATOR'S obligations to meet the time frames provided in this Agreement shall be suspended for the period of time the condition continues to exist. During such suspension, this Agreement shall remain in effect. When the COOPERATOR is able to resume performance of its obligations under this Agreement, in whole or in part, it shall immediately give the DISTRICT written notice to that effect and shall resume performance no later than two (2) business days after the notice is delivered. The suspension of the COOPERATOR'S obligations provided for in this Paragraph shall be the COOPERATOR'S sole

remedy for the delays set forth herein.

## 5. REPAYMENT.

- 5.1 The COOPERATOR shall repay the DISTRICT all funds the DISTRICT paid to the COOPERATOR under this Agreement, if: a) the COOPERATOR fails to complete the PROJECT in accordance with the terms and conditions of this Agreement, including failing to achieve the Measurable Benefit for each PROJECT Phase; b) the DISTRICT determines, in its sole discretion and judgment, that the COOPERATOR has failed to maintain scheduled progress of the PROJECT thereby endangering the timely performance of this Agreement; c) the COOPERATOR fails to appropriate sufficient funds to meet the task deadlines, unless extended in accordance with Subparagraph 1.1; or d) a Paragraph or Paragraphs of this Agreement setting forth the requirements or expectations of a Measurable Benefit resulting from the PROJECT is held to be invalid, illegal or unenforceable during the term of this Agreement, including the duration of the operation and maintenance obligations set forth in this Agreement. Should any of the above conditions exist that require the COOPERATOR to repay the DISTRICT, this Agreement shall terminate in accordance with the procedure set forth in the Default Paragraph.
- 5.2 Notwithstanding the above, the parties acknowledge that if a PROJECT Phase fails to achieve the Measurable Benefit set forth in the Project Plan, the COOPERATOR may request the DISTRICT Governing Board to waive the repayment obligation, in whole or in part.
- 5.3 In the event the COOPERATOR is obligated to repay the DISTRICT under any Paragraph of this Agreement, the COOPERATOR shall repay the DISTRICT within a reasonable time, as determined by the DISTRICT in its sole discretion.
- 5.4 The COOPERATOR shall reimburse the DISTRICT for all reasonable attorneys' fees and costs, incurred by the DISTRICT, including appeals, as a result of the COOPERATOR'S failure to repay the DISTRICT as required by this Agreement.
- 5.5 This Repayment Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.

## 6. OPERATION AND MAINTENANCE.

After construction is completed, the COOPERATOR shall own, operate, use and maintain each PROJECT Phase in such a manner that the Measurable Benefit for such PROJECT Phase required under this Agreement is maintained until the PROJECT Phase can be no longer be used without replacement or expansion, except during routine maintenance as described in the operation and maintenance plan or adverse short-term conditions beyond the control of the COOPERATOR, as determined by the DISTRICT in its sole discretion. The COOPERATOR shall provide written notice to the DISTRICT of any routine maintenance or adverse short-term conditions and the COOPERATOR'S plan to return the PROJECT Phase to full operation. The COOPERATOR shall not sell, lease, or dispose of any part of the PROJECT unless the written consent of the DISTRICT is first secured. In the event the PROJECT is not owned, operated, used and maintained in accordance with these requirements, the COOPERATOR shall repay the DISTRICT the percentage of the PROJECT benefits not utilized, as determined by the DISTRICT in its sole discretion. If the COOPERATOR ceases to operate and maintain the PROJECT, the COOPERATOR shall repay the DISTRICT, a pro-rated payment equivalent to

the percentage of the total DISTRICT monies contributed to the PROJECT for the PROJECT benefits not achieved. The rights and remedies in this Paragraph are in addition to any other rights and remedies provided by law or this Agreement.

- 6.1 Within one hundred and eighty (180) days after construction of a PROJECT Phase is completed, the COOPERATOR shall provide the DISTRICT with construction record drawings, signed and sealed by a professional engineer, certifying that the Measurable Benefit for that PROJECT Phase has been achieved. The COOPERATOR shall provide the DISTRICT with an operation and maintenance plan that ensures the Measurable Benefit for that PROJECT Phase will be maintained. Every two (2) years following the completion of the PROJECT, the COOPERATOR shall generate a report describing the operations and maintenance activities that took place during the reporting period that certifies that the Measurable Benefit for the PROJECT Phase set forth in the Project Plan has been maintained. The COOPERATOR'S obligation to generate reports shall continue until the PROJECT can be no longer used without replacement or expansion.
- 6.2 The DISTRICT retains the right to audit any certification and the COOPERATOR shall provide documentation as requested by the DISTRICT to support its certification that the specified Measurable Benefit has been maintained.
- 6.3 This Operation and Maintenance Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.

## 7. CONTRACT PERIOD.

This Agreement shall be effective October 1, 2022, and shall remain in effect through December 31, 2041, or upon satisfactory completion of all PROJECT Phases and subsequent reimbursement to the COOPERATOR, whichever occurs first, unless amended in writing by the parties. The COOPERATOR shall not be eligible for reimbursement for any work that is commenced, or costs that are incurred, prior to the effective date of this Agreement.

## 8. PROJECT RECORDS AND DOCUMENTS.

Upon request by the DISTRICT, the COOPERATOR shall permit the DISTRICT to examine or audit all PROJECT related records and documents during or following completion of the PROJECT at no cost to the DISTRICT. These records shall be available at all reasonable times for inspection, review, or audit. "Reasonable" shall be construed according to circumstances, but ordinarily shall mean normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday. The COOPERATOR shall similarly require its consultants and contractors to maintain and allow access to such records for inspection, review, or audit purposes. Payments made to the COOPERATOR under this Agreement shall be reduced for amounts found to be not allowable under this Agreement by an audit. If an audit is undertaken by either party, all required records shall be maintained until the audit has been completed and all questions arising from it are resolved. Each party shall maintain all such records and documents for at least five (5) years following completion of the PROJECT. If an audit has been initiated and audit findings have not been resolved at the end of the 5 years, the records shall be retained until resolution of audit findings, which would include an audit follow-up by the inspector general if the findings result from an external auditor, or any litigation. The COOPERATOR understands and will comply with its duty, pursuant to Section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The COOPERATOR shall similarly require its consultants and contractors to comply with their duty pursuant to Section 20.055(5), F.S., to cooperate with

the inspector general in any investigation, audit, inspection, review, or hearing. Each party shall comply with Chapter 119, F.S., the Public Records Act, including allowing public access to PROJECT documents and materials made or received by either party. Should either party assert any exemption to the requirements of Chapter 119, F.S., the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the asserting party. This Paragraph shall survive the expiration or termination of this Agreement.

## 9. REPORTS.

9.1 The COOPERATOR shall provide the DISTRICT with a quarterly report describing the progress of the PROJECT tasks, adherence to the Project Schedule and any developments affecting the PROJECT. The COOPERATOR shall promptly advise the DISTRICT of issues that arise that may impact the successful and timely completion of the PROJECT. Quarterly reports shall be submitted to the DISTRICT'S Contract Manager no later than forty-five (45) days following the completion of the quarterly reporting period. It is hereby understood and agreed by the parties that the term "quarterly" shall reflect the calendar quarters ending March 31, June 30, September 30 and December 31.

9.2 Upon request by the DISTRICT, the COOPERATOR shall provide the DISTRICT with copies of all data, reports, models, studies, maps or other PROJECT-related documents. Additionally, one (1) set, electronic and hardcopy, of any final reports must be submitted to the DISTRICT as Record and Library copies. This Subparagraph shall survive the expiration or termination of this Agreement.

9.3 The COOPERATOR shall provide the DISTRICT with the final design drawings, including supporting documentation for review by the DISTRICT in order for the DISTRICT to verify that the design meets the requirements of the PROJECT as set forth in the Project Plan. The DISTRICT shall provide a written response to the COOPERATOR within fourteen (14) days of receipt of the design drawings and supporting documentation either verifying the design drawings appear to meet the requirements of this Agreement or stating its insufficiencies. The COOPERATOR shall not advertise the construction bid documents until the DISTRICT provides the required verification. The DISTRICT'S verification shall not constitute an approval of the design, or a representation or warranty that the DISTRICT has verified the architectural, engineering, mechanical, electrical, or other components of the construction bid documents or that such documents are in compliance with DISTRICT rules and regulations or any other applicable rules, regulations or law. The COOPERATOR shall require the design professional to warrant that the construction bid documents are adequate for bidding and construction of the PROJECT.

9.4 The COOPERATOR shall provide the data, reports and documents referenced in this Paragraph at no cost to the DISTRICT.

## 10. RISK, LIABILITY, AND INDEMNITY.

10.1 To the extent permitted by Florida law, the COOPERATOR assumes all risks relating to the PROJECT and agrees to be solely liable for, and to indemnify and hold the DISTRICT harmless from all claims, loss, damage and other expenses, including attorneys' fees and costs and attorneys' fees and costs on appeal, arising from the design, construction, operation, maintenance or implementation of the PROJECT; provided, however, that the



COOPERATOR shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the DISTRICT'S officers, employees, contractors and agents. The acceptance of the DISTRICT'S funding by the COOPERATOR does not in any way constitute an agency relationship between the DISTRICT and the COOPERATOR.

- 10.2 The COOPERATOR agrees to indemnify and hold the DISTRICT harmless, to the extent allowed under Section 768.28, F.S., from all claims, loss, damage and other expenses, including attorneys' fees and costs and attorneys' fees and costs on appeal, arising from the negligent acts or omissions of the COOPERATOR'S officers, employees, contractors and agents related to its performance under this Agreement.
- 10.3 This Risk, Liability, and Indemnity Paragraph, including all subparagraphs, shall not be construed as a waiver of the COOPERATOR'S sovereign immunity or an extension of the COOPERATOR'S liability beyond the limits established in Section 768.28, F.S. Additionally, this Risk, Liability, and Indemnity Paragraph, including all subparagraphs, will not be construed to impose contractual liability on the COOPERATOR for underlying tort claims as described above beyond the limits specified in Section 768.28, F.S., nor be construed as consent by the COOPERATOR to be sued by third parties in any manner arising out of this Agreement.
- 10.4 Nothing in this Agreement shall be interpreted as a waiver of the DISTRICT'S sovereign immunity or an extension of its liability beyond the limits established in Section 768.28, F.S., nor be construed as consent by the DISTRICT to be sued by third parties in any manner arising out of this Agreement.
- 10.5 This Risk, Liability, and Indemnity Paragraph, including all subparagraphs, shall survive the expiration or termination of this Agreement.

## 11. DEFAULT.

Either party may terminate this Agreement upon the other party's failure to comply with any term or condition of this Agreement, including the failure to meet task deadlines established in this Agreement, as long as the terminating party is not in default of any term or condition of this Agreement at the time of termination. To effect termination, the terminating party shall provide the defaulting party with a written "Notice of Termination" stating its intent to terminate and describing all terms and conditions with which the defaulting party has failed to comply. If the defaulting party has not remedied its default within thirty (30) days after receiving the Notice of Termination, this Agreement shall automatically terminate. If a default cannot reasonably be cured in thirty (30) days, then the thirty (30) days may be extended at the non-defaulting party's discretion, if the defaulting party is pursuing a cure of the default with reasonable diligence. The rights and remedies in this Paragraph are in addition to any other rights and remedies provided by law or this Agreement.

## 12. RELEASE OF INFORMATION.

The parties agree not to initiate any oral or written media interviews or issue press releases on or about the PROJECT without providing notices or copies to the other party no later than three (3) business days prior to the interview or press release. This Paragraph shall not be construed as preventing the parties from complying with the public records disclosure laws set forth in Chapter 119, F.S.

13. DISTRICT RECOGNITION.

The COOPERATOR shall recognize DISTRICT funding in any reports, models, studies, maps or other documents resulting from this Agreement, and the form of said recognition shall be subject to the DISTRICT'S approval. If construction is involved, the COOPERATOR shall provide signage at the PROJECT site that recognizes the DISTRICT'S funding for the PROJECT. All signage must receive the DISTRICT'S written approval as to form, content and location, and must be in accordance with local sign ordinances.

14. PERMITS AND REAL PROPERTY RIGHTS.

The COOPERATOR shall obtain all permits, local government approvals, and real property rights necessary to complete each PROJECT Phase prior to commencing any construction involving said PROJECT Phase. The COOPERATOR shall be the applicant for all water use permits required to implement and maintain the PROJECT. The COOPERATOR may not assign, transfer, sell, or lease any of the permits, local government approvals, or real property interests necessary to own, operate, and maintain a PROJECT Phase. The DISTRICT shall have no obligation to reimburse the COOPERATOR for any costs associated with a PROJECT Phase until the COOPERATOR has obtained all permits, approvals, and property rights necessary to accomplish the objectives of the PROJECT Phase. In the event a permit, approval or property right is not obtained, obtained but is subsequently subject to a legal challenge that results in an unreasonable delay or cancellation of a PROJECT Phase, as determined by the DISTRICT in its sole discretion, the COOPERATOR shall repay the DISTRICT all monies contributed to that PROJECT Phase. This Paragraph shall survive the expiration or termination of this Agreement.

15. LAW COMPLIANCE.

The COOPERATOR shall comply with all applicable federal, state and local laws, rules, regulations and guidelines, including those of the DISTRICT, related to performance under this Agreement, including but not limited to the American Water Infrastructure Act of 2018, as they may be amended from time to time This Paragraph shall survive the expiration or termination of this Agreement.

16. DIVERSITY IN CONTRACTING AND SUBCONTRACTING.

The DISTRICT is committed to supplier diversity in the performance of all contracts associated with DISTRICT cooperative funding projects. The DISTRICT requires the COOPERATOR to make good faith efforts to encourage the participation of minority owned and woman owned and small business enterprises, both as prime contractors and subcontractors, in the performance of this Agreement, in accordance with applicable laws.

16.1 If requested, the DISTRICT shall assist the COOPERATOR by sharing information to help the COOPERATOR in ensuring that minority owned and woman owned and small businesses are afforded an opportunity to participate in the performance of this Agreement.

16.2 The COOPERATOR agrees to provide the DISTRICT with a report indicating all contractors and subcontractors who performed work in association with the PROJECT, the amount spent with each contractor or subcontractor, and to the extent such

information is known, whether each contractor or subcontractor was a minority owned or woman owned or small business enterprise. If no minority owned or woman owned or small business enterprises were used in the performance of this Agreement, then the report shall so indicate. The Minority/Women Owned and Small Business Utilization Report form is attached as an exhibit. The report is required upon final completion of the PROJECT prior to final payment, or within thirty (30) days of the execution of any amendment that increases PROJECT funding, for information up to the date of the amendment and prior to the disbursement of any additional funds by the DISTRICT.

17. ASSIGNMENT.

Except as otherwise provided in this Agreement, no party may assign any of its rights or delegate any of its obligations under this Agreement, including any operation or maintenance duties related to the PROJECT, without the prior written consent of the other party. Any attempted assignment in violation of this Paragraph is void. This Paragraph shall survive the expiration or termination of this Agreement.

18. CONTRACTORS.

Nothing in this Agreement shall be construed to create, or be implied to create, any relationship between the DISTRICT and any consultant or contractor of the COOPERATOR.

19. THIRD PARTY BENEFICIARIES.

Nothing in this Agreement shall be construed to benefit any person or entity not a party to this Agreement.

20. LOBBYING PROHIBITION.

Pursuant to Section 216.347, F.S., the COOPERATOR is prohibited from using funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or a state agency.

21. PUBLIC ENTITY CRIMES.

Pursuant to Subsections 287.133(2) and (3), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for Category Two, for a period of 36 months following the date of being placed on the convicted vendor list. The COOPERATOR agrees to include this Paragraph in all contracts issued as a result of this Agreement.

22. COMPENSATORY TREATMENT MITIGATION

The PROJECT shall not be used by the COOPERATOR or any other entity as compensatory

water quality treatment or wetland mitigation, or any other required mitigation due to impacts for any projects. In the event the PROJECT is used for compensatory water quality treatment or mitigation in violation of this Paragraph, the COOPERATOR shall repay the DISTRICT all funds the DISTRICT paid to the COOPERATOR under this Agreement. The PROJECT can be used for self-mitigation due to impacts specifically associated with the construction of the PROJECT. This Paragraph shall survive the expiration or termination of this Agreement.

23. GOVERNING LAW.

This Agreement is governed by Florida law and venue for resolving disputes under this Agreement shall be exclusively in Hillsborough County, Florida. This Paragraph shall survive the expiration or termination of this Agreement.

24. SEVERABILITY.

If any Paragraph or Paragraphs of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining Paragraphs shall not in any way be affected or impaired thereby. Notwithstanding the above, if a Paragraph or Paragraphs of this Agreement setting forth the requirements or expectations of a Measurable Benefit resulting from a PROJECT Phase is held to be invalid, illegal or unenforceable during the term of this Agreement, this Agreement shall terminate in accordance with Subparagraph. This Paragraph shall survive the expiration or termination of this Agreement.

25. COUNTERPARTS.

The parties may execute this Agreement, and any amendments related to this Agreement, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and will have the same force and effect as a written signature.

26. ENTIRE AGREEMENT.

This Agreement and the attached exhibit(s) listed below constitute the entire agreement between the parties and, unless otherwise provided herein, may be amended only in writing, signed by all parties to this Agreement.

27. DOCUMENTS.

The following document(s) is/are attached and made a part of this Agreement. In the event of a conflict of contract terminology, priority shall first be given to the language in the body of this Agreement, then to Exhibit "A", then to Exhibit "B", and then to Exhibit "C".

- Exhibit "A" Project Plan
- Exhibit "B" Minority/Women Owned and Small Business Utilization Report Form
- Exhibit "C" Contingency Funds Justification Form



IN WITNESS WHEREOF, the parties hereto, or their lawful representatives, have executed this Agreement on the day and year set forth next to their signatures below.

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

By: \_\_\_\_\_  
Amanda Rice, P.E. Date  
Assistant Executive Director

POLK REGIONAL WATER COOPERATIVE

By: \_\_\_\_\_  
Date  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Authorized Signatory

By: \_\_\_\_\_  
Date  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Authorized Signatory

COOPERATIVE FUNDING AGREEMENT (Type 2)  
BETWEEN THE  
SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT AND  
POLK REGIONAL WATER COOPERATIVE FOR  
POLK REGIONAL WATER COOPERATIVE WEST POLK WELLFIELD (Q308)

Exhibit A  
Southwest Florida Water Management District  
Project Plan

**PROJECT DESCRIPTION**

The Project is for the final design, permitting, and construction of a water production facility (WPF), wellfield and raw water transmission main to the WTP, concentrate disposal well(s), and finished water transmission mains. The WP preliminary design includes a 2.5 MGD reverse osmosis water production facility and transmission system to PRWC member utilities with a buildout capacity of 10 MGD. The general location of the Project is shown on the attached map (Figure 1).

The Project will provide a base amount of alternative water supply for use by participating member government of the Cooperator. The finished product water will meet all applicable drinking water standards and will be delivered to members by the West Polk WPF and transmission system.

The Project will be developed with an initial 2.5 mgd finished water capacity (Initial Phase) and up to three expansion phases creating 10.0 mgd finished water capacity at buildout. The Task Schedule of this Project Plan primarily defines the task of the Initial Phase. It is anticipated that the Cooperator and the District will amend the Agreement to define additional tasks for the expansion phases on a schedule necessary to meet future water demands and protect water resources. The Initial Phase shall support the expansion of the Project to the 10.0 mgd finished water capacity by the build-out date provided in the Task Schedule.

**MEASURABLE BENEFIT**

The construction of an alternative supply project providing 2.5 mgd at initial phase and 10.0 mgd at buildout for use by the Cooperator's participating member governments to reduce stress on the Upper Floridan aquifer. Construction will be done in accordance with permitted plans. The Project will provide a base supply to the Cooperator's member governments that is at least 80% of the design capacity of each completed phase, calculated as annual average deliveries per calendar year.

**PROJECT TASKS**

Key tasks to be performed by the Cooperator:

1. **PROGRAM MANAGEMENT** – The Cooperator shall provide the necessary services such as hydraulic modeling, public outreach, and financing support necessary to complete the design and construction of the project.
2. **DESIGN AND PERMITTING** – The Cooperator shall provide the necessary engineering services to develop the 60% design drawings, specifications, and estimated bidding budget; 90% and 100% design drawings and specifications; opinion of probable cost; value engineering including the maximization of owner direct purchase savings; measurable benefit calculations and methodology, and other technical specifications for construction.

The Cooperator shall prepare and submit all necessary permit applications and obtain necessary approvals. The permits may include but are not limited to the underground injection control (UIC) permit and testing plan, environmental resource permits, public water supply construction permit, national pollutant discharge elimination system (NPDES) permit, Department of Transportation approvals, City of Lakeland and/or Polk County site plan approvals, and well construction.

3. **CMAR PRECONSTRUCTION SERVICES, CONSTRUCTION BIDDING, AND AWARD OF CONTRACTS** – The COOPERATOR shall procure a Construction Manager at Risk (CMAR) to perform work and furnish labor and materials to construct the Initial Phase of the Project. The CMAR may assist the Cooperator with the Task 1 Design phase under a pre-construction service fixed fee.

The CMAR shall develop a Guaranteed Maximum Price (GMP) including a detailed supporting cost breakdown of construction trade elements. All GMP trade elements will be competitively bid by qualified subcontractors. The CMAR may self-perform work if won by participating in subcontractor bids. The Cooperator shall identify the cost items for which reimbursement will be requested from the District prior to the Cooperator's acceptance of the GMP.

4. CONSTRUCTION – The Cooperator shall construct the Project Initial Phase in conformance with the final design drawings, specifications, and approved permits. The Cooperator will hold monthly construction meetings with the CMAR, engineers, and Project Managers to discuss the schedule progress and look-ahead, material deliveries and lead-in times, problems encountered and recommended solutions and other related issues. The Cooperator shall perform operational/acceptance testing. The construction of the Injection Well is necessary for UIC testing and permitting, and therefore must be conducted before the general construction services notice to proceed. Injection Well construction services may be reimbursable prior to general construction but will not initiate payment of design services as defined in Subparagraph 3.11 of the Agreement.
5. CONSTRUCTION ENGINEERING AND CERTIFICATE OF SUBSTANTIAL COMPLETION – The Cooperator shall review all shop drawings, provide construction administrative services with a resident project representative on site for construction observation, log and respond to contractor information requests, document any change order allowances, and monitor all phases of construction to give reasonable assurance that the construction work conforms to the permitted drawings and design specifications. The Cooperator shall provide the District with inspection documents and photographs, if requested. The Cooperator shall obtain a Certificate of Substantial Completion, signed by the Cooperator, CMAR, and the professional engineer.
6. AS-BUILT SURVEY, RECORD DRAWINGS, ASSET MANAGEMENT PLAN, AND OPERATING PROTOCOL – The COOPERATOR shall obtain and provide to the District, the As-Built Surveys signed and sealed and certified by a licensed Florida professional surveyor, the Record Drawings signed and sealed by a professional engineer, and the Cooperator shall prepare O&M manuals for the facilities and transmission system and prepare an Asset Management inventory.
7. EXPANSION PHASE PLANNING – Near completion of the Initial Phase of construction, the Cooperator will assess the customer demands, the facility performance, and environmental conditions, and prepare a Facility Expansion Plan outlining the schedule, phasing, design updates, and probable costs for additional raw water wells, raw water transmission mains and to expand the Water Production Facility and Transmission System to the build-out capacity defined in the Measurable Benefit. The Facility Expansion Plan will support multi-year cooperative funding requests and Project Plan amendments to define expansion phases.
8. PROJECT BUILDOUT IMPLEMENTATION BUDGET – It is anticipated that the Cooperator and the District will amend the Agreement to include additional tasks to implement the expansion phases of the Project and develop the build-out finished water capacity defined in the Measurable Benefit, as outlined in the Facility Expansion Plan. The Buildout Implementation task budget and schedule define the anticipated budget and timeline for the expansion phases, based on 2021 dollars, as identified in the preliminary design. District Governing Board approval is required to reallocate and spend the Buildout Implementation Budget.

#### **OPERATION AND MAINTENANCE**

The Cooperator shall provide for the operation and maintenance of each completed Project Phase to ensure each Project phase functions in accordance with the design expectations and conforms to all the conditions specified in the environmental and water use permits issued for the Project. The Cooperator shall be responsible for all operation and maintenance requirements in all permits issued for the Project. The Cooperator may contractually outsource the operation and maintenance services of the Water

Production Facility and Transmission System to a qualified public utility, with District approval. The Cooperator shall prepare an Operation and Maintenance Plan detailing the inspection and maintenance activities to ensure optimum performance of the Project improvements.

**DELIVERABLES**

- Final design drawings (to verify design meets requirements of executed Project Plan)
- Engineers Estimate of Probable Construction Cost at 60% and 90% design and CMAR Guaranteed Maximum Price estimate
- CMAR Contract
- Draft and final reports for Injection Well Study
- Copies of the permit application or modification packages prepared, and permits received.
- CMAR subcontractor qualifications, trade and material bid approvals, and list of cost items for reimbursement review
- Construction phase meeting materials and schedule updates
- Operation and Maintenance Plan
- Asset Management Inventory
- As-Built Survey, Record Drawings, and Certificates of Substantial Completion
- Facility Expansion Plan

**DELIVERABLES FOR DISTRICT COMMENT**

- CMAR Guaranteed Maximum Price estimate
- List of construction cost items for which reimbursement will be requested
- Guaranteed Maximum Price Statement
- Subcontractor bid items to be self-performed by CMAR (if any)
- Contract for outsourcing facility operation and maintenance (if any)
- Facility Expansion Plan

**PROJECT SCHEDULE**

DESCRIPTION	COMMENCE	COMPLETE
Program Management	10/1/2022	8/31/2028
Design and Permitting	10/1/2022	11/26/2025
CMAR Preconstruction Services, Construction Bidding, and Award of Contracts	10/1/2022	2/24/2026
Construction (Injection Well and Initial Phase)	4/25/2026	6/30/2028
Construction Engineering & Certificate of Substantial Completion	4/25/2026	6/30/2028
As-Built Survey, Record Drawings, Asset Management Plan and Operating Protocol	1/1/2028	12/31/2028
Expansion Phase Planning	1/1/2028	12/31/2028
Project Buildout Implementation Budget	7/1/2028	9/30/2040

Additional task deadlines contained in the performance schedules of the consultant and contractor contracts will be incorporated herein by reference.



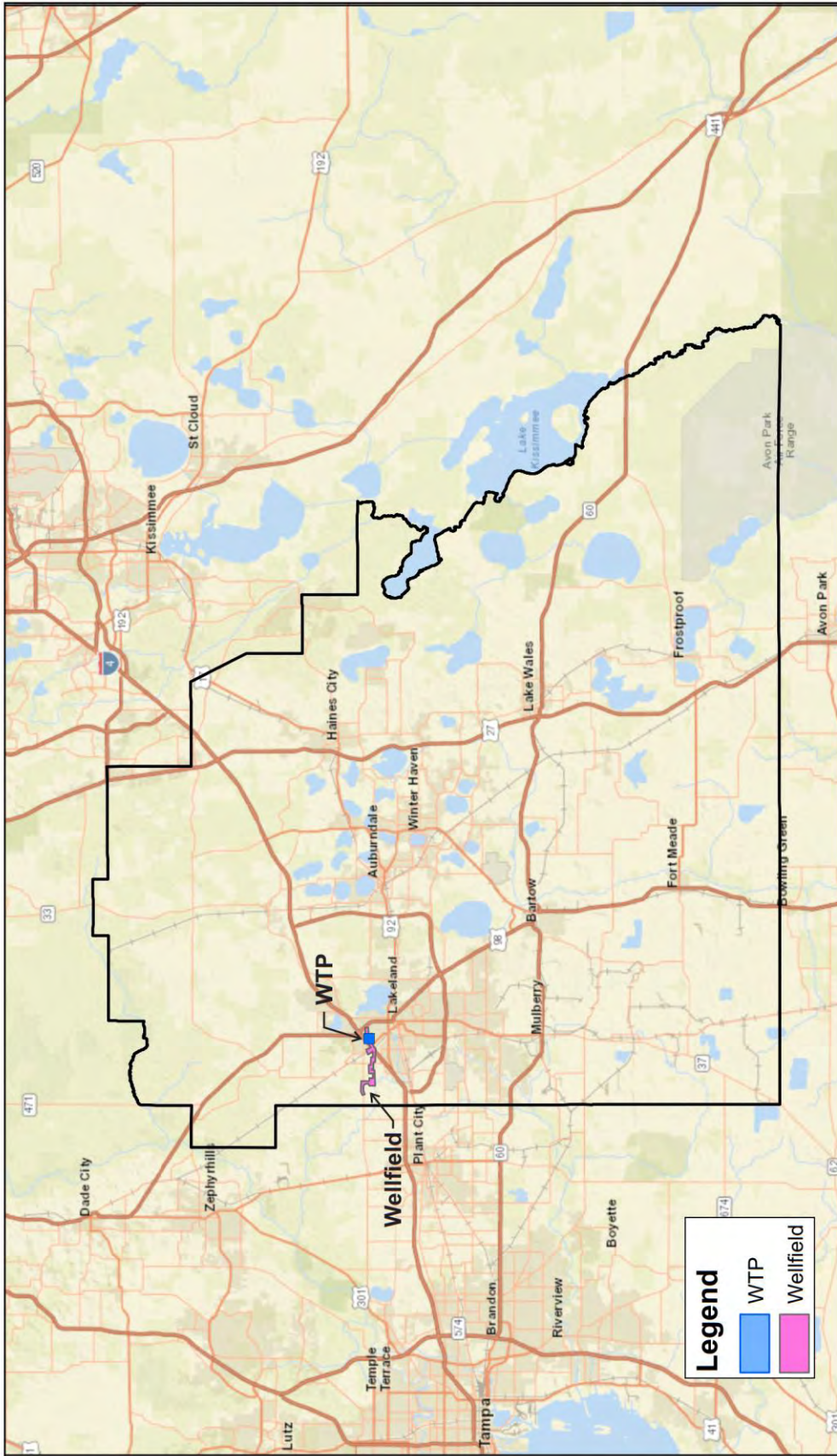
**PROJECT BUDGET**

DESCRIPTION	DISTRICT	COOPERATOR	TOTAL
Program Management	\$1,934,965	\$1,934,965	\$3,869,930
Design and Permitting	\$6,002,692	\$6,002,692	\$12,005,384
CMAR Preconstruction Services	\$150,000	\$150,000	\$300,000
Construction (Injection Well and Initial Phase)	\$47,203,448	\$47,203,448	\$94,406,896
Construction Engineering & Certificate of Substantial Completion	\$3,412,073	\$3,412,073	\$6,824,146
As-Built Survey, Record Drawings & Asset Management Plan and Operating Protocol	\$736,822	\$736,822	\$1,473,644
Expansion Phase Planning Budget	\$0	\$0	\$0
Project Buildout Implementation Budget*	\$47,612,000	\$47,612,000	\$95,224,000
<b>TOTAL</b>	<b>\$107,052,000</b>	<b>\$107,052,000</b>	<b>\$214,104,000</b>

\*Budget is reserved for additional Project phases. District Governing Board approval is required to reallocate and spend the Buildout Implementation Budget.

Reimbursement for expenditures of contingency funds is contingent upon District approval in accordance with Subparagraph 5.3 of Exhibit A. The Cooperator must complete one Contingency Funds Justification Form, attached to this Agreement, per contingency line item requested for District reimbursement.

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Drawn: 9/22/2022  
 Source: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, OpenStreetMap contributors, and the GIS User Community



WSP USA, Inc.  
 2020 N. WESTSHORE BLVD  
 SUITE 300  
 WEST PALM BEACH, FL 33411  
 TEL: +1 561 831 4444

WEST POLK WELLFIELD WUP APPLICATION  
 POLK COUNTY, FLORIDA  
 PREPARED FOR  
 POLK REGIONAL WATER COOPERATIVE

FIGURE 3

WEST POLK WELLFIELD  
 ALIGNMENT PHASED

THE ORIGINAL VERSION OF THIS DRAWING IS IN COLOR.  
 BLACK AND WHITE COPIES MAY NOT ACCURATELY DEPICT  
 CERTAIN INFORMATION.  
 NOTICE: THIS DRAWING HAS BEEN PREPARED UNDER THE  
 DIRECTION OF A PROFESSIONAL DO NOT ALTER THIS  
 DRAWING WITHOUT THE WRITTEN  
 CONSENT OF WSP USA, INC.

**Exhibit B**  
**Southwest Florida Water Management District**  
**Minority/Women Owned and Small Business Utilization Report**

Projects receiving \$100,000 or more in cooperative funding from the Southwest Florida Water Management District require the submission of the following information within 30 days of any amendment increasing project funding and with the final invoice. Questions regarding use of this form should be directed to Procurement Services Office, Phone (352) 505-2970.

COOPERATOR: _____  AGREEMENT NO.: _____  PROJECT NAME: _____  TOTAL PROJECT COST: _____		INDICATE THE ONE CATEGORY THAT BEST DESCRIBES EACH ORGANIZATION LISTED*											
		BUSINESS CLASSIFICATION		CERTIFIED MBE					NON-CERTIFIED MBE				UNKNOWN
		NON-MINORITY	SMALL BUSINESS Section 288.703(1) F.S.	AFRICAN AMERICAN	HISPANIC AMERICAN	ASIAN/HAWAIIAN AMERICAN	NATIVE AMERICAN	AMERICAN WOMAN	AFRICAN AMERICAN	HISPANIC AMERICAN	ASIAN/HAWAIIAN AMERICAN	NATIVE AMERICAN	AMERICAN WOMAN
NAMES OF CONTRACTORS AND SUBCONTRACTORS UTILIZED	TOTAL AMOUNT PAID												

\*  Our organization does not collect minority status data.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print Name and Title

Exhibit C  
Southwest Florida Water Management District  
Cooperative Funding Construction Contingency Justification

Submit ONE form per contingency line item requested for District reimbursement

Project Name:  
District Project Number:  
Cooperator:  
Contract Number:  
Contingency Request Number:

Awarded Construction Contract Total (\$):  
Contingency Amount Requested (\$):

Cumulative Contingency Amount Authorized to date (\$): Total Cumulative Contract Price Including this Request (\$): Maximum contingency eligible for reimbursement (\$):

up to 5% (2.5% District portion)

Contingency Request Description:

Contingency Line Item Justification<sup>1</sup>:



Cooperative Funding Resource Benefit<sup>2</sup>:

Cost/Negotiation Description<sup>3</sup>:

I hereby certify that this contingency request is necessary for the resource benefit required under the cooperative agreement and scope and costs were negotiated in good faith.

Contract Manager or Engineer of Record

Date

<sup>1</sup> Justification must document the need for the contingency line item, the circumstances under which the need was discovered, and why the item was not included within the original project scope. The District may deny reimbursement for additional costs due to design errors, rework and defects in the work. ALTERNATE LANGUAGE: The District may deny reimbursement for additional costs resulting from delays, inefficiencies, rework or extra work.

<sup>2</sup> Describe why the contingency line item is needed to fulfill the resource benefit required under the cooperative agreement.

<sup>3</sup> Costs need to be justified and demonstrated to be reasonable. Provide unit price comparison, or recent competitive cost proposals, RS Means or FDOT cost data. Attach backup documentation. If no price comparisons or competitive quotes can be provided, a certification from the Engineer of Record or appropriate Professional Engineer stating that the cost is reasonable may be considered. The certification method is not preferred and will require justification that other methods were not available.



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Agenda Item I.4.

1/18/2023

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## SUBJECT

Approval to Defer the Determination of Final Points of Connection for the West Polk Project - Action Item

## DESCRIPTION

Section 12.1 of the July 13, 2022 Second Amended and Restated Implementation Agreement requires that the Points of Connection (POC's) and the location of meters used for the delivery of Project Water to the Project Participants be identified by the Cooperative no later than January 1, 2023. Because the final design of the West Project has just begun, the Cooperative have not identified the final POC's for the West Polk Project Participants. Therefore, staff request to defer the determination of final points of connection and meter locations for one year, or until January 1, 2024.

## RECOMMENDATION

Approval to defer the determination of final points of connection for the West Polk Project until January 1, 2024.

## FISCAL IMPACT

There is no fiscal impact associated with this item.

## CONTACT INFORMATION

Eric DeHaven