



**AGENDA
POLK REGIONAL WATER COOPERATIVE**

March 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/87403574779?pwd=QkZCRXBXSXY3WVNuTE9QT0xKcFJYUT09>
Call In: +1 (646)558-8656
Meeting ID: 874 0357 4779
Password: 980769

- A. Call to Order
- B. Recognition of new primary/alternate appointees of members
- C. Agenda Revisions
- D. Public Comments
- E. Consent Items
 - 1. Board of Directors Meeting Minutes
- F. Regular BOD Items
 - 2. Legislative Update - Heartland Headwaters Protection & Sustainability Act (Information Only)
 - 3. Executive Director / Project Administrator Position Employment Agreement (ACTION ITEM)

RECESS REGULAR BOD/COMMENCE PROJECTS BOD:

- G. Combined Projects BOD Items
 - 4. Resolution No. 2022-02 Amending Combined Projects Total Estimated Cost Share Table (ACTION ITEM)
- H. Southeast Wellfield Project BOD Items
 - 5. Amended & Restated Implementation Agreement Southeast Wellfield Project Approval - (ACTION ITEM)
 - 6. Southeast Wellfield Phase 1 Final Design, Construction Oversight and Related Services Scope and Fee (ACTION ITEM)
- I. West Polk Wellfield Project BOD Items
 - 7. Amended & Restated Implementation Agreement West Polk Wellfield Project Approval - (ACTION ITEM)

RECESS PROJECTS BOD/COMMENCE REGULAR BOD:

- J. Open Discussion
- K. Chair / Executive Director Report
- L. Adjournment

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

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

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

SUBJECT

Board of Directors Meeting Minutes

DESCRIPTION

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

- Regular PRWC BOD meeting – November 17, 2021
- Regular PRWC BOD meeting – January 19, 2022

RECOMMENDATION

Consent Agenda - Recommend approval of minutes for referenced meeting.

FISCAL IMPACT

N/A



MINUTES POLK REGIONAL WATER COOPERATIVE

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

ZOOM Virtual Meeting
<https://us02web.zoom.us/j/86914840689?pwd=N2VHMGEvWjdqbEduR0FlanYzdSt2UT09>
Call In: +1 (646) 558-8656
Meeting ID: 869 1484 0689
Password: 085196

Member Governments in Attendance:

Member Government	Representative
City of Auburndale	Mayor Tim Pospichal, Primary
City of Bartow	Commissioner Billy Simpson, Primary
City of Davenport	Commissioner Tom Fellows, Primary
City of Dundee	Commissioner Bert Goddard, Primary
City of Eagle Lake	In Absence, Commissioner Randy Billings, Primary
City of Fort Meade	Commissioner James Watts, Primary
City of Frostproof	In Absence, Vice Mayor Austin Gravley, Primary
City of Haines City	Virtual Attendance, 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	Mayor Eugene Fultz, Primary (Chair)
City of Lakeland	Mayor Bill Mutz, Primary (Secretary/Treasurer) - 2:10 PM
City of Mulberry	In Absence, Commissioner Collins Smith, Primary
City of Polk City	Mayor Joe LaCascia, Primary
Polk County	In Absence, Commissioner George Lindsey, Primary (Vice Chair)
City of Winter Haven	Mayor Pro-Tem Nathaniel Birdsong, Primary

A. Call to Order

Meeting called to order by Chair Fultz at 2:03 PM.

B. Recognition of new primary/alternate appointees of members

Roll call held by Chair Fultz.

C. Agenda Revisions

No agenda revisions were presented.

D. Public Comments

No public comments were presented.

E. Consent Items

1. Board of Directors Meeting Minutes from May 19, 2021 and August 4, 2021
2. Polk Regional Water Cooperative Meeting Schedule 2022

Motion to approve consent agenda made by Mayor Pospichal, seconded by Mayor Kehoe. Motion was approved unanimously.

F. Regular BOD

3. Heartland Headwaters Protection & Sustainability Act Report – FY 2022-2023 (ACTION ITEM)

Executive Director Taylor presented the FY 2022-2023 Heartland Headwaters Protection & Sustainability Act Annual Report for 26 projects submitted by the PRWC membership for Board approval.

Motion to approve the Annual Report for presentation to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Florida Department of Environmental Protection, and the Southwest Florida Water Management District by December 1, 2021 made by Mayor Pospichal seconded by Mayor Mutz. Motion was approved unanimously.

Recess Regular Board of Directors Meeting / Commence Meeting of Combined Projects Phase 1 Project Board at 2:12 P.M.

G. PRWC Combined Projects Board of Directors

4. Resolution No. 2021-04 - Amended TEC and Cost Share Table in the Combined Projects Implementation Agreement (ACTION ITEM)

Mr. Ed de la Parte, PRWC legal counsel, provided a background and summary of Resolution No. 2021-04 to the Board which would increase the Total Estimated Cost (TEC) of the Combined Projects Implementation Agreement by \$284,482.21 and update the Cost Share Table in Section 8.5.1 of the Combined Projects Implementation Agreement.

Motion by Mayor Pro-Tem Birdsong, seconded by Mayor Mutz, to approve Resolution No. 2021-04. Motion approved unanimously.

5. Southeast Wellfield - Test Production Well #3 - Well Driller Procurement (ACTION ITEM)

Mark Addison, Polk County, provided a summary of the Well Driller Procurement including PRWC cost estimate of \$2,087,500. Current action requested is Board authorization to publish an advertisement for a qualified driller to complete the referenced test well.

Executive Director Taylor stated the January meeting will be full of decisions that will need to be made by the Board including the funding aspect for this project. Staff will work over the next month to get as much information to City Managers and the Board to make those decisions.

Mayor LaCascia asked if the second well was much different than the first well for SE wellfield.

Mr. Addison stated the southern most well had significantly better water quality than the second test well drilled at the plant site. This well will confirm water quality and confirm design assumptions.

Mayor LaCascia asked for the cost of drilling the first and second wells.

Mr. Addison stated he did not have that value on hand.

Ms. Thomas stated the most recent well was approximately \$2M.

Mayor LaCascia asked if we get multiple quotes or only a few.

Mr. Addison stated it is going to a competitive bid and selection process for the contractor.

Motion by Commissioner Goddard seconded by Mayor Pospichal, to authorize staff to publish an advertisement for a qualified driller to complete test production well #3. Motion approved unanimously.

6. Financing and Revenue Review (INFORMATION ITEM)

Executive Director Taylor presented an overview of suggested modifications to the project implementation agreements necessary to increase project surety and optimize state funding and offered suggestions for member revenue options.

Mayor Pospichal provided a summary of a recent water rate study performed changes passed by the City of Auburndale to support alternative water costs.

Mayor Mutz stated this is a reasonable request, that it is important that the members need to use December to talk about this topic locally so if there are workshops needed we can make sure there is availability of staff to support those workshops. But we are aligned together and there is an inevitability in the direction we are

headed, we certainly have the need to have the financing support of the District and we are living in a time where we don't have a crisis today, but we have an inevitability in terms of water needs that is not difficult for us to see. So to be in a position by January where we could really be in agreement on this will be the next most important thing we do as a Cooperative. The steps that ought to be taken, need to be taken in December to make sure the things we need to handle are handled locally so we will do that in Lakeland and will be an advocate for the recommendation.

Executive Director Taylor stated staff is always available to attend meetings whether in the evening or day.

Commissioner Goddard asked if there was a January or February deadline with respect to the 60% off ramp.

Executive Director Taylor stated we would like to have decisions for the 60% off ramp, the land acquisition, prior to 60% at the January Board meeting.

Mayor Mutz stated the urgency is self-imposed. Rather than put ourselves in a position where we may not be fully informed locally with our Commissions and Council's we need to make certain that we do have the information. Although it is wonderful to make a presentation to the Commission at a Commission meeting, it is workshop oriented so he highly recommended having a workshop for each member government

Commissioner Watts agreed with Mayor Mutz and liked the idea of a presentation to the Commissions to bring everyone up to speed.

Executive Director Taylor stated to have the City Manager reach out to set up the presentation.

Commissioner Watts stated there are two new commissioners in the City of Ft. Meade and he would like them to be brought up to speed prior to taking action in January.

Pospichal stated we need to remember that the District is stepping up with \$218M Take that off of the top line.

Mutz added that land acquisition costs will continue to escalate.

Recess Combined Projects Phase 1 Project Board / Commence Regular PRWC Board at 2:55 P.M.

H. Open Discussion

No open discussion presented.

I. Chair / Executive Director Comments

Chair

Chair Fultz thanked Mayor Pospichal for all the effort, support, and advice provided for the PRWC.

Mayor Pospichal stated this is something he strongly believes in, and thinks can be done.

Executive Director

Executive Director Taylor stated we will have a brief update from Stephen James regarding conservation.

Stephen James stated we have the potential to lower our demands by 5 mgd through conservation, the Board supported this effort and Beth Robertson was presented to assist those members without conservation staff. Mr. James also introduced Cindy Rodriguez and Josh Madden (SWFWMD staff) and Jackie Hollister. Mr. James emphasized conservation saving and favorable look of the District on conservation. TeamOne has identified proven programs that have historically shown to be beneficial (Indoor and Outdoor programs). Mr. James wanted to emphasize that the District, Jackie, Beth, and himself will do everything needed to support conservation. Mr. James requested the right person from each member be provided so Beth Robertson knows whom to contact.

PRWC will handle all of the administrative support and costs including records keeping and reimbursement requests from the District. Beth has drafted a one pager outlining the water savings, costs, and qualifications that will be provided to the members at the next meeting.

Executive Director Taylor stated as a follow up to the last meeting there has been an advertisement for the Executive Director Position that will be posted until December 3. There has been one applicant so far. The resumes will be brought to the Board at the January meeting.

J. Adjournment

Board meeting adjourned by Chair Fultz at 3:08 P.M.



MINUTES POLK REGIONAL WATER COOPERATIVE

January 19, 2022 – 2:00 PM
Nora Mayo Hall
500 3rd Street NW
Winter Haven, FL 33881

ZOOM Virtual Meeting
<https://us02web.zoom.us/j/84760601010?pwd=b2x4Q1c3Q0pKZnl6b01UQ3JDWTAvZz09>
Call In: +1 (646) 558-8656
Meeting ID: 847 6060 1010
Password: 674954

Member Governments in Attendance:

Member Government	Representative
City of Auburndale	Vice Mayor Keith Cowie, Primary
City of Bartow	Commissioner Billy Simpson, Primary
City of Davenport	Commissioner Tom Fellows, Primary
City of Dundee	Commissioner Bert Goddard, Primary
City of Eagle Lake	In Absence, Commissioner Randy Billings, Primary
City of Fort Meade	Commissioner James Watts, Primary
City of Frostproof	In Absence, Vice Mayor Austin Gravley, Primary
City of Haines City	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	Mayor Eugene Fultz, Primary (Chair)
City of Lakeland	Mayor Bill Mutz, Primary (Secretary/Treasurer)
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
Polk County	Commissioner George Lindsey, Primary (Vice Chair)

A. Call to Order

Meeting called to order by Chair Fultz at 2:01 PM.

Roll call held by Chair Fultz.

B. Recognition of new primary/alternate appointees of members

Vice Mayor Keith Cowie introduced himself as the new representative for the City of Auburndale.

C. Agenda Revisions

No agenda revisions were presented.

D. Public Comments

No public comments were presented.

E. Consent Items

1. Board of Directors Meeting Minutes from September 15, 2021
2. Errata to the Heartland Headwaters Protection & Sustainability Act Report – FY 2022-2023

Executive Director Taylor read the description of this item: In November of 2021 the PRWC Board of Directors approved the annual report to be presented to the governor, the president of the senate, speaker of the house and department of environmental protection as well as SWFWMD. Since November errors were discovered in the spreadsheet used to generate the program totals. These errors were reflected in the annual report text. These errors resulted in no meaningful impact on the request made to the state and are summarized in your packet in the Errata sheet.

Motion made by Commissioner Lindsey, seconded by Vice Mayor Cowie to approve consent agenda minutes first made. Motion was approved unanimously.

Motion made by Commissioner Lindsey, seconded by Vice Mayor Cowie to approve consent agenda Errata to the Heartland Headwaters Protection & Sustainability Act Report. Motion was approved unanimously.

F. Regular BOD

3. Executive Director Position – Selection Committee Recommendation (ACTION ITEM)

Executive Director Taylor presented the qualification and recommendation for the position of PRWC Executive Director from the Selection Committee comprised of Chair Gene Fultz, ED Ryan Taylor, City Manager of Winter Haven Mike Herr and City Manager of Lake Alfred Ryan Leavengood. The committee recommends Eric DeHaven and requests authorization to begin negotiation on an employee agreement.

Mr. DeHaven is a professional geologist who recently retired after 35 years from the water management district. Most recently he was part of the regulatory team and made presentations to this board of directors as well as the SWFWMD governing board. He has firsthand knowledge of processes; the regulatory side as well as the funding applications, and the uniqueness that not only the cooperative has but the relationship between the cooperative and the water management district.

Motion made by Commissioner Lindsey, seconded by Mayor Mutz to approve the Selection Committee's recommendation, and authorize staff to begin negotiations for the position of Executive Director. Motion was approved unanimously.

Recess Regular Board of Directors Meeting / Commence Meeting of Combined Projects Phase 1 Project Board at 2:09P.M.

G. PRWC Combined Projects Board of Directors

4. Test Production Well #3 (Southeast) and #2 (West Polk) funding and elections (ACTION ITEM)

Mary Thomas (Carollo) provided a recap of the purpose of the test production wells and the discussion points from previous meetings. A modification to the combined projects implementation agreement cost share table is being requested.

Chairman Fultz stated before the motion, the floor is open for questions.

Commissioner Watts asked if they would become production wells at a later time.

Ms. Thomas replied both the Southeast and West Polk location wells would ultimately become raw water wells should the two projects move forward. If the projects don't move forward, they would become assets of the district.

Commissioner Watts asked if the cities not receiving water should be entitled to reimbursement once the systems start.

Mr. Ed de la Parte stated these are part of the combined projects implementation agreement. District preliminary approval is needed, and they fall within the scope of that particular agreement. In the future if these projects don't move forward then these costs will need to be paid now. If the projects do move forward, there could be cost adjustments based on participation.

Commissioner Watts commented we were told earlier that we would not be able to get water from these sites. He stated if it becomes a production well, we should be entitled to reimbursement.

Mr. de la Parte stated costs will be calculated and assessed if the projects move forward. Currently, a funding source is needed for these wells and this combined project agreement is the only agreement we have to cover these particular expenditures.

Commissioner Watts replied Ft. Meade submitted an agreement back in March 2021 citing issues, but nothing has been done. He requested that agreement be addressed.

Executive Director Taylor stated the item was in the minutes just approved by the board during the September meeting. It was mentioned that the Peace River/Ft. Meade agreement be approved by the respective boards first before it came back to PRWC.

Commissioner Watts replied the boards approved it and submitted it back to be added to the agenda. Then it was tabled and taken off the agenda due to questions. Nothing has been mentioned about the questions.

Mr. de la Parte stated it was his recommendation that it go to the board members since the agreement was not just between the cooperative and the city of Ft. Meade but includes all members as parties to the agreement. The agreement has a provision in section 6.10 that under certain conditions the district agrees to provide the city of Ft. Meade an alternative water supply project to be implemented by the cooperative. Regardless, of Ft. Meade's participation in the Peace River project.

Commissioner Watts asked if it has been submitted to all members.

Mr. de la Parte replied it has been submitted to all the members – yes.

Commissioner Lindsey interjected there are two issues to address. First, is the Ft. Meade additional Peace River project agreement which he sees as on hold for now. Regarding not benefitting from the test well, there were very early conversations about it not being cost effectiveness for distant municipalities to tie into the system by hard pipe. The phrase was coined back then "virtual water". Before long, your fresh water supply may be limited. To continue providing for your customers another municipality will need to allow you to take their fresh water from the aquifer at your location. The donor city/municipality providing water will expect payment for that water at the replacement cost not the old freshwater cost. There will be access to the alternative water supply by virtue of the aquifer that ties us all together. The test well will be a benefit because it's part of the overall project that moves the entirety going forward. He asked Mr. de la Parte if that was a fair characterization.

Mr. de la Parte responded yes, commissioner.

Commissioner Tom Fellows asked for clarification about associate members voting on projects when they are not involved. He understands its considered part of the first original agreement but there were no associate members at that time. He does not think they should bear any additional cost on the project.

Mayor Bill Mutz remarked we currently only have a combined projects board to be able to vote on these test wells and they do benefit the whole. He asked what other mechanism they would have.

Commissioner Lindsey replied the mayor's question begs an answer.

Mr. de la Parte responded there is no other vehicle for paying for these other than the combined projects agreement.

Mayor Kehoe stated this combined sharing table has not gone to our Lake Hamilton council for approval, so he cannot vote on it. He is not sure if his utility attorney has reviewed the table either.

Mayor West replied he concurred with Mayor Kehoe on the cost sharing table. He will probably abstain because he wants to take it to his council for final approval before voting.

Mayor Kehoe asked if the implementation agreement can be tabled until the next meeting.

Commissioner Watts replied if that's a motion, he seconds it.

Chairman Fultz stated sounds like a motion to table.

Mayor West asked if this item is time sensitive. He asked Mr. Taylor if it can be tabled until they present to their council members.

Chairman Fultz stated he heard a motion to table and a second, but there are comments before we go forward.

Commissioner Lindsey replied he was still waiting on the answer to the mayor's question.

Executive Director Taylor responded the next meeting is in March. The Board has been discussing this since September. The costs and expenditures were discussed in the November meeting. This is a time sensitive item because of the nature of the work that's going to be performed.

Ms. Thomas added the next board agenda item is the TeamOne funding plan presentation. There is a very time sensitive request to make an increase in the SRF loan process by the end of January to meet several deadlines. She asked if the action item be modified, or consideration be made to allow them to make the request for the loan in such a way as to not commit the members. They would like an opportunity to increase the loan amount by the end of January per the next presentation.

Ms. Katie Gierok (Consultant) said each member will receive an individual SRF agreements to take back to their council. No commitment exists until those agreements are approved by each commission/council, but TeamOne on the engineering side and loan assistance side can't move forward unless we get approval here to begin preparing the documents.

Mr. de la Parte advised against going for the SRF loans unless a decision is made on increasing the budget under this agreement.

Commissioner Lindsey read the G4 agenda motion. He asked if that means we are authorizing the increase process to go forward but not committing until it goes back to the prospective members.

Mr. de la Parte replied that is correct for the SRF loan. First, we must determine if there is support for increasing the total budgeted amount before we can go to the SRF loans and borrow money.

Chairman Fultz asked if the test wells eventually be used as production wells.

Mr. de la Parte answered yes.

Chairman Fultz asked if it was fair for those who decided not to be a part of the production process to pay for a production well that they will never receive benefit.

Commissioner Watts stated that was his question.

Chairman Fultz replied he wanted to clarify whether it was fair.

Mr. de la Parte responded each project associate has an opportunity to participate in the project and if they do participate in the project down the road they will benefit.

Chairman Fultz asked if there were any repercussions or any penalties.

Commission discussion continued.

Motion made by Mayor Kehoe, seconded by Commissioner Watt to table the Implementation Agreement. Motion failed by weighted vote.

Roll call vote:

Auburndale – No
 Bartow –Yes
 Davenport – Yes
 Dundee – Yes
 Eagle Lake – Absent
 Fort Meade – Yes
 Frostproof – Absent
 Haines City – Yes
 Lake Alfred – No
 Lake Hamilton – Yes
 Lake Wales – Yes
 Lakeland – No
 Mulberry – Absent
 Polk City – No
 Winter Haven – No
 Polk County – No

Commissioner Lindsey asked Ms. Thomas if it was the right motion.

Mr. de la Parte stated there is a resolution to be voting in favor of the resolution.

Executive Director Taylor stated the draft resolution is included in your packet which right now has a resolution number of 2022-01, it includes the table that outlines the total estimated cost increase for the combined project.

Commissioner Lindsey asked if it was Action Item #1.

Executive Director Taylor confirmed it was.

Motion made by Commissioner Lindsey, seconded by Vice Mayor Cowie to approval the staff recommendation of the Combined Projects Implementation Agreement Cost Share Table increased by approximately \$8.85M to include TPW #2 and TPW #3. Motion approved by weighted vote.

Roll call vote:

Auburndale – Yes

Bartow – Yes
Davenport – No
Dundee – No
Eagle Lake – Absent
Ft. Meade – No
Frostproof – Absent
Haines City – No
Lake Alfred – Yes
Lake Hamilton – No
Lake Wales – No
Lakeland – Yes
Mulberry – Absent
Polk City – No
Winter Haven – Yes
Polk County – Yes

Chairman Fultz stated this is a weighted vote.

Executive Director Taylor confirmed the vote in the affirmative as 82.84% to approve the resolution and 14.65% in opposition of approving the resolution.

Chairman Fultz concluded there was a yes on that particular action item and it passed at 82.84%.

Mayor Mutz commented this is a wonderful opportunity for us to educate each of our commissions appropriately. Our commissions need to be aware of the kind of commitment we have to make long term to see this through. This is the time to build that resolve or identify the absence of it. To keep a good direction going forward for the future of our PRWC needs, I highly encourage you have other people help in the presentations. It's hard to commit money on a long-term basis for a future we cannot see the limitations of. But we can see the desirability of people to live where we live and the need to protect our future. I highly encourage us to thinking through ourselves what alternative we have, the associated costs and compare against the two. When we have 50% subvented costs it is by far the most affordable way for us to be able to provide water for a long-term future. We won't have that opportunity otherwise. So, with that I just submit that as a point of information.

Mayor LaCascia stated he keeps hearing if we don't move forward, we risk the project unraveling. Mr. LaCascia noted several issues relating to this matter. First, that not enough time was given for review due to delivery of the documents. Second, it is unclear why another amendment of the Restated Implementation Agreement was done. Third, there is a difference in the page count from the prior version and no time was given for questions. Until he understands the amendment, he will not vote on it.

Executive Director Taylor apologized for the timing of the information being sent out.

Mayor LaCascia said no apology is necessary. My point is much larger than that. I can't keep coming to these meetings and voting on something that I can't understand what the ramification or consequence are for Polk City. That's what I'm here for. He asked for delegates to raise their hands if they read and understand the agreement up for vote. He commented something is wrong somewhere if only two or three have. We

need to all understand what is going on and what the consequences are of voting on these projects.

Mayor Kehoe agreed with Mr. LaCascia and felt the same way about H.5. on the Southeast Wellfield Implementation Agreement amendment. Their attorneys and county administrator are out until next Wednesday and have not had a chance to review this or take it to their council.

Commissioner Watts concurs with the gentlemen preceding him that not enough time was given for review. He would like hard copies sent.

Commissioner Lindsey agrees the documents need to get in members hands earlier. Due to questions raised by Mayor LaCascia we should meet before the March meeting. A request was made to have a reset and refresh meeting in 30 days. Allowing time to discuss with respective boards their interest in moving forward. An additional request is to return to the Auburndale location for better acoustics. Since there are new members, councils, managers, and attorneys we need to confirm who wants to move forward and who does not. The PRWC having access to additional capital through the water management district is unprecedented and irreplaceable as Mayor Mutz mentioned. The rates and terms at which the money can be borrowed cannot be matched. We would not be the beneficiary of the Heartland Waters Protection Sustainability Act (millions of dollars so far to the benefit of this organization) were it not for the PRWC. The elements have come together to our collective best interest. Everybody needs to clarify their position, express concerns, and have their questions answered.

Chairman Fultz responded that valid points have been brought up. It was telling that very few had read the document or taken it back to their council for review. The conversation has gone well to this point but Commissioner Lindsey's suggestion to coming back and doing it fresh is tenement to tabling it.

Commissioner Lindsey expressed his disagreement with Chair Fultz. The motion that just passed said conceptually the Cooperative agrees with this path, and instructed the members to take it back to their boards for validation.

Chairman Fultz responded in concept but without a document to take back.

Commissioner Lindsey said he begs to differ.

Mayor Mutz replied the spirit of the agreement from my perspective is that it remains to allow us to have a discussion locally. When we get to H5 and I7 I'm going to ask for more time since we don't have a timing urgency like on this one.

Commissioner Lindsey stated the test well production is an incremental vital part of the process which we just approved – subject to. He asked Mayor Mutz as chair of West Polk Project Board if he intended to table the next three items as they are not time critical.

Mayor Mutz replied yes when we get there.

Commissioner Lindsey stated as chair of Southeast Wellfield Project Board, he would do the same.

Mayor Mutz stated they want to assure nobody has regrets to this long-term commitment. There must be forward thinking as this is less a desirable issue than it is potentially a crisis issue for us to face in all our cities within 10-15 years. That needs to be in our forethought for future actions.

Mayor LaCascia stated if no alternatives are presented to be discussed in the proposal, then something is wrong with the proposal.

Chairman Fultz asked if Commission Lindsey mentioned having a meeting in a month to solidify the thoughts in this process of all the board members.

Commissioner Lindsey replied yes let's refresh since we are 4-5 years in this process to determine our direction. Understand, the dollars will not decrease, the timeline will not be shorter, and tougher decisions are yet to come. Let's reconvene at an appropriate time in February and not wait until our March meeting. I recommend we go back to the other room for the acoustic benefits to have candid conversations. Before then discuss alternatives with your colleagues, utility directors, managers, and consultants. If there are viable individually or collectively options, they need to be considered.

Chairman Fultz stated we need to be unified in our mindsets and our efforts moving forward. Coming back together after having the opportunity to review the document will help unify our thoughts and move us forward. Asks if there is a consensus to call another meeting within a month to discuss.

Motion made by Commissioner Lindsey, seconded by Mayor Mutz to have a refresh meeting in approximately 30 days. Motion approved unanimously.

Ms. Thomas offers her team as a resource as Mr. Taylor has offered in the past. She asked if there are areas the team can improve on or any assist they can provide.

Commissioner Lindsey stated some municipalities have already had Ms. Thomas and Mr. Taylor's team present to them. He suggested any municipalities with upcoming commission meetings before mid-February who are interested in the team presenting in their meetings should contact staff and schedule it.

Commissioner Watts asked who to contact to schedule a meeting.

Commissioner Lindsey replied contact Executive Director Taylor.

Executive Director Taylor shared they had met with Auburndale and the mayor of Haines City. They ran a workshop in Lakeland, and the City of Bartow accepted the offer from the November meeting. They are available to travel and attend meetings when requested, whether in a workshop or in-formals setting. They attempt to accommodate all requests. A link to the City of Lakeland's workshop in December was provided for members. It was a great meeting, and we look forward to having those discussion with everyone.

Mayor LaCascia stated an improvement the team could make is providing an update on who is making the decision, why it's being made and the consequences to our cities.

Ms. Thomas replied speaking specifically on technical information, meetings are held the first Tuesday of every month at 1:30pm and anyone may attend. The implementation agreement has been discussed at least three times and if we need to invite more people or present to your city we can. To Mayor LaCascia's point they will work with Ryan and others to make sure that type of information goes out.

Mayor LaCascia asked if a memo could be sent with the subjects being discuss for those who wish to attend.

Ms. Thomas responded every board member is invited to our technical advisory committee meetings. Anyone who would like to be invited to that meeting, feel free to email her at MThomas@Carollo.com.

Commissioner Lindsey stated it would be beneficial if an updated timeline was included providing more details of what took place between major events.

Chairman Fultz stated education is important. We still need to address item #2 on 4.

Ms. Thomas said the second part of this agenda item is for Tom Mattiacci to explain the next step in the loan agreement portion and then you can decide if it's an action item or information only.

Mr. Tom Mattiacci introduced himself. In December, he contacted staff of all the entities to discuss how they wanted to pay for the test wells. Nine communities decided to advantage of the state revolving fund (SRF) and six communities decided to pay direct. The table presented was created based on that information. There are a lot of moving parts to this process. The initial plan was to get the SRF to give an amendment toward this and then create the amendments to the guarantee agreements you sign in the beginning. This needs to be delayed for now. He asks if we could request the increase without identifying the nine communities. When the SRF meets again within 30 days, the request could be updated with the communities so the revised guarantee agreements can be prepared. SRF states it will take them a month to process. [see slides]

Mr. de la Parte advised going forward and draft the revised funding agreements. Insert a place holder and let them prepare the updated guarantee agreements. Understanding, they will not be signed until the 30 days pass, and we know who will be involved.

Mr. Mattiacci suggested the guarantee agreements should not be prepared in case we need to reappropriate. We may not have a contract with a contractor to build the test wells until July. We can proceed and get everybody identified through the SRF and get the guarantee agreements done by July.

Commissioner Lindsey asked if this table was prepared based on Mr. Mattiacci's conversation with the perspective staff as to how they would propose to finance election.

Mr. Mattiacci responded yes commissioner.

Commissioner Lindsey commented if we passed a motion that goes with the rest of the package – it goes back to the respective boards for validation to reaffirm what the

staff has told Mr. Mattiacci. Let's put something in front of the members so they know what their staff has recommended. Then they can either approve it or make changes.

Mr. Mattiacci stated the presentation table is slightly different than the one in the package as a result of staff recommendations.

Executive Director Taylor said it changed just prior to the meeting today but everyone will receive an update.

Commissioner Lindsey asked if the chart in front of us has been changed.

Mr. Mattiacci replied the chart in front of you is slightly different than the chart on the screen.

Commissioner Lindsey stated we're talking about a rounding error, not a substantial difference. His motion is to adopt the updated schedule as represented here and refer it back to the respective boards for reaffirmation. Asked if that is what we need.

Mr. Mattiacci replied in addition to that we would need to increase the amendment amount to the State Revolving Fund now. Our next opportunity may not be until August, and we'll have a contractor on-board by then.

Mr. de la Parte stated that is perfectly fine as long as we don't sign the loan agreement. We're just putting a place holder in there to keep our hands in the till.

Mr. Mattiacci replied if this falls apart and we meet again in 30 days, we'll have time to pull the amendment from the SRF before they vote on the amendment.

Mayor Mutz replied second.

Chairman Fultz confirmed we have a motion on the floor. Asked that the motion be restate for a second.

Commissioner Lindsey asked to clarify if the chart is identifying the financing elections of the communities.

Mr. Mattiacci responded yes sir.

Commissioner Lindsey stated while the numbers may change slightly, the election of how to proceed individually financing is not likely to change. He made a motion that action item #2 which identifies the financing election of each member go back to the respective members board for validation.

Chairman Fultz asked if there is a second.

Motion by Commissioner Lindsey, seconded by Mayor Mutz to approve the members individual financing elections to participate in the SRF planning loan and go back to their respective boards for validation. Motion approved with only Ft Meade in dissent.

Chairman Fultz stated that concludes item #2 on G. The combined projects board of directors is now recessed, and we commence the Southeast Wellfield project board.

Recess Combined Projects Phase 1 Project Board / Commence Meeting of Southeast Wellfield Project Board at 3:18 P.M.

Commissioner Lindsey stated the Combined Southeast Wellfield project board is now convened. The chair will entertain a motion to table items 5 & 6 on the agenda.

H. Southeast Wellfield Project BOD

5. Southeast Wellfield Implementation Agreement amendment (ACTION ITEM)
6. SRF Loan Request and Funding Schedule (ACTION ITEM)

Mayor Mutz stated this motion is made in the spirit of us working together and to diminish any feeling that this issue is being forced. The city of Lakeland is still very much interested in pursuing both the West Polk and the Southeast wellfield projects although we cannot commit today to any kind of substantive approval of the agreements and that is due to their complexity in length and some provisions. We can commit to working in good faith with the other West Polk and Southeast project participants to attempt to develop final agreements prior to the March PRWC meeting. That is made as a motion.

Commissioner Lindsey commented that is in effect tabling items 5 and 6.

Mayor Mutz responded yes.

Commissioner Lindsey asked for any additional discussion. Requested casting a voice vote before going to a weighted vote.

Commissioner Lindsey stated you can consider that a 100% weighted vote.

Motion by Mayor Mutz, seconded by Commissioner Watts to table the Southeast Wellfield Implementation Agreement amendment and the SRF Loan Request and Funding Schedule. Motion approved unanimously.

Mary Thomas said for informational purposes, it may be helpful to still present item #6 (the funding schedule) to help understand the path forward.

Commissioner Lindsey replied point taken.

Mayor Fultz asked if items 5 & 6 were on hold.

Commissioner Lindsey replied yes. He recognized a special guest in attendance from SWFWMD, Mr. Brian Armstrong. Mr. Armstrong was invited to be recognized or to share his thoughts.

Brian Armstrong introduced himself as the Executive Director of the Southwest Water District. His goal today was to listen and report any action and/or inaction back to his board. The SWFWMD has always supported and given priority to alternative water supplies (AWS) projects. They set aside \$300 million for this project and have been trying since September 2021 to move forward. It was over nine years ago when this item was first presented. If this money were not allocated to Polk, it would solve

our financial problems. He will present his board with a financial forecast showing how it looks without Polk.

Commissioner Lindsey asked for the record, if the current science show the freshwater aquifer is over subscribed.

Mr. Armstrong replies it's over permitted.

Commissioner Lindsey restated over permitted meaning it cannot supply the water that is been allocated for that purpose. He asked if the SWFWMD has seen adverse environmental impacts due of drawdowns.

Mr. Armstrong explained the CFWI process and that recently rules were adopted that will be implemented soon. Over 10 years was spent defining CFWI and their resource concerns because of existing impacts. A request can be made and if there are no real resource impact it would be permitted. He stated we are more likely to run into a MFL within the district before tripping that threshold. Currently, they are in the process of updating the Upper Peace River MFL. Originally only low flows were adopted but the revision will adopt low, medium, and high flows.

Commissioner Lindsey asked if it will be cost effective for individual municipalities to get access to AWS through the permitting process.

Mr. Armstrong responded permits are issued based on their availability and resource impacts. The evaluation process is extensive. The regulations are set through laws, standards, and rules. When a permit is requested, they are run through those standards. It does not matter if someone is part of this or not – it was done this way before and after CFWI.

Commissioner Lindsey asked if Mr. Armstrong's agency and the other agencies are bound by a set of rules to go through the evaluation process.

Mr. Armstrong responded yes. The difference is now when permits come inhouse within the CFWI area we'll all be doing it the same way.

Commissioner Lindsey asked if this had been not the case in the past.

Mr. Armstrong replied not really.

Commissioner Lindsey asked if it was prudent for a participant municipality or county to continue to approve development beyond the capacity of their current permit limits.

Mr. Armstrong responded it's not appropriate for me to answer that question. Development is not under our purview. The district is statutorily obligated to identify sources to meet future growth. That statutory obligation was met. Over \$11.5 million dollars was spent on the Southeast Wellfield and the West Polk in other investigations. A water supply plan is out there. No statutory obligation exists to pay for any water supply source. The cooperative funding agreement along with the current commitment exist but funding is becoming limited.

Commissioner Lindsey asked if there were other questions for Mr. Armstrong.

Mayor LaCascia asked if there would be permitting or monetary consequences if a city did not go along with a particular project.

Mr. Armstrong responded let's take those individually. Regarding permitting, no everyone will be evaluated based off the current rules.

Mayor LaCascia asked if monetarily.

Mr. Armstrong responded potentially. Tough decisions are being made right now on what to cooperatively fund. To the detriment of everything else alternative water supply has prioritized but that may not continue.

Mayor LaCascia asked if the extent of the monetary consideration percentage was known.

Mr. Armstrong replied it could go from the district funding 50% or nothing.

Commissioner Lindsey asked if that range applied to regional endeavors or individual applicant endeavors.

Mr. Armstrong responded the district only funds alternative water supply with regional authorities. Most water supply authorities are counties. An allowance was made for Polk County because it was 17 municipalities. It's the size of Pinellas and Hillsborough combined. Polk received another concession when the EPA denied its regional water supply authority designation and the district modified the cooperative funding agreement to include "cooperatives".

Commissioner Lindsey replied the efforts provided through the process are appreciated.

Mayor Pro-tem Birdsong asked if what Mr. Armstrong saw today has deterred his understanding of the commitment collectively to the cooperative.

Mr. Armstrong stated he will present a no funding option to his board.

Commissioner Lindsey asked if based on today's meeting the recommendation to his board would be to redirect resources dedicated to this effort somewhere else.

Mr. Armstrong replied everything else. The District has a lot of responsibilities other than AWS and AWS is statutorily obligated.

Mayor Pro-Tem Birdsong responded there was no indication today that anyone wanted to abandon the alternative water supply project. The municipalities want to understand more about the agreements presented. The perception from Mr. Armstrong seems to be the cooperative is coming loose at the seams. That is not the perception we were trying to give him.

Commissioner Lindsey added to Mayor Pro-Tem Birdsong's comments, that the weighted votes today reaffirm a supermajority commitment to going forward.

Mayor Mutz stated the willingness of Mr. Armstrong to make impromptu comments is appreciated. This has been the most unified effort Polk County has done on anything. We just need ownership locally and it can be full steam ahead.

Commissioner Lindsey: asked if there are any other comments under the Southeast Wellfield board of directors or any closing comments from Mr. Armstrong.

Mr. Armstrong said thank you.

Commissioner Lindsey thanked Mr. Armstrong for his comments, for sharing his thoughts and being with us. He asked if there was any other business under the Southeast Wellfield project board.

Executive Director Taylor replied no, both items were tabled.

Commissioner Lindsey stated the Southeast Wellfield project board is adjourned and turn it over to the West Polk project board.

Recess Southeast Wellfield Project Board / Commence West Polk Wellfield Project Board at 3:39 P.M.

- I. West Polk Wellfield Project BOD
 7. West Polk Wellfield Implementation Agreement Amendment (ACTION ITEM)

Mayor Mutz asked for same motion as made in the Southeast Wellfield Project Board.

Commissioner Lindsey made the same motion for West Polk.

Commissioner Lindsey asked Mayor Fultz if he seconded the motion.

Mayor Fultz replied yes.

Commissioner Lindsey informed Mayor Mutz of a second on the motion.

Mayor Mutz asked for discussion on the motion. Asked for a vote.

Motion by Commissioner Lindsey, seconded by Chair Fultz to table the West Polk Wellfield Implementation Agreement. Motion approved unanimously.

Recess West Polk Wellfield Project Board / Commence Regular Board of Directors at 3:40 P.M.

- J. Open Discussion

Chairman Fultz states the floor is open for discussion now.

K. Chair / Executive Director Comments

Chairman Fultz asked if there was anything else before turning it over to the executive director.

No comments provided

Executive Director

Executive Director Taylor replied everything is covered.

L. Adjournment

Board meeting adjourned by Chair Fultz at 3:42 P.M.

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

SUBJECT

Legislative Update - Heartland Headwaters Protection & Sustainability Act (Information Only)

DESCRIPTION

Every year by December 1, the PRWC coordinates and submits the Heartland Headwaters Protection & Sustainability Act comprehensive annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Department of Environmental Protection, and the appropriate water management districts.

The PRWC acts as a clearing house for all project funding requests within the region. The Cooperative simply provides a mechanism for a consolidated funding request to the State.

The funding requested was only for expenditures for the upcoming fiscal year that begins July 1, 2022 and ends June 30, 2023. There were 24 projects submitted for inclusion in this year's report, including 2 candidate projects (West Polk and Southeast Wellfield projects). The PRWC requested \$53,901,987 in State funding out of an estimated fiscal year expenditure of \$100,762,910 which is about 53%.

Frank Bernardino, Anfield Consulting, will provide the Board of Directors an overview of the 2022 Legislative Session and the outcome of the Heartland State appropriations request.

RECOMMENDATION

No Action Required.

FISCAL IMPACT

Pending State appropriations for Fiscal Year 2022-2023.

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

SUBJECT

Executive Director / Project Administrator Position Employment Agreement (ACTION ITEM)

DESCRIPTION

The Polk Regional Water Cooperative Board of Directors authorized the Executive Director to solicit resumes to assume the role of the Executive Director. The Board approved a Selection Committee comprised of Chair Gene Fultz, Executive Director Ryan Taylor, City Manager Mike Herr (Winter Haven) and City Manager Ryan Leavengood (Lake Alfred) to interview and rank candidates and make a recommendation to the BOD. The position was advertised and two (2) resumes were submitted to Polk County Human Resources.

In January of 2022, the PRWC Board of Directors approved staff to move forward with negotiations with the Selection Committee's recommendation, Mr. Eric DeHaven.

The employment agreement has been developed and reviewed by staff, including the BOD's legal counsel Ed de la Parte and Mr. DeHaven. Staff also provided Southwest Florida Water Management District a copy of the proposed employment agreement for their review.

Some provisions included in the employment agreement of note are:

- The term of this continuing Agreement shall commence on April 4, 2022, and shall serve at the pleasure of the Cooperative.
- The Contract Employee will ensure the mission and goals of the Cooperative (as such are determined by the Board) are met.
- Annual base salary of \$115,000 (No annual or sick leave benefits. No health, dental, or vision benefits. No retirement benefits.)
- The Cooperative shall evaluate potential adjustment to the Contract Employee's salary on an annual basis, beginning April 4, 2023, based on an Annual Performance Evaluation. The Cooperative shall review and evaluate the Contract Employee's performance at least once annually as deemed appropriate.
- The Contract Employee may voluntarily resign with a minimum of two (2) months' notice in advance. The Cooperative may terminate employment at any time, with or without cause.

Included in your packet is Mr. DeHaven's resume and proposed employment agreement.

RECOMMENDATION

Staff recommends approval of the employment agreement for the PRWC Executive Director / Project Administrator position with Mr. Eric DeHaven effective April 4, 2022.

FISCAL IMPACT

Funding will be provided in the operation budget for this position.

ATTACHMENTS

- Proposed Employment Agreement and Resume for Mr. Eric DeHaven

Employment Agreement for Executive Director / Project Administrator

This Agreement is made and entered into this 16th day of March, 2022, by and between the POLK REGIONAL WATER COOPERATIVE, a regional water supply authority of the State of Florida, hereinafter referred to as “Employer” or “Cooperative”, and Eric C. DeHaven, hereinafter referred to as “Contract Employee”.

RECITALS:

1. The Cooperative desires to employ the services of Eric C. DeHaven as Executive Director / Project Administrator of the Cooperative.
2. The Contract Employee desires to accept employment as the Executive Director / Project Administrator of the Cooperative according to the terms provided herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the Cooperative and the Contract Employee agree as follows:

Section 1. Employment

The Employer hereby employs, engages, and hires the Contract Employee as the Executive Director / Project Administrator of the Polk Regional Water Cooperative. The Contract Employee shall exercise the responsibilities and duties as the chief administrative officer as directed by the Board of Directors of the Cooperative (the “Board”).

Section 2. Best Efforts of Contract Employee

The Contract Employee agrees that he will faithfully, industriously, and to the best of his abilities, experience, and talents, perform all of the legally permissible and proper duties that may be required of and from him pursuant to the express and implicit terms of this Agreement, to the reasonable satisfaction of the Employer. The Contract Employee will ensure the mission and goals of the Cooperative (as such are determined by the Board) are met.

Section 3. Term

The term of this Agreement shall commence on April 4, 2022 and shall be a continuing agreement provided that neither party submits a notice of termination. The Contract Employee shall be employed on an at-will basis, serving at the pleasure of the Cooperative. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Cooperative to terminate the services of the Contract Employee at any time.

Section 4. Compensation of Contract Employee

The Employer agrees to pay the Contract Employee for his services rendered pursuant hereto an annual base salary of \$115,000, payable on a monthly or biweekly basis. The Employer shall evaluate potential adjustment to the Contract Employee’s salary on an annual basis, beginning on April 4, 2023, based on the Contract Employee’s Annual Performance Evaluation (Section 5).

Section 5. Performance Evaluation

The Cooperative shall review and evaluate the performance of the Contract Employee at least once annually and at such other times as the Cooperative deems appropriate.

Section 6. Annual Leave and Sick Leave

The Contract Employee and Employer agree that the Contract Employee is an independent contractor (self-employed) and no annual or sick leave benefits are provided.

Section 7. Retirement

The Cooperative is not a member of the Florida Retirement System and the position of Executive Director for the Cooperative is not a defined class position in the Florida Retirement System. The Contract Employee and Employer agree that no retirement benefits are provided.

Section 8. Insurance

The Contract Employee and Employer agree that no health, dental, or vision benefits are provided.

Section 9. Administrative Support, Work Location and Remote Work

A member of the Cooperative will provide a standard office work space for the Contract Employee within the jurisdiction of the Cooperative. A member or members of the Cooperative will also provide reasonable administrative support for the Contract Employee. The Contract Employee and Employer recognize the cyclical and spatially dispersed nature of the work associated with the Executive Director position. Both parties agree that remote work by the Executive Director is allowed based on the workload and best interests of the Cooperative.

Section 10. Resignation

In the event the Contract Employee voluntarily resigns his position with the Cooperative, then the Contract Employee shall give the Cooperative a minimum of two months' notice in advance. The Cooperative may accelerate the Contract Employee's noticed resignation date at its discretion.

Section 11. Termination

The employment of the Contract Employee shall be at the will of the Employer, and Contract Employee's employment shall be subject to termination by the Employer at any time, with or without cause.

Section 12. Indemnification

The Employer shall defend, save harmless and indemnify the Contract Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise arising out of an alleged act or omission occurring in the performance of Contract Employee's duties as Executive Director, while serving a public purpose, unless he acted in bad faith or with malicious purpose or in the manner exhibiting wanton and willful disregard of human rights, safety or property. The Employer shall not be liable in tort for the acts or omissions of the Contract Employee committed while acting outside the course and scope of his agreed duties or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Employer shall have the right to settle and compromise claims brought against Contract Employee in his official

capacity. Nothing herein shall be construed as a waiver by the Cooperative of any defense of sovereign immunity, or as any increase in the limits of its liability provided for in Section 768.28. Florida Statutes.

Section 13 Directors and Officers Liability Insurance

The Cooperative will maintain a Directors and Officers (D&O) Liability Insurance policy identifying the Contract Employee as a named insured, at all times during the period of the Contract Employee’s employment. The terms and policy limits of the D&O policy will be standard for organizations of a similar size and a similar purpose as the Cooperative.

Section 14 Controlling Law

This Agreement is to be governed by the laws of the State of Florida. The venue for any litigation resulting out of this agreement shall be in Polk County, Florida.

Section 15 Enforceability

If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable by a court of competent jurisdiction, that provision or portion shall be severed from the Agreement, with the remainder of this Agreement continuing in full force and effect.

Section 16 Notices

All notices, demands, and requests which may be given or which are required to be given by either party to the other, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective: (a) when personally delivered to the address of the party to receive such notice, (b) when sent by email provided sent between 8:00 o’clock a.m. and 6:00 o’clock p.m. on a day other than a holiday or weekend, otherwise such notice by email shall be effective on the next business day provided such email notice is also sent by another proper means hereunder, or (c) whether actually received or not, two (2) business days after being deposited in any post office or mail receptacle regularly maintained by the United States Government, certified or registered mail, return receipt requested, postage prepaid, or one (1) day after deposited with a nationally recognized overnight courier such as Federal Express, in each case addressed as set forth below, or such other place as the Cooperative or Contract Employee, respectively, may from time to time designate by written notice to the other. The addresses for notices given pursuant to this Agreement shall be as follows:

If to Cooperative:	Polk Regional Water Cooperative Attn: Board Chair _____ _____ _____ Email: _____
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If to Contract Employee:	Eric C. DeHaven 1002 S. Harbour Island Blvd. Unit 1609 Tampa, Florida 33602 Email: ericdehaven775@gmail.com
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Section 17 Documents and Public Records

The Contract Employee acknowledges that the Cooperative is a Florida independent special district subject to the Florida Public Records Act.

Contract Employee shall comply with Chapter 119, Florida Statutes, regarding public records. Contract Employee shall keep and maintain all documents, records, correspondence, computer files, emails, and/or reports prepared in order to perform the work under this Agreement. A request to inspect or copy public records relating to this Agreement must be made directly to the Cooperative. If the Cooperative does not possess the requested records, the Cooperative shall immediately notify the Contract Employee of the request, and the Contract Employee shall provide the records to the Cooperative or allow the records to be inspected or copied within a reasonable time at the cost that would not exceed the cost allowed by law. All records stored electronically must be provided to the Cooperative, upon request, in a format that is compatible with the information technology systems of the Cooperative. Upon completion of the Agreement, Contract Employee shall transfer, at no cost, to the Cooperative all public records in possession of Contract Employee. Upon transfer of all public records to the Cooperative upon completion of the Agreement, Contract Employee shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. Contract Employee shall ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed. Records that are exempt or confidential and exempt from public records disclosure requirements may include plans, drawings and records related to the physical security of Cooperative facilities or security systems and shall not be disclosed by Contract Employee, except as authorized by law and specifically authorized by Cooperative. Failure of the Contract Employee to provide public records to the Cooperative within a reasonable time or allowable cost may be subject to penalties under Sec. 119.10, Fla. Stat., and may be cause for termination of the Agreement, in addition to any other remedies available under the Agreement or by law.

IF THE CONTRACT EMPLOYEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACT EMPLOYEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT POLK COUNTY'S CUSTODIAN OF PUBLIC RECORDS, WHO IS THE COOPERATIVE'S CUSTODIAN OF PUBLIC RECORDS, AT: RECORDS MANAGEMENT LIASON OFFICER, POLK COUNTY, 330 WEST CHURCH ST., BARTOW, FL 33830, TELEPHONE (863) 534-7527, EMAIL: RMLO@POLK-COUNTY.NET.

Any work performed under this Agreement by Contract Employee shall not be copyrighted by Contract Employee and shall be the sole property of the Cooperative.

Section 18 Assignment

Contract Employee shall not assign or subcontract any responsibilities, rights, obligations, or monies due under this Agreement.

Section 19 Independent Contractor

Contract Employee shall be considered an independent contractor during the term of this Agreement.

Section 20 Third Parties

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Cooperative and the Contract Employee.

Section 21 Outside Work

The Contract Employee shall be permitted to engage in, and receive compensation for outside activities, so long as such activity does not conflict with Contract Employee’s duties or the interests of the Cooperative. The Cooperative shall be the sole judge of whether such outside activities conflict with its interests.

Section 22 Extent of Agreement

This Agreement represents the entire and integrated agreement between the Cooperative and the Contract Employee and supersedes all prior negotiations, representations, or agreements either written or oral. This agreement may only be amended, supplemented, modified, changed, or canceled by a duly executed written instrument signed by both the Cooperative and the Contract Employee.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first written above.

Witnesses:

Print Name: _____

Print Name: _____

Print Name: _____

Print Name: _____

POLK REGIONAL WATER COOPERATIVE, a regional water supply authority of the State of Florida

By: _____
Print Name: _____
Its: _____

CONTRACT EMPLOYEE

Eric C. DeHaven

Eric DeHaven
1002 S. Harbour Island Blvd.
#1609
Tampa, FL 33602
(813) 323-7061
ericdehaven775@gmail.com

Polk Regional Water Cooperative
JenniferHolland@polk-county.net

Dear Mr. Taylor and members of the selection committee,

Thank you for considering my attached resume for the position of Executive Director of the Polk Regional Water Cooperative (PRWC). I believe my past employment, recent involvement with the PRWC, and overall skill set position me as an excellent match for the position.

I am a Professional Geologist registered in the States of Florida and Tennessee with a long history of technical research and management in Florida water resource issues. In addition, I have extensive experience in the management of professional staff involved in water resources, including water supply. For the past 35 years I have worked for the Southwest Florida Water Water Management District (District), cumulating as the Assistant Director for the Resource Management Division for the past seven years. As you know, for the past several years I have been the principal contact for the District to the PRWC.

THE PRWC has made tremendous strides in the development of alternative water supplies since its inception in 2017. The Southeast and West Polk Lower Floridan Aquifer Wellfield Projects will provide the necessary additional water supply for the region to meet its water supply needs for the next twenty years and possibly beyond. Significant challenges remain in the actual implementation of these projects, as well as the more long-term surface water supply projects identified by the PRWC. I believe I am in a unique position, given my experience, familiarity, and interpersonal skills, to help lead the PRWC as its Executive Director through these current and future challenges.

Once again, thank you for your time and consideration of my qualifications for the Executive Director position and I look forward to meeting with you if selected for an interview.

Warm Regards,

Eric C. DeHaven

Eric Cooper DeHaven

ericdehaven775@gmail.com
 (813) 323-7061
 1002 S. Harbour Island Blvd # 1609
 Tampa, Florida 33602

Objective – Seeking a challenging position in the management of Florida water resources where I can use my technical and interpersonal skills to ensure the long-term sustainable use of our water supply

Education

DePauw University	B.A. Geology 1984
DePauw University	B.A. Geography 1984
University of South Florida	M.S. Geology/Hydrogeology 1987

Professional License

Licensed Professional Geologist
 State of Florida PG # 0001382
 State of Tennessee PG # 00005687

Professional Experience

Southwest Florida Water Management District
 7601 Hwy 301 North, Tampa FL 33611
 (813) 985-7481

Resource Management Division Assistant Director 2014 – 2021 (Retired)
 Assistant Director for a Division of approximately 90 staff comprised of the Water Resources Bureau, Natural Systems and Restoration Bureau, and Project Management Office. Areas of focus include alternative water supply projects (Polk Regional Water Cooperative), minimum flows and levels, District Cooperative Funding Program, agricultural projects through the Facilitating Agricultural Resource Management Systems (FARMS) Program and Northern Coastal Springs plans and projects.

Natural Systems and Restoration Bureau Chief 2012 – 2014
 Chief of a Bureau comprised of approximately 40 staff including the Surface Water Improvement and Management (SWIM) Program, Facilitating Agriculture Resource Management Systems (FARMS) Program, and Springs and Environmental Flow Section. Responsible for an annual budget of \$30-\$35 million.

Resource Data and Restoration Director/Bureau Chief 2007 - 2012
 Responsible for a Department/Bureau comprised of five sections and approximately 60 staff including: 1) Surface Water Improvement and Management (SWIM) Program; 2) Facilitating Agricultural Resource Management Systems (FARMS) Program; 3) Chemistry Lab Section; 4) Water Quality Monitoring Program (WQMP); and 5) Regional Observation Monitoring Well Program (ROMP). Responsible for an annual budget of \$20-\$25 million.

Resource Data Manager 2002 – 2007

Managed a section of 38 professional, technical, and administrative staff members with a budget of approximately \$10 million. Areas of focus included: 1) the Regional Observation Monitor Well Program (ROMP) tasked with the collection of lithologic and hydraulic data through well construction and testing, 2) Quality of Water Improvement Program (QWIP) tasked with borehole geophysical logging and well abandonment through cost reimbursement, 3) Water Quality Monitoring Program (WQMP) tasked with the collection and analysis of ground and surface water quality data, and 4) Facilitating Agricultural Resource Management Systems Program (FARMS) tasked with cost share agreements with agriculture operations to reduce ground water use and improve water quality.

Water Quality Monitoring Program Manager 1998 - 2002

Managed a section of approximately 12 technical and professional staff focused on the collection and analysis of water quality data. Created the Coastal Groundwater Quality Monitoring network to monitor and report on salt-water intrusion. Initiated routine monitoring and reporting of nutrients in District spring systems. Maintained several water quality sampling networks for the Florida Department of Natural Resources.

Professional Geologist 1993-1998

Supervised the sampling programs responsible for the monitoring of ground and surface water quality within the 16-county region of the District. Managed revenue contracts with the Florida Department of Environmental Protection and expenditure contracts with private consulting firms, laboratories, well drilling companies, and universities. Lead investigator on large-scale studies on salt-water intrusion, nitrate and pesticide contamination, and ground water withdrawal impacts on water quality.

Staff Hydrologist/Field Technician 1986-1993

Designed and sampled water quality monitoring networks, including the establishment of quality assurance/quality control procedures. Designed database management systems for the analysis of water quality data.

Skills

SCUBA – advanced certification/wreck dive
 Language proficiency – basic Spanish

Interests

Travel – Costa Rica resident
 Boating/Fishing
 Golf

References

Mr. David Brown Principal, Managing Partner Progressive Water Resources (941) 552-5657	Dr. Sam Upchurch Vice President/Principal SDII Global Corporation (813) 496-9634
Mr. Mark Hammond - Retired Resource Management Division Director Southwest Florida WMD (813) 760-1857	Mr. Mike Coates Executive Director Peace River/Manasota Regional WSA (941) 316-1776

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

SUBJECT

Resolution No. 2022-02 Amending Combined Projects Total Estimated Cost Share Table (ACTION ITEM)

DESCRIPTION

In January of 2022, the Polk Regional Water Cooperative (PRWC) Board of Directors approved Resolution No. 2022-01 which updated the Combined Project Cost Share table to include the cost of design, permitting, construction and testing of Test Production Well #2 for the West Polk Wellfield and Test Production Well #3 for the Southeast Wellfield.

However, as a result of concerns expressed by board members during the January 2022 meeting that cost split was not equitable for members not moving forward with implementation agreements, a proposal to modify the Cost Share table was presented to the Board of Directors in February of 2022 and accepted by the board members.

Included in your agenda packet is Resolution No. 2022-02 modifying the Combined Projects Cost Share table to reflect a modified member cost-share, shown in Exhibit A of the resolution.

RECOMMENDATION

Staff recommends approval of the Updated Combined Projects Cost Share Table included in Resolution No. 2022-02.

FISCAL IMPACT

Resolution No. 2022-02 modifies individual member cost-share amounts. The update cost share table included in the resolution reflects the fiscal impact to member governments

ATTACHMENT

- Resolution No. 2022-02
- Exhibit A to Resolution No. 2022-02

POLK REGIONAL WATER COOPERATIVE

Resolution 2022-02

**RESOLUTION APPROVING AMENDED TEC AND COST SHARE TABLE
IN THE COMBINED PROJECTS IMPLEMENTATION AGREEMENT**

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, in 2017 the Cooperative, the City of Auburndale, the City of Bartow, City of Davenport, City of Eagle Lake, City of Fort Meade, City of Frostproof, the City of Haines City, the City of Lake Alfred, City of Lakeland, City of Lake Wales, City of Mulberry, Polk City, City of Winter Haven, Town of Dundee, Town of Lake Hamilton and Polk County entered into the Combined Projects Implementation Agreement, with an effective date of May 1, 2017; and

WHEREAS, the Combined Projects Implementation Agreement established a Total Estimated Cost (TEC) of Twenty-Three Million Dollars (\$23,000,000.00) for Phase 1 of the Combined Projects; and

WHEREAS, the Cooperative entered into Funding Agreements with the Southwest Florida Water Management District (SWFWMD) to pay up to fifty (50%) percent of the TEC or approximately Eleven Million Five Hundred Thousand Dollars (\$11,500,000.00); and

WHEREAS, the Combined Project Participants were responsible for paying their share of the remaining Eleven Million Five Hundred Thousand Dollars (\$11,500,000.00) according to the Cost Share Table contained in Section 8.5.1 of the Combined Projects Implementation Agreement; and

WHEREAS, on November 17, 2021, the Cooperative Combined Project Board approved an amended TEC in the amount of Twenty-Three One Hundred Ninety Thousand Four Hundred and Eighty Three Dollars and 19 cents (\$23,190,483.19) and a new Cost Share Table replacing the one currently contained in Section 8.5.1 of the Combined Projects Implementation Agreement; and

WHEREAS, SWFWMD has requested the Cooperative to construct two test production wells (Well No. 2 West Polk Lower Floridan Aquifer Wellfield) and (Well No. 3 Southeast Wellfield) to verify program feasibility, specifically water quality; and

WHEREAS, the two test production wells are expected to cost Eight Million Eight Hundred and Fifty Thousand Dollars (\$8,850,000.00) with SWFWMD co-funding fifty (50%) percent of engineering, construction and administration and the Cooperative paying one hundred (100%) percent of the land cost; and

WHEREAS, on January 19, 2022, the Cooperative Combined Projects Board increased the TEC by Eight Million Eight Hundred and Fifty Thousand Dollars (\$8,850,00.00) to a total of Thirty-Two Million Forty Thousand Four Hundred and Eighty Three Dollars and nineteen cents (\$32,040,483.19) to cover the cost of the two test production wells and approved a revised Cost Share Table in Section 8.5.1 of the Combined Projects Implementation Agreement; and

WHEREAS, following the meeting, Combined Project Participants, who are only participating as project associates under the Southeast Wellfield Project Implementation Agreement and the West Polk Project Implementation Agreement, expressed concerns about having to pay for the two test production wells, when they were not participating in either of the two projects; and

WHEREAS, in order to address their concerns, a revised Cost Share Table was prepared that reduced those Combined Project Participants’ share of the Eight Million Eight Hundred and Fifty Thousand Dollars (\$8,850,00.00) to zero and re-allocated the cost previously attributed to them among the remaining Combined Project Participants; and

WHEREAS, Section 8.5.2 of the Combined Projects Implementation Agreement authorizes the Cooperative Combined Projects Board to amend the Cost Share Table.

NOW, THEREFORE, BE IT RESOLVED:

Section 1. The Cooperative Combined Projects Board does hereby approve an amended a new Cost Share Table replacing the one currently contained in the Combined Projects Implementation Agreement, as set forth in **Exhibit A**.

DONE at Auburndale, Florida this 16th day of March, 2022

Project Board of the Polk Regional Water Cooperative:

Mayor Eugene Fultz
Chair

Mayor William “Bill” Mutz
Secretary/Treasurer

Approved as to Form:

Edward P. de la Parte
Legal Counsel

Exhibit A - Combined Projects Implementation Agreement
 UPDATED COST SHARE TABLE

Community	Previous Cost Share Dollars		Cost Share Dollars Adopted January 2022		Updated Cost Share Dollars			
	Combined Projects Agreement Cost Share %	Current Cost Share Dollars	Total Share Dollars for TPWs	Revised Cost Share Dollars	Test Production Well Cost Share %	Total Share Dollars for TPWs	Updated Cost Share Dollars	Updated Combined Projects Agreement Cost Share %
Auburndale	7.11%	1,647,875.82	\$639,800.91	\$2,287,676.73	7.60%	\$672,187.80	\$2,320,063.62	7.24%
Bartow	6.95%	1,612,815.73	\$324,797.70	\$1,937,613.43	7.42%	\$657,061.21	\$2,269,876.94	7.08%
Davenport	0.93%	215,376.06	\$0.00	\$215,376.06	\$0.00	\$0.00	\$215,376.06	0.67%
Dundee	2.25%	520,909.09	\$921,875.00	\$1,442,784.09	2.40%	\$212,717.66	\$733,626.75	2.29%
Eagle Lake	1.34%	310,542.48	\$109,529.70	\$420,072.18	1.43%	\$126,685.18	\$437,227.66	1.36%
Fort Meade	0.56%	130,227.53	\$0.00	\$130,227.53	\$0.00	\$0.00	\$130,227.53	0.41%
Frostproof	0.00%	0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%
Haines City	5.16%	1,197,089.94	\$858,052.88	\$2,055,142.82	5.51%	\$487,832.50	\$1,684,922.44	5.26%
Lake Alfred	1.71%	395,691.02	\$152,463.94	\$548,154.96	1.83%	\$161,665.42	\$557,356.44	1.74%
Lake Hamilton	0.04%	10,017.89	\$0.00	\$10,017.89	\$0.00	\$0.00	\$10,017.89	0.03%
Lakeland	25.12%	5,825,168.48	\$3,491,118.86	\$9,316,287.34	26.83%	\$2,374,874.48	\$8,200,042.96	25.59%
Lake Wales	4.08%	946,652.77	\$0.00	\$946,652.77	\$0.00	\$0.00	\$946,652.77	2.95%
Mulberry	0.78%	180,314.96	\$0.00	\$180,314.96	\$0.00	\$0.00	\$180,314.96	0.56%
Polk City	1.68%	390,681.57	\$16,429.46	\$407,111.03	1.79%	\$158,829.18	\$549,510.75	1.72%
Polk County	32.72%	7,588,246.37	\$1,742,224.39	\$9,330,470.76	34.95%	\$3,093,387.46	\$10,681,633.83	33.34%
Winter Haven	9.57%	2,218,873.48	\$593,707.16	\$2,812,580.64	10.22%	\$904,759.11	\$3,123,632.59	9.75%
Totals	100.00%	23,190,483.19	\$8,850,000.00	\$32,040,483.19	100.00%	8,850,000.00	32,040,483.19	100.00%

Attachment: 22-02-28 Exhibit A to Resolution 2022-02 (18420 : Resolution No. 2022-02 Amending

March 16, 2022 Polk Regional Water Cooperative Regular Meeting
Agenda Item #5

SUBJECT

Amended & Restated Implementation Agreement Southeast Wellfield Project Approval - (ACTION ITEM)

DESCRIPTION

In February of 2022, the Polk Regional Water Cooperative (PRWC) Board of Directors approved the modifications to the Amended and Restated Implementation Agreements for the Southeast Wellfield final design and construction. The modifications were made to reflect recommendations made by PRWC financial consultants, bond counsel, and grant and loan agencies to ensure the highest rating and to meet the financing and grant requirements of various agencies. The BOD agreed to move forward with member government approvals.

The Amended and Restated Implementation Agreements have since been taken back to member government Commissions to approve with updated supply demand numbers.

Actions taken by the Cooperative’s member governments for the Southeast Wellfield Project have been submitted to Staff as:

<u>Participants</u>	<u>Associates</u>
Auburndale	Davenport
Bartow	Eagle Lake
Dundee	Fort Meade
Haines City	Lake Hamilton
Lake Alfred	Lake Wales
Lakeland	Mulberry
Winter Haven	Polk City
Polk County	

RECOMMENDATION

Staff recommends ratifying the Amended and Restated Implementation Agreement for the Southeast Wellfield Project as adopted by individual member governments.

FISCAL IMPACT

This action will commit participating member governments to costs associated with the design and phased construction of the 12.5 MGD Southeast Wellfield project.

ATTACHMENT

- Amended & Restated Implementation Agreement – Southeast Wellfield Project

February 21, 2022

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

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

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

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

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

1.1 **“Agreement”** means this Amended and Restated Implementation Agreement for the Southeast Wellfield Project, as it may be amended or restated from time to time.

1.2 **“Alternative Procurement Methods”** means alternatives to the separate design and construction mechanisms specified in Sections 7.3.7 and 8.3 such as “design build,” “construction management at risk” or “public-private partnership.”

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

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

1.5 **“Capital Cost”** means fixed, one-time expenses incurred for the acquisition of real property, tangible property and intangible property, the construction of tangible personal property and other expenditures required for the production of water and other goods or the rendering of services in connection with the Project, including without limitation the Southeast Wellfield Refund Cost.

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1.6 “Capital Replacement and Renewal Cost” means all costs incurred by the Cooperative for the ordinary renewal, replacement, upgrade and improvement of the Project, which are not paid from the proceeds of any Obligation and costs that will occur over the life of the Project for the assets comprising the Project.

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

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

1.9 “Construction Budget” means the approved maximum cost for the actual construction of the Project infrastructure, including any contingency. The Construction Budget is set after Project bidding and selection of a contractor or contractors, and may be amended if needed subject to written change orders approved in writing by the Cooperative and the Contractor engaged by the Cooperative.

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

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

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

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

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

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

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

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

1.18 **“Force Majeure Event”** means an event not the fault of, and beyond the reasonable control of a Party claiming excuse when it is either impossible or extremely impracticable for such Party to perform the obligations imposed on it by this Agreement, by virtue of its effect on physical facilities and their operation or employees essential to such performance. Force Majeure Events include (a) an “act of God” such as an earthquake, flood, earth movement, pandemic, or similar catastrophic event; (b) an act of public enemy, terrorism, sabotage, civil disturbance or similar event; (c) a strike, work stoppage, picketing or similar concerted labor action; (d) delays in construction caused by unanticipated negligence or breach of contract by a third party or inability to obtain Project Permits or essential materials after

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diligent and timely efforts; or (e) an order or regulation issued by a federal, state, regional or local regulatory agency after the Effective Date or a judgment or order entered by a federal or state court after the Effective Date.

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

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

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

1.22 “MGD” means million gallons a day.

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

1.24 “Operation and Maintenance Cost” means any and all costs incurred by the Project Board in operating, maintaining and administering the Project, related operation maintenance management, security and development of the Project; labor and labor overhead cost; cost associated with tools, equipment, vehicles, supplies, materials, and services; the operation, maintenance, management, security and development of the Project, which are not a Capital Replacement and Renewal Cost or are payable from the proceeds of any Obligation. Operation and Maintenance Costs, to the extent not constituting a Capital Replacement and Renewal Cost or payable from the proceeds of any Obligation, include, but are not limited to any cost of litigation or legal judgment against the Cooperative relating to the Project; cost of purchasing any water

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related to the Project; development expenses relating to expansion of the Project; all costs incurred in planning or applying for, obtaining, maintaining and defending Project Permits, which are not paid under Phase 1 of the Combined Projects Implementation Agreement; administrative, accounting, legal and engineering expenses related to the Project; ordinary and current rentals of equipment or other property related to the Project; refunds of moneys lawfully due to others, pension, retirement, health and hospitalization funds related to the Project; payments in lieu of taxes and impact fees, if applicable; moneys to be deposited to a Rate Stabilization Fund (if one is established); and administrative costs incurred by the Cooperative for management of the Project.

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

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

1.27 “Project” means the Southeast Wellfield.

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

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

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

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

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

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

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

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

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

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

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

1.38 “PSI” means pounds per square inch.

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

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

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

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

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

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

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

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

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

2045 Water Allotment Table

Name of Party	2045 Water Allotment Annual Average (MGD)	2045 Water Allotment Percentage (%)
City of Auburndale	1.65	13.27%
City of Bartow	0.36	2.89%
<i>*City of Davenport</i>	<i>Project Associate</i>	
<i>* City of Eagle Lake</i>	<i>Project Associate</i>	
<i>* City of Fort Meade</i>	<i>Project Associate</i>	
City of Haines City	3.50	28.16%
City of Lake Alfred	1.00	8.05%
<i>*City of Lake Wales</i>	<i>Project Associate</i>	
City of Lakeland	0.10	0.80%
<i>* City of Mulberry</i>	<i>Project Associate</i>	
<i>* Polk City</i>	<i>Project Associate</i>	

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Name of Party	2045 Water Allotment Annual Average (MGD)	2045 Water Allotment Percentage (%)
City of Winter Haven	1.52	12.23%
Town of Dundee	0.90	7.24%
<i>*Town of Lake Hamilton</i>	<i>Project Associate</i>	
Polk County	3.40	27.36%
TOTAL	12.43	100.00%

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

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

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

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

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

2. PURPOSE OF THE AGREEMENT.

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

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of the Project and receipt of Project Water Service from the Cooperative. It is the intent of this Agreement that Project Water be used to help serve the needs of the Project Participants.

2.2 Interlocal Agreement. The Parties have entered into the Interlocal Agreement. In the event of a conflict between the Interlocal Agreement and this Agreement, the Interlocal Agreement shall control.

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

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

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

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

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

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

4.2 Authority to Enter Agreement. The Parties each have the power, authority and legal right to enter into and perform the obligations set forth in this Agreement, and the execution and delivery and performance hereof by the Parties: (1) has been duly authorized by the governing authority of each of the Parties; (2) does not require any consent or referendum of the voters; and, (3) does not constitute a default under, or result in the creation of any lien, charge,

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encumbrance or security interest upon, the assets of the Parties under any agreement or instrument to which the Parties and their assets may be bound or affected, except as otherwise provided herein.

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

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

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

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

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7. PROJECT ADMINISTRATION.

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

7.2 Project Administrator. No later than thirty (30) days from the Effective Date of this Agreement, the Project Board shall designate the name, address, phone number, fax number and email address of its Project Administrator. The Project Administrator may be changed at any time by the Project Board. The Project Administrator shall act as the Cooperative's representative with regard to implementation and management of the Project.

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

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

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

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

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

7.3.5 Manage the review of interim and final deliverables.

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

7.3.7 Approve the use of Alternative Procurement Methods, as specified in Section 8.4, for design and construction of the Project.

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

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

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

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

7.3.12 Implement any alternative financing mechanisms.

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

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

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

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

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

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

7.3.19 Submit applications to modify or renew Project Permits issued in connection with the Project. Respond to requests for additional information or clarification from regulatory agencies and provide information as needed to finalize applications to modify or renew Project Permits. Obtain all modifications or renewals of Project Permits.

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

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

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

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

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

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

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8.1 Final Design and Bidding Stage.

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

8.1.2 The Cooperative shall require the consultant to prepare (1) a final design in relative conformance with the Project Preliminary Design Report, and (2) a Bidding Budget based on the final design. The final design shall include a 100% final design. The 100% final design shall include design specifications, design drawings, the final Bidding Budget, and an estimate of real estate acquisition costs.

8.1.3 Once the consultant has completed the 100% final design, the Project Administrator will present it to the Project Board the final design and a Bidding Budget based on the final design for approval.

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

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

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

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

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

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

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

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

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

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

8.6 Project Funding. A portion of the Project costs is expected to be reimbursed through cooperative funding from the District. The Cooperative anticipates issuing Obligations that will be used to pay the costs of the Project prior to reimbursement from the District of such Project costs. The Cooperative covenants to coordinate the issuance of Obligations with the execution of cooperative funding agreements with the District, which agreement by the District may be subject to such conditions precedent to funding, including appropriation and approval of reimbursement requests.

9. OWNERSHIP. The Cooperative shall own the Project facilities, including the water treatment plant and transmission lines up to and including the Points of Connection. Ownership does not include any infrastructure or facilities owned by Project Participants as of the time of the execution of this Agreement.

10. TRUE-UPS.

10.1 Additions, assignments and substitutions. Before the beginning of each fiscal year, the Project Board will consider for approval any proposed additions, assignments, and substitutions proposed under the process set forth in Section 20.

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

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

10.3 Expansions and Capital Cost. The Project is permitted for 30 MGD and is proposed to be developed in phases, the first of which will provide approximately 12.43 MGD of finished water availability for Project Participants. Some components of the Project will be constructed to accommodate water production expansion and future development. Therefore, Project Participants will pay Capital Costs and commit to pay Obligations for certain Project components which will benefit the current Project Participants and the Project Participants of future Project expansions (“Common Capital Components”). For each expansion, the Capital Costs and Obligation commitments the Project Participants have made for the Common Capital Components will be re-allotted among all Project Participants of any future Project expansion in accordance with the then-current Water Allocation Table, and the then-current Project Participants shall reimburse the initial Project Participants for that portion of the Capital Costs and Obligation commitments paid for Common Capital Components which benefit the expansion Project Participants. Each time there is an expansion there shall be a similar re-allotment of Capital Costs and Obligation commitments for Common Capital Components based on the new Water Allocation Table and a reimbursement to existing Project Participants for Capital Costs and Obligation commitments paid for Common Capital Components which benefit the expansion Project Participants.

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

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

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

11. PROJECT WATER SERVICE.

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

11.1.1 Delivery of Project Water Estimates. Each Project Participant desiring to take Project Water shall deliver to the Project Administrator its Project Water Estimate for the upcoming Fiscal Year on or before May 1. The Project Water Estimate shall identify the quantity of Project Water, at an annual average daily rate, the Project Participant requests the Project Board to deliver to its Point of Connection during the upcoming Fiscal Year or the quantity of Water Offset, at an annual average daily rate that the Project Participant requests to use during the upcoming Fiscal Year. A Project Water Estimate must include all the water a Project Participant will need. The Project Administrator shall send a written reminder to the Project Participants on or before April 1, if a Project Water Estimate has not been received from that Project Participant. If a Project Participant fails to deliver a Project Water Estimate to the Project Administrator by

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

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

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

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

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

11.1.2.4 If there is Excess Water available for use by Project Participants after the available Project Water has been allocated pursuant to Sections 11.1.2.1

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through 11.1.2.4, then the Excess Water will be allocated among the Project Participants requesting Project Water on a pro rata basis.

11.2 System Operation. The Cooperative shall at all times maintain the Project in accordance with Prudent Utility Practices. The Cooperative shall adopt an adequate budget to pay for all Operation and Maintenance Costs for the Project as required to provide Project Water Service, as set forth in this Agreement. The Cooperative shall provide sufficient personnel, with appropriate experience and credentials to undertake all regulatory requirements imposed with regard to the Project, while providing for reliable operations and maintenance. If new regulatory requirements necessitate capital improvements, the Cooperative shall take all necessary actions to accomplish the same. The Cooperative shall be responsible for all regulatory violations, including compliance costs or penalties assessed for same, which arise out of or are solely created through 1) material errors or omissions by its personnel or agents in the day-to-day operations of the Project; or, 2) the failure of the Cooperative to timely proceed administratively to undertake or complete a requirement imposed by any regulatory agency in any consent order or Project Permit. The Cooperative shall maintain adequate catastrophic insurance on the Project on such terms and amounts as established by the Project Board.

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

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

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

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

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

12. POINTS OF CONNECTIONS AND METERING FACILITIES.

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

12.2 Installation and Maintenance of Meters. The quantity of Project Water delivered by the Cooperative to each Point of Connection or the quantity of Water Offsets taken by a Project Participant shall be exclusively measured by a Meter. The Cooperative shall own,

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install, maintain and read each Meter. The type of Meter shall be selected at the discretion of the Cooperative, subject to compliance with industry standards for similar Meters.

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

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

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

13.1 General. The Water Charge shall be sufficient to pay the Debt Service Costs, Capital Renewal and Replacement Costs, Fixed Operation and Maintenance Costs, Reserves and Variable Operation and Maintenance Costs incurred by the Cooperative in order to provide Project Water Service to the Project Participants for the upcoming Fiscal Year. The Water Charge shall consist of a Base Rate Charge and a Water Use Charge. The Water Charge shall be computed in the manner specified in Section 13.3, prior to the upcoming Fiscal Year and the Project Participants shall be notified of the Water Charge for the upcoming Fiscal Year in the manner provided in Section 13.2. Establishment of the Water Charge shall be made by the Project Board and the Project Board's decision shall not be subject to supervision or regulation by any commission, board, bureau, agency, municipality, county or political subdivision of the State of Florida.

13.2 Notification of Water Charge. On or before May 31 prior to the Fiscal Year in which the Project Water Service is scheduled to commence and on or before every May 31st thereafter, the Cooperative shall provide the Project Participants the Water Charge for the upcoming Fiscal Year. The Water Charge shall be accompanied by a report detailing the manner in which the Water Charge was computed for the upcoming Fiscal Year. In lieu of a report, the basis for the Water Charge may be detailed in the annual budget adopted by the Project Board for this Project for the upcoming Fiscal Year.

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

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

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

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

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

13.3.2 Water Use Charge. The Water Use Charge shall be computed as the Variable Operation and Maintenance Cost determined pursuant to Section 13.3.1.1 divided by the total of all the Project Water Estimates submitted by the Project Participants for the upcoming Fiscal Year and expressed as a cost per thousand (1,000) gallons of water.

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

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

13.4.2 The Project Participants shall pay their Water Use Charge on a monthly basis. Each Project Participant's monthly payment shall be determined by multiplying the actual amount of Project Water delivered by the Project Board to the Project Participant's Point of Connection during the prior calendar month by the Water Use Charge identified in Section 13.3.2.

13.5 Accounting, Audits and Adjustments for Actual Expenses and Water Use. The Cooperative shall maintain accounts and records of actual water use by the Project Participants, all revenue received from all sources to meet the cash needs of the Project and the actual Debt Service Costs, Capital Renewal and Replacement Costs, Fixed Operation and Maintenance Costs, Reserves and Variable Operation and Maintenance Costs incurred with respect to the Project. On or before each January 31, beginning on the January 31 immediately following the Fiscal Year in which Project Water Service commenced, the Cooperative shall complete an audit of the aforesaid records and accounts and determine what should have been the Water Charge for each Project Participant based on actual costs during the preceding Fiscal Year. For purposes of verifying the Base Rate Charge portion of the Water Charge for this audit, it shall be assumed that the Project Participants have used the quantity of water specified in their Project Water Estimates even if actual water use was less. Said audit shall be conducted by a nationally recognized certified public accounting firm. In the event the audit determines an underpayment was made by a Project Participant, then said underpayment shall be added to that Project Participant's Base Rate Charge for the upcoming Fiscal Year and paid in the manner specified in Section 13.4.1. If the audit determines that an overpayment was made by a Project Participant, then said overpayment shall

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

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

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

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

14.1 Billing and Payment. The Cooperative shall invoice each Project Participant for their Water Use Charge on regular monthly intervals. The Meters shall be read and recorded on or about the last normal workday of the calendar month during which the Project Water Service was provided. Billing to each Project Participant shall be made on the 10th day of the following calendar month. Payment of the Water Charge shall be made to the order of the Cooperative no later than thirty (30) days after which the statement was received. If the Water Charge or any portion thereof remains unpaid following their due date, the delinquent Project Participant shall be charged with and pay to the order of the Cooperative interest on the amount unpaid from its due date at such rates the Project Board may establish from time to time.

14.2 Irrevocable Commitment to Pay. The Project Participants shall pay their respective Water Charge for every Fiscal Year throughout the term of the Agreement in the manner provided in Section 14.1. Said payments shall be made without notice or demand and without set-

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off, counterclaim, abatement, suspension or deduction. The Cooperative is undertaking the acquisition, construction, operation and replacement and expansion of the Project on the representation, warranties and covenants of the Project Participants to pay the Water Charge in a timely manner.

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

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

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

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under this Agreement or to compel payment from any source, other than as indicated in Section 14.3.

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

16. FORCE MAJEURE.

16.1 Excuse from Performance. No Party shall be liable to any other Party for delay in performance of, or failure to perform, its obligations under this Agreement, if such delay or failure is caused by a Force Majeure Event. However, a Force Majeure Event shall not excuse a Project Participant from paying its Base Rate Charge, when due, pursuant to Section 13.4.

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

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

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

18. DEFAULT AND REMEDY.

18.1 Default. If any Party fails to observe, comply with, perform or maintain in any material way any term, covenant, condition, duty, obligation, representation or warranty contained or arising under this Agreement, such action shall constitute a default and the other Parties may seek remedies set forth herein. For all defaults, except the failure to pay the Base Rate Charge, when due, pursuant to Section 13.4, the defaulting Party shall have thirty (30) days to cure

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the default, unless such default is not capable of being cured within thirty (30) days, in which case the Party must cure the default as soon as practicable. Recognizing the Project Participants' paramount need for a safe and dependable water supply, the Parties agree that, with the exception of the suspension of Project Water Service or Water Offsets pursuant to Section 18.4 of this Agreement, the exclusive remedy for default under this Agreement shall be for the non-defaulting Parties to individually or jointly seek specific performance arising from such default.

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

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

18.4 Suspension of Project Water Service in the Event of Non-Payment of the Water Charge. A Project Participant that fails to pay its Water Charge or any portion thereof by the due date shall be in default of this Agreement and upon fifteen (15) days written notice, the Cooperative may suspend Project Water Service to a Project Participant and prohibit a Project Participant from using Water Offsets unless there is in mediation a good faith dispute or suspension of service compromises the health, safety, and welfare of the end water users. Suspension of Project Water Service to a Project Participant or prohibition of the use of Water Offsets by a Project Participant because of its failure to pay the Water Charge or any portion thereof shall not excuse the Project Participant from paying the Base Rate Charge, when it becomes due nor prohibit the Cooperative from continuing to charge interest on the unpaid amount. Upon payment of all outstanding Water Charges, including any interest, the Cooperative shall immediately resume Project Water Service to the Project Participant or immediately allow a Project Participant to use a Water Offset. The Cooperative's decision to suspend Project Water Service to a Project Participant or to prohibit Water Offsets use by a Project Participant under this Section shall not be subject to the dispute resolution process in Section 17 and shall not be considered a default under Section 18. However, the Cooperative's failure to resume Project Water Service or to allow a Project Participant to use Water Offsets upon payment of all outstanding Water Charges, including any interest, may

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constitute a default under Section 18 and shall be subject to the dispute resolution process specified in Section 17.

19. WITHDRAWAL OF A PROJECT PARTICIPANT FROM THIS AGREEMENT.

19.1 Withdrawal Process. A Project Participant who withdraws from this Agreement shall remain liable for payment of its share of the Water Charge. If the withdrawing Project Participant has submitted a Project Water Estimate to the Cooperative for the current Fiscal Year, then it shall remain liable to pay the Water Charge for that Fiscal Year, as if it had taken the entire quantity of Project Water specified in its Project Estimate. Additionally, unless the remaining Project Participants take all or a portion of the withdrawing Project Participant's Water Allotment, the withdrawing Project Participant shall continue to remain liable for payment of its share of the Base Rate Charge. This liability shall continue for the term of the Agreement, until such time as the withdrawing Project Participant's Water Allotment is completely redistributed among the remaining Project Participants.

19.2 Duties of and Effect on Withdrawing Project Participant. A withdrawing Project Participant shall no longer be considered a voting member of the Project Board with regard to that specific Project. Upon notice by the Cooperative, a withdrawing Project Participant shall apply to withdraw from any Project Permits issued in its name and shall not oppose or challenge any modification to a Project Permit necessitated by its withdrawal. A withdrawing Project Participant shall surrender its Water Allotment, if any, and immediately forfeit its right to receive Project Water Service from the Project Board, including the use of Water Offsets. A Project Participant who withdraws from the Project may later request to join the Project again as a new

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

19.3 Redistribution of Water. All of a withdrawing Project Participant's Water Allotment, if any, shall be subject to redistribution among the remaining Project Participants. Each remaining Project Participant shall be entitled to a pro-rated amount of the withdrawing Project Participant's Water Allotment, if any, based upon the then applicable Water Allotment Table. Redistribution of the withdrawing Project Participant's Water Allotment to the remaining Project Participants shall take place within sixty (60) days of the Parties receiving written notice of the withdrawing Project Participant's intent to withdraw from this Agreement. During this sixty (60) day period a Project Participant will notify the Cooperative in writing of its intent to take some or all of the withdrawing Project Participant's Water Allotment. Any redistribution of the withdrawing Project Participant's Water Allotment to another Project Participant must be reviewed and approved by the Project Board as to technical feasibility. If two or more existing Project Participants exercise their right to take all of the withdrawing Project Participant's Water Allotment, then the withdrawing Project Participant's Water Allotment shall be redistributed in proportionate portions to the Project Participants, which requested redistribution. Any of the withdrawing Party's Water Allotment that is not redistributed, shall become Excess Water.

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

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

20.1 Substitution. As a matter of right, a new Project Participant or an existing Project Participant may be substituted for an existing Project Participant, if the new Project

February 21, 2022

Participant or existing Project Participant agrees to fully perform all the obligations of the existing Project Participant. Substitution shall mean the new or existing Project Participant shall at a minimum succeed to the old Project Participant's entire Water Allotment, if any. Prior to substitution taking effect, the existing Project Participant must notify all other existing Project Participants and Project Associates in writing of the substitution and offer the substitution on the same terms and conditions to the other existing Project Participants and Project Associates, who shall be allowed at least sixty (60) days to exercise the right of first refusal. This right of first refusal shall only apply when a new Party to this Agreement is proposed to be substituted for an existing Project Participant. If one of the existing Project Participants or Project Associates exercises its right of first refusal during this time period, then all of the substituted Project Participant's Water Allotment, if any shall be assigned to the substituting Party. If two or more existing Project Participants or Project Associates exercise their right of first refusal during this time period, then all of the substituted Project Participant's Water Allotment, if any, shall be reassigned in equal portions to the substituting Parties. If none of the existing Project Participants or Project Associates commit to acquire the substituted Project Participant's entire Water Allotment, if any, during this sixty (60) day period, then the Parties to this Agreement shall be considered to have waived their right of first refusal. Any substitution under this Section 20.1 must be reviewed and approved by the Project Board as to technical feasibility. Any new Party to this Agreement must be unanimously approved by the existing Project Participants. Once the substitution takes place, the substituted Project Participant shall withdraw from the Project and shall no longer be considered a voting member of the Project Board. Additionally, the substituted Project Participant shall cooperate with the Cooperative in any modifications to the Project Permits necessary to effectuate this substitution.

February 21, 2022

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

20.2.1 Cost to Become a New Project Participant. The provisions of this section 20.2 are established to provide equity among all Project Participants and to provide an incentive for local governments to subscribe early. Subject to the provisions of Section 2.4 of this Agreement, any new Project Participant that joins this Agreement after it is first executed under the process described in this Section 20 of this Agreement shall pay its proportionate share of the costs incurred by the Project Participants before the new Project Participant joins the Agreement and its proportionate share of the Project Costs expended to date. This amount is in addition to the Water Charge for each upcoming fiscal year as described in Section 13. When this occurs, the percentage collected shall be refunded proportionately to the initial Project Participants who joined this Agreement when it was first executed.

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

20.3 Assignment. As a matter of right, an existing Project Participant may assign a portion of its Water Allotment, if any, to a new Project Participant, an existing Project Participant, or a Project Associate if the assignee agrees to fully perform all the obligations of the existing Project Participant. Any new Party assignee must be unanimously approved by the existing Project

February 21, 2022

Participants. The complete assignment of an existing Project Participant's Water Allotment, if any, to a new Project Participant, an existing Project Participant, or a Project Associate shall be treated as a substitution under Section 20.1. Prior to the assignment taking effect, the existing Project Participant must notify the other existing Participants in writing of the assignment and offer the assignment on the same terms and conditions to the other existing Project Participants and Project Associates, who shall be provided at least sixty (60) days to exercise the right of first refusal. If one of the existing Project Participants or Project Associates exercises its right of first refusal during this time period, then the portion of the assigning Project Participant's Water Allotment, if any, up for assignment shall be transferred to the existing Project Participant. If two or more existing Project Participants or Project Associates exercise their right of first refusal during this time period, then the portion of the assigning Project Participant's Water Allotment, if any, up for assignment shall be transferred in equal portions to the existing Project Participants and Project Associates. If none of the Project Participants or Project Associates commit to acquire the assigning Project Participant's Water Allotment, if any, up for assignment, then the Parties to this Agreement shall be considered to have waived their right of first refusal. The right of first refusal shall not apply when an existing Project Participant or Project Associate is the assignee. Any assignment under this Section 20.3 must be reviewed and approved by the Cooperative as to technical feasibility. Once the assignment takes place, the assigning Project Participant shall still be a Party to the Agreement, but it shall forfeit or surrender the assigned portion of its Water Allotment to the assignee Project Participant, as well as its voting rights, proportionate to the extent of the assignment. Once assignment takes place, the assigning Project Participant shall cooperate with the Cooperative in any modification to the Project Permits necessary to effectuate this assignment.

February 21, 2022

21. PERMITS.

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

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

21.3 No Project Participant shall purposefully submit information to a regulatory agency that conflicts with information submitted by the Cooperative in support of any application for a Project Permit. In the event that an application for a Project Permit will interfere with the existing consumptive use permits or existing water, wastewater or reclaimed water facilities of that Project Participant the provisions of Section 21.1 shall apply.

21.4 No Party shall legally challenge or support any legal challenge against any proposed or final agency action or any legal instrument with regard to any Project Permit sought by the Cooperative, unless the proposed Project Permit directly threatens an existing legal right of that Party to use the water resources of the state, in existence prior to the date of the application for the Project Permit.

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

February 21, 2022

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

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

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

22.3 Obligations. The Project Participants shall cooperate with the Cooperative should the Cooperative decide in accordance with the Agreement to issue Obligations to fund any Capital Costs incurred by the Cooperative with regard to the Project. In said event, the Project Participants shall comply with the reasonable request of the Cooperative and will, upon such request, do as follows: (1) make available general material and financial information about itself; (2) consent to publication and distribution of its financial information; (3) certify that any general material and financial information is accurate, does not contain any untrue statements of material fact and does not omit to state a material fact necessary to make the statements contained in the general material and financial information, in light of the circumstances under which they were made not misleading; (4) provide reasonable certifications to be used in a transcript of closing documents; (5) provide and pay for reasonable requested opinions of counsel as to the binding effect of this Agreement, the validity of actions taken as a result of the Agreement, title to real property, as applicable, and pending litigation which could materially affect the Party's

February 21, 2022

performance under the Agreement; and, (6) provide guarantee agreements, if required in order to obtain the Obligation. In addition, each Project Participant agrees to take no action which shall adversely affect the exclusion from gross income of interest on the Obligations for purposes of federal income taxation.

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

23. SOVEREIGN IMMUNITY AND INDEMNIFICATION. The Parties intend to avail themselves of the benefits of Section 768.28, Florida Statutes, and any other statute and common law governing sovereign immunity to the fullest extent possible and nothing herein shall be construed as a waiver of sovereign immunity by these Parties. Additionally, the Project Participants are not jointly or severally liable for any torts attributable to the Cooperative and only the Cooperative shall be liable for torts attributable to it or for the torts of its officers, agents, attorneys or employees under this Agreement, and then only to the extent of the waiver of sovereign immunity or limitation specified in Section 768.28, Florida Statutes, regardless of whether such claims are grounded in contract, statute, tort, negligence, product liability, strict liability, or otherwise. Finally, the Cooperative agrees to indemnify and hold the Project Participants harmless from any injury that the Project Participants or their officers, agents, attorneys, employees or invitees sustain while carrying out the Cooperative's obligations under this Agreement.

24. APPLICABLE LAW, VENUE AND WAIVER OF JURY TRIAL. This Agreement and the rights and obligations of the Parties are to be governed by, construed and interpreted in accordance with the laws of the State of Florida. In the event of any legal proceeding

February 21, 2022

arising under this Agreement, the exclusive venue for such proceeding shall be either in a State court of competent jurisdiction located in Polk County, Florida or the United States District Court in and for the Middle District of Florida, Tampa Division. In any such legal proceeding, the Parties hereby consent to trial by the court and waive the right to a jury trial as to any issues that are triable before a jury.

25. NOTICES.

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

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

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

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

City of Eagle Lake
City Manager
P.O. Box 129
Eagle Lake, Florida 33839

February 21, 2022

863-293-4141

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

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

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

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

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

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

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

Town of Dundee
Town Manager

February 21, 2022

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

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

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

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

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

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

25.3 Any Party, may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand (or facsimile transmission) or three (3) days after the date mailed.

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

February 21, 2022

27. DISCLAIMER OF THIRD-PARTY BENEFICIARIES. This Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue to or for the benefit of anyone that is not a Party hereto, except for lenders of Cooperative Obligations, parties to cooperative funding agreements with the Cooperative and providers of grant funding to the Cooperative.

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

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

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

31. ATTORNEY'S FEES AND COSTS.

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

February 21, 2022

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

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

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

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

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

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

February 21, 2022

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

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

39. NON-PARTICIPATING MEMBER GOVERNMENTS. This Agreement is not binding upon and cannot negatively affect a Member Government, who is not a Party to the Agreement either directly or indirectly nor shall a Member Government, who is not a Party to the Agreement, incur any liability under this Agreement solely by virtue of being a Member Government of the Cooperative.

[Signatures begin on the following pages]

February 21, 2022

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

CITY COMMISSION OF THE
CITY OF AUBURNDALE, FLORIDA


By:  Dorothea Taylor Bogert, Mayor

Date: 03/07/2022

ATTEST:

By:  Jeffrey Brown, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:


Frederick J. Murphy, Jr., City Attorney

Attachment: 22-02-21 SEWF Implementation Agreement (Clean 2022021) (18421 : Amended & Restated Implementation Agreement Southeast

February 21, 2022


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

CITY COMMISSION OF
THE CITY OF BARTOW,
FLORIDA

By:  Steve Githens, Mayor

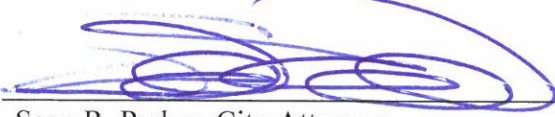
Date: March 7, 2022

ATTEST:

By:  Jacqueline Poole, City Clerk

Approved as to form and correctness:

Approved as to substance:


Sean R. Parker, City Attorney


George A. Long, City Manager



February 21, 2022

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

CITY COMMISSION OF THE
CITY OF DAVENPORT,
FLORIDA

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

Date: 3-7-22

ATTEST:

By: Raquel Castillo Raquel Castillo, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Thomas A. Cloud
Thomas A. Cloud, City Attorney

Attachment: 22-02-21 SEWF Implementation Agreement (Clean 2022021) (18421 : Amended & Restated Implementation Agreement Southeast

February 21, 2022

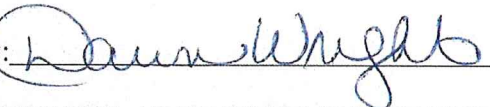
IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed and entered into.

CITY COMMISSION OF THE
CITY OF EAGLE LAKE,
FLORIDA

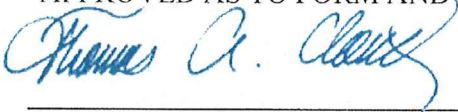
By:  Cory Coler, Mayor

Date: 3/8/2022

ATTEST:

By:  Dawn Wright, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:


Thomas A. Cloud, City Attorney

Attachment: 22-02-21 SEWF Implementation Agreement (Clean 2022021) (18421 : Amended & Restated Implementation Agreement Southeast

February 21, 2022

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

CITY COMMISSION OF THE
CITY OF FT. MEADE,
FLORIDA

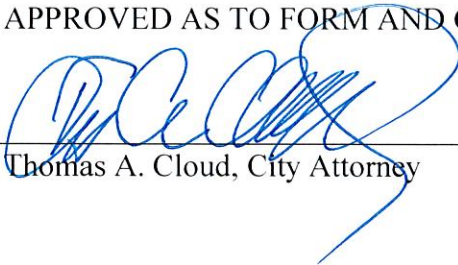
By:  Robert Elliott, Mayor

Date: March 8, 2022

ATTEST:

By:  Melissa Cannon, Deputy City Clerk

APPROVED AS TO FORM AND CORRECTNESS:


Thomas A. Cloud, City Attorney

Attachment: 22-02-21 SEWF Implementation Agreement (Clean 2022021) (18421 : Amended & Restated Implementation Agreement Southeast

February 21, 2022

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

CITY COMMISSION OF THE
CITY OF HAINES CITY,
FLORIDA

By: Morris L. West Morris L. West, Mayor

Date: 3-3-2022

ATTEST:
By: Erica Anderson Erica Anderson, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Fred Reilly
Fred Reilly, City Attorney

Attachment: 22-02-21 SEWF Implementation Agreement (Clean 2022021) (18421 : Amended & Restated Implementation Agreement Southeast

February 21, 2022

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

CITY COMMISSION OF THE
CITY OF LAKE ALFRED, FLORIDA

By: Nancy Z. Daley Nancy Z. Daley, Mayor

Date: 3/7/2022

ATTEST:

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

APPROVED AS TO FORM AND CORRECTNESS:

Frederick J. Murphy, Jr.
Frederick J. Murphy, Jr., City Attorney



Attachment: 22-02-21 SEWF Implementation Agreement (Clean 2022021) (18421 : Amended & Restated Implementation Agreement Southeast

February 21, 2022

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

CITY COMMISSION OF THE
CITY OF LAKELAND,
FLORIDA

By: _____ H. William Mutz, Mayor

Date: _____

ATTEST:

By: _____ Kelly Koos, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Palmer Davis, City Attorney

Attachment: 22-02-21 SEWF Implementation Agreement (Clean 2022021) (18421 : Amended & Restated Implementation Agreement Southeast

February 21, 2022

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

CITY COMMISSION OF THE
CITY OF LAKE WALES, FLORIDA

By:  Eugene Fultz, Mayor

Date: March 1, 2022

ATTEST:

By:  Jennifer Nanek, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

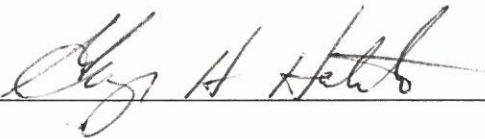

Albert C. Galloway, Jr., City Attorney

Attachment: 22-02-21 SEWF Implementation Agreement (Clean 2022021) (18421 : Amended & Restated Implementation Agreement Southeast

February 21, 2022


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

CITY COMMISSION OF THE
CITY OF MULBERRY,
FLORIDA

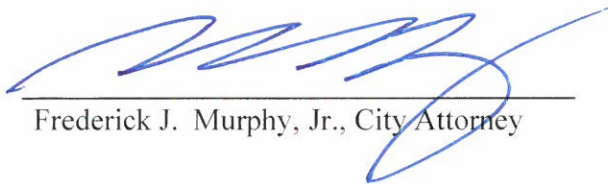
By:  George H. Hatch, Mayor

Date: March 1, 2022

ATTEST:

By:  Sharon Lauther, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:


Frederick J. Murphy, Jr., City Attorney

Attachment: 22-02-21 SEWF Implementation Agreement (Clean 2022021) (18421 : Amended & Restated Implementation Agreement Southeast

February 21, 2022

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

CITY COMMISSION OF THE
CITY OF POLK CITY,
FLORIDA

By: _____ Joe LaCascia, Mayor

Date: _____

ATTEST:

By: _____ Patricia Jackson, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Thomas A. Cloud, City Attorney

Attachment: 22-02-21 SEWF Implementation Agreement (Clean 2022021) (18421 : Amended & Restated Implementation Agreement Southeast

February 21, 2022

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

CITY COMMISSION OF THE
CITY OF WINTER HAVEN, FLORIDA


By:  Bradley T. Dantzler, Mayor

Date: 3/1/22

ATTEST:

By:  Vanessa Castillo, MMC City Clerk

APPROVED AS TO FORM AND CORRECTNESS:


Frederick J. Murphy, Jr., City Attorney

Attachment: 22-02-21 SEWF Implementation Agreement (Clean 2022021) (18421 : Amended & Restated Implementation Agreement Southeast

February 21, 2022

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

TOWN COMMISSION OF
THE TOWN OF DUNDEE,
FLORIDA

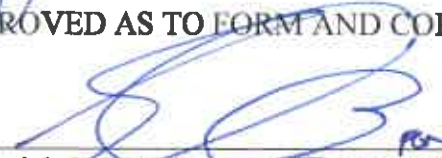
By:  Sam Pennant, Mayor

Date: 02/22/2022

ATTEST:

By:  Jenn Garcia, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:


Frederick J. Murphy, Jr., City Attorney

Attachment: 22-02-21 SEWF Implementation Agreement (Clean 2022021) (18421 : Amended & Restated Implementation Agreement Southeast

February 21, 2022

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

TOWN COUNCIL OF THE
TOWN OF LAKE HAMILTON, FLORIDA

By: _____ Mike Kehoe, Mayor

Date: _____

ATTEST:

By: _____ Sara Irvine, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Heather Maxwell, Town Attorney

Attachment: 22-02-21 SEWF Implementation Agreement (Clean 2022021) (18421 : Amended & Restated Implementation Agreement Southeast

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: Alison Holland
Deputy Clerk

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

Dated and signed by the Chairman: 3/1/22



Reviewed as to form and legal sufficiency:

John D. [Signature]
County Attorney's Office

Attachment: 22-02-21 SEWF Implementation Agreement (Clean 2022021) (18421 : Amended & Restated Implementation Agreement Southeast

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

POLK REGIONAL WATER COOPERATIVE

By: _____
Eugene Fultz, Chair

Date: _____

ATTEST:

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

APPROVED AS TO FORM AND CORRECTNESS:

Edward P. de la Parte, Legal Counsel

Attachment: 22-02-21 SEWF Implementation Agreement (Clean 2022021) (18421 : Amended & Restated Implementation Agreement Southeast

March 16, 2022 Polk Regional Water Cooperative Regular Meeting
Agenda Item #6

SUBJECT

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

DESCRIPTION

Carollo Engineers and team (a.k.a. "TeamOne") has been requested by staff to prepare a scope and fee proposal to complete the design, construction oversight, and other related services to implement Phase 1 of the Southeast wellfield project. A presentation summarizing the scope elements and total cost for the program was given to this board as information only in February of 2022. While the scope and fee presented represents the entire program, **consultants would proceed on a limited basis.**

The PRWC's ability to initiate the Southeast Wellfield program under the terms of the Implementation Agreement is dependent upon the ability to secure funding. The following funding and financing programs exist or are currently underway:

- The PRWC has received \$452,000 under FDEP agreement LPA0132 for the Southeast wellfield. This money is to be applied to Southeast Wellfield program expenses, and when applied to cofundable expenses would be shared with the District.
- District cooperative funding agreements Q184 and Q216 for the Southeast wellfield plant and transmission are expected to be approved by the District board in April of 2022.
- The loan and guaranty agreements for the SRF design loan discussed during the February 2022 board meeting are expected to be finalized in May of 2022.
- The WIFIA loan is expected to be closed before the end of the year and would cover the remainder of the program costs.

Therefore, staff recommends that the board approve the Carollo Engineer's contract, pursuant to the following:

- Expenditures incurred starting March 16, 2022 will be limited to \$452,000.
- All remaining expenditures contingent upon SWFWMD Board authorization of the CFAs and final approval of SRF loan documents.
- Executive Director must authorize expenditures beyond \$19,509,778.

A presentation will be providing recapping the services to be provided.

RECOMMENDATION

Staff recommends that the board approve the Carollo Engineers contract pursuant to the conditions described.

FISCAL IMPACT

This contract will allow for up to \$53,126,063 in professional services related to the design and construction of the Phase 1, 5 MGD Southeast Wellfield project be incurred over the course of the project, subject to the limitations described.

ATTACHMENTS

- Document was provided in previous meeting agenda

March 16, 2022 Polk Regional Water Cooperative Regular Meeting
Agenda Item #7

SUBJECT

Amended & Restated Implementation Agreement West Polk Wellfield Project Approval - (ACTION ITEM)

DESCRIPTION

In February of 2022, the Polk Regional Water Cooperative (PRWC) Board of Directors approved the modifications to the Amended and Restated Implementation Agreements for the West Polk Wellfield Project final design and construction. The modifications were made to reflect recommendations made by PRWC financial consultants, bond counsel, and grant and loan agencies to ensure the highest rating and to meet the financing and grant requirements of various agencies. The BOD agreed to move forward with member government approvals.

The amended Implementation Agreements have since been taken back to member government Commissions to approve with updated supply demand numbers.

Actions taken by the Cooperative’s member governments for the Southeast Wellfield Project have been submitted to Staff as:

<u>Participants</u>	<u>Associates</u>
Auburndale	Dundee
Bartow	Fort Meade
Lakeland	Lake Alfred
Polk City	Lake Hamilton
Winter Haven	Mulberry
Polk County	

RECOMMENDATION

Staff recommends ratifying the Amended and Restated Implementation Agreement for the West Polk Wellfield Project as adopted by individual member governments.

FISCAL IMPACT

This action will commit participating member governments to costs associated with the design and construction of the 10 MGD West Polk Wellfield project.

ATTACHMENT

- Amended & Restated Implementation Agreement - West Polk Wellfield Project

February 21, 2022

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

THIS AMENDED AND RESTATED PROJECT IMPLEMENTATION AGREEMENT (the “Agreement”) is made and entered into as of the Effective Date as hereinafter defined, by and among the Polk Regional Water Cooperative (“Cooperative”), whose address is P.O. Box 9005, Bartow, Florida 33831, the City of Auburndale whose address is P.O. Box 186, Auburndale, FL 33823, the City of Lakeland whose address is 228 S. Massachusetts Avenue, Lakeland, Florida 33801, Polk City, Florida, a Florida municipal corporation (fka “City of Polk City”) whose address is 123 Broadway Blvd SE, Polk City, Florida 33868, Polk County (“Polk County”), a charter county and political subdivision of the State of Florida, whose address is P.O. Box 9005, Bartow, Florida 33831, the City of Mulberry whose address is P.O. Box 707, Mulberry, Florida 33860, the City of Lake Alfred whose address is 155 East Pomelo Street, Lake Alfred, Florida 33850, the City of Winter Haven whose address is P.O. Box 2270, Winter Haven, Florida 33883, the City of Bartow whose address is 450 N. Wilson Avenue, Bartow, Florida 33838, the Town of Dundee, Florida whose address is 2020 East Main Street, Dundee, Florida 33838 and the City of Fort Meade, whose address is 8 West Broadway Street, Fort Meade, Florida 33841, individually also referred to as a “Party” and collectively referred to as the “Parties”.

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

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

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

1.1 **“Agreement”** means this Amended and Restated Implementation Agreement for the West Polk Lower Floridan Wellfield, as it may be amended or restated from time to time.

1.2 **“Alternative Procurement Methods”** means alternatives to the separate design and construction mechanisms specified in Sections 7.3.7 and 8.3 such as “design build,” “construction management at risk” or “public-private partnership.”

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

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

1.5 **“Capital Cost”** means fixed, one-time expenses incurred for the acquisition of real property, tangible property and intangible property, the construction of tangible personal property and other expenditures required for the production of water and other goods or the rendering of services in connection with the Project.

1.6 **“Capital Replacement and Renewal Cost”** means all costs incurred by the Cooperative for the ordinary renewal, replacement, upgrade and improvement of the Project, which are not paid from the proceeds of any Obligation and costs that will occur over the life of the Project for the assets comprising the Project.

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

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

1.9 “Construction Budget” means the approved maximum cost for the actual construction of the Project infrastructure, including any contingency. The Construction Budget is set after Project bidding and selection of a contractor or contractors, and may be amended if needed subject to written change orders approved in writing by the Cooperative and the Contractor engaged by the Cooperative.

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

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

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

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

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

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

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

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

1.18 “Force Majeure Event” means an event not the fault of, and beyond the reasonable control of, the Party claiming excuse when it is either impossible or extremely impracticable for such Party to perform the obligations imposed on it by this Agreement, by virtue of its effect on physical facilities and their operation or employees essential to such performance. Force Majeure Events include (a) an “act of God” such as an earthquake, flood, earth movement, pandemic, or similar catastrophic event; (b) an act of public enemy, terrorism, sabotage, civil disturbance or similar event; (c) a strike, work stoppage, picketing or similar concerted labor action; (d) delays in construction caused by unanticipated negligence or breach of contract by a third party or inability to obtain Project Permits or essential materials after diligent and timely efforts; or (e) an order or regulation issued by a federal, state, regional or local regulatory agency after the Effective Date or a judgment or order entered by a federal or state court after the Effective Date.

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

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

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

1.22 “MGD” means million gallons a day.

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

1.24 “Operation and Maintenance Cost” means any and all costs incurred by the Project Board in operating, maintaining and administering the Project, related operation, maintenance, management, security and development of the Project; labor and labor overhead cost; cost associated with tools, equipment, vehicles, supplies, materials and services; the operation, maintenance management, security and development of the Project, which are not a Capital Replacement and Renewal Cost or are payable from the proceeds of any Obligation. Operation and Maintenance Costs, to the extent not constituting a Capital Replacement and Renewal Cost or payable from the proceeds of any Obligation, include, but are not limited to any cost of litigation or legal judgment against the Cooperative relating to the Project; cost of purchasing any water related to the Project; development expenses relating to expansion of the Project; all costs incurred in planning or applying for, obtaining, maintaining and defending Project Permits, which are not paid under Phase 1 of the Combined Projects Implementation Agreement; administrative, accounting, legal and engineering expenses related to the Project; ordinary and current rentals of equipment or other property related to the Project; refunds of moneys lawfully due to others, pension, retirement, health and hospitalization funds related to the Project; payments in lieu of

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

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

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

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

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

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

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

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

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

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

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

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

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

1.37 “Prudent Utility Practices” means any of the practices, methods and acts engaged in, or approved by, a significant portion of the public water supply utility industry in the United States of America during the relevant time period or any of the practices, methods and acts,

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

1.38 “PSI” means pounds per square inch.

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

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

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

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

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

1.44 “Water Allotment” means the quantity of Project Water that each Project Participant is entitled to receive from the Project as set forth in the table below. In the event the Project Yield is different from the totals listed in the Water Allotment Table, the Water Allotment

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

2045 Water Allotment Table:

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

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

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

1.47 “Water Transfer Cost” means those costs incurred by the City of Lakeland in transmitting Project Water from the West Polk Lower Floridan Aquifer Wellfield to certain Project Participants.

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

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

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

2. PURPOSE OF THE AGREEMENT.

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

2.2 Interlocal Agreement. The Parties have entered into the Interlocal Agreement. In the event of a conflict between the Interlocal Agreement and this Agreement, the Interlocal Agreement shall control.

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

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

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

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

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

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

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

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

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

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

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

7. **PROJECT ADMINISTRATION.**

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

7.2 **Project Administrator.** No later than thirty (30) days from the Effective Date of this Agreement, the Project Board shall designate the name, address, phone number, fax number and email address of its Project Administrator. The Project Administrator may be changed at any time by the Project Board. The Project Administrator shall act as the Cooperative's representative with regard to implementation and management of the Project.

7.3 **Performance Standards.** The following performance standards shall

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apply to the Cooperative when implementing this Project:

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

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

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

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

7.3.5 Manage the review of interim and final deliverables.

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

7.3.7 Approve the use of Alternative Procurement Methods, as specified in Section 8.4, for design and construction of the Project.

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

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

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

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

7.3.12 Implement any alternative financing mechanisms.

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

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

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

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

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

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

7.3.19 Submit applications to modify or renew Project Permits issued in connection with the Project. Respond to requests for additional information or clarification from regulatory agencies and provide information as needed to finalize applications to modify or renew Project Permits. Obtain all modifications or renewals of Project Permits.

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

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

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

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

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

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

8.1 Final Design and Bidding Stage.

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

8.1.2 The Cooperative shall require the consultant to prepare (1) a final design in relative conformance with the Project Preliminary Design Report, and (2) a Bidding Budget based on the final design. The final design shall include a 100% final design. The 100% final design shall include design specifications, design drawings, the final Bidding Budget, and an estimate of real estate acquisition costs.

8.1.3 Once the consultant has completed the 100% final design, the Project Administrator will present it to the Project Board the final design and a Bidding Budget based on the final design for approval.

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

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

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

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

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

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

8.4 Alternative Procurement Methods. The Project Board may approve the use of Alternative Procurement Methods as allowed by Florida Statutes including Chapters 255 and 287, in place of the separate design and construction mechanisms described in Sections 8.1 and 8.3, including the procurement of a construction manager at risk.

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

8.6 Project Funding. A portion of the Project costs is expected to be reimbursed through cooperative funding from the District. The Cooperative anticipates issuing Obligations that will be used to pay the costs of the Project prior to reimbursement from the District of such Project costs. The Cooperative covenants to coordinate the issuance of Obligations with the execution of cooperative funding agreements with the District, which agreement by the District may be subject to such conditions precedent to funding, including appropriation and approval of reimbursement requests.

9. OWNERSHIP. The Cooperative shall own the Project facilities, including the water treatment plant and transmission lines up to and including the Points of Connection. Ownership does not include any infrastructure or facilities owned by Project Participants as of the time of the execution of this Agreement.

10. TRUE-UP.

10.1 Additions, assignments and substitutions. Before the beginning of each fiscal year, the Project Board will consider for approval any proposed additions, assignments, and substitutions proposed under the process set forth in Section 20.

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

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

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

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

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

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

11. PROJECT WATER SERVICE.

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

11.1.1 Delivery of Project Water Estimates. Each Project Participant desiring to take Project Water shall deliver to the Project Administrator its Project Water Estimate for the upcoming Fiscal Year on or before May 1. The Project Water Estimate shall identify the quantity of Project Water, at an annual average daily rate, the Project Participant requests the Project Board to deliver to its Point of Connection during the upcoming Fiscal Year or the quantity of Water Offset, at an annual average daily rate that the Project Participant requests to use during the upcoming Fiscal Year. A Project Water Estimate must include all the water a Project Participant will need. The Project Administrator shall send a written reminder to the Project Participants on or before April 1, if a Project Water Estimate has not been received from that Project Participant. If a Project Participant fails to deliver a Project Water Estimate to the Project Administrator by May 1, then the Project Participant shall be deemed to have requested its full Water Allotment for the upcoming Fiscal Year.

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

11.1.2.1 Every Project Participant with a Water Allotment

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

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

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

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

11.2 System Operation. The Cooperative shall at all times maintain the Project in accordance with Prudent Utility Practices. The Cooperative shall adopt an adequate budget to pay for all Operation and Maintenance Costs for the Project as required to provide Project Water Service, as set forth in this Agreement. The Cooperative shall provide sufficient personnel, with

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appropriate experience and credentials to undertake all regulatory requirements imposed with regard to the Project, while providing for reliable operations and maintenance. If new regulatory requirements necessitate capital improvements, the Cooperative shall take all necessary actions to accomplish the same. The Cooperative shall be responsible for all regulatory violations, including compliance costs or penalties assessed for same, which arise out of or are solely created through 1) material errors or omissions by its personnel or agents in the day-to-day operations of the Project; or, 2) the failure of the Cooperative to timely proceed administratively to undertake or complete a requirement imposed by any regulatory agency in any consent order or Project Permit. The Cooperative shall maintain adequate catastrophic insurance on the Project on such terms and amounts as established by the Project Board.

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

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

11.5 Project Permits. The Cooperative, shall obtain, renew, maintain and modify, if necessary, all Project Permits required for the operation and maintenance of the Project

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and to ensure that Project Water Service will be provided to the Project Participants under the terms of this Agreement.

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

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

12. POINTS OF CONNECTIONS AND METERING FACILITIES.

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

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

12.3 Inspection of Meters. Each Meter shall be inspected annually and an inspection report shall be prepared at the conclusion of each inspection detailing the condition and accuracy of each Meter. Each inspection shall be performed by a representative of the

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

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

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

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

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Charge shall consist of a Base Rate Charge and a Water Use Charge. The Water Charge shall be computed in the manner specified in Section 13.3, prior to the upcoming Fiscal Year and the Project Participants shall be notified of the Water Charge for the upcoming Fiscal Year in the manner provided in Section 13.2. Establishment of the Water Charge shall be made by the Project Board and the Project Board's decision shall not be subject to supervision or regulation by any commission, board, bureau, agency, municipality, county or political subdivision of the State of Florida.

13.2 Notification of Water Charge. On or before May 31 prior to the Fiscal Year in which the Project Water Service is scheduled to commence and on or before every May 31st thereafter, the Cooperative shall provide the Project Participants the Water Charge for the upcoming Fiscal Year. The Water Charge shall be accompanied by a report detailing the manner in which the Water Charge was computed for the upcoming Fiscal Year. In lieu of a report, the basis for the Water Charge may be detailed in the annual budget adopted by the Project Board for this Project for the upcoming Fiscal Year.

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

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

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

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

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

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

13.3.2 Water Use Charge. The Water Use Charge shall be computed as the Variable Operation and Maintenance Cost determined pursuant to Section 13.3.1.1 divided by the total of all the Project Water Estimates submitted by the Project Participants for the upcoming Fiscal Year and expressed as a cost per thousand (1,000) gallons of water.

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

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

13.4.2 The Project Participants shall pay their Water Use Charge on a monthly basis. Each Project Participant's monthly payment shall be determined by multiplying the actual amount of Project Water delivered by the Project Board to the Project Participant's Point of Connection during the prior calendar month by the Water Use Charge identified in Section 13.3.2.

13.5 Accounting, Audits and Adjustments for Actual Expenses and Water Use. The Cooperative shall maintain accounts and records of actual water use by the Project Participants, all revenue received from all sources to meet the cash needs of the Project and the

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actual Debt Service Costs, Capital Renewal and Replacement Costs, Fixed Operation and Maintenance Costs, Reserves and Variable Operation and Maintenance Costs incurred with respect to the Project. On or before each January 31, beginning on the January 31 immediately following the Fiscal Year in which Project Water Service commenced, the Cooperative shall complete an audit of the aforesaid records and accounts and determine what should have been the Water Charge for each Project Participant based on actual costs during the preceding Fiscal Year. For purposes of verifying the Base Rate Charge portion of the Water Charge for this audit, it shall be assumed that the Project Participants have used the quantity of water specified in their Project Water Estimates even if actual water use was less. Said audit shall be conducted by a nationally recognized certified public accounting firm. In the event the audit determines an underpayment was made by a Project Participant, then said underpayment shall be added to that Project Participant's Base Rate Charge for the upcoming Fiscal Year and paid in the manner specified in Section 13.4.1. If the audit determines that an overpayment was made by a Project Participant, then said overpayment shall be deducted from that Project Participant's Base Rate Charge for the upcoming Fiscal Year in the manner specified in Section 13.4.1.

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

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

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

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

14.2 Irrevocable Commitment to Pay. The Project Participants shall pay their respective Water Charge for every Fiscal Year throughout the term of the Agreement in the manner provided in Section 14.1. Said payments shall be made without notice or demand and without set-off, counterclaim, abatement, suspension or deduction. The Cooperative is undertaking the acquisition, construction, operation and replacement and expansion of the Project on the representation, warranties and covenants of the Project Participants to pay the Water Charge in a timely manner.

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

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

14.5 Prohibition Against Indebtedness and Ad Valorem Taxation. The obligation of the Project Participants to pay the Water Charge pursuant to this Agreement does not constitute general indebtedness of the Project Participants or any other municipality or county within the meaning of any constitutional, statutory or charter provision limiting the amount and nature of indebtedness that may be incurred by the Project Participants. Neither the Cooperative nor the holder of any Obligations issued by the Cooperative to finance the construction, alteration, improvement, replacement, expansion or operation of the Project nor any regional, state or federal agency providing cooperative funding to fund the construction, alteration, improvement, replacement, expansion or operation of the Project shall have the right to require the Project Participants to exercise their ad valorem taxing power, if any, to pay their obligations and liabilities under this Agreement or to compel payment from any source, other than as indicated in Section 14.3.

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

16. FORCE MAJEURE.

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

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

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

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

17. DISPUTE RESOLUTION. If there is a dispute between two or more Parties arising out of or related to this Agreement which cannot be resolved, then unless it shall be unreasonable to do so or an emergency situation or necessity dictates otherwise, before proceeding to the default and remedy provisions of this Agreement in Section 18, the affected Parties (“Mediating Parties”) shall attempt to resolve the dispute by non-binding mediation. The mediation will be conducted by a mediator mutually agreeable to all Mediating Parties who has experience in mediating disputes of a similar nature. The Mediating Parties will use a procedure agreeable to those Parties and the mediator. The Mediating Parties will mediate in good faith, and will be bound by any resulting mediation agreement that is approved by the governing body for each Party,

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equally share the costs of mediation and timely pay same. Mediation will commence within thirty (30) days after the date a Party requests mediation of a dispute, or if the agreed mediator is not available within that time period, then at the first opportunity the agreed mediator is available. A Party may not commence litigation of the dispute pursuant to Section 18 until (a) the mediator has declared the Mediating Parties are at an impasse, or (ii) one or all Mediating Parties have terminated the mediation. Among other matters the Parties intend this mediation process as an alternative to the conflict resolution procedure described in the Florida Governmental Conflict Resolution Act, Chapter 164, Florida Statutes.

18. DEFAULT AND REMEDY.

18.1 Default. If any Party fails to observe, comply with, perform or maintain in any material way any term, covenant, condition, duty, obligation, representation or warranty contained or arising under this Agreement, such action shall constitute a default and the other Parties may seek remedies set forth herein. For all defaults, except the failure to pay the Base Rate Charge, when due, pursuant to Section 13.4, the defaulting Party shall have thirty (30) days to cure the default, unless such default is not capable of being cured within thirty (30) days, in which case the Party must cure the default as soon as practicable. Recognizing the Project Participants' paramount need for a safe and dependable water supply, the Parties agree that, with the exception of the suspension of Project Water Service or Water Offsets pursuant to Section 18.4 of this Agreement, the exclusive remedy for default under this Agreement shall be for the non-defaulting Parties to individually or jointly seek specific performance arising from such default.

18.2 Default in Payment of Base Rate Charge. The failure by a Project Participant to pay the Base Rate Charge, when due, shall be immediately cured. If not cured, the Cooperative shall use the Reserves to pay the defaulting Project Participant's Base Rate Charge in the short term, in order to ensure

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

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

18.4 Suspension of Project Water Service in the Event of Non-Payment of the Water Charge. A Project Participant that fails to pay its Water Charge or any portion thereof by the due date shall be in default of this Agreement and upon fifteen (15) days written notice, the Cooperative may suspend Project Water Service to the Project Participant and prohibit a Project

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Participant from using Water Offsets unless there is in mediation a good faith dispute or suspension of service compromises the health, safety, and welfare of the end water users. Suspension of Project Water Service to a Project Participant or prohibition of the use of Water Offsets by a Project Participant because of its failure to pay the Water Charge or any portion thereof shall not excuse the Project Participant from paying the Base Rate Charge, when it becomes due nor prohibit the Cooperative from continuing to charge interest on the unpaid amount. Upon payment of all outstanding Water Charges, including any interest, the Cooperative shall immediately resume Project Water Service to the Project Participant or immediately allow a Project Participant to use a Water Offset. The Cooperative's decision to suspend Project Water Service to a Project Participant or to prohibit Water Offsets use by a Project Participant under this Section shall not be subject to the dispute resolution process in Section 17 and shall not be considered a default under Section 18. However, the Cooperative's failure to resume Project Water Service or to allow a Project Participant to use Water Offsets upon payment of all outstanding Water Charges, including any interest, may constitute a default under Section 18 and shall be subject to the dispute resolution process specified in Section 17.

19. WITHDRAWAL OF A PROJECT PARTICIPANT FROM THIS AGREEMENT.

19.1 Withdrawal Process. A Project Participant who withdraws from this Agreement shall remain liable for payment of its share of the Water Charge. If the withdrawing Project Participant has submitted a Project Water Estimate to the Cooperative for the current Fiscal Year, then it shall remain liable to pay the Water Charge for that Fiscal Year, as if it had taken the entire quantity of Project Water specified in its Project Estimate. Additionally, unless the remaining Project Participants take all or a portion of the withdrawing Project Participant's Water Allotment,

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

19.2 Duties of and Effect on Withdrawing Project Participant. A withdrawing Project Participant shall no longer be considered a voting member of the Project Board with regard to that specific Project. Upon notice by the Cooperative, a withdrawing Project Participant shall apply to withdraw from any Project Permits issued in its name and shall not oppose or challenge any modification to a Project Permit necessitated by its withdrawal. A withdrawing Project Participant shall surrender its Water Allotment, if any, and immediately forfeit its right to receive Project Water Service from the Project Board, including the use of Water Offsets. A Project Participant who withdraws from the Project may later request to join the Project again as a new Project Participant in accordance with Section 20 and, if approved to do so, will receive due credit given for all previous Project expenditures.

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

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

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

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

20.1 Substitution. As a matter of right, a new Project Participant or an existing Project Participant may be substituted for an existing Project Participant, if the new Project Participant or existing Project Participant agrees to fully perform all the obligations of the existing Project Participant. Substitution shall mean the new or existing Project Participant shall at a minimum succeed to the old Project Participant's entire Water Allotment, if any. Prior to substitution taking effect, the existing Project Participant must notify the other existing Project Participants in writing of the substitution and offer the substitution on the same terms and conditions to the other existing Project Participants, who shall be allowed at least sixty (60) days to exercise the right of first refusal. This right of first refusal shall only apply when a new Project Participant is substituted for an existing Project Participant. If one of the existing Project Participants exercises its right of first refusal during this time period, then all of the substituted Party's Water Allotment, if any, shall be assigned to the existing Project Participant. If two or more existing Project Participants exercise their right of first refusal during this time period, then all of

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the substituted Project Participant's Water Allotment, if any, shall be reassigned in equal portions to the existing Project Participants. If none of the existing Project Participants commit to acquire the substituted Project Participant's entire Water Allotment, if any, during this sixty (60) day period, then the other existing Project Participants shall be considered to have waived their right of first refusal. Any substitution under this Section 20.1 must be reviewed and approved by the Project Board as to technical feasibility. Once the substitution takes place, the substituted Project Participant shall withdraw from the Agreement and shall no longer be considered a voting member of the Project Board. Additionally, the substituted Project Participant shall cooperate with the Project Board in any modifications to the Project Permits necessary to effectuate this substitution.

20.2 Addition. A new Project Participant may be added by the unanimous decision of all the current Project Participants.

20.2.1 Cost to Become a New Project Participant. The provisions of this section 20.2 are established to provide equity among all Project Participants and to provide an incentive for local governments to subscribe early. Subject to the provisions of Section 2.4 of this Agreement, any new Project Participant that joins this Agreement after it is first executed under the process described in this Section 20 of this Agreement shall pay its proportionate share of the costs incurred by the Project Participants before the new Project Participant joins the Agreement and its proportionate share of the Project Costs expended to date. This amount is in addition to the Water Charge for each upcoming fiscal year as described in Section 13. When this occurs, the percentage collected shall be refunded proportionately to the initial Project Participants who joined this Agreement when it was first executed.

20.2.2 Amendment of Water Charge. When a new Project Participant is added pursuant to this Section 20.2, the existing Project Participants must amend the Agreement

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to reflect the reassignment of Water Allotments among the existing Project Participants and the new Project Participant. The Project Board will also determine how the new Base Water Charge is allocated among the new group of Project Participants taking into consideration the short and long-term costs and benefits of the new infrastructure to the new and existing Project Participants including any savings realized due to economies of scale.

20.3 Assignment. As a matter of right, an existing Project Participant may assign a portion of its Water Allotment, if any, to a new Project Participant or an existing Project Participant, if the new Project Participant or existing Project Participant agrees to fully perform all the obligations of the existing Project Participant. The complete assignment of an existing Project Participant's Water Allotment, if any, to a new Project Participant or an existing Project Participant shall be treated as a substitution under Section 20.1. Prior to the assignment taking effect, the existing Project Participant must notify the other existing Participants in writing of the assignment and offer the assignment on the same terms and conditions to the other existing Project Participants, who shall be provided at least sixty (60) days to exercise the right of first refusal. This right of first refusal shall only apply when the assignee is a new Project Participant. If one of the existing Project Participants exercises its right of first refusal during this time period, then the portion of the assigning Project Participant's Water Allotment, if any, up for assignment shall be transferred to the existing Project Participant. If two or more existing Project Participants exercise their right of first refusal during this time period, then the portion of the assigning Project Participant's Water Allotment, if any, up for assignment shall be transferred in equal portions to the existing Project Participants. If none of the existing Project Participants commit to acquire the assigning Project Participant's Water Allotment, if any, up for assignment, then the other existing Project Participants shall be considered to have waived their right of first refusal. The right of first

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refusal shall not apply when an existing Project Participant or Project Associate is the assignee. Any assignment under this Section 20.3 must be reviewed and approved by the Project Board as to technical feasibility. Once the assignment takes place, the assigning Project Participant shall still be a Party to the Agreement, but it shall forfeit or surrender the assigned portion of its Water Allotment to the assignee Project Participant, as well as its voting rights, proportionate to the extent of the assignment. Once assignment takes place, the assigning Project Participant shall cooperate with the Project Board in any modification to the Project Permits necessary to effectuate this assignment.

21. PERMITS.

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

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

21.3 No Project Participant shall purposefully submit information to a regulatory agency that conflicts with information submitted by the Cooperative in support of any application for a Project Permit. In the event that an application for a Project Permit will interfere with the existing consumptive use permits or existing water, wastewater or reclaimed water facilities of that Project Participant the provisions of Section 21.1 shall apply .

21.4 No Party shall legally challenge or support any legal challenge against any proposed or final agency action or any legal instrument with regard to any Project Permit sought by the Cooperative, unless the proposed Project Permit directly threatens an existing legal right of

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

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

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

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

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

22.3 Obligations. The Project Participants shall cooperate with the Cooperative should the Cooperative decide in accordance with the Agreement to issue Obligations to fund any Capital Costs incurred by the Cooperative with regard to the Project. In said event, the Project Participants shall comply with the reasonable request of the Cooperative and will, upon such request, do as follows: (1) make available general material and financial information about itself; (2) consent to publication and distribution of its financial information; (3) certify that any general

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material and financial information is accurate, does not contain any untrue statements of material fact and does not omit to state a material fact necessary to make the statements contained in the general material and financial information, in light of the circumstances under which they were made not misleading; (4) provide reasonable certifications to be used in a transcript of closing documents; (5) provide and pay for reasonable requested opinions of counsel as to the binding effect of this Agreement, the validity of actions taken as a result of the Agreement, title to real property, as applicable, and pending litigation which could materially affect the Party's performance under the Agreement; and, (6) provide guarantee agreements, if required in order to obtain the Obligation. In addition, each Project Participant agrees to take no action which shall adversely affect the exclusion from gross income of interest on the Obligations for purposes of federal income taxation.

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

23. SOVEREIGN IMMUNITY AND INDEMNIFICATION. The Parties intend to avail themselves of the benefits of Section 768.28, Florida Statutes, and any other statute and common law governing sovereign immunity to the fullest extent possible and nothing herein shall be construed as a waiver of sovereign immunity by these Parties. Additionally, the Project Participants are not jointly or severally liable for any torts attributable to the Cooperative and only the Cooperative shall be liable for torts attributable to it or for the torts of its officers, agents, attorneys or employees under this Agreement, and then only to the extent of the waiver of sovereign immunity or limitation specified in Section 768.28, Florida Statutes, regardless of whether such claims are grounded in contract, statute, tort, negligence, product liability, strict

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liability, or otherwise. Finally, the Cooperative agrees to indemnify and hold the Project Participants harmless from any injury that the Project Participants or their officers, agents, attorneys, employees or invitees sustain while carrying out the Cooperative's obligations under this Agreement.

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

25. NOTICES.

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

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

City of Bartow
 City Manager

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

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

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

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

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

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

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

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

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

25.3 Any Party, may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand (or facsimile transmission) or three (3) days after the date mailed.

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

27. DISCLAIMER OF THIRD-PARTY BENEFICIARIES. This Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue to or for the benefit of anyone that is not a Party hereto, except for lenders of Cooperative Obligations, parties to cooperative funding agreements with the Cooperative and the providers of grant funding to the Cooperative.

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

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

30. SEVERABILITY. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, it shall be considered deleted, and shall not invalidate the remaining provisions. However, if the deleted language is considered a key provision of the Agreement, the Parties must agree to a substitute provision that will accomplish the original intent

February 21, 2022

of the Parties. If the Parties cannot agree to a substitute provision within ninety (90) days of the determination by the court, then the Agreement shall be deemed terminated.

31. ATTORNEY'S FEES AND COSTS.

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

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

32. ENTIRE AGREEMENT. This Agreement, including Exhibits, constitutes the entire contract among the Parties pertaining to the subject matter hereof, and there are no warranties, representations or other agreements in connection with the subject matter hereof, except as specifically set forth herein. This Agreement supersedes and replaces the previously executed Implementation Agreement for the West Polk Lower Floridan Wellfield.

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

February 21, 2022

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

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

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

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

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

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Statutes or make into a public record a document that is not a public record under the applicable law.

39. NON-PARTICIPATING MEMBER GOVERNMENTS. This Agreement is not binding upon and cannot negatively affect a Member Government, who is not a Party to the Agreement either directly or indirectly nor shall a Member Government, who is not a Party to the Agreement, incur any liability under this Agreement solely by virtue of being a Member Government of the Cooperative.

[Signatures begin on the following pages]

February 21, 2022

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly

executed and entered into by:

CITY COMMISSION OF THE
CITY OF AUBURNDALE, FLORIDA

By:  Dorothea Taylor Bogert, Mayor

Date: 03/07/2022

ATTEST:

By:  Jeffrey Brown, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:


Fredrick J. Murphy, Jr., City Attorney

Attachment: 22-02-21 WPLFA Implementation Agreement (Clean 2022021) (18422 : Amended & Restated Implementation Agreement West Polk

February 21, 2022

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

CITY COMMISSION OF THE
CITY OF LAKELAND,
FLORIDA

By: _____ H. William Mutz, Mayor

Date: _____

ATTEST:

By: _____ Kelly Koos, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Palmer Davis, City Attorney

Attachment: 22-02-21 WPLFA Implementation Agreement (Clean 2022021) (18422 : Amended & Restated Implementation Agreement West Polk

February 21, 2022

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

CITY COMMISSION OF THE
POLK CITY, FLORIDA,

By: _____ Joseph LaCascia, Mayor

Date: _____

ATTEST:

By: _____ Patricia Jackson, City Clerk

APPROVED AS TO FORM & LEGALITY

By: _____ Thomas A. Cloud, City Attorney

Attachment: 22-02-21 WPLFA Implementation Agreement (Clean 2022021) (18422 : Amended & Restated Implementation Agreement West Polk

February 21, 2022

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

ATTEST:

POLK COUNTY, a political subdivision of The State of Florida

Stacy M. Butterfield
Clerk to the Board of County Commissioners

By: Alison Holland
Deputy Clerk

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

Dated and signed by the Chairman: 3/1/22



Reviewed as to form and legal sufficiency:

Shirley Neumann
County Attorney's Office

Attachment: 22-02-21 WPLFA Implementation Agreement (Clean 2022021) (18422 : Amended & Restated Implementation Agreement West Polk

February 21, 2022

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

CITY COMMISSION OF THE CITY OF FORT MEADE, FLORIDA


By:  Robert Elliott, Mayor

Date: March 8, 2022

ATTEST:

By:  Melissa Cannon, Deputy City Clerk

APPROVED AS TO FORM & LEGALITY

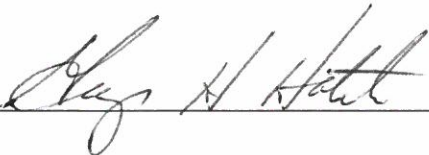
By:  Thomas A. Cloud, City Attorney

Attachment: 22-02-21 WPLFA Implementation Agreement (Clean 2022021) (18422 : Amended & Restated Implementation Agreement West Polk

February 21, 2022

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

CITY COMMISSION OF THE
CITY OF MULBERRY,
FLORIDA

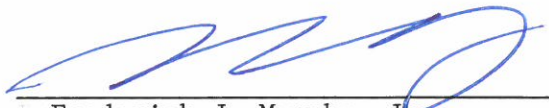
By:  George H. Hatch, Mayor

Date: March 1, 2022

ATTEST:

By:  Sharon Lauther, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:


Frederick J. Murphy, Jr.
City Attorney

Attachment: 22-02-21 WPLFA Implementation Agreement (Clean 2022021) (18422 : Amended & Restated Implementation Agreement West Polk

February 21, 2022

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

CITY COMMISSION OF THE CITY OF LAKE ALFRED, FLORIDA

By: Nancy Z. Daley Nancy Z. Daley, Mayor

Date: 3/7/2022

ATTEST:

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

APPROVED AS TO FORM AND CORRECTNESS:

Frederick J. Murphy, Jr.
Frederick J. Murphy, Jr., City Attorney



Attachment: 22-02-21 WPLFA Implementation Agreement (Clean 2022021) (18422 : Amended & Restated Implementation Agreement West Polk

February 21, 2022

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

CITY COMMISSION OF THE CITY OF WINTER HAVEN, FLORIDA

By:  Bradley T. Dantzler, City Mayor

Date: 3/1/22

ATTEST:

By:  Vanessa Castillo, MMC, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:


Frederick J. Murphy, Jr., City Attorney

Attachment: 22-02-21 WPLFA Implementation Agreement (Clean 2022021) (18422 : Amended & Restated Implementation Agreement West Polk

February 21, 2022

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


CITY COMMISSION OF THE CITY OF BARTOW, FLORIDA

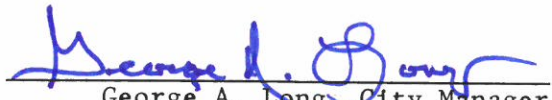
By:  Steve Githens, Mayor

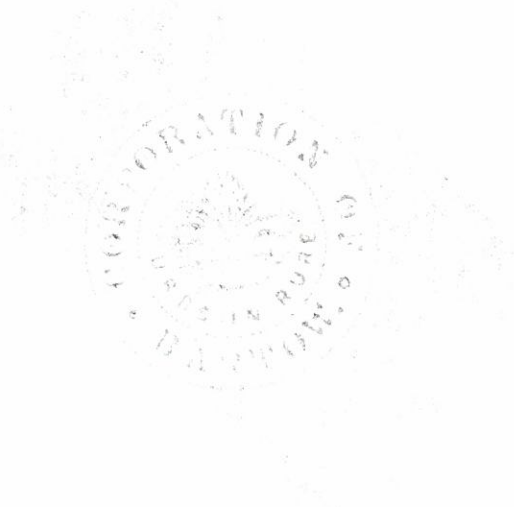
Date: March 7, 2022

ATTEST:

By:  Jacqueline Poole, MMC, FCRM, CPM, City Clerk
APPROVED AS TO FORM AND CORRECTNESS: APPROVED AS TO SUBSTANCE:


Sean R. Parker., City Attorney


George A. Long, City Manager



February 21, 2022

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

TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA


By:  Sam Pennant, Mayor

Date: 02/22/2022

ATTEST:

By:  Jenn Garcia, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:


Frederick J. Murphy, Jr., Town Attorney

Attachment: 22-02-21 WPLFA Implementation Agreement (Clean 20220201) (18422 : Amended & Restated Implementation Agreement West Polk

February 21, 2022

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

POLK REGIONAL WATER COOPERATIVE

By: _____ Eugene Fultz, Chair

Date: _____

ATTEST:

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

APPROVED AS TO FORM AND CORRECTNESS:

Edward P. de la Parte, Legal Counsel