

POLK REGIONAL WATER COOPERATIVE

Resolution 2023-01

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DONE at Auburndale, Florida this 18th day of January, 2023

Board of Directors of the Polk Regional Water Cooperative:



George Lindsey III
Chair



Eric DeHaven
Executive Director

Approved as to Form:



Edward P. de la Parte
Legal Counsel

EXHIBIT A

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

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

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

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

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

Certain provisions of the Agreement need revision.

The Parties hereto agree as follows:

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

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

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

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

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

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

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

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

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

3.01. LOAN DEBT SERVICE ACCOUNT.

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

(1) RESERVED.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.06. ABANDONMENT, TERMINATION OR VOLUNTARY CANCELLATION.

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

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

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

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

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

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

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

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

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

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

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

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

The estimated Project costs are revised as follows:

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

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

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

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

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

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

10.08. SPECIAL CONDITION.

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

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

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

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

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

for
POLK REGIONAL WATER COOPERATIVE

George Lindsey III, Chairman

Attest:

Approved as to form and legal sufficiency:

Eric DeHaven, Clerk

Edward P. de la Parte, Attorney

SEAL

for
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Secretary or Designee

Date