

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: March 7, 2016

RE: Interlocal Agreement Establishing the Polk Regional Water Cooperative

Attached hereto is a proposed interlocal agreement among Polk County and all of the Polk County municipalities which establishes the Polk Regional Water Cooperative (PRWC). Its creation has been a collaborative effort among all of the city governments and Polk County. It is authorized and supported by the Southwest Florida Water Management District (SWFMD) with the goal of facilitating the development of regional water projects. Specifically, its purpose is to provide a mechanism for regional cooperation among Polk County governments for the development, recovery, storage, and supply of water among its Members, and/or other similar regional entities.

Through its funding priorities, SWFMD favors multi-jurisdictional Alternative Water Supply Projects, which are water supply sources that do not impact the Floridan Aquifer. This Agreement creates the PWRC and provides for its governance and operation. Once it has been created and begins conducting business, Polk County will perform the administrative duties on behalf of the PRWC and its member governments, at least for the foreseeable future.

In the near future the PRWC will begin to identify and evaluate the feasibility of potential projects for consideration by one or more of the parties. If interested, those interested parties, will negotiate an Implementation Agreement which will provide for financing, allocation of supply among the parties, and how the Project will be designed and built. Significant provisions of the Agreement are:

1. Establishment. The Agreement creates the PRWC, articulates its purpose, provides for representation by an elected official from each Member government, and provides restrictions on withdrawal as a Member. SWFMD has established a criteria as a condition to future funding that at all times, the PRWC represent at least 5 Member governments and 70% of the overall water demand in the County. Lakeland currently represents about 32.7% of the total water demand in the County

2. Board of Directors (Board). Provides for terms, administrative responsibilities, Chair and Vice-Chair, conduct of meetings, quorum requirements, normal and weighted voting methods, sets forth expressed powers of the Board, establishing specific limitations, rate making procedure, and process for issuing debt.
 - a. The PRWC acts through its Board, which will make most administrative decisions by a majority vote of the Board. Budget decisions in excess of \$200,000 are decided based on a weighted method determined by the size of a governments system. Project implementation decisions will be made by the Project Boards, which is those Member's participating in a particular project in accordance with their share of participation.
 - b. The Board will be subject to the Sunshine requirements, meetings will be public and noticed, and the PRWC will do annual audits, with reporting requirements.
 - c. The Board has broad governmental powers to carry out its purpose, including advocating and lobbying on behalf of its Members in water related matters. It can sue, or be sued, enter into contracts, acquire property by purchase or eminent domain, provided however, that no facilities of a Member can be acquired without their consent. It can set rates for water it sells, and require Members to contribute a share of the annual budget. It is the entity that will interact with the public and other governments on all matters related to regional water issues.
 - d. The PRWC can issue bonds and enter into any other financial transactions that a city government is authorized to do. No Member can become liable for the debts on projects in which they do not participate.
 - e. The PRWC will observe a process created by the Agreement where projects may be nominated, further studied, and if feasible added to a list of Candidate Projects. Members will decide individually whether a particular project benefits them, and decides whether and to what extent it will participate. The participants in a particular project will negotiate an Implementation Agreement where the participating parties will decide how to move forward with a project,handle permitting financing and construction.
 - f. Finally there are provisions for what happens when a Member defaults, or when the PRWC may dissolve.

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Each of the Members will be considering this Agreement during the month of March or early April.. Upon approval by the required Members, business will commence. It is recommended that the appropriate City officials be authorized to execute this agreement.

TJM

attachment

FINAL – 02-24-2016

INTERLOCAL AGREEMENT
RELATING TO THE ESTABLISHMENT
OF THE
POLK REGIONAL WATER COOPERATIVE

By and Among

City of Auburndale

City of Bartow

City of Davenport

City of Eagle Lake

City of Fort Meade

City of Frostproof

City of Haines City

Village of Highland Park

City of Lake Alfred

City of Lakeland

City of Lake Wales

City of Mulberry

City of Polk City

City of Winter Haven

Town of Dundee

Town of Lake Hamilton

and

Polk County, a political subdivision of the State of Florida

TABLE OF CONTENTS

Preamble		1
ARTICLE I	DEFINITIONS AND CONSTRUCTION	4
SECTION 1.01.	DEFINITIONS	4
SECTION 1.02.	CONSTRUCTION	11
SECTION 1.03.	SECTION HEADINGS	12
SECTION 1.04.	FINDINGS	12
ARTICLE II	THE COOPERATIVE	14
SECTION 2.01.	ESTABLISHMENT AND CREATION	14
SECTION 2.02.	BOARD OF DIRECTORS	16
SECTION 2.03	PROJECT BOARD	20
SECTION 2.04.	MEETINGS; NOTICE; REGISTERED AGENT AND OFFICE	22
SECTION 2.05.	REPORTS; BUDGETS; AUDITS	23
SECTION 2.06.	COOPERATIVE POWERS, FUNCTIONS AND DUTIES; LIMITATIONS	24
SECTION 2.07.	CREATION OF STATE, COUNTY OR MUNICIPAL DEBTS PROHIBITED	31
SECTION 2.08.	ADOPTION OF RATES, FEES AND CHARGES; USE OF FUNDS	32
SECTION 2.09.	BONDS AND OBLIGATIONS	35
SECTION 2.10.	PLANNING AND DEVELOPMENT OF WATER PROJECTS; DEVELOPING AND MODIFYING PROJECT LISTS; PURSUIT OF WATER PROJECTS BY MEMBER GOVERNMENTS	40
SECTION 2.11.	IMPLEMENTATION OF WATER PROJECTS	43
SECTION 2.12	DEFAULT, INSOLVENCY OR BANKRUPTCY OF MEMBER GOVERNMENTS PARTICIPATING IN AN APPROVED WATER PROJECT	45
SECTION 2.13.	MERGER; DISSOLUTION	47
SECTION 2.14.	ENFORCEMENT AND PENALTIES	48
SECTION 2.15.	TAX EXEMPTION	49
ARTICLE III	ADMINISTRATION	49
SECTION 3.01.	INITIAL FUNDING	49
SECTION 3.02.	STAFFING	50
SECTION 3.03.	CONFLICTS; WAIVERS	52
ARTICLE IV	GENERAL PROVISIONS	52
SECTION 4.01.	TERM OF AGREEMENT	52
SECTION 4.02.	AMENDMENTS AND WAIVERS	52
SECTION 4.03.	NOTICES	53
SECTION 4.04.	IMMUNITY; LIMITED LIABILITY	56
SECTION 4.05.	SEVERABILITY	56
SECTION 4.06.	EXECUTION IN COUNTERPARTS	57

SECTION 4.07.	APPLICABLE LAW	57
SECTION 4.08.	ENTIRE AGREEMENT	57
SECTION 4.09.	FILING	57
EXHIBIT A	POLK COUNTY 2035 WATER DEMAND	75

Preamble

This Interlocal Agreement provides a mechanism for innovative regional cooperation amongst local governments. This Interlocal Agreement creates the charter for a separate legal entity entitled the Polk Regional Water Cooperative to serve these regional purposes. These regional purposes include developing, recovering, storing and supplying water for county or municipal purpose in such a manner, as will give priority to reducing adverse environmental effects of excessive or improper withdrawals of water from concentrated areas. Capitalized terms used in this preamble shall have the meaning ascribed to those terms in the definitions section of this Interlocal Agreement.

The intent of the Cooperative is to encourage the development of fully integrated robust public water supply systems comprised of diverse sources managed in a manner that take full advantage of Florida intense climatic cycles to ensure reliable, sustainable and drought resistant systems, which maximize the use of Alternative Water Supplies to the greatest extent practicable. This intent will be implemented by having the Cooperative evaluate, plan and implement various Water Projects and coordinate partnerships with other water users (i.e., agriculture, mining, industry and commercial). Whenever practicable and acceptable to the participating Member Governments, the Cooperative will attempt to develop Water Projects that solve multiple water resource problems, as well as provide a source of water to meet public water supply demands. It is anticipated that Approved Water Projects will have multiple benefits to Polk County's economic, social and environmental future. To accomplish these tasks, the Cooperative intends to access Water Management District funds and other private or public funding sources to develop Alternative Water Supplies.

The intent of the Cooperative is that any Water Project developed under this Interlocal Agreement shall not interfere with either the existing water supply facilities or existing consumptive use permits of the Member Governments. This is primarily accomplished by requiring that Water Projects to be approved for inclusion in the Candidate Water Project List by majority vote of a Quorum of the Board of Directors using the Normal Vote Method before the Water Project is approved for implementation. The approval process will greatly diminish the potential for disputes or conflicts amongst local governments, other water users (i.e., agriculture, mining, industry and commercial) and with natural systems. As well, such approval greatly advances the potential success, credibility and efficiency of any Water Project.

The required addition of a Water Project to the Nominated Water Project and Candidate Water Project Lists will not constrain, prohibit or otherwise impede any Member Government executing this Interlocal Agreement or any other party, public or private, from separately or independently undertaking or attempting to implement a Water Project, except that certain Water Projects may only be pursued by Member Governments executing this Interlocal Agreement following notice to the Cooperative.

The intent of the Cooperative is to support the right of the Member Governments to keep their existing permitted allocations and to advocate on behalf of the Member Governments with federal, state, regional or local authorities, including, but not limited to legislative bodies and

executive agencies regarding matters within the scope of the responsibilities assigned to the Cooperative under this Interlocal Agreement.

Accordingly, because of the broad-ranging tasks assigned to the Cooperative and the constraints to the exercise of powers by the Cooperative emanating from the approval process for any Water Project undertaken, the powers and abilities articulated in this Interlocal Agreement are broad and far-reaching. This is done intentionally so that when an Implementation Agreement relative to any single Approved Water Project is achieved, the Cooperative can be the most efficient and effective means to carry out such regional undertakings and objectives.

**INTERLOCAL AGREEMENT
RELATING TO THE ESTABLISHMENT OF THE
POLK REGIONAL WATER COOPERATIVE**

THIS INTERLOCAL AGREEMENT (the “Interlocal Agreement”) is made and entered into as of the Effective Date as hereinafter defined, by and among 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 Frostproof whose address is P.O. Box 308, Frostproof, FL 33843, the City of Haines City whose address is 620 E. Main Street, Haines City, FL 33844, the Village of Highland Park whose address is 151 N. Scenic Highway, Babson Park, FL 33827, the City of Lake Alfred whose address is 120 E Pomelo Street, Lake Alfred, FL 33850, the City of Lakeland whose address is 228 S Massachusetts Ave., Lakeland, FL 33801, the City of Lake Wales whose address is P.O. Box 1320, Lake Wales, FL 33859, the City of Mulberry whose address is P.O. Box 707, Mulberry, FL 33860, the City of Polk City whose address is 123 Broadway Blvd SE, Polk City, FL 33868, the City of Winter Haven whose address is P.O. Box 2277, Winter Haven, FL 33883, the Town of Dundee whose address is P.O. Box 1000, Dundee, FL 33838, the Town of Lake Hamilton whose address is P.O. Box 126, Lake Hamilton, FL 33851 and Polk County (“Polk County”), a charter county and political subdivision of the State of Florida, whose address is P.O. Box 9005, Bartow, Florida 33831, individually also referred to as a “Party” and collectively referred to as the “Parties.”

THE PURPOSE of this Interlocal Agreement is to create and establish a separate legal entity, public agency and unit of special purpose local government, pursuant to Section

163.01(7)(g) and 373.713, Florida Statutes, with all of the privileges, benefits, powers and terms provided for herein and by law.

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:

**ARTICLE I
DEFINITIONS AND CONSTRUCTION**

SECTION 1.01. DEFINITIONS. As used in this Interlocal Agreement, the following terms shall have the following meanings unless the context clearly requires otherwise:

“Administrative Expenses” means those costs incurred by the Cooperative in implementing its obligations under the Agreement, which are not otherwise attributable to implementation of an Approved Water Project.

“Alternative Water Supply” or **“AWS”** shall have the meaning for such term provided in Section 373.019(1), Florida Statutes, as the same may be amended from time to time, which at the present time means salt water; brackish surface water and groundwater; surface water captured predominantly during wet-weather flows; sources made available through the addition of new storage capacity for surface or groundwater; water that has been reclaimed after one or more public water supply, municipal, industrial, commercial, or agricultural uses; the downstream augmentation of water bodies with reclaimed water; stormwater; and any water supply source that is designated as nontraditional for a water supply planning region within a Water Management District’s regional water supply plan.

“Approved Water Projects List” means the master list of Approved Water Projects, more particularly described in Section 2.10 (A)(3).

“Approved Water Project” means a Water Project that is approved for implementation, under the process of approval more particularly described in Section 2.10 (A)(3).

“Board of Directors” means the governing body of the Cooperative constituted and empowered as provided in Section 2.02, and other provisions of this Interlocal Agreement.

“Candidate Water Projects List” means the master list of Candidate Water Projects, more particularly described in Section 2.10 (A)(2).

“Candidate Water Project” means a Water Project deemed ready for assessment and evaluation for implementation under the process more particularly described in Section 2.10 (A)(2).

“Cooperative” means the Polk Regional Water Cooperative, a separate legal entity created by this Interlocal Agreement and identified in Section 2.01 as the Cooperative.

“Cooperative Facilities” means those constructed Approved Water Project facilities owned, leased, operated, managed or used or contracted for use, in whole or in part by the Cooperative. The term includes the Cooperative’s potable and non-potable water resources, re-infiltration, collection, production, pumping, treatment, transmission, distribution and other public facilities, and property of any kind or nature, as they may be modified, improved or expanded from time to time, which are owned, leased, operated, managed and or used or contracted for use, in whole or in part, by the Cooperative to collect, obtain, treat, hold, store, conserve, reuse, share or distribute water. Cooperative Facilities shall include all property, real or personal, tangible or intangible, now or hereafter owned, leased, operated or managed by the Cooperative.

“Cost” when used in connection with a Water Project means (A) the Cooperative’s costs of feasibility studies, permitting, design, construction or installation; (B) costs of transfer or

acquisition by or for the Cooperative of such Water Project; (C) costs of land, equipment, fixtures or chattel and interests thereon or therein and the cost of the Cooperative incidental to the transfer or acquisition thereof; (D) the costs of any indemnity and or surety bonds and premiums for insurance during construction or installation; (E) all interest due to be paid on the Obligations relating to any Water Project during the period of acquisition and construction of such Water Project and for periods subsequent to completion of acquisition and construction as the Board of Directors may determine by resolution; (F) engineering, legal and other consulting fees and expenses; (G) costs and expenses of the financing incurred for such Water Project, including without limitation, audits, fees and expenses of any paying agent, registrar, trustee, consultants, attorneys, engineers, financial advisors, credit enhancers or depositories; (H) payments, when due (whether at the maturity of principal or the due date of interest or upon redemption) on any interim or temporary indebtedness incurred for such Water Project; (I) costs of labor, machinery, equipment, supplies and spare parts required by the Cooperative for the commencement of operation of such Water Project or continuation of operation of such Water Project; (J) cost of re-locating existing utility lines, to the extent permitted by law; and (K) any other costs properly attributable to such Water Project or to the issuance of Obligations that finance such Water Project, as determined by generally accepted accounting principles applicable to such Water Project, and may include reimbursement to the Cooperative or a Member Government for any such items of cost advanced, incurred or paid by the Cooperative or a Member Government prior to issuance of the Obligations issued to finance or acquire such Water Project. Additional items of cost may be provided pursuant to the Financing Documents.

“Director” means a member of the Board of Directors and/or Project Board of the Cooperative.

“Effective Date” means the first day of the calendar month following the execution of this Interlocal Agreement by at least five (5) Member Governments (including the County itself) within Polk County representing at least seventy (70%) percent of the projected total demand for public water supply in Polk County for the calendar year 2035, as specified in **Exhibit A** to this Interlocal Agreement and the filing of this Interlocal Agreement with the Clerk of the Circuit Court of Polk County, Florida.

“Financing Documents” means the resolution or resolutions duly adopted by the Cooperative, as well as any indenture of trust, trust agreement, interlocal agreement, loan agreement or other instrument relating to the issuance or security of any Obligations of the Cooperative.

“Funding Agreement” means a contract between the Cooperative and a Water Management District or other financing agency governing, the design, construction, operation, production and funding of any Water Management District sanctioned Water Project.

“General Business of the Cooperative” means all powers, privileges, and duties vested in or imposed on the Cooperative under this Interlocal Agreement, except for those powers, privileges and duties reserved to the Member Governments or a Project Board under this Interlocal Agreement.

“Implementation Agreement” means an agreement entered into by the Cooperative and one or more Member Government and/or other public or private entities to participate in the funding and development of an Approved Water Project, including an interlocal agency created under Section 163.01, Florida Statutes or a public agency (as defined in Section 163.01, Florida Statutes).

“Interlocal Agreement” means this Interlocal Agreement including any amendments and supplements hereto executed and delivered in accordance with the terms hereof.

“Member Government” means a local government that is a member of the Cooperative, admitted to membership pursuant to the terms of this Interlocal Agreement and by binding execution of this Interlocal Agreement.

“Nominated Water Projects List” means the master list of Nominated Water Projects, more particularly described in Section 2.10 (A)(1).

“Nominated Water Project” means a Water Project initially submitted to the Board of Directors for consideration under the process of review more particularly described in Section 2.10 (A)(1).

“Normal Vote Method” means a procedure by which each Director is assigned one vote.

“Obligations” means bonds, obligations or other evidence of indebtedness, including, but not limited to, notes, commercial paper, capital leases or any other obligations of the Cooperative issued or incurred hereunder, or under any general law provisions, and pursuant to the Financing Documents. The term shall also include any lawful obligation committed to by the Cooperative pursuant to agreement including, but not limited to, an interlocal agreement with another governmental body or agency.

“Pledged Funds” means with respect to series of Obligations (A) the revenues, fees, charges, contract revenues, interlocal obligations, grants and or other moneys received by the Cooperative or its designee relating to its ownership or operation of the Cooperative Facilities, or some portion thereof, (B) until applied in accordance with the terms of the Financing Documents, all moneys in the funds, accounts and sub-accounts established thereby, including investments therein, and (C) such other property, assets and moneys of the Cooperative as shall

be pledged pursuant to the Financing Documents; in each case to the extent provided by the Board of Directors and/or Project Board(s), as applicable, pursuant to the Financing Documents. The Pledged Funds pledged to one series of Obligations may be different than the Pledged Funds pledged to other series of Obligations. Pledged Funds shall not include any ad valorem tax revenues or general fund account of the Cooperative.

“Product Water” means the finished water produced by an Approved Water Project to meet the potable water demands of one or more Member Governments, as well as other public or private entities.

“Project Board” means the Board of Directors acting in its capacity as the governing body of the Cooperative responsible for approval, development and implementation of an Approved Water Project and voting under the Weighted Vote Method. A separate Project Board shall be constituted for each Approved Water Project. Any Director whose Member Government is a party to the Implementation Agreement for the specified Approved Water Project is a voting member of the Project Board, and any Director whose Member Government is not a party to the Implementation Agreement for the specified Approved Water Project shall not have a vote and be considered an ex officio member of the Project Board. A Project Board shall be governed by the procedures and policies applicable to the Board of Directors and shall exercise the powers of the Cooperative with regards to the Approved Water Project for which it was constituted, except as otherwise specified in this Interlocal Agreement or the Implementation Agreement for the Approved Water Project, except to the extent the Implementation Agreement conflicts with this Interlocal Agreement, in which case a majority vote of a Quorum of the Board of Directors using the Normal Vote Method shall be required to waive the conflict.

“Quorum” means a majority of voting Directors currently comprising the Board of Directors and/or a Project Board.

“Reclaimed Water” means as that term is defined in Section 373.019(17), Florida Statutes, as may be amended from time to time, which at present means water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility.

“Water Management District” means any one or any combination of the Southwest Florida Water Management District (“SWFWMD”), and/or the South Florida Water Management District (“SFWMDC”) as the context reasonably requires, which are public corporations of the State of Florida, created and existing pursuant to Chapter 373, Florida Statutes.

“Water Project” means the use, acquisition or transfer of any water collection, holding, storage, pumping, treatment, transmission, distribution, conservation or disposal facility, or system, or any related assets thereof (including real or personal property), or the securing of the right to collect, obtain, hold, store, treat, conserve, reuse, share, distribute or provide water or related service as provided for in one or more Implementation Agreements. The term includes traditional potable water supply projects, AWS potable water supply projects, water system interconnects and water sharing, Water Projects using Reclaimed Water, water conservation projects, water restoration projects, aquifer recharge projects and any other project that makes Product Water available either by offsetting existing or projected water withdrawal impacts or making additional water available for potable Water Projects. The term only includes wholesale and does not include facilities for local distribution. As the context requires, a Water Project may be a Nominated Water Project, a Candidate Water Project, or an Approved Water Project, as

those terms are further defined in this Interlocal Agreement. This term is to be broadly construed so as to include the lawful undertaking that will accrue, or is reasonably expected to accrue, to the benefit or furtherance of the Cooperative Facilities, including joint ventures and acquisitions of partial interests or contractual rights.

“Weighted Vote Method” means with regards to the Board of Directors a procedure by which each Director is assigned one vote for each full 100,000 gallons a day annual average [water delivered by its Member Government for public supply] based on a five (5) year rolling average and with regards to a Project Board a procedure by which each Director is assigned votes based on the amount of water his or her appointing Member Government is legally obligated to take and/or allocated under an Implementation Agreement approved by the Project Board between the Member Government and the Cooperative for the specified Approved Water Project. Under the Weighted Vote Method, any Director, whose Member Government is not party to the Implementation Agreement for the specified Approved Water Project shall not have a vote and shall only be considered an ex officio member of the Project Board.

SECTION 1.02. CONSTRUCTION.

(A) Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms and corporations. Term “day” shall refer to a calendar day. The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof,” and any similar terms, shall refer to this Interlocal Agreement; the term “heretofore” shall mean before the Effective Date of this Interlocal Agreement; and the term “hereafter” shall mean after the Effective Date of this Interlocal Agreement. References to articles and sections shall refer to the provisions of this Interlocal Agreement unless expressly referenced otherwise.

(B) Each recital, covenant, agreement, representation and warranty made by a Party in this Interlocal Agreement shall be deemed to have been material and to have been relied on by

the other Parties to this Interlocal Agreement. All of the Parties have participated in the drafting and preparation of this Interlocal Agreement; and, the Cooperative is the resulting separate legal entity created and established by the authors hereof. The provisions hereof shall not be construed for or against any Party or the Cooperative by reason of authorship.

SECTION 1.03. SECTION HEADINGS. Any headings preceding the text of the several Articles and Sections of this Interlocal Agreement and any table of contents or marginal notes appended to copies hereof shall be solely for convenience of reference and shall neither constitute a part of this Interlocal Agreement nor affect its meaning, construction or effect.

SECTION 1.04. FINDINGS. The Parties find and determine that:

(A) The growth of population and attendant commerce throughout Polk County, Florida have caused the Parties to recognize the need to consider, advance and develop an effective regional approach to the conservation of water and the use, delivery and provision of potable and non-potable water systems, the protection of the environment, and the efficient, innovative, and cooperative use of valuable water resources.

(B) The establishment of the Cooperative demonstrates an appreciation of the comprehensive planning requirements of Chapter 163, Florida Statutes, and the beneficial use policy declarations of Chapter 373, Florida Statutes, which mandate that local governments and Water Management Districts coordinate their plans for future growth with available resources, funding constraints and thoughtful delivery of infrastructure.

(C) It is in the public interest to create a separate legal entity that can carry out Water Projects to provide economies of scale, eliminate duplicative functions and expenditures, and protect the local and regional environment.

(D) There is a need for a separate legal entity to facilitate and promote exceptional water conservation, land use and water restoration practices in order to increase the available water supply in Polk County.

(E) This Interlocal Agreement constitutes a joint exercise of power, privilege or authority by and between the Member Governments and shall be deemed to be an “interlocal agreement” within the meaning of the Florida Interlocal Cooperation Act of 1969, as amended.

(F) This Interlocal Agreement is for the purpose of advancing and cooperatively developing essential public functions and shall be liberally construed to effect the purposes hereof. This Interlocal Agreement shall be deemed to be supplemental to any other powers available by law.

(G) The Cooperative is a regional water supply authority pursuant to Section 373.713, Florida Statutes.

(H) The Parties have and the Cooperative will have upon its formation on the Effective Date of this Interlocal Agreement the power to enter into agreements with each other and to join with each other and other governmental entities in the exercise of common powers.

(I) The Parties each own and operate and will continue to own and operate extensive water distribution systems and treatment facilities within Polk County, Florida.

(J) The Cooperative and each Member Government aspire and expect to cooperate with each other over time to advance regional water supply planning and avoid interference with each Member Government’s existing water distribution and treatment facilities, avoid interference with existing consumptive use permits and avoid competition for water supplies. This Interlocal Agreement provides a means and ability to achieve such objectives.

(K) The Cooperative may not exercise any power granted under this Interlocal Agreement within the water service territory of a Member Government so as to interfere with said Member Government's existing water distribution and treatment facilities, existing consumptive use permits or existing water supplies, except with the consent of the Member Government. This provision is supplemental to and shall not be interpreted as limiting the restrictions placed on the Cooperative's exercise of power by Sections 1.04(J), 2.07(D), 2.11(E) and 2.11(F) of the Interlocal Agreement.

ARTICLE II THE COOPERATIVE

SECTION 2.01. ESTABLISHMENT AND CREATION.

(A) There is hereby created and established the "Polk Regional Water Cooperative" a legal entity and public agency and unit of special purpose government with all of the privileges, benefits, powers and terms provided for herein and by law, including without limitation, Sections 163.01 and 373.713 and Chapter 189, Florida Statutes, whose initial geographic territory includes all of Polk County, Florida, with recognition that the boundaries may be expanded to include other municipalities and counties.

(B) The purpose of the Cooperative shall be to perform such acts as shall be necessary to effectuate the purpose of this Interlocal Agreement, provide for the sound planning, acquisition, development, management, operation, improvement, and maintenance of Water Projects, including all business or associated facilities necessary and incidental thereto, support the right of its Member Governments to keep their existing permitted allocations and otherwise advocate on behalf of its Member Governments with federal, state, regional or local authorities, including, but not limited to legislative bodies and executive agencies regarding matters within the scope of the responsibilities assigned to the Cooperative under this Interlocal Agreement.

(C) Membership in the Cooperative shall initially consist of no less than five local governments (including the County itself) within Polk County, which together constitute at least seventy (70%) percent of the projected total demand for public water supply in the calendar year 2035, as specified in **Exhibit A** to this Interlocal Agreement. Provided, however, that prior to April 30, 2018, any municipality within Polk County that did not sign this Interlocal Agreement before the Effective Date shall be admitted by amendment hereto upon a duly adopted resolution from the governing body of the municipality seeking admission. Said amendment need only be executed by the municipality seeking admission and the Cooperative acting through its Board of Directors. The Cooperative shall not withhold such approval or execution. At any time after April 30, 2018, local governments that did not join within the period specified above or which withdrew from the Cooperative as specified in Section 2.01(C) may be admitted or re-admitted by amendment hereto approved by the Board of Directors; provided however, that only applications for membership submitted during the month of January starting with January 2019 and each year thereafter may be considered by the Cooperative for the year in question.

(D) A Member Government may not withdraw from the Cooperative, if it is a party to an Implementation Agreement or, if it is not a party to an Implementation Agreement, for a period of twenty (20) years following approval of this Interlocal Agreement by the SWFWMD governing board. After twenty (20) years following approval of this Interlocal Agreement by the SWFWMD governing board, a Member Government that is not a party to an Implementation Agreement may withdraw from the Cooperative, if its withdrawal does not cause the membership of the Cooperative to fall below five (5) local governments (including the County itself) within Polk County and sixty-five (65%) percent of the projected total demand for public supply based initially on calendar year 2035, as specified in **Exhibit A** to this Interlocal

Agreement and thereafter based on the annual re-projection of total water demand for public supply within the next twenty (20) years. If Member Government is eligible to withdraw from the Cooperative, it must provide written notice accompanied by a copy of a duly adopted resolution from its governing body. Upon issuance of written notice, the withdrawing Member Government may only participate in decisions pertaining to matters in existence prior to issuance of the notice. Withdrawal shall become effective one hundred eighty (180) days after written notice has been provided in accordance with this section and upon recording of the notice and resolution in the official records of the county in which the Member Government is located. Upon withdrawal, a former Member Government shall have no further rights as a Member Government under this Interlocal Agreement, unless readmitted as a Member Government under this Interlocal Agreement pursuant to Section 2.01(C).

SECTION 2.02. BOARD OF DIRECTORS.

(A) The Board of Directors is responsible for the General Business of the Cooperative. Except where this Interlocal Agreement expressly requires approval of an action by the Member Governments or a Project Board, all powers, privileges, and duties vested in or imposed on the Cooperative shall be exercised and performed by and through the governing body of the Cooperative to be known as the Board of Directors; provided, however, that the exercise of any and all executive, administrative and ministerial powers may be delegated by the Board of Directors.

(B) The Board of Directors shall consist of one Director appointed by each Member Government. A Director may only represent one Member Government. Within forty-five (45) days of the Effective Date, or its later admission by the Cooperative, each Member Government shall provide the Cooperative with a resolution identifying the appointment and term of its primary and alternate Directors.

(C) Each primary and alternate Director shall be at all times a member of the elected body of the Member Government. Each Member Government shall appoint its primary and alternate Directors for a term deemed appropriate by the Member Government, but not less than one (1) year. Each Member Government may remove or replace its primary or alternate Director upon written notice to the Cooperative delivered at least three (3) business days prior to a meeting of the Board of Directors. Reappointments shall be made when necessary to ensure continuous representation of the Member Governments. Appointment to the Board of Directors shall be effective only for so long as the appointing government is a Member Government.

(D) Appointment to the Board of Directors does not implicate dual office prohibitions of Art. II (5)(a), Fla. Const., in that the Cooperative is a separate legal entity, and is not a dependent district as such term is defined in Section 189.012, Florida Statutes, but rather a local unit of a special purpose government created for all purposes set forth in Sections 163.01 and 373.713 and Chapter 189, Florida Statutes.

(E) No later than thirty (30) days following the appointment of the initial primary and alternate Directors by the Member Governments, the Board of Directors shall meet to elect Directors to serve as the chair, vice-chair, secretary, treasurer and such other offices of the Cooperative as created by the Board of Directors, each of whom shall serve for a term of one (1) year and such additional time as may transpire between the completion of one (1) year and October 1. Each officer, including the chair and vice-chair may serve two consecutive one (1) year terms, if re-elected. A Director may not be elected to more than one office on the Board of Directors. The chair shall be rotated at the at the end of each term, so that the vice-chair shall replace the chair, unless the chair is re-elected to a second consecutive one (1) year term and a new vice-chair, secretary and treasurer shall be elected each year. An officer may be removed by

the Board of Directors at any time without cause. If a vacancy occurs in any office (e.g., chair, vice-chair, secretary, treasurer, etc.), the Board of Directors shall elect a Director as a replacement to serve the balance of the unexpired term.

(F) The chair or the vice-chair, in the absence of the chair, shall conduct the meetings of the Board of Directors and perform such other functions as herein provided. The chair or the vice-chair, in the absence of the chair, shall take such actions, and have all such powers and sign all documents on behalf of the Cooperative in furtherance of this Interlocal Agreement or as may be approved by resolution of the Board of Directors adopted at a duly called meeting. In the absence of either the chair or the vice-chair, the secretary shall conduct the meeting of the Board of Directors. In the absence of the chair, vice-chair and secretary, the treasurer shall conduct the meeting of the Board of Directors. In the absence of the chair, vice-chair, treasurer and secretary, the Board of Directors shall elect one of their own to serve as chair pro-tem for that meeting.

(G) The secretary, or the secretary's designee, shall keep minutes of all meetings, proceedings and acts of the Board of Directors, but such minutes need not be verbatim. Copies of all minutes of the meetings of the Board of Directors shall promptly be sent by the secretary, or the secretary's designee, to all Directors and each Member Government. The secretary may also attest to the execution of documents. The Board of Directors may designate one or more persons who are not members of the Board of Directors to act as an assistant secretary for the purpose of attesting to the execution of documents. The secretary and any assistant secretary shall have such other powers as may be approved by resolution of the Board of Directors.

(H) The Board of Directors may appoint a person or entity to act as its executive director having such official title, functions, duties, and powers as the Board of Directors may prescribe. The Board of Directors may appoint a person or entity to act as the general counsel for

the Cooperative. The executive director and general counsel shall each answer directly to the Board of Directors. The executive director or general counsel may be provided by or otherwise be employed or retained by a Member Government, provided, however, that a sitting Director shall not be eligible to serve as executive director, general counsel or any other employee of the Cooperative.

(I) The Board of Directors shall have those administrative duties set forth in this Interlocal Agreement, Sections 163.01 and 373.713 and Chapter 189, Florida Statutes, as the same may be amended from time to time, with the exception of those administrative duties relating to an Approved Water Project, which shall be exercised by the associated Project Board, as specified in Section 2.03. Any certificate, resolution or instrument signed by the chair, vice-chair or such other person as may hereafter be designated and authorized by the Board of Directors shall be evidence of the action of the Cooperative and any such certificate, resolution or other instrument so signed shall be conclusively presumed to be authentic.

(J) Each Director shall serve voluntarily and shall not receive compensation for service. Directors may be reimbursed for expenses as provided in Section 112.061, Florida Statutes, as approved by the Board of Directors, exclusively for travel on Cooperative business, excluding regularly scheduled board meetings.

(K) A Quorum of the Board of Directors shall be necessary for the transaction of business of the Cooperative, except for votes on questions, resolutions, regulations or other decisions within the purview of a Project Board. All decisions of the Board of Directors shall be made as specified in this section. With the exception of a decision to set total Member Government annual contributions in excess of two hundred thousand (\$200,000.00) dollars to fund the Cooperative's Administrative Expenses for said year, all decisions of the Board of

Directors shall be made by majority vote of the Quorum of the Board of Directors utilizing the Normal Vote Method. A decision to set total Member Government annual contributions in excess of two hundred thousand (\$200,000.00) dollars shall only be made by seventy-five (75%) percent vote of the Quorum of the Board of Directors using the the Weighted Vote Method.

(L) The Board of Directors may adopt bylaws or rules of procedure such as Robert's Rules of Order, governing the election of officers, the conduct of meetings and other business, provided said bylaws or rules of procedure shall not conflict with the terms and conditions of the Interlocal Agreement.

SECTION 2.03. PROJECT BOARD. The Board of Directors sitting as a Project Board govern the implementation of an Approved Project. When the Board of Directors is constituted as a Project Board, it shall function as specified in Section 2.02, with the following exceptions:

(A) All powers, privileges, and duties vested in or imposed on the Cooperative with regards to the approval and implementation of an Approved Water Project shall be exercised and performed by the Board of Directors constituted as a Project Board for that specific Approved Water Project; provided, however, that the exercise of any and all executive, administrative and ministerial powers regarding that specific Approved Water Project may be delegated by the Project Board. Any Director whose Member Government is a party to the Implementation Agreement for the specific Approved Water Project is a voting member of the Project Board; and any Director whose Member Government is not party to the Implementation Agreement for the specific Approved Water Project shall not have a vote and shall be considered an ex officio member of the Project Board.

(B) No later than thirty (30) days following approval of the Implementation Agreement for the Approved Water Project by all the Participating Member Governments, the Project Board shall meet to elect Directors (all of whom are from participating Member Governments) to serve as the chair, vice-chair, secretary, treasurer and such other offices as created by the Project Board, each of whom shall serve for a term of one (1) year and such additional time as may transpire between completion of one (1) year and October 1. Each officer, including the chair and vice-chair may serve two consecutive one (1) year terms, if re-elected. A Director may not be elected to hold more than one office on the Project Board. The chair shall be rotated at the end of each term, so that the vice-chair shall replace the chair, unless the chair is re-elected to a second consecutive one (1) year term and a new vice-chair, secretary and treasurer shall be elected each year. An officer may be removed by the Project Board at any time without cause. If a vacancy occurs in any office (e.g., chair, vice-chair, secretary, treasurer, etc.), the Project Board shall elect a Director as a replacement to serve the balance of the unexpired term.

(C) The chair or the vice-chair, in the absence of the chair, shall conduct the meetings of the Project Board and perform such other functions as herein provided. The chair or vice chair, in the absence of the chair, shall take such actions, and have all such powers and sign all documents on behalf of the Cooperative relating to the specified Approved Water Project that led to creation of the Project Board. In the absence of the chair, vice-chair, treasurer and secretary, the Project Board shall elect one of their own to serve as chair pro-tem for that meeting.

(D) The secretary, or the secretary's designee, shall keep minutes of all meetings, proceedings and acts of the Project Board, but such minutes need not be verbatim. Copies of all minutes of the meetings of the Project Board shall promptly be sent by the secretary, or the secretary's designee, to all Directors and each Member Government. The secretary may also

attest to the execution of documents relating to the specified Approved Water Project that led to creation of the Project Board. The secretary and assistant secretary shall have such other powers as may be approved by resolution of the Project Board.

(E) The Project Board shall have those administrative duties set forth in this Interlocal Agreement, Sections 163.01 and 373.713 and Chapter 189, Florida Statutes, as the same may be amended from time to time only as they relate to the specific Approved Water Project that led to creation of the Project Board. Any certificate, resolution or instrument signed by the chair, vice-chair or such other person as may thereafter be designated and authorized by the Project Board shall be evidence of the action of the Cooperative as it relates to the specific Approved Water Project that led to creation of the Project Board and any such certificate, resolution or other instrument so signed shall be conclusively presumed to be authentic.

(F) A Quorum of the Project Board shall be necessary for the transaction of business of the Cooperative relating to the specific Approved Water Project that led to creation of the Project Board. All decisions of the Project Board relating to the specific Approved Water Project that led to creation of the Project Board shall be made by majority vote of a Quorum of the Project Board using the Weighted Vote Method, unless the Implementation Agreement for the specific Approved Water Project specifies another voting method.

SECTION 2.04. MEETINGS; NOTICE; REGISTERED AGENT AND OFFICE. The Board of Directors shall designate a registered agent and office and hold meetings pursuant to Sections 189.014 and 189.015, Florida Statutes. Regular meetings of the Board of Directors and any Project Board shall be held at least bi-monthly. Special meetings of the Board of Directors may be called by the chair or in his or her absence, the next available officer starting with the vice-chair upon at least three (3) business day notice to the Board of

Directors or by written request of at least a majority of the Member Governments upon at least three (3) business day notice to the other Member Governments and the Board of Directors. Special meetings of a Project Board may be called by the chair or in his or her absence, the next available officer starting with the vice-chair upon at least three (3) business day notice to the Project Board or by written request of at least a majority of the Member Governments, which are parties to the Implementation Agreement for the specific Approved Water Project that led to creation of the Project Board, upon at least three (3) business day notice to the other Member Governments and the Project Board.

SECTION 2.05. REPORTS; BUDGETS; AUDITS. The Cooperative shall prepare and submit reports, budgets and audits as provided in Sections 189.08, 189.015, 189.016, and 218.39, Florida Statutes. The Cooperative's budget shall contain separate cost centers for Administrative Expenses and Water Project Costs. Water Project Costs may be consolidated into one Approved Water Project Cost center, groups of Approved Water Project Cost centers or into separate Approved Water Project Cost centers. The Board of Directors shall provide each Member Government with a notice of the Cooperative's intention to adopt the budget along with a copy of the tentative budget no later than thirty days prior to the budget hearing. The Board of Directors shall approve the Administrative Expense portion of the budget by a majority vote of the Quorum using the Normal Vote Method, except that any decision to approve total Member Government annual contributions in excess of two hundred thousand (\$200,000.00) dollars shall be by seventy-five (75%) percent vote of the Quorum using the Weighted Vote Method. The Water Project Cost portion of the budget shall be approved by the Project Board(s) by a majority vote of the Quorum using the Weighted Vote Method. If the Water Project Cost portion of the budget is presented as one Approved Water Project cost center, then it must be approved by all

Project Boards. If the Water Project Cost portion of the budget is presented as separate Cost centers representing one or more Approved Water Projects, then each separate Cost center must be approved by the Project Board(s) associated with each Approved Water Project. The Cooperative's duly adopted final budget shall be transmitted to or filed annually with the clerk or other similar official for each Member Government.

SECTION 2.06. COOPERATIVE POWERS, FUNCTIONS AND DUTIES; LIMITATIONS.

(A) The Cooperative shall have all powers to carry out the purposes of this Interlocal Agreement and the functions and duties provided for herein, including the following powers, which shall be in addition to and supplementing any other privileges, benefits and powers granted by this Interlocal Agreement or by law:

(1) to acquire water and water rights, and to develop, store, and transport water, and sell water in the manner provided herein;

(2) to acquire, construct, own, lease, operate, manage, maintain, dispose of, improve and expand the Cooperative Facilities, and to have the exclusive control and jurisdiction thereof;

(3) to acquire, by purchase, gift, devise or otherwise, real property, or any estate, rights and interests therein, including lands under water, littoral rights, and riparian rights; and to acquire, by purchase, gift, devise or otherwise, such personal property as the Cooperative may deem necessary and appropriate in connection with the acquisition, construction, ownership, expansion, improvement, operation and maintenance of the Cooperative Facilities; and to hold and dispose of all real and personal property under its control; the power of eminent domain, to the maximum extent available (except that the power of eminent domain shall not be available to acquire any real property, facility or water or water rights owned or controlled by such Member

Government without the consent of a Member Government, which consent may be withheld for any reason or, with the exception of transmission lines and appurtenant facilities, any real property, facility, water or water rights within the water service territory of a Member Government without the consent of such Member Government, which consent shall not be unreasonably withheld), may be exercised by the Cooperative for the purpose of carrying out this Interlocal Agreement;

(4) to lease, as lessor or lessee, to or from any person, firm, corporation, association, or body, public or private, facilities or properties of any nature for the use of the Cooperative to carry out any of the purposes authorized by this Interlocal Agreement;

(5) to make and execute contracts or other instruments necessary or convenient to the exercise of the powers of the Cooperative, including, but not limited to Implementation Agreements;

(6) to contract with one or more public corporations for the purpose of carrying out any of the powers of the Cooperative and for that purpose to contract with one or more public or private corporations for the purpose of financing acquisitions, construction, and operations;

(7) to contract for the service of engineers, accountants, attorneys and other experts or consultants, and such other agents and employees as the Board of Directors may require or deem appropriate from time to time;

(8) to contract with a Member Government or any private or public entity for the operation and management of any Cooperative Facility;

(9) to establish Member Government annual contributions to fund the Cooperative's Administrative Expenses, provided that each Member Government's annual

contribution shall be in proportion to its annual average potable water use in comparison to the total annual average potable water use by all of the Cooperative's Member Governments for the prior year, but not less than \$500 per Member Government;

(10) to collect rates, fees and charges from public or private corporations, the state or its agencies, the federal government or any other entities for the use or provision of Cooperative Facilities or services;

(11) to create a rate stabilization fund(s), as appropriate;

(12) to re-bundle and consolidate Costs for different Approved Water Projects, when appropriate;

(13) to use any lawful means of enforcement available to the Cooperative to require and enforce the performance of any entity or person as required by or in conjunction with any Implementation Agreement or other agreement related to a Water Project;

(14) to adopt by resolution all necessary standards, rules and regulations that provide design and construction specifications and procedures associated with the Cooperative Facilities; the Cooperative may require as condition precedent to the approval of any connection to Cooperative Facilities (a) any infrastructure necessary to serve a particular user, and necessary easements, be approved by and dedicated to the Cooperative, and (b) surety bonds or other guarantees from any user to assure completion of construction in compliance with any standards, rules and regulations adopted by the Cooperative;

(15) to provide water and develop, receive, recover, treat, store, and supply potable and non-potable water on a wholesale or bulk-service basis;

(16) to accomplish construction directly, through contracts, or by letting construction contracts to other entities, whether public or private, for all or any part of the

acquisition, installation or construction of improvements that may comprise Cooperative Facilities in accordance with applicable law and as determined by the Board of Directors or Project Board(s), as applicable;

(17) subject to such provisions and restrictions as may be set forth in Financing Documents, to enter into contracts with the government of the United States or any agency or instrumentality thereof, the State, or with any municipality, county, district, authority, political subdivision, private corporation, partnership, association or individual necessary to effect the purposes of this Interlocal Agreement;

(18) to apply for, receive and accept from any governmental agency, grants, subsidies, or loans or enter any Funding Agreement for or in aid of the planning, acquisition, construction, reconstruction, operation and maintenance, or financing of Cooperative Facilities and improvements, additions or extensions thereto; and to receive and accept aid or contributions or loans from any other source of either money, labor or other things of value, to be held, used and applied only for the purpose for which such grants, contributions or loans may be made;

(19) to work with future development interests and the communities in which such interests may be located to establish future funding mechanisms that employ a partnership approach;

(20) to promote future land use and water management practices and Water Projects to help restore water supply systems, including, but not limited to aquifers, lakes, rivers and springs;

(21) to purchase, assume the ownership, lease, operation, management and or control of any publicly or privately owned water, transmission/distribution, conservation, treatment, or similar facilities of every kind or nature, including the assumption, defeasance or

payment of the financial liabilities associated with such water related facilities, provided, however, that ownership, lease, operation, management and/or control of any Member Government owned water transmission/distribution, conservation, treatment or similar facility of every kind may only occur with the consent of the Member Government;

(22) appoint advisory boards and committees to assist the Board of Directors in the exercise and performance of the powers and duties provided in this Interlocal Agreement;

(23) to adopt and use a seal and authorize use of a facsimile thereof;

(24) to sue and be sued in its own name;

(25) subject to such provisions and restrictions in Financing Documents, to sell or otherwise dispose of the Cooperative Facilities, or any portion thereof, upon such terms as the Board of Directors deems appropriate;

(26) to engage and or employ persons or legal entities and provide such deferred compensation, retirement benefits or other benefits or programs, as the Board of Directors deems appropriate;

(27) to maintain an office or offices at such place or places as the Board of Directors may designate;

(28) to incur debts, liabilities and Obligations, which do not constitute debts, liabilities and Obligations of the Member Governments, unless specifically agreed to by such Member Governments in an Implementation Agreement;

(29) to enter into interest rate swaps, caps, collars, and any other financial instruments for the purpose of hedging or managing interest rates;

(30) exercise all powers in connection with the authorization, issuance and sale of Obligations, as are conferred by Section 163.01(7)(d) and 163.01(7)(g), Florida Statutes, as amended, and any other applicable provisions of law and any other statute hereafter adopted;

(31) to the extent allowed by law and to the extent required to effectuate the purposes of this Interlocal Agreement, to exercise all privileges, immunities and exemptions accorded municipalities and counties of the State under the provisions of the constitution and laws of the State;

(32) to invest its moneys in such investments as directed by the Board of Directors in accordance with State law and that shall be consistent in all instances with the applicable provisions of the Financing Documents;

(33) to purchase such insurance as it deems appropriate;

(34) to periodically develop and update a water supply plan for Polk County, Florida, endeavoring to involve the applicable Water Management District(s) in such planning and to include consolidated water demands, water supply resources and facilities, individual and cooperative water supply projects, regional ground water and distribution system modeling and other information to facilitate cooperative regional planning for water supply and to jointly develop and update the water supply development component of the Water Management District approved regional water supply plan(s), which affects public utilities and public water supply for those areas served by the Cooperative and its Member Governments, as specified in Section 373.709(3), Florida Statutes, as may be amended from time to time;

(35) to advocate on behalf of the Member Governments with federal, state, regional or local authorities, including, but not limited to legislative bodies and executive agencies regarding matters within the scope of the responsibilities assigned to the Cooperative

under this Interlocal Agreement, including, but not limited to supporting the right of the Member Governments to keep their existing permitted allocations;

(36) to help encourage the establishment of appropriate water conservation policies throughout the boundaries of the various Member Governments comprising the Cooperative to ensure the effective use of the water supply;

(37) to help encourage the establishment of land use policies that promote the conservation of water for residential, commercial and industrial uses and landscape in Polk County; and

(38) to do all acts and to exercise all of the powers necessary, convenient, incidental, implied or proper, in connection with any of the powers, duties, obligations or purposes authorized by this Interlocal Agreement or by law.

(B) In exercising the powers conferred by this Interlocal Agreement the Board of Directors and/or Project Board(s) shall act by resolution or motion made and adopted at duly noticed and publicly held meetings in conformance with applicable law.

(C) Unless otherwise expressly required by law, the provisions of Chapter 120, Florida Statutes, shall not apply to the Cooperative.

(D) Nothing herein shall be construed to grant the Cooperative any jurisdiction to set or regulate the services or rates of any governmental utility, except as may be required pursuant to an Implementation Agreement for an Approved Water Project, develop or implement a retail Water Project, acquire or operate Member Government water, wastewater or Reclaimed Water facilities, except with the consent of the Member Government, interfere with existing consumptive use permits or water, wastewater or Reclaimed Water Facilities owned or operated by a Member Government, except with the consent of the Member Government or otherwise

interfere with the autonomy of water, wastewater or Reclaimed Water utilities operated by a Member Government, except with the consent of the Member Government.

(E) In addition to the powers granted the Cooperative hereunder, the Cooperative may issue bonds or other debt instruments for the principal purpose of lending the proceeds thereof to a public or private entity which shall finance or refinance the acquisition and/or construction of water treatment, transmission and/or production facilities, water which may be purchased in whole or in part by the Cooperative or Member Governments. Any bonds or other debt instruments shall be payable in whole or in part by the Cooperative or Member Governments. Any bonds or other debt instrument shall be payable from such sources as determined by the Board of Directors, including, without limitation, payments received by the Cooperative from the private or public entity under a loan or lease agreement.

SECTION 2.07. CREATION OF STATE, COUNTY OR MUNICIPAL DEBTS PROHIBITED. The Cooperative shall not be empowered or authorized in any manner to create a debt, liability or obligation of the State, any county, any municipality, or any other district or authority, including the Member Government, and may not pledge the full faith and credit or taxing power of the State, any county, any municipality or any other district or authority, including the Member Governments. All revenue bonds or debt obligations of the Cooperative shall contain a statement to the effect that they are limited obligations of the Cooperative payable solely from revenues of the Cooperative or the portion thereof expressly pledged thereto for specific Approved Water Projects under their associated Implementation Agreements and that neither the State nor any county, any municipality, or other district or authority, including the Member Governments, except for the revenues of the Member Government pledged thereto, shall be obligated to pay the same or the interest thereon and that neither the full faith and credit

nor the taxing power of the State or of any political subdivision thereof, including the Member Governments, is pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue or refunding bonds under the provisions of law or this Interlocal Agreement shall not directly or indirectly or contingently obligate the State, any county, any municipality, or any district or authority, including the Member Governments, to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

SECTION 2.08. ADOPTION OF RATES, FEES AND CHARGES; USE OF FUNDS.

(A) The Cooperative shall authorize and adopt by resolution any agreement relating to or schedule of rates, fees or other charges for the use of the services, facilities and products of the Cooperative to be paid by each user that may be connected with or provided service by such Cooperative Facilities. The schedule of rates, fees or other charges shall be approved by the Project Board(s) associated with the Approved Water Projects comprising such Cooperative Facilities. Notwithstanding the foregoing, the Project Board(s) shall have no authority to change the terms and conditions of any Implementation Agreement without the consent of all parties to such agreement.

(B) The Cooperative may establish by resolution schedules of separate rates, fees and charges for individual Cooperative Facilities and/or individual portions of any given Cooperative Facility, provided such rates, fees and charges are consistent with applicable law. The schedule of rates, fees and charges shall be approved by the Project Board(s) associated with the Approved Water Projects comprising the individual Cooperative Facilities and/or individual portions of any given Cooperative Facility.

(C) Such rates, fees and charges shall be adopted and revised so as to provide moneys, which, with other funds available for such purposes, shall be at least sufficient at all times to pay

the expenses of operating, managing, expanding, improving and maintaining the Cooperative Facilities, including renewal and replacement costs and appropriate reserves for such Cooperative Facilities, to pay costs and expenses provided for by law, the Financing Documents, or any applicable interlocal agreements. Notwithstanding any other provision in this Interlocal Agreement, such rates, fees and charges shall always be sufficient to comply fully with any covenants contained in the Financing Documents. The Cooperative shall charge and collect such rates, fees and charges so adopted and revised, and such rates, fees and charges shall not be subject to supervision or regulation by any other commission, board, bureau, agency or other political subdivision of the State.

(D) Such rates, fees and charges for each Cooperative Facility or portion thereof shall be just and equitable for the users in the same class and may be based upon or computed upon any factor (including without limitation, the relative contribution of any participants in the development of the Cooperative Facility) or combination of factors affecting the cost and use of the services, products or facilities furnished to the users of such Cooperative Facility or portion thereof, as may be determined by the Project Board(s). Except as provided in Section 2.08(G), no rates, fees or charges shall be fixed, adopted or revised under the foregoing provisions of this Section 2.08 until after a duly noticed public hearing at which all of the users of the Cooperative Facility affected thereby and all other interested persons shall have an opportunity to be heard concerning the proposed rates, fees or charges. Notice of such public hearing setting forth the proposed schedule or schedules of rates, fees or charges shall be given by one publication in a newspaper of general circulation in the areas affected by such proposed rates, fees or charges at least twenty (20) days before the date fixed in such notice for the public hearing, which may be

adjourned from time to time. After such hearing, the proposed schedule or schedules, either as initially adopted, or as modified or amended, may be finally adopted.

(E) The rates, fees or charges adopted for any class of users served shall be extended to cover any additional users thereafter served within the same class, without the necessity of any further hearing or notice.

(F) The Project Board(s) may appoint the Cooperative executive director, a Director, a committee of Directors, and/or a special master to act as a hearing officer to conduct the public hearing or hearings on its behalf relating to rates, fees and charges. The designated hearing officer shall report to the Project Board(s) findings relating to such public hearing. Only a Project Board may set or revise rates, fees and charges for its associated Approved Water Project.

(G) No public hearing shall be required for adoption of the rates, fees and charges contained in the rate tariff relating thereto previously approved by any governmental entity for facilities transferred to the Cooperative. In the event any rate tariff previously approved by a governmental entity includes a surcharge authorized by Section 180.191, Florida Statutes, or its successor in function, the Cooperative may continue the imposition of any such surcharge provided that the Cooperative incrementally reduces each year thereafter and ultimately discontinues such surcharge within fifteen (15) years of any transfer to the Cooperative.

(H) No subsequent public hearings shall be required to implement a periodic automatic indexing factor after its adoption by the Project Board(s) applicable to the initial or any revised schedule of rates, fees and charges.

(I) Notwithstanding anything in this Interlocal Agreement to the contrary, no public hearing shall be required for adoption by the Cooperative of any agreements, Implementation

Agreements, Funding Agreement, large-user or similar funding or project agreements, or for the issuance of Obligations.

(J) Notwithstanding anything in this Interlocal Agreement to the contrary, the Cooperative may establish a general fund account into which moneys may be deposited from any rates, fees, charges or other revenues identified by the Project Board(s) to be established during the budget approval process. Any moneys deposited to such general fund account shall be considered legally available for any lawful purpose approved by the Board of Directors and/or Project Board(s), as applicable, that furthers the mission of the Cooperative and may not be pledged beyond any fiscal year of the Cooperative.

(K) The imposition or use of rates, fees and charges herein for an Approved Water Project or for those Cooperative Facilities relating to an Approved Water Project shall be the subject of covenants, conditions or contractual provisions in an Implementation Agreement.

SECTION 2.09. BONDS AND OBLIGATIONS.

(A) The Board of Directors and/or the Project Board(s), as applicable, shall have the power and it is hereby authorized to provide pursuant to the Financing Documents for the issuance, at one time or from time to time in one or more series, of Obligations of the Cooperative, or notes in anticipation thereof, payable from Pledged Funds of such Member Governments, for one or more of the following purposes:

(1) paying all or part of the Cost of one or more Approved Water Projects and and/or Cooperative Facilities;

(2) refunding any bonds or other indebtedness of the Cooperative, or paying costs of terminating any interest rate swap, hedge or other financial interest with respect thereto;

(3) assuming or repaying the indebtedness relating to Cooperative Facilities acquired or leased by the Cooperative from a public or private entity, including without limitation, an interlocal agency established under Section 163.01, Florida Statutes or public agency, as defined in Section 163.01, Florida Statutes;

(4) setting aside moneys in a renewal or replacement account;

(5) funding a debt service reserve account;

(6) capitalizing interest on the Obligations;

(7) paying costs of issuance relating to the Obligations; and,

(8) any other purpose relating to this Interlocal Agreement.

(B) The principal of and the interest on each series of Obligations shall be payable from the Pledged Funds, all as determined pursuant to, and to the extent provided in, the Financing Documents. The Cooperative may grant a lien upon and pledge the Pledged Funds in favor of the holders of each series of Obligations in the manner and to the extent provided in the Financing Documents. Such Pledged Funds shall immediately be subject to such lien without any physical delivery thereof and such lien shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Cooperative.

(C) The Obligations of each series shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding forty (40) years from their date or dates, may be made redeemable or subject to optional or mandatory tender for purchase before maturity and shall contain or be subject to such terms and conditions, all as shall be determined by the Board of Directors and/or Project Board(s), as applicable, pursuant to the Financing Documents. The Board of Directors and/or Project Board(s), as applicable shall determine the form of the Obligations, the manner of executing such Obligations, and shall fix the denomination of such

Obligations and the place of payment of the principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or facsimile of whose signature shall appear on any Obligations shall cease to be such officer before the delivery of such Obligations, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until delivery.

(D) The Board of Directors and/or Project Board(s), as applicable, may sell Obligations in such manner and for such price as it may determine to be in the best interest of the Cooperative in accordance with the terms of the Financing Documents. In addition to the Pledged Funds, the Obligations may be secured by such credit enhancement as the Board of Directors and/or Project Board(s), as applicable, determines to be appropriate pursuant to the Financing Documents. The Obligations may be issued as capital appreciation bonds, current interest bonds, term bonds, serial bonds, variable interest rate or fixed interest rate bonds, commercial paper obligations and tax-exempt and taxable bonds or any combination thereof, all as shall be determined pursuant to the Financing Documents.

(E) Prior to the preparation of definitive Obligations of any series, the Board of Directors and/or Project Board(s), as applicable, may issue interim receipts, interim certificates or temporary Obligations, exchangeable for definitive Obligations when such Obligations have been executed and are available for delivery. The Board of Directors and/or Project Board(s), as applicable, may also provide for the replacement of any Obligations that shall become mutilated, or be destroyed or lost. Obligations may be issued without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions or things that are specifically required by this Interlocal Agreement, the Financing Documents or other applicable laws.

(F) The proceeds of any series of Obligations shall be used for such purposes, and shall be disbursed in such manner and under such restrictions, if any, as the Board of Directors and/or Project Board(s), as applicable, may provide pursuant to the Financing Documents.

(G) The Financing Documents may also contain such limitations upon the issuance of additional Obligations as the Board of Directors and/or Project Board(s), as applicable, may deem appropriate, and such additional Obligations shall be issued under such restrictions and limitations as may be proscribed by such Financing Documents. The Financing Documents may contain such provisions and terms in relation to the Obligations, the Pledged Funds and the use and operation of the Water Project or facilities financed thereby as the Board of Directors and/or Project Board(s), as applicable, deems appropriate and that shall not be inconsistent herewith.

(H) Obligations shall not be deemed to constitute a general obligation debt of the Cooperative or a pledge of the faith and credit of the Cooperative, but such Obligations shall be payable solely from the Pledged Funds and any moneys received from the credit enhancers of the Obligations, in accordance with the terms of the Financing Documents. The Obligations shall not constitute a debt, liability or obligation of any Member Government (provided that the foregoing shall not be deemed to relieve any such Member Government of its obligation to pay fees, rates or charges imposed in accordance with the terms hereof) with respect to the Cooperative Facilities. The issuance of Obligations shall not directly or indirectly or contingently obligate the Cooperative or any Member Government to levy or to pledge any form of ad valorem taxation whatsoever therefor. No holder of any such Obligations shall ever have the right to compel any exercise of the ad valorem taxing power on the part of the Cooperative or any Member Government to pay any such Obligations or the interest thereon or the right to enforce payment of such Obligations, or the interest thereon, against any property of the Cooperative, nor shall

such Obligations constitute a charge, lien or encumbrance, legal or equitable, upon any property of the Cooperative, except the Pledged Funds in accordance with the terms of the Financing Documents.

(I) All Pledged Funds shall be deemed to be trust funds, to be held and applied solely as provided in the Financing Documents. Such Pledged Funds may be invested by the Cooperative in such manner as provided in the Financing Documents.

(J) Any holder of Obligations, except to the extent the rights herein given may be restricted by the Financing Documents, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under the Financing Documents, and may enforce and compel the performance of all agreements or covenants required by this Interlocal Agreement, any applicable Implementation Agreement or by such Financing Documents, to be performed by the Cooperative or by any officer thereof.

(K) The Obligations may be validated, at the sole discretion of the Board of Directors and/or Project Board(s), as applicable, pursuant to Chapter 75, Florida Statutes. Obligations may be issued pursuant to and secured by a resolution of the Board of Directors and/or Project Board(s), as applicable.

(L) In addition to the other provisions and requirements of this Interlocal Agreement, any Financing Documents may contain such provisions as the Board of Directors and/or Project Board(s), as applicable, deems appropriate. To finance an Approved Water Project, the Cooperative is authorized to form a single purpose limited liability corporation or to create a new interlocal agency under Section 163.01, Florida Statutes for the sole purpose of performing with respect to the issuance of obligations, the duties and responsibilities of the Cooperative.

(M) Obligations issued hereunder shall not be invalid for any irregularity or defect in the proceedings for the issuance and sale thereof and shall be incontestable in the hands of bona fide purchasers for value. No proceedings in respect to the issuance of such Obligations shall be necessary except such as are required by law, this Interlocal Agreement or the Financing Documents. The provisions of the Financing Documents shall constitute an irrevocable contract between the Cooperative and the holders of the Obligations issued pursuant to the provisions thereof.

(N) Holders of Obligations shall be considered third party beneficiaries hereunder and may enforce the provisions of this Interlocal Agreement or general purpose law.

(O) The Board of Directors and/or Project Board(s), as applicable, may enter into such interest rate swaps, caps, collars and any financial instruments for the purpose of hedging or managing interest rates, as it deems appropriate.

SECTION 2.10. PLANNING AND DEVELOPMENT OF POTENTIAL WATER PROJECTS; DEVELOPING AND MODIFYING PROJECT LISTS; PURSUIT OF WATER PROJECTS BY MEMBER GOVERNMENTS.

(A) This section sets forth the steps that transpire from nomination of a Water Project to its establishment as part of the Cooperative Facilities.

(1) Step 1. Nominated Water Projects List. A Water Project shall enter the first evaluative step by inclusion in the Nominated Water Projects List. Upon approval by the Board of Directors or upon submittal by a Member Government or a non-Member Government, a Water Project may be included on the Nominated Water Project List. A Water Project will automatically qualify for the Nominated Water Project List upon identification in a Water Management District regional water supply plan as benefitting the Cooperative or its Member Governments. A Nominated Water Project must fall within the Cooperative's responsibilities and must benefit at least one Member Government, even though it can include non-Member

Government participants. A Nominated Water Project may be located within or outside of Polk County. A Nominated Water Project must be submitted to the Board of Directors with sufficient information to allow the Board of Directors to determine if it should be included in the Candidate Water Projects List.

(2) Step 2. Candidate Water Projects List. The Board of Directors may elevate a Nominated Water Project to the Candidate Water Projects List, if it deems that the Nominated Water Project has potential for development according to criteria adopted by the Board of Directors. Once a Nominated Water Project is approved for placement on the Candidate Water Projects List, it becomes a Candidate Water Project and is deemed ready for ranking for assessment and evaluation for potential implementation. The Board of Directors shall periodically (but no less frequently than annually) review and, if necessary, make modifications, additions, and deletions to the Candidate Water Projects List. Additionally, any Member Government may submit to the Cooperative a written proposal to modify, add to, or delete a Candidate Water Projects from the Candidate Water Projects List. The Board of Directors shall decide whether to modify, add to, or delete a Candidate Water Project from the Candidate Water Projects List within sixty (60) days of receipt of the proposal. The Cooperative shall not advance or begin implementation of any Water Project, unless it is first placed on the Candidate Water Project List. Upon placement on the Candidate Water Projects List, one or more Member Governments may enter into an Implementation Agreement for a Candidate Water Project. If an Implementation Agreement for a Candidate Water Project is not entered into by one or more Member Governments within one hundred eighty (180) days after listing on the Candidate Water Project List, then the Candidate Water Project shall be demoted to the Nominated Water Project List. An extension of time of up to another one hundred eighty (180) days to allow Member

Governments to enter into an Implementation Agreement for a Candidate Water Project shall be deemed granted at the request of one or more Member Governments.

(3) Step 3. Approved Water Projects List. The Cooperative shall maintain an Approved Water Projects List, which shall include all Water Projects for which one or more Member Governments have timely entered into an Implementation Agreement and the Implementation Agreement has been approved by the specific Project Board. An Approved Water Project may only be removed from the Approved Water Project List by the associated Project Board.

(4) Step 4. Cooperative Facilities. After an Approved Water Project is constructed pursuant to an Implementation Agreement, it shall become a Cooperative Facility, if owned, leased, operated, managed or used or contracted for use, in whole or in part by the Cooperative.

(B) The Cooperative shall comply with the provisions of Sections 189.08 and 189.081, Florida Statutes.

(C) Within one (1) year of the creation of the Cooperative, but in no case later than April 30, 2017, the Board of Directors shall decide whether to elevate one or more Nominated Water Projects to the Candidate Water Project List, which in combination will produce at least thirty (30) MGD annual average of Product Water from AWS Water Projects for use by the Member Governments.

(D) A Member Government may independently pursue a potable water AWS Water Project outside of the process described in Section 2.10, provided the Member Government gives the Cooperative at least ninety (90) days written notice of its intent to develop the proposed potable water AWS Water Project and the Cooperative is allowed at least ninety (90) days

following said notice to consider the potable water AWS Water Project for inclusion in the Nominated, Candidate and Approved Project Lists or whether it would recommend the potable water AWS Water Project to the applicable Water Management District for cooperative funding. A Member Government may independently pursue a traditional Water Project and/or a non-potable AWS Water Project without notifying the Cooperative or allowing the Cooperative a period of time to consider the Water Project for inclusion in the Nominated, Candidate and Approved Project Lists.

(E) The Board of Directors may prioritize those Water Projects on the Approved Water Project List that have associated Implementation Agreements for purposes of seeking cooperative funding from a Water Management District.

SECTION 2.11. IMPLEMENTATION OF WATER PROJECTS.

(A) The purpose of an Implementation Agreement is to further an Approved Water Project and potentially lead to its ultimate completion. An Implementation Agreement may only be entered into by the Cooperative and the participating Member and non-Member Governments for development of a Water Project listed on the Candidate Water Project List. An Implementation Agreement shall first be approved by all the participating Member Governments before it is approved by the Cooperative. A decision by the Cooperative to approve an Implementation Agreement shall be made by the associated Project Board. For purposes of this section, the Project Board shall be constituted upon approval of the Implementation Agreement by all the Member Governments participating in the Approved Water Project. Implementation of an Approved Water Project may occur in any lawful manner including without limitation, by the Cooperative, by one or more Member Governments on behalf of the Cooperative, or through contract with any Member Government(s) or any third party, any combination of the foregoing, or any alternative method.

(B) Implementation Agreements shall reasonably detail the scope, nature, implementation and governance of the Water Project, including without limitation (1) the affected resource, areas and utilities involved, (2) anticipated participants, customers or users, (3) anticipated permits and regulatory considerations, (4) a summary description of the capital program, if any, (5) consideration of relevant comprehensive plans, (6) anticipated administrative funding, revenue sources, financing, design, construction and operation responsibilities, (7) compliance with any applicable Funding Agreement(s) and (8) voting by the specific Project Board and (8) allocations of Costs and Product Water.

(C) Full development of Approved Water Projects may require amendments or modifications to Implementation Agreements. Approval by the associated Project Board of such amendments should not be unreasonably withheld.

(D) During the term of any Implementation Agreement in which the Cooperative is proceeding to finance, construct and implement an Approved Water Project, the Member Governments shall cooperate and not compete or interfere with the relevant Approved Water Project.

(E) Any permits applied for by the Cooperative to implement an Approved Water Project shall be filed in the name of the Cooperative and any participating Member Government or non-Member Government persons or entities that are parties to the applicable Implementation Agreement. Said permit applications shall not interfere with existing consumptive use permits or existing water production, treatment and distribution facilities of any Member Government, without the consent of the Member Government. If a Member Government of the Cooperative is not participating in an Approved Water Project, it shall not be responsible either directly or indirectly for compliance with the terms and conditions of the permits for the Water Project nor

shall it be responsible either directly or indirectly for any fines, penalties or damages associated with any permits for the Water Project.

(F) An Implementation Agreement is not binding upon and cannot negatively affect a Member Government that is not participating in the Implementation Agreement for the Approved Water Project either directly or indirectly, and every Implementation Agreement shall so state.

SECTION 2.12. DEFAULT, INSOLVENCY OR BANKRUPTCY OF MEMBER GOVERNMENT PARTICIPATING IN AN APPROVED WATER PROJECT.

(A) The default, insolvency or bankruptcy of a Member Government participating in an Approved Water Project shall not financially obligate any other Cooperative Member Government in any manner or form.

(B) In the event a Member Government defaults on its obligations under an Implementation Agreement, fails to pay, when due, the rates, fees or charges adopted by the Cooperative for said Member Government, becomes insolvent or has voluntary or involuntary bankruptcy proceedings instituted against such Member Government or a Member Government becomes unable or fails to meet its obligations to its creditors as they come due, the Cooperative shall thereupon become entitled to seek appointment of a receiver for the revenues of such Member Government's water utility system. In the event a receiver is appointed for the revenues of such Member Government's water utility system in accordance with this section, said receiver shall, subject to orders of the appointing court, have the exclusive right to obtain, collect and deposit or invest all revenues payable to or received by a Member Government from its water customers, to pay to the Cooperative from such revenues all amounts due or becoming due to the Cooperative, and to make payments under the provisions of resolutions or indentures pertaining

to outstanding debt of a Member Government that is secured by the revenues of its water utility system.

(C) The Cooperative's right to seek the appointment of a receiver under this section shall be subordinate to any right to the appointment of a receiver that may be conferred upon the holders of Obligations secured by the revenues of the Member Government's water utility system under this Interlocal Agreement or the applicable Financing Documents. It is acknowledged that the Cooperative's right to receive payments under this Interlocal Agreement and the applicable Implementation Agreement will be treated as an operating cost of the applicable Member Governments and therefore prior to the right of the holders of debt obligations of the Member Government's water utility system. A Member Government shall have the right to contest the appointment of a receiver only in the event that such Member Government is not in default on any payment obligations to the Cooperative under this Interlocal Agreement or the applicable Implementation Agreement at the time of the filing of the Cooperative's petition for appointment of such a receiver. Such Member Government shall be entitled to have the receivership discharged at any time upon demonstration to the court that the Member Government is current in payment of all amounts then due and owing to the Cooperative and is in substantial compliance with the material covenants and conditions of this Interlocal Agreement and the applicable Implementation Agreement.

(D) Sections 2.12(B)-(C) may be modified or superseded by the applicable Implementation Agreement only to the extent that the covenants, conditions or contractual provisions in the Implementation Agreement provide at a minimum the same level of protection to the Cooperative and its Member Governments as provided for in Sections 2.12(B)-(C).

SECTION 2.13. MERGER; DISSOLUTION.

(A) In no event shall a merger involving the Cooperative be permitted unless approved by at least seventy-five (75%) percent vote of the Quorum of the Board of Directors using the Normal Vote Method expressed by resolution of the Board of Directors. The resolution shall revoke, amend or restate the Cooperative's charter in order to accomplish the merger.

(B) Dissolution of the Cooperative shall only occur by law or upon approval by at least seventy-five (75%) percent vote of the Quorum of the Board of Directors using the Normal Vote Method expressed by resolution of the Board of Directors and transfer of title to all property owned by the Cooperative shall occur in a manner consistent with Chapter 189, Florida Statutes, unless (1) the Cooperative is merged into an independent special district, or (2) otherwise provided in a dissolution plan adopted by at least seventy-five (75%) percent vote of the Quorum of the Board of Directors using the Normal Vote Method expressed by resolution of the Board of Directors, or (3) otherwise provided herein.

(C) Any merger or dissolution plan may not become effective unless arrangements have been made for the full assumption of all governmental services and responsibilities then being provided and undertaken by the Cooperative, and the allocation of revenue, property, and indebtedness of the Cooperative. If any Obligations of the Cooperative are outstanding, any merger or dissolution plan shall set forth the arrangements under which holders of outstanding Obligations will be timely paid, or continue to be paid, which arrangements must be consistent with the terms of the outstanding Obligations, any related Financing Documents and any applicable Funding Agreements. Any resolution, agreement, or formal action merging or dissolving the Cooperative must specify an effective date.

(D) In the event the Board of Directors determine by resolution approved by at least a majority vote of the Quorum of the Board of Directors using the Normal Vote Method that

dissolution is necessary, but approval of a dissolution plan by at least seventy-five (75%) percent of the Quorum of the Board of Directors using the Normal Vote Method cannot be obtained after reasonable good faith efforts to do so, then any Member Government is authorized to file such a petition for receivership in a court of competent jurisdiction and seek the appointment of a receiver to resolve and dissolve and wind up the affairs of the Cooperative in a manner generally consistent with the Interlocal Agreement.

SECTION 2.14. ENFORCEMENT AND PENALTIES.

(A) The Board of Directors on behalf of the Cooperative, and any aggrieved Member Government, may have recourse to such remedies in law and equity as may be necessary to ensure compliance with the provisions of this Interlocal Agreement, including injunctive relief to mandate compliance with or enjoin or restrain any person violating the provisions of this Interlocal Agreement and any bylaws, resolutions, regulations, rules, codes, and orders adopted under this Interlocal Agreement.

(B) The Member Governments expressly agree that the consideration, in part, for each of them entering into this Interlocal Agreement is the willingness of each of the others to limit the remedies for all actions arising out of or in connection with this Interlocal Agreement as to the other Member Governments and the Cooperative. Therefore, notwithstanding any provision of this Interlocal Agreement to the contrary, upon any failure by any Party to perform its obligations under this Interlocal Agreement, the Cooperative and each Member Government shall be limited strictly to only the following remedies:

- (i) action for specific performance or injunction;
- (ii) the right to collect any Costs due hereunder; or
- (iii) the right to appointment of a receiver, as specified in Section 2.12.

(C) Notwithstanding anything herein to the contrary, each Member Government, on behalf of itself and its respective successors and assigns, hereby agrees that no Member Government shall be liable to the Cooperative or to any other Member Government(s) for any indirect, special, punitive or consequential damages, including, without limitation, damages based on loss of services, revenues, profits or business opportunities, and all Member Governments hereby waive any and all claims and causes of action hereafter accruing for the recovery of such indirect, special, punitive or consequential damages.

(D) The provisions of Sections 2.12 and 2.14 shall survive the termination of this Interlocal Agreement.

SECTION 2.15. TAX EXEMPTION. As the exercise of the powers conferred by this Interlocal Agreement to effect the purposes of this Interlocal Agreement constitute the performance of essential public functions, and as the Cooperative Facilities and Water Projects of the Cooperative will constitute public property used for public purposes, all assets and properties of the Cooperative and all Obligations issued hereunder and interest paid thereon and all rates, fees, charges, and other revenues derived by the Cooperative from the Water Projects provided for by this Interlocal Agreement or otherwise shall be exempt from all taxes by the state or any political subdivision, agency, or instrumentality thereof, except that this exemption shall not apply to interest earnings, if any, subject to taxation under Chapter 220, Florida Statutes.

ARTICLE III ADMINISTRATION

SECTION 3.01. INITIAL FUNDING. Upon creation of the Cooperative, the Board of Directors shall determine the initial working capital for the Cooperative and shall establish the initial annual contribution by each Member Government within ninety (90) days of the Effective Date. Each Member Government's initial contribution shall be in proportion to its

annual average water use in comparison to the total annual average water use by the Member Governments during the calendar year preceding the one in which the Cooperative is created. A decision to set total Member Government annual contributions less than two hundred thousand (\$200,000.00) dollars shall be made by a majority vote of a Quorum of the Board of Directors using the Normal Vote Method. A decision to set total Member Government annual contributions in excess of two hundred thousand (\$200,000.00) dollars shall only be made by a seventy-five (75%) percent vote of a Quorum of the Board of Directors Using the Weighted Vote Method.

SECTION 3.02. STAFFING.

(A) Although the Cooperative may hire, contract or otherwise retain a dedicated staff to administer the Cooperative at any time, the initial staffing and administration of the Cooperative shall be by and through the staff members, employees, consultants, and other professionals of the Member Governments. Polk County shall be deemed the agent of the Cooperative within the scope of authority provided herein until the Board of Directors retains a new agent.

(B) The Cooperative shall periodically, but not more often than monthly, pay and reimburse any Member Government duly authorized to act as the agent for all actual and verifiable costs incurred to implement and administer the Cooperative. Such costs shall include reasonable indirect cost accounting for labor, materials, equipment, facilities, and other resources used in administering the Cooperative. Such expenditures shall be reviewed and approved by the Cooperative. In the event of any dispute concerning any such amounts due, the Cooperative shall pay the agent those amounts not in dispute and promptly seek and submit to a mediated

determination of any disputed costs. The expense of such mediation shall be shared equally between the agent and the Cooperative.

(C) The agent of the Cooperative shall maintain in accordance with generally accepted accounting procedures, and provide for an audit of, such information necessary to report to the Cooperative, not less than annually, the income, expenses, and expenditures associated with the administration and implementation of the Cooperative. Such information shall be timely made available to the Cooperative and its Member Governments as a part of the administration and implementation of the Cooperative.

(D) Subject to the limitations of general law and this Interlocal Agreement, the Cooperative shall indemnify, hold harmless and defend the agent of the Cooperative, designated or appointed pursuant to Section 3.02(A), above, and any of the agent's managers, directors, officers, employees and agents from and against any and all claims, demands and causes of action arising out of or related to any loss, damage, or injury related to the performance by the agent designated or appointed pursuant to Section 3.02(A) and any of the agent's managers, directors, officers employees and agents of its duties and obligations for the Cooperative that are not caused by or result from intentional acts outside of the scope of the agent's authority or negligence of the agent, its managers, directors, officers, employees and agents, or anyone for whom any of them is responsible. The provisions of this Section 3.02 shall not be construed as a waiver of the Cooperative's or any Member Government's sovereign immunity or a waiver of any provision of Section 768.28, Florida Statutes. The provisions of this Section 3.02 shall survive the termination of this Interlocal Agreement.

(E) With regard to staffing the Cooperative, each Member Government retains the right at any time to reassign or terminate any of its officials, staff or employees. Each Member

Government may separately and independently exercise contractual rights associated with its officials, staff, employees, consultants or other professionals, and determine in its sole discretion to use or not use any consultants or other professionals used or employed by the Cooperative. However, each Member Government is encouraged to provide reasonable informal notice to the Cooperative of significant staffing determinations that may affect the administration of the Cooperative or any Water Project.

SECTION 3.03. CONFLICTS; WAIVERS. Because of the proximity of the Member Governments and the similarity of their utilities endeavors, consultants and other professionals they individually engage or employ may seek to also provide services to the Cooperative. Therefore, from time to time, such consultants and professionals may seek conflict waivers from Member Governments or the Cooperative. Such requests for waivers should be promptly requested with relevant information necessary for an informed decision and then be promptly considered.

ARTICLE IV GENERAL PROVISIONS

SECTION 4.01. TERM OF AGREEMENT.

(A) The term of this Interlocal Agreement shall commence on the Effective Date, and shall continue for so long as the Cooperative shall exist.

(B) The Cooperative shall exist unless dissolved or merged as specified in Section 2.13.

SECTION 4.02. AMENDMENTS AND WAIVERS.

(A) Except as otherwise provided herein, no amendment, supplement, modification or waiver of this Interlocal Agreement shall be binding unless approved by the unanimous consent of the Member Governments.

(B) To the extent the Cooperative has outstanding Obligations, this Interlocal Agreement may not be amended or modified in any way that is materially adverse to holders of such Obligations without the consent in writing of the holders of a majority or more in principal amount of such Obligations then outstanding, or any insurer or credit enhancer duly authorized to provide such consent on behalf of such holders.

SECTION 4.03. NOTICES.

(A) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, or sent by nationally recognized overnight courier (with delivery instructions for “next business day” service) to the Parties at the following addresses:

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

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

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

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

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

City of Frostproof
City Manager
P.O. Box 308
Frostproof, Florida 33843
863-635-7855

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

Village of Highland Park
City Manager
151 N. Scenic Highway
Babson Park, FL 33827

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

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

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

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

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

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

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

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

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

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

(C) Any Member Government, and the Cooperative, 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.

SECTION 4.04. IMMUNITY; LIMITED LIABILITY.

(A) All of the privileges and immunities from liability and exemptions from laws, ordinances and rules that apply to the activity of officials, officers, agents or employees of the Member Governments shall apply to the Cooperative, its officials, officers, agents or employees and any Member Governments when performing their respective functions and duties under the provisions of this Interlocal Agreement.

(B) The Cooperative and Member Governments are and shall be subject to Sections 768.28 and 163.01(9)(c), Florida Statutes, and any other provisions of Florida law governing sovereign immunity and notwithstanding any provision of this Interlocal Agreement to the contrary, nothing herein shall be deemed a waiver of sovereign immunity. Pursuant to Section 163.01(5)(o), Florida Statutes, Member Governments shall not be jointly or individually liable for the torts of the officers or employees of the Cooperative, or any other tort attributable to the Cooperative; the Cooperative alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes, or its successor in function.

(C) No Member Government shall in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of the Cooperative, the Board of Directors or any other agents, employees, officers or officials of the Cooperative, except to the extent otherwise mutually agreed upon, and neither the Cooperative, the Board of Directors, Project Board(s) or any other agents, employees, officers or officials of the Cooperative have any authority or power to otherwise obligate any Member Government in any manner.

SECTION 4.05. SEVERABILITY. In the event any provision of this Interlocal Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 4.06. EXECUTION IN COUNTERPARTS. This Interlocal Agreement, or a resolution required hereunder, may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 4.07. APPLICABLE LAW. This Interlocal Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Unless otherwise required by law, venue for any action or proceeding to construe or enforce the provisions of this Interlocal Agreement or any matters associated therewith shall lie in the Circuit Court in and for Polk County, Florida in which this Interlocal Agreement is recorded and which the Cooperative is authorized and in fact is engaged in business.

SECTION 4.08. ENTIRE AGREEMENT. This Interlocal Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the Parties, whether oral or written, and there are no warranties, representations or other agreements among the Parties in connection with the subject matter hereof, except as specifically set forth herein.

SECTION 4.09. FILING. This Interlocal Agreement and any amendment thereto shall be recorded in the public records of Polk County Florida.

IN WITNESS WHEREOF, the undersigned has caused this Interlocal Agreement Relating to the Establishment of the Polk Regional Water Cooperative shall be filed with the Clerk of the Circuit Court of Polk County, Florida, prior to taking effect.

CITY COMMISSION OF THE
CITY OF AUBURNDALE, FLORIDA

By: _____
Tim Pospichal, Mayor

Date: _____

ATTEST:

By: _____
Shirley Lowrance, City Clerk

IN WITNESS WHEREOF, the undersigned has caused this Interlocal Agreement Relating to the Establishment of the Water Cooperative of Polk County to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF BARTOW, FLORIDA

By: _____
J. Adrian Jackson, Mayor

Date: _____

ATTEST:

By: _____
Jacqueline Poole, City Clerk

IN WITNESS WHEREOF, the undersigned has caused this Interlocal Agreement Relating to the Establishment of the Water Cooperative of Polk County to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF DAVENPORT, FLORIDA

By: _____
Darlene Bradley, Mayor

Date: _____

ATTEST:

By: _____
Rachel Castillo, City Clerk

IN WITNESS WHEREOF, the undersigned has caused this Interlocal Agreement Relating to the Establishment of the Water Cooperative of Polk County to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF EAGLE LAKE, FLORIDA

By: _____
Suzy Wilson, Mayor

Date: _____

ATTEST:

By: _____
Dawn Wright, City Clerk

IN WITNESS WHEREOF, the undersigned has caused this Interlocal Agreement Relating to the Establishment of the Water Cooperative of Polk County to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF FT. MEADE, FLORIDA

By: _____
James Watts, Mayor

Date: _____

ATTEST:

By: _____
Melissa Newman, City Clerk

IN WITNESS WHEREOF, the undersigned has caused this Interlocal Agreement Relating to the Establishment of the Water Cooperative of Polk County to be duly executed and entered into as of the Effective Date.

CITY COUNCIL OF THE
CITY OF FROSTPROOF, FLORIDA

By: _____
Ralph Waters, Mayor

Date: _____

ATTEST:

By: _____
Nicole McDowell, City Clerk

IN WITNESS WHEREOF, the undersigned has caused this Interlocal Agreement Relating to the Establishment of the Water Cooperative of Polk County to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF HAINES CITY, FLORIDA

By: _____
Kenneth Kipp, Mayor

Date: _____

ATTEST:

By: _____
Linda Bourgeois, City Clerk

IN WITNESS WHEREOF, the undersigned has caused this Interlocal Agreement Relating to the Establishment of the Water Cooperative of Polk County to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF LAKE ALFRED, FLORIDA

By: _____
Charles Lake, Mayor

Date: _____

ATTEST:

By: _____
Amee Bailey, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

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

IN WITNESS WHEREOF, the undersigned has caused this Interlocal Agreement Relating to the Establishment of the Water Cooperative of Polk County to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF LAKELAND, FLORIDA

By: _____
R. Howard Wiggs, Mayor

Date: _____

ATTEST:

By: _____
Kelly Koos, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Timothy J. McCausland, City Attorney

IN WITNESS WHEREOF, the undersigned has caused this Interlocal Agreement Relating to the Establishment of the Water Cooperative of Polk County to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF LAKE WALES, FLORIDA

By: _____
Eugene Fultz, Mayor

Date: _____

ATTEST:

By: _____
Clara VanBlargan, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Albert C. Galloway, Jr., City Attorney

IN WITNESS WHEREOF, the undersigned has caused this Interlocal Agreement Relating to the Establishment of the Water Cooperative of Polk County to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF MULBERRY, FLORIDA

By: _____
George H. Hatch, Mayor

Date: _____

ATTEST:

By: _____
Sharon Lauther, City Clerk

IN WITNESS WHEREOF, the undersigned has caused this Interlocal Agreement Relating to the Establishment of the Water Cooperative of Polk County to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF POLK CITY, FLORIDA

By: _____
Joe LaCascia, Mayor

Date: _____

ATTEST:

By: _____
Patricia Jackson, City Clerk

IN WITNESS WHEREOF, the undersigned has caused this Interlocal Agreement Relating to the Establishment of the Water Cooperative of Polk County to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF WINTER HAVEN, FLORIDA

By: _____
Brad Datnzler, Mayor

Date: _____

ATTEST:

By: _____
Vanessa Castillo, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

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

IN WITNESS WHEREOF, the undersigned has caused this Interlocal Agreement Relating to the Establishment of the Water Cooperative of Polk County to be duly executed and entered into as of the Effective Date.

TOWN COMMISSION OF THE
TOWN OF DUNDEE, FLORIDA

By: _____
Sam Pennant, Mayor

Date: _____

ATTEST:

By: _____
Deena Ware, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

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

IN WITNESS WHEREOF, the undersigned has caused this Interlocal Agreement Relating to the Establishment of the Water Cooperative of Polk County to be duly executed and entered into as of the Effective Date.

TOWN COUNCIL OF THE
TOWN OF LAKE HAMILTON, FLORIDA

By: _____
Marlene M. Wagner, Mayor

Date: _____

ATTEST:

By: _____
Sara Irvine, Town Clerk

IN WITNESS WHEREOF, the undersigned has caused this Interlocal Agreement Relating to the Establishment of the Water Cooperative of Polk County to be duly executed and entered into as of the Effective Date.

VILLAGE COMMISSION OF THE
VILLAGE OF HIGHLAND PARK, FLORIDA

By: _____
Mark H. Smith, Mayor

Date: _____

ATTEST:

By: _____
Maggie E. Taylor, Village Clerk

APPROVED AS TO FORM AND CORRECTNESS:

Albert C. Galloway, Jr., Village Attorney

IN WITNESS WHEREOF, the undersigned has caused this Interlocal Agreement Relating to the Establishment of the Water Cooperative of Polk County to be duly executed and entered into as of the Effective Date.

BOARD OF COUNTY COMMISSIONERS
POLK COUNTY, FLORIDA

By: _____
John Hall, Chairman

Date: _____

ATTEST:

By: _____
Stacy M. Butterfield, Clerk of Courts

EXHIBIT A

POLK COUNTY 2035 WATER DEMAND

ENTITY	ANNUAL AVERAGE DEMAND (MGD)
City of Bartow	6.58
City of Fort Meade	1.00
Town of Lake Hamilton	0.32
City of Winter Haven	15.31
City of Lake Wales	4.93
City of Lakeland	36.34
City of Davenport	1.16
City of Frostproof	0.83
Town of Dundee	1.64
City of Mulberry	0.77
City of Lake Alfred	1.82
City of Eagle Lake	0.95
City of Auburndale	8.11
City of Polk City	1.13
City of Haines City	6.56
Polk County	31.39
Total Demand	118.84