

**MEMORANDUM**

**TO:** MAYOR AND CITY COMMISSION

**FROM:** CITY ATTORNEY'S OFFICE

**DATE:** May 20, 2019

**RE: First Amendment to the Combined Projects Implementation Agreement**

Attached hereto for your consideration is a proposed First Amendment to the Combined Projects Implementation Agreement for the Polk Regional Water Cooperative (PRWC).

Following the formation of the PRWC in 2017, one of its early tasks, was to consider a list of potential water projects that might provide alternative water sources. The Board heard engineering reports and recommendations from their consultants in order to prioritize those projects that showed the most promise in providing quality water at a reasonable cost. That resulted in a determination to further investigate the feasibility of three nominated projects:

1. The West Polk Lower Floridan Aquifer Wellfield
2. The Southeast Wellfield
3. The Peace Creek Integrated Water Supply Project

The PRWC then entered into the Combined Projects Implementation Agreement among its members which established cost sharing and other terms of how to pursue the feasibility of these potential projects.

During the course of the recent permit dispute with the Peace River/Manasota Regional Supply Water Authority over the withdrawal of surface water from the Peace River, interest was generated in a potential reservoir project in the Hardee/Highlands County area. In order to preserve potential funding for this additional project the board decided it should be added to the three projects that were being explored. This First Amendment adds the Peace River Project, so that it can be properly included in the consultant's work program.

It is recommended that the appropriate City Officials be authorized to execute the attached First Amendment to the Combined Projects Implementation Agreement.

attachments

**FIRST AMENDMENT TO  
COMBINED PROJECTS IMPLEMENTATION AGREEMENT**

THIS FIRST AMENDMENT to that certain Combined Projects Implementation Agreement dated May 1, 2017 (“Agreement”) is made and entered into as of the Effective Date as hereinafter defined, by and among the Polk Regional Water Cooperative (“Cooperative”), whose address is 330 W. Church Street, Bartow, FL 33830, the City of Auburndale whose address is P.O. Box 186, Auburndale, FL 33823, the City of Bartow whose address is P.O. Box 1069, Bartow, FL 33831, the City of Davenport whose address is P.O. Box 125, Davenport, FL 33836, the City of Eagle Lake whose address is P.O. Box 129, Eagle Lake, FL 33839, the City of Fort Meade whose address is P.O. Box 856, Fort Meade, FL 33841, the City of Haines City whose address is 620 E. Main Street, Haines City, FL 33844, the City of Lake Alfred whose address is 120 E Pomelo Street, Lake Alfred, FL 33850, the City of 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 First Amendment is to add the Peace River Project to the Combined Projects, all of which are Approved Water Projects of the Cooperative, pursuant to the In-

terlocal Agreement Relating to the Establishment of the Polk Regional Water Cooperative and Sections 163.01 and 373.713, Florida Statutes.

**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 and the Parties hereby modify, amend and supplement the Agreement as follows:

**Section 1: RECITALS AND RATIFICATION OF PRIOR AGREEMENT.**

The foregoing recitals are true and correct and by this reference are incorporated into this First Amendment. It is the Parties' intent, which is hereby expressed, that except as specifically modified herein, the original Agreement is not modified and remains an enforceable contractual relationship among the Parties.

**Section 2: EFFECTIVE DATE.**

This First Amendment shall take effect on the date it is duly authorized and executed by all the Parties, which date shall be memorialized by the Cooperative and distributed to the other Parties.

**Section 3: DEFINITIONS.**

a. The term "Combined Projects" in Section 1 of the Agreement is modified and shall read as follows:

**"Combined Projects"** means the West Polk Lower Floridan Aquifer Wellfield, Southeast Wellfield, Peace Creek Integrated Water Supply Project and the Peace River/Land Use Transition Treatment Facility.

b. The term "Peace River/Land Use Transition Treatment Facility and Reservoir" is created in Section 1 of the Agreement and shall read as follows:

**"Peace River/Land Use Transition Treatment Facility"** means a surface water facility to be implemented along the Peace River and transition of existing agricultural and/or mining withdrawals to public supply.

c. The term “Project” in Section 1 of the Agreement is modified and shall read as follows:

“**Project**” means one, two, three or all four of the Combined Projects, as determined when Phase 2 is implemented.

d. The term “Project Manager” in Section 1 of the Agreement is modified and shall read as follows:

“**Project Manager**” means the person or alternate(s) designated by the Cooperative pursuant to Section 7.3 to manage the Cooperative’s responsibilities under this Agreement with respect to each of the four Projects. The Cooperative may appoint the Combined Project Administrator as one or more Project Managers.

**Section 4: GENERAL BACKGROUND OF THE PROJECT.**

Section 2 of the Agreement is modified to add a new Section 2.4 and shall read as follows:

**2.4 Peace River/Land Use Transition Treatment Facility.** This Project includes construction of a surface water intake, treatment facility, storage facilities and transmission lines along the Peace River and transition of existing agricultural and/or mining withdrawals to public supply. It is estimated that approximately 30 MGD of surface water can be withdrawn from the Peace River and 6 MGD of groundwater will be made available as a result of land use transitions over a 50-year period. In the Phase 2 Implementation Agreement Engineer’s Report dated April 30, 2017, it was estimated that the construction cost for this Project would be \$150,232,900. But because that report only anticipated that 5 MGD would be available from the Peace River, the actual construction costs will likely be larger, but the unit cost of water from this Project should be less than originally estimated.

*[Signatures begin on the following pages]*

CITY COMMISSION OF THE  
CITY OF AUBURNDALE, FLORIDA

By: \_\_\_\_\_  
Timothy J. Pospichal, Mayor

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

ATTEST:

By: \_\_\_\_\_  
Shirley Lowrance, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
V. Patton Kee, City Attorney

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

CITY COMMISSION OF THE  
CITY OF BARTOW, FLORIDA

By: \_\_\_\_\_  
Leo E. Longworth, Mayor

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

ATTEST:

By: \_\_\_\_\_  
Jacqueline Poole, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
Sean Parker, City Attorney

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

CITY COMMISSION OF THE  
CITY OF DAVENPORT, FLORIDA

By: \_\_\_\_\_  
H.B. Robinson III, Mayor

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

ATTEST:

By: \_\_\_\_\_  
Rachel Castillo, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
Andrew J. Hand, City Attorney

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

CITY COMMISSION OF THE  
CITY OF EAGLE LAKE, FLORIDA

By: \_\_\_\_\_  
Cory Coler, Mayor

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

ATTEST:

By: \_\_\_\_\_  
Dawn Wright, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
Jeff Dawson, City Attorney

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CITY COMMISSION OF THE  
CITY OF FORT MEADE, FLORIDA

By: \_\_\_\_\_  
Richard Cochrane, Mayor

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

ATTEST:

By: \_\_\_\_\_  
Melissa Newman, Deputy City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
Thomas A. Cloud, City Attorney

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

CITY COMMISSION OF THE  
CITY OF HAINES CITY, FLORIDA

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

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

ATTEST:

By: \_\_\_\_\_  
Linda Bourgeois, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
Fred Reilly, City Attorney

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

CITY COMMISSION OF THE  
CITY OF LAKELAND, FLORIDA

By: \_\_\_\_\_  
William "Bill" Mutz, 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 First Amendment to the Combined Projects Implementation Agreement 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: \_\_\_\_\_  
Jennifer Nanck, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
Albert C. Galloway, Jr., City Attorney

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

CITY COMMISSION OF THE  
CITY OF MULBERRY, FLORIDA

By: \_\_\_\_\_  
George H. Hatch, Mayor

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

ATTEST:

By: \_\_\_\_\_  
Sharon Lauther, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
W.A. "Drew" Crawford, City Attorney

IN WITNESS WHEREOF, the undersigned has caused this First Amendment to the Combined Projects Implementation Agreement 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

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
Thomas A. Cloud, City Attorney

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

CITY COMMISSION OF THE  
CITY OF WINTER HAVEN, FLORIDA

By: \_\_\_\_\_  
Bradley T. Dantzler, Mayor

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

ATTEST:

By: \_\_\_\_\_  
Joy Townsend, Deputy City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

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

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



TOWN COMMISSION OF THE  
TOWN OF DUNDEE, FLORIDA

By: \_\_\_\_\_  
Sam Pennant, Mayor

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

ATTEST:

By: \_\_\_\_\_  
Brian Lueth, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

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

IN WITNESS WHEREOF, the undersigned has caused this First Amendment to the Combined Projects Implementation Agreement 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: \_\_\_\_\_  
Brittney Sandovalsto, Town Clerk

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

ATTEST:

POLK COUNTY, a political subdivision of  
The State of Florida

Stacy M. Butterfield  
Clerk to the Board

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

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

Reviewed as to form and legal sufficiency:

\_\_\_\_\_  
County Attorney's Office

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

POLK REGIONAL WATER COOPERATIVE

By: \_\_\_\_\_  
Timothy J. Pospichal, Chair

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

ATTEST:

By: \_\_\_\_\_  
Eugene Fultz, Secretary/Treasurer

APPROVED AS TO FORM AND CORRECTNESS:

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

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

## Summary Sheet and Cost Breakdown for PRWC Projects

### Project Plan Modifications for The Current Phase I Project

Project	Before Modification	After Modification
Southeast Well Field	\$11,800,000	\$11,117,916
West Polk LFA	9,300,000	8,940,734
Peace Creek Integrated WSP	1,900,000	1,980,250
<b>Total</b>	<b>\$23,000,000</b>	<b>\$22,038,900</b>
<b>Change Amount</b>		<b>\$ 961,100</b>

Notes: 1. Savings for Southeast Well Field and West Polk LFA come from reduction of Pilot Treatment.  
 2. Increase for Peace Creek Integrated Water Supply from need for real estate to proceed.  
 3. Southwest Florida Water Management District pays 50% of Cost.

### New Scope Added by Amendment 1 to the Current Phase I Project

Project	Brief Scope	Cost
Peace River Project	Project required to evaluate the feasibility of Upper Peace River Withdrawals for Polk County as a whole.	\$961,100
	<b>Total</b>	<b>\$961,100</b>

Notes: 1. Southwest Florida Water Management District pays 50% of Cost.

### Estimated Total Capital Cost for Phase 2

Project	Cost
Southeast Well Field	\$352,385,000
West Polk LFA	166,754,000
Peace Creek Integrated WSP	120,885,115
<b>Cost without Peace River</b>	<b>\$640,024,115</b>
Peace River Project	150,232,900
<b>Total Cost</b>	<b>\$790,257,015</b>

Notes: 1. All Cost are Estimates as of April 30, 2017  
 2. Projects will be Phased, all cost not realized at the same time.  
 3. Southwest Florida Water Management District pays 50% of Cost.