

**MEMORANDUM**

**TO:** MAYOR AND CITY COMMISSION

**FROM:** CITY ATTORNEY'S OFFICE

**DATE:** April 19, 2021

**RE:** **West Polk Lower Floridan Aquifer Wellfield Implementation Agreement**

Attached for your consideration is a proposed Implementation Agreement between the City of Lakeland, Polk County and various municipalities within Polk County for the development of the West Polk Lower Floridan Aquifer Wellfield Project. The West Polk Wellfield Project was presented to the City Commission at a March 12 workshop, with a recommendation from the City's Water Utility Department that the City participate in this Project in order to diversify its sources of potable water and to secure additional supply in anticipation of both the 2038 expiration of the City's current water use permit and the potential for regulatory changes prior to such time.

The West Polk Wellfield Project is one of several alternative water supply projects that have been approved by the Polk Regional Water Cooperative (PRWC), making it eligible for grant funding from the Southwest Florida Water Management District (SWFWMD). The Project is anticipated to yield approximately 10 million gallons per day (10 mgd) based upon calendar year 2045 buildout estimates. The projected water allotments for the various jurisdictions electing to participate in the Project as of the effective date of this Agreement are shown in the following table:

**Project Participants' 2045 Water Allotment Table:**

<b>Project Participants</b>	<b>2045 Water Allotment Annual Average (MGD)</b>	<b>2045 Water Allotment Percentage (%)</b>
City of Auburndale	0.10	1.238%
City of Eagle Lake	0.20	2.475%
City of Lakeland	6.31	78.094%
Polk City	0.03	0.371%
Polk County	0.98	12.129%
City of Winter Haven	0.10	1.238%
City of Bartow	0.36	4.455%
<b>TOTAL</b>	<b>8.08</b>	<b>100.00%</b>

Under the proposed Implementation Agreement, a Project Board will be formed after the effective date of the Agreement by the Project Participants. Each Project

Participant will appoint a director to serve on the Project Board and the Board's decisions will be based upon a weighted vote methodology, whereby the weight of each director's vote will be in proportion to the water allotment percentage of the jurisdiction represented by that director. The City of Lakeland's director will exercise approximately 78% of the Board's vote, reflecting Lakeland's lead role in this Project. The City of Mulberry and the City of Lake Alfred will initially participate in the Project solely as Project Associates, which will entitle them to participate in Project Board meetings for purposes of determining possible future status as a full Project Participant, but will not confer on them any voting rights until full participation.

Upon formation, one of the first orders of business for the Project Board will be the selection of engineering consultants to design the Project. Pursuant to the Implementation Agreement, the consultants will first prepare 60% design plans. The Agreement is structured such that, upon completion of the 60% plans, any Project Participant may elect to withdrawal from the Project. Upon withdrawal, the Project Participant remains liable to pay their share of the costs to develop the 60% plans (with each Participant's share being based upon their water allotment percentage as shown above), but will no longer be liable for the costs to complete 100% plans or for construction costs. Participants that do not withdraw will be responsible for their percentage share of the costs to complete the Project.

The Implementation Agreement is conditioned upon SWFWMD agreeing to provide at least 50% funding of the Project's capital costs. The current estimated cost to develop 60% plans for the Project is \$6.16 million, with Lakeland's proportionate share estimated to be \$5 million. Upon commencement of construction, these sums will be eligible for 50% reimbursement pursuant to the pending SWFWMD grant. The estimated construction costs for the Project are \$171 million, with Lakeland's proportionate share estimated at \$70 million after co-funding by SWFWMD. In addition to SWFWMD funding, the PRWC intends to apply for a low-interest Water Infrastructure Finance and Innovation Act (WIFIA) loan for the Project through the U.S. Environmental Protection Agency. The WIFIA loan is anticipated to provide funding for an additional 48% of Project costs. The remaining costs for the Project will likely be funded through a low-interest State Revolving Fund loan through the Florida Department of Environmental Protection.

It is anticipated that the West Polk Wellfield will be developed in 2.5 mgd increments, with an anticipated buildout in 2045 ultimately producing 10 mgd of finished water. The construction stages will be based upon projected demands as the project develops. It is currently estimated that the first stage of the Project will be online by 2027 and will produce 2.5 mgd of available potable water for the Project Participants.

It is recommended that the City Commission approve the attached Implementation Agreement for the West Polk Lower Floridan Wellfield Project and that the appropriate City officials be authorized to execute the Agreement

Attachment

# **IMPLEMENTATION AGREEMENT**

THIS PROJECT IMPLEMENTATION AGREEMENT (the “Agreement”) is made and entered into as of the Effective Date as hereinafter defined, by and among the following members of the Polk Regional Water Cooperative (“Cooperative”), to wit: the City of Auburndale whose address is P.O. Box 186, Auburndale, FL 33823, the City of Eagle Lake whose address is P.O. Box 129, Eagle Lake, Florida 33839, the City of Lakeland whose address is 228 S. Massachusetts Avenue, Lakeland, Florida 33801, Polk City, Florida, a Florida municipal corporation (fka “City of Polk City”) whose address is 123 Broadway Blvd SE, Polk City, Florida 33868, Polk County (“Polk County”), a charter county and political subdivision of the State of Florida, whose address is P.O. Box 9005, Bartow, Florida 33831, the City of Mulberry whose address is P.O. Box 707, Mulberry, Florida 33860, the City of Lake Alfred whose address is 155 East Pomelo Street, Lake Alfred, Florida 33850, the City of Winter Haven whose address is P.O. Box 2270, Winter Haven, Florida 33883, and the City of Bartow whose address is 450 N. Wilson Avenue, Bartow, Florida 33830, individually also referred to as a “Party” and collectively referred to as the “Parties.”

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

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

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

**1.1 “Agreement”** means this West Polk Lower Floridan Wellfield Project Implementation Agreement, as may be amended or restated from time to time.

**1.2 “Alternative Procurement Methods”** means alternatives to the separate design and construction mechanisms specified in Sections 7.3.7 and 8.2.5 such as “design build,” “construction management at risk” or “public-private partnership.”

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

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

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

**1.6 “Capital Replacement and Renewal Cost”** means all costs incurred by the Project Board for the ordinary renewal, replacement, upgrade and improvement of those aspects of the Project owned by the Cooperative, including, but not limited to filter/membrane replacements, which are not paid from the proceeds of any Obligation and costs that will occur over the life of the Project for the assets comprising the Project.

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

**1.8 “Cooperative”** shall have the same meaning as in the Interlocal Agreement. Pursuant to and in accordance with the Interlocal Agreement, all powers, privileges, and duties vested in or imposed on the Cooperative with regards to the approval and implementation of the Project shall be exercised by the Project Board. Accordingly, references to the “Cooperative” within this Agreement pertaining to the exercise of such powers, privileges, and duties are understood as resulting from the Project Board’s exercise of such authority by and on behalf of the Polk Regional Water Cooperative. For purposes of this Implementation Agreement, the Cooperative acts through the Project Board for the West Polk Lower Floridan Aquifer Wellfield.

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

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

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

**1.12 “Director”** shall have the same meaning as in the Interlocal Agreement. For purposes of this Agreement, Directors shall be Directors and/or alternates appointed by the Project Participants.

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

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

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

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

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

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

after the Effective Date or a judgment or order entered by a federal or state court after the Effective Date.

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

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

**1.21 “MGD”** means million gallons a day.

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

**1.23 “Operation and Maintenance Cost”** means any and all costs incurred by the Project Board in operating, maintaining and administering the Project, related operation, maintenance, management, security and development of the Project; labor and labor overhead cost; cost associated with tools, equipment, vehicles, supplies, materials, services and support for the operation, maintenance, management, security and development of the Project. The following are not considered Operation and Maintenance Costs: any cost of litigation or legal judgment against the Cooperative relating to the Project; cost of purchasing any water related to the Project; development expenses relating to expansion of the Project; all costs incurred in planning or applying for, obtaining, maintaining and defending Project Permits, which are not paid under Phase 1 of the Combined Projects Implementation Agreement, Capital Replacement and Renewal Cost and are not payable from the proceeds of any Obligation; administrative, accounting, legal and engineering expenses related to the Project; ordinary and current rentals of equipment or other

property related to the Project; refunds of moneys lawfully due to others, pension, retirement, health and hospitalization funds related to the Project; payments in lieu of taxes and impact fees, if applicable; moneys to be deposited to a Rate Stabilization Fund (if one is established); and administrative costs incurred by the Project Board for management of the Project.

**1.24 “Parties”** mean the City of Auburndale, the City of Eagle Lake, the City of Lakeland, the City of Polk City, Polk County, and the City of Mulberry.

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

**1.26 “Project”** means the West Polk Lower Floridan Aquifer Project with a Project Yield of approximately 10.00 MGD finished water at the year 2045 buildout.

**1.27 “Project Administrator”** means the person or persons and/or alternate or alternates designated by the Project Board of the West Polk Wellfield pursuant to Section 7.2 to manage the Project Board’s responsibilities under this Agreement.

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



**1.29 “Project Board”** shall have the same meaning as in the Interlocal Agreement. The Project Board for the West Polk Wellfield Project will consist of Directors and/or alternates appointed by the Project Participants.

**1.30 “Project Participants”** means those Parties, other than the Project Associates, who have executed this Agreement for the purpose of implementing this Project, which includes the design, permitting, construction, operation, maintenance and funding of the Project and receipt of Project Water Service from the Project Board.

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

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

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

**1.34 “Project Water Service”** means the delivery of Project Water by the Project Board to the Points of Connection for use by the Project Participants.

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

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

**1.37 “PSI”** means pounds per square inch.

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

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

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

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

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

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

**Project Participants' 2045 Water Allotment Table:**

<b>Project Participants</b>	<b>2045 Water Allotment Annual Average (MGD)</b>	<b>2045 Water Allotment Percentage (%)</b>
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<b>TOTAL</b>	<b>8.08</b>	<b>100.00%</b>

These numbers and percentages will be adjusted upon the election of Allotments in Section 2.6 below, including the addition of Project Participants not reflected herein, if any. Any reduction of the Water Allotments set forth in this Section shall only occur by the individual written consent of the affected Protect Participant(s).

**1.43 “Water Charge”** means for any Fiscal Year, the charge established by the Project Board pursuant to Section 12 for providing Project Water Service to the Project Participants. This charge is comprised of the Base Rate Charge and the Water Use Charge.

**1.44 “Water Cost Proportionate Share”** means for any Fiscal Year, that portion of the Base Rate Charge each Project Participant is obligated to pay. The Water Cost Proportionate Share shall be based on each Project Participant’s projected 2045 water allotments, as revised every five (5) years through the True-Up process set forth in Section 10.

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

**1.46 “Water Use Charge”** means for any Fiscal Year that component of the Water Charge computed according to Section 13.

**1.47 “Weighted Vote Method”** means that each Director is assigned a vote based on its Water Cost Allotment percentage under the Base Rate Cost Allotment Table identified in Section 1.42.

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

## **2. PURPOSE OF THE AGREEMENT.**

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

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

**2.3 West Polk Lower Floridan Aquifer Wellfield Implementation Agreement.** The Parties to this Agreement have decided to implement this Project. As such, all further implementation of this Project shall be governed by the terms and conditions of this Agreement rather than the provisions of the Combined Projects Implementation Agreement which is hereby superseded.

**2.4 Other Agreements Not Affected by this Agreement.** Any other agreement between some or all of the Parties not specifically referenced herein is not intended to be changed or affected by this Agreement. Additionally, nothing in this Agreement is intended to

change any existing agreement, permit and/or other similar administrative matters between the District and any Party.

**2.5 Project Participants and Project Associates.** At the first meeting of the Project Board after the Effective Date of this Agreement, each Party hereto shall submit to the Project Board its election in writing of status under this Agreement as a Project Participant or a Project Associate. Each Party to this Agreement electing Project Associate status may at any time submit an election in writing to change its status to Project Participant. To receive Project Participant status, the Project Associate shall, prior to the end of the fiscal year, deliver to the Project Board its Project Water Estimate and pay to the Cooperative its proportionate share of the Capital Cost, Capital Renewal and Replacement Cost, Debt Service Cost, and design fees, if applicable, incurred to date by Project Participants, as well as 2.5% of its proportionate share of such costs expended to date. For all others, to receive Project Participant status, any new Project Participant(s) shall, prior to the end of the fiscal year, deliver to the Project Board its Project Water Estimate and pay to the Cooperative its proportionate share of the Capital Cost, Capital Renewal and Replacement Cost, Debt Service Cost, and design fees, if applicable, incurred to date by Project Participants, as well as 7.5% of its proportionate share of such costs expended to date.

**2.6 Recognition of Initial Water Cost Allotment.** At the first meeting of the Project Board after the Effective Date of this Agreement, each Party intending to be a Project Participant shall provide the Project Board in writing with its 2045 water allotments. The Project Board shall collect the 2045 water allotments prepared by Project Participants and publish those allotments in a table reflecting the initial Water Cost Allotment for each Project Participant calculated pursuant to Section 1.42.

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

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

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

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

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

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

**5. CONDITIONS PRECEDENT.** The Effective Date of this Agreement shall take effect upon satisfaction of the following conditions precedent:

**5.1 Execution of the Agreement.** This Agreement shall be duly authorized and executed by the Parties.

**5.2 SWFWMD Funding Commitment.** The Cooperative and the Southwest Florida Water Management District shall execute a contract in which the District agrees to fund at least fifty (50%) percent of the eligible Capital Cost of the Project.

**5.3 Satisfaction of Conditions Precedent.** The Project Board acting as the Cooperative shall determine when these conditions precedent have been satisfied and the Effective Date of this Agreement.

**6. TERM AND TERMINATION.** The term of this Agreement shall begin on the Effective Date and remain in effect, unless terminated by written agreement of all the Parties.

Termination shall not take place until all Obligations issued by the Cooperative with respect to the West Polk Lower Floridan Aquifer Wellfield Project have been repaid, all cooperative funding agreements or grants received by the Cooperative have been completed and any other funding mechanisms used to pay for construction, operation or maintenance of the Project have been successfully concluded.

## **7. PROJECT ADMINISTRATION.**

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

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

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

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



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

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

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

**7.3.5** Manage the review of interim and final deliverables.

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

**7.3.7** Approve the use of Alternative Procurement Methods, as specified in Section 8.2.5, for design and construction of the Project.

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

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

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

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

**7.3.12** Implement any alternative financing mechanisms.

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

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

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

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

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

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

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

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

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

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

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

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

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

**8.1 Final Design and Bidding Stage.**

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

**8.1.2** The Project Board shall require the consultant to prepare (1) a final design in relative conformance with the Project Preliminary Design Report, and (2) a Bidding Budget based on the final design. The final design shall, at a minimum, include a 60% final design and 100% final design, and shall present the 60% design as a single line item. The 60% final design shall include design specifications, design drawings, an estimated Bidding Budget, and an estimate of real estate acquisition costs. The 100% final design shall include design specifications, design drawings, the final Bidding Budget, and an estimate of real estate acquisition costs.

**8.1.3** Once the consultant has completed the 60% final design, the Project Administrator will present it to the Project Board. Any Project Participant may withdraw from the Project as provided in Section 19 following completion of 60% final design. The consultant shall not commence the 100% final design until after the Project Board has approved the 60% final design.

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

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

**8.1.6** The Cooperative will execute funding agreement(s) with the District to provide up to fifty (50) percent cooperative funding of the eligible Capital Costs of the Project.

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

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

**8.1.9** The Project Board may approve the use of Alternative Procurement Methods as allowed by Florida Statutes including Chapters 255 and 287, in place of the separate design and construction mechanisms described Sections 1.2 and 8.3, including the procurement of a construction manager at risk.

**8.2 Real Estate Acquisition Stage.** After Project Board approval of the 60% final design the Cooperative shall acquire any real property interests necessary to implement the Project, subject to the limitations of the Interlocal Agreement.

**8.3 Project Construction Stage.** The Project Construction Phase begins upon completion of the Final Design and Bidding Stage. The Project Board shall make all decisions

regarding the procurement of a contractor or construction manager at risk to construct the Project. The Project Administrator shall submit all change orders to the Project Board for approval unless otherwise designated by the Project Board.

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

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

**10. TRUE-UP.** Before the beginning of each fiscal year, the Project Board will consider for approval any proposed additions, assignments and substitutions proposed under the process set forth in Section 20. At least every 5 years after the Effective Date of this Agreement and every 5 years thereafter, the Project Board will determine the size and timing of the next phase of construction. Any additions, substitutions, assignments or revisions to the size and timing of construction phases must be approved by the Project Board and reflected in an Amendment to this Agreement.

**11. PROJECT WATER SERVICE.**

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

**11.1.1 Delivery of Project Water Estimates.** Each Project Participant desiring to take Project Water shall deliver to the Project Board its Project Water Estimate for the

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

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

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

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

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

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

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

Permit. The Project Board shall maintain adequate catastrophic insurance on the Project on such terms and amounts as established by the Project Board.

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

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

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

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

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



## **12. POINTS OF CONNECTIONS AND METERING FACILITIES.**

**12.1 Points of Connection.** The Points of Connection and the location of the Meters used for the delivery of Project Water to the Project Participants will be identified by the Project Board no later than 30 days after the 60% design presentation to the Project Board for those Project Participants with a Water Allotment under the Water Allotment Table set forth above. This requirement applies equally to those Project Participants that will physically take Project Water and those Project Participants that will take Water Offsets. The Project Board and a Project Participant may, by mutual written agreement, more specifically identify or modify the Point of Connection or the location of the corresponding Meter. Any change in the Points of Connection or the location of the Meters shall be reflected in a map prepared by the Project Board.

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

**12.3 Inspection of Meters.** Each Meter shall be inspected annually and an inspection report shall be prepared at the conclusion of each inspection detailing the condition and accuracy of each Meter. Each inspection shall be performed by a representative of the manufacturer or other certified, competent entity agreeable to the Project Board and the Project Participants and a copy of each inspection report shall be furnished to all Project Participants. Upon request of a Project Participant, the Project Board shall make arrangements for a test of the Meter installed at the Project Participant's Point of Connection by an independent testing entity. The Project Board shall be responsible for selecting and engaging the independent testing entity.

All costs and expenses shall be borne by the Project Participant requesting the test, unless the Meter is found to be inaccurate beyond the manufacturer's guaranteed range of accuracy, in which case, the cost and expense of the test shall be borne by the Project Board and such cost may not be passed along to the Project Participant requesting the test, as part of the Water Charge.

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

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

**13.1 General.** The Water Charge shall be sufficient to pay the Debt Service Costs, Capital Renewal and Replacement Costs, Fixed Operation and Maintenance Costs and Variable Operation and Maintenance Costs incurred by the Project Board in order to provide Project Water Service to the Project Participants for the upcoming Fiscal Year. The Water Charge shall consist of a Base Rate Charge and a Water Use Charge, including any Operation and Maintenance Costs. The Water Charge shall be uniform for all Project Participants. The Water Charge shall be computed in the manner specified in Section 13.4, prior to the upcoming Fiscal Year and the Project Participants shall be notified of the Water Charge for the upcoming Fiscal Year in the manner provided in Section 13.3. The Water Charge shall be uniform to all Project

Participants and the Project Board may not discriminate against any Project Participant, when establishing the Water Charge. Establishment of the Water Charge shall be made by the Project Board and the Project Board's decision shall not be subject to supervision or regulation by any commission, board, bureau, agency, municipality, county or political subdivision of the State of Florida.

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

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

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

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

**13.3.1.2** The Base Rate Charge shall consist of the total of the Debt Service Cost, Capital Renewal and Replacement Cost and Fixed Operation and Maintenance Cost determined pursuant to Section 13.3.1.1. The Base Rate Charge shall be allocated among

each Project Participant based upon each Project Participant's Water Cost Allotment Percentage identified in the then effective Base Rate Cost Allotment Table in Section 1.42, as it may be modified pursuant to Section 10, for the upcoming Fiscal Year.

**13.3.1.3** The Base Rate Charge allotment computed for each Project Participant pursuant to Section 13.3.1.2 shall be increased by any underpayment or decreased by any overpayment determined pursuant to Sections 13.6 and/or 10 of this Agreement.

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

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

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

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

**13.5 Accounting, Audits and Adjustments for Actual Expenses and Water Use.** The Project Board shall maintain accounts and records of actual water use by the Project Participants, all revenue received from all sources to meet the cash needs of the Project and the actual Debt Service Costs, Capital Renewal and Replacement Costs, Fixed Operation and

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

**13.6 Prohibition Against Surcharges, Transfers to General Fund and Certain Payments.** The Water Charge shall not include any surcharge, tax, payment in lieu of taxes, payment in lieu of franchise fees, transfers to the Project Board's or the Cooperative's general administrative expenses or any charge or payment not directly related to the cost of providing Project Water Service.

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

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

**14.1 Billing and Payment.** The Project Board shall invoice each Project Participant for their Water Use Charge on regular monthly intervals. The Meters shall be read and recorded on or about the last normal work day of the calendar month during which the Project Water Service was provided. Billing to each Project Participant shall be made on the 10<sup>th</sup> day of the following calendar month. Payment of the Water Charge shall be made to the order of the Cooperative and tendered to the Project Board no later than thirty (30) days after which the statement was received. If the Water Charge or any portion thereof remains unpaid following their due date, the Project Participants shall be charged with and pay to the order of the Cooperative interest on the amount unpaid from its due date until paid at the rate of one (1.0) percent monthly, or 12% per annum.

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

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

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

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

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

## **16. FORCE MAJEURE.**

**16.1 Excuse from Performance.** No Party shall be liable to any other Party for delay in performance of, or failure to perform, its obligations under this Agreement, if such delay or failure is caused by a Force Majeure Event.

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

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

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



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

## **18. DEFAULT AND REMEDY.**

**18.1 Default.** If any Party fails to observe, comply with, perform or maintain in any material way any term, covenant, condition, duty, obligation, representation or warranty contained or arising under this Agreement, such action shall constitute a default and the other Parties may seek remedies set forth herein, if that default is not timely cured within thirty (30) days, unless such default is not capable of being cured within thirty (30) days, in which case the Party must cure the default as soon as practicable. Recognizing the Project Participants' paramount need for a safe and dependable water supply, the Parties agree that, with the exception of the suspension of Project Water Service or Water Offsets pursuant to Section 18.3 of this Agreement, the exclusive remedy for default under this Agreement shall be for the non-defaulting Parties to individually or jointly seek specific performance arising from such default.

**18.2 Project Participant Payment Dispute.** A Project Participant that disputes a payment of the Water Charge under Section 13 shall be obligated to continue paying the disputed

charge until the disagreement is resolved. If the dispute is decided in the favor of the Project Participant, the Project Board shall elect to either pay the disputed charge as a credit against the Water Charge for the next Fiscal Year or through a direct one-time payment to the Project Participant.

**18.3 Suspension of Project Water Service in the Event of Non-Payment of the Water Charge.** A Project Participant that fails to pay its Water Charge or any portion thereof within ninety (90) days following its due date shall be in default of this Agreement and upon thirty (30) days written notice, the Project Board may suspend Project Water Service to the Project Participant and prohibit a Project Participant from using Water Offsets unless there is in mediation a good faith dispute or suspension of service compromises the health, safety, and welfare of the end water users. Suspension of Project Water Service to a Project Participant or prohibition of the use of Water Offsets by a Project Participant because of its failure to pay the Water Charge or any portion thereof shall not excuse the Project Participant from paying the Base Rate Charge, when it becomes due nor prohibit the Project Board from continuing to charge interest on the unpaid amount. Upon payment of all outstanding Water Charges, including any interest, the Project Board shall immediately resume Project Water Service to the Project Participant or immediately allow a Project Participant to use a Water Offset. The Project Board's decision to suspend Project Water Service to a Project Participant or to prohibit Water Offsets use by a Project Participant under this Section shall not be subject to the dispute resolution process in Section 17 and shall not be considered a default under Section 18. However, the Project Board's failure to resume Project Water Service or to allow a Project Participant to use Water Offsets upon payment of all outstanding Water Charges, including any interest, may constitute a default under Section 18 and shall be subject to the dispute resolution process specified in Section 17.

**19. WITHDRAWAL OF A PROJECT PARTICIPANT FROM THIS AGREEMENT.**

**19.1 Withdrawal Before the Decision to Commence 100% Final Design.**

Once the 60% design is complete, the Project Administrator will present it to the Project Board. Within 45 days after the 60% design presentation to the Project Board, any Project Participant may withdraw from the Project. Any withdrawal must be in writing and provided as set forth in Section 25 of this Agreement. Within 45 days after the time set for any Member to withdraw, the Project Board shall convene and the remaining Members of the Project Board shall consider approval of the 60% design and authorization to proceed with 100% final design. A Project Participant who withdraws from this Agreement before the decision to commence with 100% final design shall remain liable for payment of its share of the cost for the 60% final design, but shall not be liable for any future costs of the Cooperative or the Project Board. The Parties to this Agreement expressly acknowledge that construction costs, financing options, and other material terms set forth in this Agreement may be further refined and clarified when the 60% design has been completed. During the initial thirty (30) days of the Withdrawal Period, a Project Participant may proposed modifications to the Agreement that address material terms of the Agreement. At the conclusion of such thirty (30) day period, the Project Participants shall address whether to accept or reject the proposed modifications. If any modifications are accepted by the Project Participants, the Project Participants shall execute a formal amendment to this Agreement.

**19.2 Withdrawal After the Decision to Commence 100% Final Design. A**

Project Participant who withdraws from this Agreement after the decision to commence 100% final design shall remain liable for payment of its share of the cost for the Final Design and Bidding Stage, and shall remain liable for payment of its share of the Water Charge. If the withdrawing

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

**19.3 Duties of and effect on Withdrawing Project Participant.** A withdrawing Project Participant shall no longer be considered a voting member of the Project Board with regard to that specific Project. Upon notice by the Project Board, a withdrawing Project Participant shall apply to withdraw from any Project Permits issued in its name and shall not oppose or challenge any modification to a Project Permit necessitated by its withdrawal. A withdrawing Project Participant shall surrender its Water Allotment, if any, and immediately forfeit its right to receive Project Water Service from the Project Board, including the use of Water Offsets.

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

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

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

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

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

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

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

**20.2.1 Cost to become a new Project Participant.** The provisions of this section 20.2 are established to provide equity among all Project Participants and to provide an incentive for local governments to subscribe early. Subject to the provisions of Section 2.5 of this Agreement, any new Project Participant that joins this Agreement after it is first executed under the process described in this Section 20 of this Agreement shall pay its proportionate share of the costs incurred by the Project Participants before the new Project Participant joins the Agreement, design fees if applicable, and its proportionate share of the Project Costs expended to date. This amount is in addition to the Water Charge for each upcoming fiscal year as described in section 13. When this occurs, the percentage collected shall be refunded proportionately to the initial Project Participants who joined this Agreement when it was first executed.

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

**20.3 Assignment.** As a matter of right, an existing Project Participant may assign a portion of its Water Allotment, if any, and its Water Cost Allotment to a new Project Participant or an existing Project Participant, if the new Project Participant or existing Project Participant agrees to fully perform all the obligations of the existing Project Participant. The complete assignment of an existing Project Participant's Water Allotment, if any, and Water Cost Allotment to a new Project Participant or an existing Project Participant shall be treated as a substitution under Section 20.1. Prior to the assignment taking effect, the existing Project Participant must notify the other existing Participants in writing of the assignment and offer the assignment on the same terms and conditions to the other existing Project Participants, who shall be provided at least sixty (60) days to exercise the right of first refusal. This right of first refusal shall only apply when the assignee is a new Project Participant. If one of the existing Project Participants exercises its right of first refusal during this time period, then the portion of the assigning Project Participant's Water Allotment, if any, and Water Cost Allotment up for assignment shall be transferred to the existing Project Participant. If two or more existing Project Participants exercise their right of first refusal during this time period, then the portion of the assigning Project Participant's Water Allotment, if any, and Water Cost Allotment up for

assignment shall be transferred in equal portions to the existing Project Participants. If none of the existing Project Participants commit to acquire the assigning Project Participant's Water Allotment, if any, and Water Cost Allotment up for assignment, then the other existing Project Participants shall be considered to have waived their right of first refusal. The right of first refusal shall not apply when an existing Party is the assignee. Any assignment under this Section 20.3 must be reviewed and approved by the Project Board as to technical feasibility. Once the assignment takes place, the assigning Project Participant shall still be a Party to the Agreement, but it shall forfeit or surrender the assigned portion of its Water Allotment and Water Cost Allotment to the assignee Project Participant, as well as its voting rights, proportionate to the extent of the assignment. Once assignment takes place, the assigning Project Participant shall cooperate with the Project Board in any modification to the Project Permits necessary to effectuate this assignment.

## **21. PERMITS.**

**21.1** Neither the Cooperative, the Project Board, or any Member of the Cooperative shall interfere with the existing consumptive use permits or existing water, wastewater, or reclaimed water facilities of a Member Government, except as may otherwise be consented to in writing by the Member Government.

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

**21.3** No Project Participant shall purposefully submit information to a regulatory agency that conflicts with information submitted by the Project Board in support of any application for a Project Permit. In the event that an application for a Project Permit will interfere with the



existing consumptive use permits or existing water, wastewater or reclaimed water facilities of that Project Participant the provisions of Section 21.1 shall apply.

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

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

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

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

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

**22.3 Obligations.** The Project Participants shall cooperate with the Cooperative and/or Project Board should the Cooperative and/or the Project Board decide in accordance with the Agreement to issue Obligations to fund any Capital Costs incurred by the Cooperative and/or the Project Board with regard to the Project. In said event, the Project Participants shall comply with the reasonable request of the Cooperative and/or the Project Board and will, upon such request, do as follows: (1) make available general material and financial information about itself; (2) consent to publication and distribution of its financial information; (3) certify that any general material and financial information is accurate, does not contain any untrue statements of material fact and does not omit to state a material fact necessary to make the statements contained in the general material and financial information, in light of the circumstances under which they were made not misleading; (4) provide reasonable certifications to be used in a transcript of closing documents; (6) provide and pay for reasonable requested opinions of counsel as to the binding effect of this Agreement, the validity of actions taken as a result of the Agreement, title to real property, as applicable, and pending litigation which could materially affect the Party's performance under the Agreement; and, (7) provide guarantee agreements, if required in order to obtain the Obligation. In addition, each Project Participant agrees to take no action which shall adversely affect the exclusion from gross income of interest on the Obligations for purposes of federal income taxation.

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

**23. SOVEREIGN IMMUNITY AND INDEMNIFICATION.** The Parties intend to avail themselves of the benefits of Section 768.28, Florida Statutes, and any other statute and

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

**24. APPLICABLE LAW, VENUE AND WAIVER OF JURY TRIAL.** This Agreement and the rights and obligations of the Parties are to be governed by, construed and interpreted in accordance with the laws of the State of Florida. In the event of any legal proceeding arising under this Agreement, the exclusive venue for such proceeding shall be either in a State court of competent jurisdiction located in Polk County, Florida or the United States District Court in and for the Middle District of Florida, Tampa Division. In any such legal proceeding, the Parties hereby consent to trial by the court and waive the right to a jury trial as to any issues that are triable before a jury.

**25. NOTICES.**

**25.1** All notices provided for in this Agreement must be in writing and shall be sufficient and deemed to be given when sent by certified mail or registered mail, return receipt requested. A copy shall also be sent to the Parties by email. All notices shall be delivered or sent

to the Parties and/or Project Associates at their respective addresses shown below or such other addresses as a Party and/or Project Associate may designate by prior notice given in accordance with this provision to the other Parties and/or Project Associates:

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

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

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

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

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

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

**25.2** All notices shall also be sent to the Chair of the Project Board, with a separate copies to the Project Administrator and the Executive Director of the Polk Regional Water Cooperative.

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

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

**27. DISCLAIMER OF THIRD-PARTY BENEFICIARIES.** This Agreement is solely for the benefit of the Parties and no right or cause of action shall accrue to or for the benefit of anyone that is not a Party hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity, other than the Parties any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the Parties.

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

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

**30. SEVERABILITY.** If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, it shall be considered deleted, and shall not invalidate the

remaining provisions. However, if the deleted language is considered a key provision of the Agreement, the Parties must agree to a substitute provision that will accomplish the original intent of the Parties. If the Parties cannot agree to a substitute provision within ninety (90) days of the determination by the court, then the Agreement shall be deemed terminated.

### **31. ATTORNEY'S FEES AND COSTS.**

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

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

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

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

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

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

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

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

**38. PUBLIC RECORDS.** Should any Party assert any exemption to, or inapplicability of, the requirements of Chapter 119 and related statutes, the burden and cost of establishing such an assertion, by way of injunctive or other relief as provided by law, shall be upon that Party. The Parties shall allow public access to all Project documents and materials that are subject to the requirements of Chapter 119, Florida Statutes or claim that a document does not constitute a public record, the burden of establishing such an exemption or excluding a document as a public record,

by way of injunctive or other relief as provided by law, shall be upon the Party asserting the exemption or the claim that a document does not constitute a public record. Additionally, nothing in this Agreement shall be construed nor is intended to, expand the scope of Chapter 119, Florida Statutes or make into a public record a document that is not a public record under the applicable law.

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

*[Signatures begin on the following pages]*



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

CITY COMMISSION OF THE  
CITY OF AUBURNDALE, FLORIDA

as a Project Participant.

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

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

ATTEST:

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

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
Fredrick J. Murphy, Jr., City Attorney

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

CITY COMMISSION OF THE  
CITY OF EAGLE LAKE, FLORIDA

as a Project Participant.

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

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

ATTEST:

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

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

CITY COMMISSION OF THE  
CITY OF LAKE LAND, FLORIDA

as a Project Participant.

By: \_\_\_\_\_  
William "Bill" Mutz, Mayor

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

ATTEST:

By: \_\_\_\_\_  
Kelly Koos, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
Palmer Davis, City Attorney

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

CITY COMMISSION OF THE  
POLK CITY, FLORIDA, a Florida municipal corporation  
as a Project Participant.

By: \_\_\_\_\_  
Joseph LaCascia, Mayor

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

ATTEST:

By: \_\_\_\_\_  
Patricia Jackson, City Clerk

APPROVED AS TO FORM & LEGALITY

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

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

ATTEST:

POLK COUNTY, a political subdivision of  
The State of Florida

as a Project Participant.

Stacy M. Butterfield  
Clerk to the Board of County Commissioners

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

By: \_\_\_\_\_  
W.C. Braswell, Chair  
Board of County Commissioners

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

Reviewed as to form and legal sufficiency:

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

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

CITY COMMISSION OF THE  
CITY OF MULBERRY, FLORIDA

as a Project Associate.

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

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

ATTEST:

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

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

CITY COMMISSION OF THE  
CITY OF LAKE ALFRED, FLORIDA

as a Project Associate.

By: \_\_\_\_\_  
Ryan Leavengood, City Manager

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

ATTEST:

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

APPROVED AS TO FORM AND CORRECTNESS:

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

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

CITY COMMISSION OF THE  
CITY OF WINTER HAVEN, FLORIDA

as a Project Participant.

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

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

ATTEST:

By: \_\_\_\_\_  
Vanessa Castillo, MMC, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

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



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

CITY COMMISSION OF THE  
CITY OF BARTOW, FLORIDA

as a Project Participant

By: \_\_\_\_\_  
Scott Sjoblom, Mayor

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

ATTEST:

By: \_\_\_\_\_  
Jacqueline Poole, MMC, FCRM, CPM, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
Sean R. Parker, City Attorney

**West Polk Lower Floridan Aquifer Project Board**

The foregoing Implementation Agreement is approved and ratified by the Project Board pursuant to § 2.11 of the Interlocal Agreement Relating to the Establishment of the Polk Regional Water Cooperative for, on behalf of, and in the name of the Polk Regional Water Cooperative, at a duly convened public Project Board meeting held this \_\_\_\_ day of \_\_\_\_\_, 2021.

POLK REGIONAL WATER COOPERATIVE

By: \_\_\_\_\_  
      *Name*  
      Project Board Chair

ATTEST:

By: \_\_\_\_\_  
      *Name*  
      Secretary, Polk Regional Water Cooperative