

## MEMORANDUM

**TO:** MAYOR AND CITY COMMISSION

**FROM:** CITY ATTORNEY'S OFFICE

**DATE:** July 5, 2022

**RE: Second Amended and Restated Implementation Agreements for the West Polk Lower Floridan and Southeast Wellfield Projects**

Representatives of the Polk Regional Water Cooperative (PRWC) have been in continuing discussions with the United States Environmental Protection Agency (EPA) for the purpose of securing a Water Infrastructure Finance and Innovation Act (WIFIA) loan to finance a significant portion of both the West Polk Lower Floridan Aquifer Wellfield Project and the Southeast Wellfield Project. Each project will be financed through a combination of a Southwest Florida Water Management District (SWFWMD) grant providing for the reimbursement of fifty percent (50%) of project costs, a low-interest, deferred payment WIFIA loan through the EPA, which will fund an additional 48% of project costs, and a low-interest State Revolving Fund (SRF) loan through the Florida Department of Environmental Protection (FDEP). The WIFIA loan has several advantageous features, including a low interest rate tied to Treasury bonds of similar maturity, the ability to draw funds as costs are incurred in order to avoid unnecessary interest payments, a long repayment period of up to 35 years after substantial completion of the projects, and the ability to not only defer the commencement of payments for up to 5 years after substantial completion, but to customize the repayment schedule to allow for the phase-in of rate increases over time.

The Implementation Agreements for both the West Polk and Southeast Projects were originally approved in April of 2021. They were subsequently amended in March of 2022 based upon discussions between PRWC's bond counsel and financial advisor and the various financing entities. PRWC representatives are now recommending that the Implementation Agreements be amended a second time in order to satisfy additional comments from the EPA. Aside from largely non-substantive changes designed to make the two Implementation Agreements consistent with one another, the attached Second Amended and Restated Implementation Agreements identify "Anchor Project Participants" for the two projects and specify that an Anchor Project Participant may not withdraw from or assign or reduce its water allocation for the project for which it is an Anchor Project Participant unless approved by the EPA or unless otherwise authorized to do so by the express provisions of the debt obligation instruments issued for the project. The purpose of these modifications is to ensure that the larger project participants remain obligated for the repayment of outstanding debt. The City of Lakeland is the sole Anchor Project Participant for the West Polk Project, while Polk County and the Cities of

Auburndale, Davenport, Haines City and Winter Haven are the Anchor Project Participants for the Southeast Wellfield Project.

The City's Water Utility Department continues to believe that the City should participate in both projects 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. 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. Lakeland's water allotment percentage for this Project is approximately 80%. The construction stages will be based upon projected demands as the Project develops and will allow the parties to evaluate their needs prior to incurring additional debt. It is currently estimated that the first stage of the West Polk Project will be online by 2027 and will produce 2.5 mgd of available potable water for the Project Participants. Lakeland's participation in the Southeast Wellfield Project is significantly less, at 0.10 mgd, representing 0.66% of the total water allotment for that Project. By participating in the Southeast Wellfield Project as a Project Participant, in addition to receiving 0.10 mgd of potable water, Lakeland will have a vote on the Project Board and will be able to avoid paying a penalty of up to 7.5% of its share of capital costs should it choose to join the Project later.

It is recommended that the City Commission approve both the attached Second Amended and Restated Implementation Agreement for the West Polk Lower Floridan Aquifer Wellfield Project, as well as the Second Amended and Restated Implementation Agreement for the Southeast Wellfield Project, and authorize the appropriate City officials to execute both Agreements.

Attachments

May 11, 2022

**SECOND AMENDED AND RESTATED IMPLEMENTATION  
AGREEMENT**

**West Polk Lower Floridan Aquifer Wellfield**

THIS SECOND AMENDED AND RESTATED PROJECT IMPLEMENTATION AGREEMENT (the “Agreement”) is made and entered into as of the Effective Date as hereinafter defined, by and among the Polk Regional Water Cooperative (“Cooperative”), whose address is P.O. Box 9005, Bartow, Florida 33831, the City of Auburndale whose address is P.O. Box 186, Auburndale, FL 33823, the City of Lakeland whose address is 228 ~~S.~~South Massachusetts Avenue, Lakeland, Florida 33801, Polk City, Florida, a Florida municipal corporation (fka “City of Polk City”) whose address is 123 Broadway Blvd SE, Polk City, Florida 33868, Polk County (“Polk County”), a charter county and political subdivision of the State of Florida, whose address is P.O. Box 9005, Bartow, Florida 33831, the City of Mulberry whose address is P.O. Box 707, Mulberry, Florida 33860, the City of Lake Alfred whose address is 155 East Pomelo Street, Lake Alfred, Florida 33850, the City of Winter Haven whose address is P.O. Box 2270, Winter Haven, Florida 33883, the City of Bartow whose address is 450 N. Wilson Avenue, Bartow, Florida 33838, the Town of Dundee, Florida whose address is 2020 East Main Street, Dundee, Florida 33838, the Town of Lake Hamilton whose address is P.O. Box 126, Lake Hamilton, ~~FL~~Florida 33851 and the City of Fort Meade, whose address is 8 West Broadway Street, Fort Meade, Florida 33841, individually also referred to as a “Party” and collectively referred to as the “Parties~~”.~~”.”

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

~~March 16, 2022~~

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 Second Amended and Restated Implementation Agreement for the West Polk Lower Floridan Wellfield, as it may be amended or restated from time to time.

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

1.3 **“Anchor Project Participant”** means the City of Lakeland.

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

1.41.5 **“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.

1.51.6 **“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.

1.61.7 **“Capital Replacement and Renewal Cost”** means all costs incurred by the Cooperative for the ordinary renewal, replacement, upgrade and improvement of the Project,

which are not paid from the proceeds of any Obligation and costs that will occur over the life of the Project for the assets comprising the Project.

~~1.71.8~~ **“Combined Projects Implementation Agreement”** means the Combined Projects Implementation Agreement with an effective date of May 1, 2017, including any amendments thereto.

~~1.81.9~~ **“Cooperative”** shall have the same meaning as in the Interlocal Agreement. Pursuant to and in accordance with the Interlocal Agreement, all powers, privileges, and duties vested in or imposed on the Cooperative with regards to the approval and implementation of the Project shall be exercised by the Project Board.

~~1.91.10~~ **“Construction Budget”** means the approved maximum cost for the actual construction of the Project infrastructure, including any contingency. The Construction Budget is set after Project bidding and selection of a contractor or contractors, and may be amended if needed subject to written change orders approved in writing by the Cooperative and the Contractor engaged by the Cooperative.

~~1.101.11~~ **“Debt Service Cost”** means the principal, redemption premium, if any, and interest due on Obligations and any recurring costs and expenses relating to Obligations, including but not limited to paying agent, registrar and escrow agent fees, credit enhancement fees and other charges, but only to the extent such cost and expenses are not otherwise reflected in the Capital Replacement and Renewal Cost, Fixed Operation and Maintenance Cost, Reserves and Variable Operation and Maintenance Cost.

~~1.111.12~~ **“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.

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~~1.121.13~~ **“Director”** shall have the same meaning as in the Interlocal Agreement.

~~1.131.14~~ **“District”** means the Southwest Florida Water Management District.

~~1.141.15~~ **“Effective Date”** means the date the Agreement takes legal effect as specified in Section 5.

~~1.151.16~~ **“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.

~~1.161.17~~ **“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.

~~1.171.18~~ **“Fixed Operation and Maintenance Cost”** means all Operation and Maintenance Cost other than Variable Operation and Maintenance Cost.

~~1.181.19~~ **“Force Majeure Event”** means an event not the fault of, and beyond the reasonable control of, ~~the~~ a Party claiming excuse when it is either impossible or extremely impracticable for such Party to perform the obligations imposed on it by this Agreement, by virtue of its effect on physical facilities and their operation or employees essential to such performance. Force Majeure Events include (a) an “act of God” such as an earthquake, flood, earth movement, pandemic, or similar catastrophic event; (b) an act of public enemy, terrorism, sabotage, civil disturbance or similar event; (c) a strike, work stoppage, picketing or similar concerted labor action; (d) delays in construction caused by unanticipated negligence or breach of contract by a third party or inability to obtain Project Permits or essential materials after diligent and timely efforts; or (e) an order or regulation issued by a federal, state, regional or local

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

~~1.191.20~~ **“Interlocal Agreement”** means that Interlocal Agreement creating the Cooperative, with an effective date of June 1, 2016, including any amendments and supplements thereto.

~~1.201.21~~ **“Member Government”** shall have the same meaning as in the Interlocal Agreement.

~~1.241.22~~ **“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.

~~1.221.23~~ **“MGD”** means million gallons a day.

~~1.231.24~~ **“Obligation”** shall have the same meaning as in the Interlocal Agreement.

~~1.241.25~~ **“Operation and Maintenance Cost”** means any and all costs incurred by the Project Board ~~including: costs of~~ operating, maintaining and administering the Project; ~~related~~ costs of operation, maintenance, management, security and development of the Project; labor and labor overhead ~~cost; cost~~ costs; costs associated with tools, equipment, vehicles, supplies, materials and services; any costs of the operation, maintenance, management, security ~~and~~ or development of the Project, ~~which are that is~~ not (i) a Capital Replacement and Renewal Cost or ~~are~~ (ii) payable from the proceeds of any Obligation. Operation and Maintenance Costs, to the extent not (i) constituting a Capital Replacement and Renewal Cost or (ii) payable from the proceeds of any Obligation, include, but are not limited to any cost of litigation or legal judgment against the Cooperative relating to the Project; cost of purchasing any water related to the Project;

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

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

**1.261.27** “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.

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

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

**1.291.30** “Project Associate” means a Party to this Agreement who has elected to become a Project Associate in order to stay abreast of the status of the Project and enable



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

~~1.301.31~~ **“Project Board”** shall have the same meaning as in the Interlocal Agreement.

~~1.311.32~~ **“Project ~~Participants~~Participant”** means a Party to this Agreement, other than the Cooperative or a Project Associate, who has executed this Agreement for the purpose of implementing this Project, which includes the design, permitting, construction, operation, maintenance and funding of the Project and receipt of Project Water Service from the Cooperative.

~~1.321.33~~ **“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.

~~1.331.34~~ **“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.

~~1.341.35~~ **“Project Water Estimate”** means the document submitted by each Project Participant to the Cooperative detailing the quantity of Project Water on an annual average

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daily flow basis, it requests to receive during the upcoming Fiscal Year, as specified in Section 11.1.1.

~~1.351.36~~ **“Project Water Service”** means the delivery of Project Water by the Cooperative to the Points of Connection for use by the Project Participants.

~~1.361.37~~ **“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.

~~1.371.38~~ **“Prudent Utility Practices”** means any of the practices, methods and acts engaged in, or approved by, a significant portion of the public water supply utility industry in the United States of America during the relevant time period or any of the practices, methods and acts, which in the exercise of reasonable judgment in light of facts known, that should have been known, at the time the decision was made, or could have only been expected to accomplish the desired results at a reasonable cost consistent with applicable legal, engineering, reliability, safety and time requirements.

~~1.381.39~~ **“PSI”** means pounds per square inch.

~~1.391.40~~ **“Reserves”** means adequate monetary reserves established by the Cooperative to ensure continued operation of the Project, in the event one or more Project Participants are unable to pay their Water Charge on a short term basis.

~~1.401.41~~ **“True-up”** means the process specified in Section 10 of this Agreement.

~~1.411.42~~ **“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.

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

**1.431.44** “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.

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

**2045 Water Allotment Table:**

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

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Name of Party	2045 Water Allotment Annual Average (MGD)	2045 Water Allotment Percentage (%)
TOTAL	7.88	100.000%

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

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

**1.471.48** “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.

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

**1.491.50** “Weighted Vote Method” means that each Director is assigned a vote based on its Water Allotment percentage under the Water Allotment Table identified in Section 1.444.5.

**1.501.51** “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.

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

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

**2.3 Amended and Restated Implementation Agreement for West Polk Lower Floridan Aquifer Wellfield Superseded.** This Agreement supersedes and replaces the Amended and Restated Agreement for the West Polk Lower Florida Aquifer Wellfield entered into by the Parties on or about March 16, 2022 on the Effective Date of this Agreement

**2.32.4 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.

**2.42.5 Project Participants and Project Associates.** Each Party to this Agreement electing Project Associate status may at anytime submit an election in writing to change its status to Project Participant. To receive Project Participant status, the Project Associate shall, prior to the end of the fiscal year, deliver to the Cooperative its Project Water Estimate and pay to the Cooperative its proportionate share of the Capital Cost, Capital Renewal and Replacement Cost, Debt Service Cost, Fixed Operation and Maintenance Costs and Reserves, incurred to date by Project Participants, as well as 2.5% of its proportionate share of such costs

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

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

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

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

**7. PROJECT ADMINISTRATION.**

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

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

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



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

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

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

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

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

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

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

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

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

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

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

**7.3.12** Implement any alternative financing mechanisms.

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

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

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

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

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

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

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

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

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

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

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

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

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

**8.1 Final Design and Bidding Stage.**

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

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

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

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

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

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

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

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

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

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

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

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

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

**10. TRUE-UP.**

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

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

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

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

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

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

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increases, the Cooperative shall conduct a true-up of the Water Allotment table and of each Project Participant's Water Cost Proportionate Share to reflect the most current data, use and allotment estimates. The foregoing notwithstanding, for so long as any Obligation incurred under the Water Infrastructure Finance and Innovation Act remains outstanding, there shall be no reduction of the Water Allotment of the Anchor Project Participant that reduces its Water Cost Proportionate Share existing on the Effective Date of this Agreement unless (a) such reduction is approved by the United States Environmental Protection Agency ("EPA") or its successor or (b) t such reduction is otherwise authorized under the instrument under which such Obligation is incurred.

## **11. PROJECT WATER SERVICE.**

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

**12.1 Points of Connection.** The Points of Connection and the location of the Meters used for the delivery of Project Water to the Project Participants will be identified by the Cooperative for those Project Participants with a Water Allotment under the Water Allotment Table set forth above: no later than January 1, 2023. This requirement applies equally to those Project Participants that will physically take Project Water and those Project Participants that will take Water Offsets. The Cooperative and a Project Participant may, by mutual agreement, more specifically identify or modify the Point of Connection or the location of the corresponding Meter.

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

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

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

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

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

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

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

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

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

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

**13.3.1.2** The Base Rate Charge shall consist of the total of the Debt Service Cost, Capital Renewal and Replacement Cost, Fixed Operation and Maintenance Cost and Reserves determined pursuant to Section 13.3.1.1. The Base Rate Charge shall be allocated among each Project Participant based upon each Project Participant's Water Allotment Percentage identified in the then effective Water Allotment Table in Section 1.4445, as it may be modified pursuant to Section 10, for the upcoming Fiscal Year.

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

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

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

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

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

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

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

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

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

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

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

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representation, warranties and covenants of the Project Participants to pay the Water Charge in a timely manner. Each Project Participant agrees that the obligation to pay its Base Rate Charge shall constitute an absolute and unconditional obligation of such Project Participant. For the avoidance of doubt, each Project Participant shall pay its Base Rate Charge to the Cooperative irrespective of the operational status of the Project.

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

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

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



replacement, expansion or operation of the Project shall have the right to require the Project Participants to exercise their ad valorem taxing power, if any, to pay their obligations and liabilities under this Agreement or to compel payment from any source, other than as indicated in Section 14.3.

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

**16. FORCE MAJEURE.**

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

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

**16.3 Obligation to Restore Ability to Perform.** Any suspension of performance by a Party pursuant to this Section shall be only to the extent, and for a period of no longer duration

than, required by the nature of the Force Majeure Event, and the Party claiming excuse shall use its best efforts to remedy its inability to perform as quickly as possible.

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

**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

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contained or arising under this Agreement, such action shall constitute a default and the other Parties may seek remedies set forth herein. For all defaults, except the failure to pay the Base Rate Charge, when due, pursuant to Section 13.4, the defaulting Party shall have thirty (30) days to cure the default, unless such default is not capable of being cured within thirty (30) days, in which case the Party must cure the default as soon as practicable. Recognizing the Project Participants' paramount need for a safe and dependable water supply, the Parties agree that, with the exception of the suspension of Project Water Service or Water Offsets pursuant to Section 18.4 of this Agreement, the exclusive remedy for default under this Agreement shall be for the non-defaulting Parties to individually or jointly seek specific performance arising from such default, including but not limited to the re-payment of any delinquent Water Charge along with any interest on the unpaid amount established pursuant Section 14.1.

**18.2 Step-Up Requirement Upon Default in Payment Initial Payments of the Base Rate Charge.** The failure by ~~a one or more~~ Project ~~Participant~~Participants to pay the Base Rate Charge, when due, shall be immediately cured. If not cured, the Cooperative shall use the Reserves to pay the defaulting Project ~~Participant's~~Participant(s) Base Rate Charge in the short term, in order to ensure the continued operation of the Project and the payment of the Debt Service until the defaulting Project Participant(s) cures the default. Additionally, ~~at the request of the Cooperative,~~ the remaining non-defaulting Project Participants shall be obligated to make up any shortfalls created by the defaulting Project ~~Participant's~~Participant(s) failure to pay ~~it~~their Base Rate Charge, when due, ~~according to the Water Allotment Table in Section 1.44,~~ in order to ensure the continued operation of the Project and the payment of the Debt Service until the defaulting Project Participant(s) cures the default. The amount of any Base Rate Charge shortfalls to be paid by each non-defaulting Project Participant shall be a share of the total shortfall in the proportion of the non-defaulting Project Participant's Water Cost Proportionate Share in Section 1.45

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~~bears to the sum of the Water Cost Proportionate Share of the non-defaulting Project Participants, as determined by the Project Board. Any failure by a Project Participant to pay its portion of the payment required by this Section 18.2 shall be deemed a failure to pay the Base Rate Charge when due, and shall be governed by this Section 18.2 as such, with the failing Project Participant deemed a defaulting Project Participant. In order to cure the default, the defaulting Project Participant(s) must repay to the Cooperative ~~its~~their Base Rate Charge. Upon repayment of the Base Rate Charge by the defaulting Project Participant(s) ~~plus any interest at the rate determined by the by the Project Board in accordance with Section 14.1,~~ the Cooperative shall replenish the Reserves and/or credit the other Project Participants for payments made in order to avoid a shortfall. Repayments to the Cooperative from a defaulting Project Participant(s) shall first be used to credit ~~non-defaulting~~ Project Participants for payments made in order to avoid a shortfall, and then be used to replenish Reserves. If the defaulting Project Participant(s) makes partial repayments to the Cooperative, ~~credits~~the repayment shall be ~~issued~~used to reimburse the non-defaulting Project Participants in ~~payor~~order of payment size with the largest payor receiving credits first until made whole, and the smallest ~~payer~~payor receiving credits last until made whole, until all ~~non-defaulting~~ Project Participants are fully repaid. ~~Notwithstanding the foregoing, the application of payments hereunder shall first be applied in accordance with the applicable bond resolution and thereafter amounts shall be applied as provided herein.~~~~

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

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

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

**19.1 Withdrawal Process.** A Project Participant who withdraws from this Agreement shall remain liable for payment of its share of the Water Charge. If the withdrawing

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Project Participant has submitted a Project Water Estimate to the Cooperative for the current Fiscal Year, then it shall remain liable to pay the Water Charge for that Fiscal Year, as if it had taken the entire quantity of Project Water specified in its Project Estimate. Additionally, unless the remaining Project Participants take all or a portion of the withdrawing Project Participant's Water Allotment, the withdrawing Project Participant shall continue to remain liable for payment of its share of the Base Rate Charge. This liability shall continue for the term of the Agreement, until such time as the withdrawing Project Participant's Water Allotment is completely redistributed among the remaining Project Participants. The foregoing notwithstanding, for so long as any Obligation incurred under the Water Infrastructure Finance and Innovation Act remains outstanding, the Anchor Project Participant shall not withdraw from this Agreement unless (a) such withdrawal is approved by the EPA or its successor or (b) such withdrawal is otherwise authorized under the instrument under which such Obligation is incurred.

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

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

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

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

**20.1 Substitution.** As a matter of right, a new Project Participant, an existing Project Participant or an existing Project ParticipantAssociate may be substituted for an existing Project Participant, if the new Project Participant or existing Project Participant or Project Associate agrees to fully perform all the obligations of the existing Project Participant. Substitution shall

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mean the new or existing Project Participant or existing Project Associate shall at a minimum succeed to the old Project Participant's entire Water Allotment, if any. Prior to substitution taking effect, the existing Project Participant must notify all the other existing Project Participants and Project Associates in writing of the substitution and offer the substitution on the same terms and conditions to the other existing Project Participants and Project Associates, who shall be allowed at least sixty (60) days to exercise the right of first refusal. This right of first refusal shall only apply when a new ~~Project Participant is~~ Party to this Agreement is proposed to be substituted for an existing Project Participant. If one of the existing Project Participants or Project Associates exercises its right of first refusal during this time period, then all of the substituted ~~Party's~~ Project Participant's Water Allotment, if any, shall be assigned to the existing Project Participant ~~or~~ Project Associate. If two or more existing Project Participants or Project Associates exercise their right of first refusal during this time period, then all of the substituted Project Participant's Water Allotment, if any, shall be reassigned in equal portions to the existing Project Participants ~~or~~ Project Associates. If none of the existing Project Participants or Project Associates commit to acquire the substituted Project Participant's entire Water Allotment, if any, during this sixty (60) day period, then the other existing Project Participants and Project Associates 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~~ Cooperative in any modifications to the Project Permits necessary to effectuate this substitution. The foregoing notwithstanding, for so long as any Obligation incurred under the Water Infrastructure Finance and Innovation Act remains



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outstanding, the Anchor Participant shall not be substituted unless (a) such substitution is approved by the EPA or its successor or (b) such substitution is otherwise authorized under the instrument under which such Obligation is incurred.

**20.2 Addition.** ~~A~~Other than through substitution or assignment, a new ~~Project Participant~~Party may only be added to this Agreement by the unanimous decision of all the current Project Participants.

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

**20.2.2 Amendment of Water Charge.** When a new Project Participant is added pursuant to this Section 20.2, the existing Project Participants must amend the Agreement to reflect the reassignment of Water Allotments among the existing Project Participants and the new Project Participant. The Project Board will also determine how the new Base ~~WaterRate~~ 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. The foregoing

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notwithstanding, for so long as any Obligation incurred under the Water Infrastructure Finance and Innovation Act remains outstanding, there shall be no reduction of the Water Allotment for the Anchor Project Participant that reduces its Water Coast Proportionate Share existing on the Effective Date of this Agreement (a) unless such reduction is approved by the EPA or its successor or (b) such reduction is otherwise authorized under the instrument under which such Obligation is incurred.

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

~~March 16, 2022~~

the existing Project Participants: and Project Associates. If none of the existing Project Participants or Project Associates commit to acquire the assigning Project Participant's Water Allotment, if any, up for assignment, then the other existing Project Participants and Project Associates shall be considered to have waived their right of first refusal. ~~The right of first refusal shall not apply when an existing Project Participant or Project Associate is the assignee.~~ Any assignment under this Section 20.3 must be reviewed and approved by the Project Board Cooperative as to technical feasibility. Once the assignment takes place, the assigning Project Participant shall still be a Party to the Agreement, but it shall forfeit or surrender the assigned portion of its Water Allotment to the assignee Project Participant, as well as its voting rights, proportionate to the extent of the assignment. Once assignment takes place, the assigning Project Participant shall cooperate with the Project Board Cooperative in any modification to the Project Permits necessary to effectuate this assignment. The foregoing notwithstanding, for so long as any Obligation incurred under the Water Infrastructure Finance and Innovation Act remains outstanding, the Anchor Project Participant shall not assign its interests and obligations under this Agreement (a) unless such assignment is approved by the EPA or its successor or (b) such assignment is otherwise authorized under the instrument under which such Obligation is incurred.

## **21. PERMITS.**

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

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

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

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

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

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

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

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

**22.3 Obligations.** The Project Participants shall cooperate with the Cooperative should the Cooperative decide in accordance with the Agreement to issue Obligations to fund any Capital Costs incurred by the Cooperative with regard to the Project. In said event, the Project Participants shall comply with the reasonable request of the Cooperative and will, upon such request, do as follows: (1) make available general material and financial information about itself; (2) consent to publication and distribution of its financial information; (3) certify that any general material and financial information is accurate, does not contain any untrue statements of material fact and does not omit to state a material fact necessary to make the statements contained in the general material and financial information, in light of the circumstances under which they were made not misleading; (4) provide reasonable certifications to be used in a transcript of closing documents; (5) provide and pay for reasonable requested opinions of counsel as to the binding effect of this Agreement, the validity of actions taken as a result of the Agreement, title to real property, as applicable, and pending litigation which could materially affect the Party's performance under the Agreement; and, (6) provide guarantee agreements, if required in order to obtain the Obligation. In addition, each Project Participant agrees to take no action which shall adversely affect the exclusion from gross income of interest on the Obligations for purposes of federal income taxation.

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

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

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

**25. NOTICES.**

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

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

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

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

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

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

Polk City, Florida  
City Manager

~~March 16, 2022~~

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

**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]*

~~March 16, 2022~~

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

CITY COMMISSION OF THE  
CITY OF AUBURNDALE, FLORIDA

By: \_\_\_\_\_ Dorothea Taylor Bogert, Mayor

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

ATTEST:

By: \_\_\_\_\_ Jeffrey Brown, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

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

~~March 16, 2022~~

IN WITNESS WHEREOF, the undersigned has caused this Implementation

Agreement to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE  
CITY OF LAKELAND,  
FLORIDA

By: \_\_\_\_\_ H. William Mutz, Mayor

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

ATTEST:

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

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
\_\_\_\_\_

Palmer Davis, City Attorney

~~March 16, 2022~~

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

CITY COMMISSION OF THE  
POLK CITY, FLORIDA,

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

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

ATTEST:

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

APPROVED AS TO FORM & LEGALITY

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

~~March 16, 2022~~

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

ATTEST:

POLK COUNTY, a political subdivision  
of The State of Florida

Stacy M. Butterfield  
Clerk to the Board of County Commissioners

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

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

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

Reviewed as to form and legal sufficiency:

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

~~March 16, 2022~~

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

CITY COMMISSION OF THE  
CITY OF FORT MEADE, FLORIDA

By: \_\_\_\_\_ Robert Elliott, Mayor

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

ATTEST:

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

APPROVED AS TO FORM & LEGALITY

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



~~March 16, 2022~~

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

CITY COMMISSION OF THE  
CITY OF MULBERRY,  
FLORIDA

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

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

ATTEST:

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

~~March 16, 2022~~

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

CITY COMMISSION OF THE  
CITY OF LAKE ALFRED, FLORIDA

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

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

ATTEST:

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

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
\_\_\_\_\_

Frederick J. Murphy, Jr., City Attorney

~~March 16, 2022~~

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

CITY COMMISSION OF THE  
CITY OF WINTER HAVEN, FLORIDA

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

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

ATTEST:

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

APPROVED AS TO FORM AND CORRECTNESS:

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

~~March 16, 2022~~

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

CITY COMMISSION OF THE  
CITY OF BARTOW, FLORIDA

By: \_\_\_\_\_ Steve Githens, Mayor

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

ATTEST:

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

APPROVED AS TO FORM AND CORRECTNESS:

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

~~March 16, 2022~~

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

TOWN COMMISSION OF THE  
TOWN OF DUNDEE, FLORIDA

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

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

ATTEST:

By: \_\_\_\_\_ Jenn Garcia, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

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

~~March 16, 2022~~

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

TOWN COUNCIL OF THE  
TOWN OF LAKE HAMILTON, FLORIDA

By: \_\_\_\_\_ Mike Kehoe, Mayor

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

ATTEST:

By: \_\_\_\_\_ Sara Irvine, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
\_\_\_\_\_

Heather Maxwell, Town Attorney

~~March 16, 2022~~

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

POLK REGIONAL WATER COOPERATIVE

By: \_\_\_\_\_ Eugene Fultz, Chair

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

ATTEST:

By: \_\_\_\_\_ Mayor H. William Mutz, Secretary/Treasurer

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
\_\_\_\_\_

Edward P. de la Parte, Legal Counsel

May 11, 2022

**SECOND AMENDED AND RESTATED IMPLEMENTATION  
AGREEMENT**

**Southeast Wellfield Project**

THIS SECOND AMENDED AND RESTATED PROJECT IMPLEMENTATION AGREEMENT (the “Agreement”) is made and entered into as of the Effective Date as hereinafter defined, by and among the Polk Regional Water Cooperative (“Cooperative”), whose address is P.O. Box 9005, Bartow, Florida 33831, the City of Auburndale whose address is P.O. Box 186, Auburndale, ~~FL~~Florida 33823, the City of Bartow whose address is ~~P.O. Box 1069450 North Wilson Avenue~~, Bartow, ~~FL 33834~~Florida 33833, the City of Davenport whose address is P.O. Box 125, Davenport, ~~FL~~Florida 33836, the City of Eagle Lake whose address is P.O. Box 129, Eagle Lake, ~~FL~~Florida 33839, the City of Fort Meade whose address is ~~P.O. Box 856, 8 West Broadway Street~~, Fort Meade, ~~FL~~Florida 33841, the City of Haines City whose address is 620 E. Main Street, Haines City, ~~FL~~Florida 33844, the City of Lake Alfred whose address is ~~120 E 155 East~~ Pomelo Street, Lake Alfred, ~~FL~~Florida 33850, the City of Lake Wales whose address is P.O. Box 1320, Lake Wales, ~~FL~~Florida 33859, the City of Lakeland whose address is 228 ~~South~~ Massachusetts ~~Ave~~Avenue., Lakeland, ~~FL~~Florida 33801, the City of Mulberry whose address is P.O. Box 707, Mulberry, ~~FL~~Florida 33860, the City of Winter Haven whose address is P.O. Box ~~22772270~~, Winter Haven, ~~FL~~Florida 33883, the Town of Dundee whose address is ~~P.O. Box 10002020 East Main Street~~, Dundee, ~~FL~~Florida 33838, the Town of Lake Hamilton whose address is P.O. Box 126, Lake Hamilton, ~~FL~~Florida 33851, Polk City, a Florida municipal corporation (fka “City of Polk City”), whose address is 123 Broadway Blvd SE, Polk City, ~~FL~~Florida 33868, and Polk County (“Polk County”), a charter county and political subdivision of the State of Florida, whose address is P.O. Box 9005, Bartow, Florida 33831, individually also referred to as a “Party” and collectively referred to as the “Parties””.”



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

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

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

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

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

**1.3 “Anchor Project Participants”** mean the City of Auburndale, City of Davenport, City of Haines City, City of Winter Haven and Polk County.

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

**1.41.5 “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.

**1.51.6 “Capital Cost”** means fixed, one-time expenses incurred for the acquisition of real property, tangible property and intangible property, the construction of tangible personal property and other expenditures required for the production of water and other goods or the

rendering of services in connection with the Project, including without limitation the Southeast Wellfield Refund Cost.

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

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

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

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

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

Capital Replacement and Renewal Cost, Fixed Operation and Maintenance Cost, Reserves and Variable Operation and Maintenance Cost.

**1.141.12** “**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.

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

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

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

**1.151.16** “**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.

**1.161.17** “**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 maybe prescribed by law as the fiscal year of the Cooperative.

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

**1.181.19** “**Force Majeure Event**” means an event not the fault of, and beyond the reasonable control of a Party claiming excuse when it is either impossible or extremely impracticable for such Party to perform the obligations imposed on it by this Agreement, by virtue of its effect on physical facilities and their operation or employees essential to such performance. Force Majeure Events include (a) an “act of God” such as an

earthquake, flood, earth movement, pandemic, or similar catastrophic event; (b) an act of public enemy, terrorism, sabotage, civil disturbance or similar event; (c) a strike, work stoppage, picketing or similar concerted labor action; (d) delays in construction caused by unanticipated negligence or breach of contract by a third party or inability to obtain Project Permits or essential materials after 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.

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

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

**1.211.22** “**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.

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

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

**1.241.25** “**Operation and Maintenance Cost**” means any and all costs incurred by the Project Board ~~including: costs of~~ operating, maintaining and administering the Project; related ~~costs of~~ operation, maintenance, management, security and development of the Project; labor and labor overhead ~~cost; cost costs; costs~~ associated with tools, equipment, vehicles,

supplies, materials, and services; any costs of the operation, maintenance, management, security ~~and/or~~ development of the Project, ~~which are that is~~ not (i) a Capital Replacement and Renewal Cost or ~~are~~ (ii) payable from the proceeds of any Obligation. Operation and Maintenance Costs, to the extent not (i) constituting a Capital Replacement and Renewal Cost or (ii) payable from the proceeds of any Obligation, include, but are not limited to any cost of litigation or legal judgment against the Cooperative relating to the Project; cost of purchasing any water related to the Project; development expenses relating to expansion of the Project; all costs incurred in planning or applying for, obtaining, maintaining and defending Project Permits, which are not paid under Phase 1 of the Combined Projects Implementation Agreement; administrative, accounting, legal and engineering expenses related to the Project; ordinary and current rentals of equipment or other property related to the Project; refunds of moneys lawfully due to others, pension, retirement, health and hospitalization funds related to the Project; payments in lieu of taxes and impact fees, if applicable; moneys to be deposited to a Rate Stabilization Fund (if one is established); and administrative costs incurred by the Cooperative for management of the Project.

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

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

**1.271.28** “Project” means the Southeast Wellfield.

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

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

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

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

**1.321.33** “**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.

**1.331.34** “**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

ProjectParticipant, who pursuant to the Project plan will not physically take finished water produced by the Project.

~~1.34~~1.35 **“Project Water Estimate”** means the document submitted by each ProjectParticipant to the Cooperative detailing the quantity of Project Water on an annual average dailyflow basis, it requests to receive during the upcoming Fiscal Year, as specified in Section 11.1.1.

~~1.35~~1.36 **“Project Water Service”** means the delivery of Project Water by the Cooperative to the Points of Connection for use by the Project Participants.

~~1.36~~ **“Project Yield”** means the total quantity of Project Water that the Project

~~1.37~~ can reasonably be expected to produce for Project Water Service to the Project Participants, which is expressed as an annual average rate or base production rate.

~~1.37~~1.38 **“Prudent Utility Practices”** means any of the practices, methods and actsengaged in, or approved by, a significant portion of the public water supply utility industry in theUnited States of America during the relevant time period or any of the practices, methods and acts,which in the exercise of reasonable judgment in light of facts known, that should have been known,at the time the decision was made, or could have only been expected to accomplish the desired results at a reasonable cost consistent with applicable legal, engineering, reliability, safety and timerequirements.

~~1.38~~1.39 **“PSI”** means pounds per square inch.

~~1.39~~1.40 **“Reserves”** means adequate monetary reserves established by the Cooperative to ensure ~~the~~ continued operation of the Project, in the event one or more Project Participants are unable to pay their Water Charge on a short term basis.

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

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

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

**1.431.44** “**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.

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

**1.451.46** “**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.

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



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

**2045 Water Allotment Table**

<b>Name of Party</b>	<b>2045 Water Allotment Annual Average (MGD)</b>	<b>2045 Water Allotment Percentage (%)</b>
City of Auburndale	1.65	10.89%
City of Bartow	0.36	2.38%
City of Davenport	2.72	17.95%
<i>* City of Eagle Lake</i>	<i>Project Associate</i>	
<i>* City of Fort Meade</i>	<i>Project Associate</i>	
City of Haines City	3.50	23.10%
City of Lake Alfred	1.00	6.60%
<i>* City of Lake Wales</i>	<i>Project Associate</i>	
City of Lakeland	0.10	0.66%
<i>* City of Mulberry</i>	<i>Project Associate</i>	
<i>* Polk City</i>	<i>Project Associate</i>	
City of Winter Haven	1.52	10.03%
Town of Dundee	0.90	5.94%
<i>* Town of Lake Hamilton</i>	<i>Project Associate</i>	
Polk County	3.40	22.45%
<b>TOTAL</b>	<b>15.15</b>	<b>100.00%</b>

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

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

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

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

**1.511.52** “Weighted Vote Method” means that each Director is assigned a vote based on its Water Allotment percentage under the Water Allotment Table identified in Section 1.4647.

## 2. PURPOSE OF THE AGREEMENT.

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

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

**2.3 Amended and Restated Implementation Agreement for Southeast Wellfield Superseded.** This Agreement supersedes and replaces the Amended and Restated Agreement for the Southeast Wellfield entered into by the Parties on or about March 16, 2022 on the Effective Date of this Agreement.

**2.32.4 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.

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

**3. CONSTRUCTION OF TERMS.** Terms defined in a given number, tense or form shall have the corresponding meaning when used in this Agreement with initial capitals in another number, tense or form. References containing terms such as “hereof,” “herein,” “hereto,” “hereinafter” and other terms of like import are not limited in applicability to the specific provision within which such references are set forth, but instead refer to this Agreement taken as a whole. “Includes” or “including” shall not be deemed limited to the specific enumeration of items, but

shall be deemed without limitation. The term “or” is not exclusive. The headings contained in this Agreement are solely for the convenience of the Parties. Accounting terms used but not defined herein have the meanings given to them under generally accepted accounting principles in the United States of America consistently applied throughout the specified period and in the immediately comparable period.

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

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

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

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

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

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

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

**7. PROJECT ADMINISTRATION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**7.3.12** Implement any alternative financing mechanisms.

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

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

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

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

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

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

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

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

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

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

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

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

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

**8.1 Final Design and Bidding Stage.**

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

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



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

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

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

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

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

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

section 55.03, from the date Polk County paid the design costs through the date the Member Government fully pays the amount owed to Polk County.

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

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

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

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

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

may be subject to such conditions precedent to funding, including appropriation and approval of reimbursement requests.

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

**10. TRUE-~~UPS~~UP.**

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

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

**10.3 Expansions and Capital Cost.** The Project is permitted for 30 MGD and is proposed to be developed in phases, the first of which will provide approximately 15.15 MGD of finished water availability for Project Participants. Some components of the Project will be constructed to accommodate water production expansion and future development. Therefore, Project Participants will pay Capital Costs and commit to pay Obligations for certain Project components which will benefit the current Project Participants and the Project Participants of future Project expansions (“Common Capital Components”). For each expansion, the Capital Costs and Obligation commitments the Project Participants have made for the Common Capital

Components will be re-allotted among all Project Participants of any future Project expansion in accordance with the then-current Water Allocation Table, and the then-current Project Participants shall reimburse the initial Project Participants for that portion of the Capital Costs and Obligation commitments paid for Common Capital Components which benefit the expansion Project Participants. Each time there is an expansion there shall be a similar re-allotment of Capital Costs and Obligation commitments for Common Capital Components based on the new Water Allocation Table and a reimbursement to existing Project Participants for Capital Costs and Obligation commitments paid for Common Capital Components which benefit the expansion Project Participants.

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

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

**10.6 Water Allotments.** At least once in every 5-year period after the Effective Date of this Agreement, and at any time that a Project Participant's 2045 Water Allotment increases, the Cooperative shall conduct a true-up of the Water Allotment table and of each Project Participant's Water Cost Proportionate Share to reflect the most current data, use and allotment estimates. The foregoing notwithstanding, for so long as any Obligation issued by the Cooperative for construction or expansion of the Project remains outstanding, there shall be no reduction of the Water Allotment of any Anchor Project Participant that reduces its Water Cost Proportionate Share existing on the Effective Date of this Agreement unless (a) such reduction is approved by the

lender of the Cooperative's Obligation or its successor or (b) such reduction is otherwise authorized under the instrument under which such Obligation is incurred.

## **11. PROJECT WATER SERVICE.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**12.1 Points of Connection.** The Points of Connection and the location of the Meters used for the delivery of Project Water to the Project Participants will be identified by the Cooperative for those Project Participants with a Water Allotment under the Water Allotment Table set forth above: no later than January 1, 2023. This requirement applies equally to those Project Participants that will physically take Project Water and those Project Participants that will take Water Offsets. The Cooperative and a Project Participant may, by mutual agreement, more specifically identify or modify the Point of Connection or the location of the corresponding Meter.

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

**12.3 Inspection of Meters.** Each Meter shall be inspected annually and an inspection report shall be prepared at the conclusion of each inspection detailing the condition and accuracy of each Meter. Each inspection shall be performed by a representative of the manufacturer or other certified, competent entity agreeable to the Cooperative and the Project Participants and a copy of each inspection report shall be furnished to all Project Participants.



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

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

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

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

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

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

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

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

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

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

among each Project Participant based upon each Project Participant's Water Allotment Percentage identified in the then effective Water Allotment Table in Section 1.4647, as it may be modified pursuant to Section 10, for the upcoming Fiscal Year.

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

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

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

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

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

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

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

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

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

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

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

**14.2 Irrevocable Commitment to Pay.** The Project Participants shall pay their respective Water Charge for every Fiscal Year throughout the term of the Agreement in the manner provided in Section 14.1. Said payments shall be made without notice or demand and without set-off, counterclaim, abatement, suspension or deduction. The Cooperative is undertaking the acquisition, construction, operation and replacement and expansion of the Project on the representation, warranties and covenants of the Project Participants to pay the Water Charge in a timely manner. Each Project Participant agrees that the obligation to pay its Base Rate Charge shall constitute an absolute and unconditional obligation of such Project Participant. For the avoidance of doubt, each Project Participant shall pay its Base Rate Charge to the Cooperative irrespective of the operational status of the Project.

**14.3 Source of Payment.** The source of funds for payment of the Water Charge shall be the utility enterprise fund established by each Project Participant. Each Project Participant shall maintain an operation and maintenance account as part of its utility enterprise fund

throughout the term of this Agreement. At all times during the term of this Agreement, a Project Participant shall pay the Water Charge from its utility system operation and maintenance account.

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

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

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

**16. FORCE MAJEURE.**

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

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

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

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

in mediating disputes of a similar nature. The Mediating Parties will use a procedure agreeable to those Parties and the mediator. The Mediating Parties will mediate in good faith, and will be bound by any resulting mediation agreement that is approved by the governing body for each Party, 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. The occurrence of a dispute shall not excuse a Party from performing its obligations under this Agreement.

**18. DEFAULT AND REMEDY.**

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



Parties to individually or jointly seek specific performance arising from such default, including but not limited to the re-payment of any delinquent Water Charge along with any interest on the unpaid amount established pursuant Section 14.1.

**18.2 Step-Up Requirement Upon Default in Payment/Initial Payments of the Base Rate Charge.** The failure by ~~aone or more~~ Project ~~Partieipant~~Participants to pay the Base Rate Charge; when due, shall be immediately cured. If not cured, the Cooperative shall use the Reserves to pay the defaulting Project ~~Partieipant's~~Participant(s)' Base Rate Charge in the short term, in order to ensure the continued operation of the Project and the payment of the Debt Service until the defaulting Project Participant(s) cures the default. Additionally, ~~at the request of the Cooperative,~~ the remaining non-defaulting Project Participants shall be obligated to make up any shortfalls created by the defaulting Project ~~Partieipant's~~Participant(s)' failure to pay ~~itstheir~~ Base Rate Charge; when due, ~~according to the Water Allotment Table in Section 1.46,~~ in order to ensure the continued operation of the Project and the payment of the Debt Service until the defaulting Project Participant(s) cures the default. The amount of any Base Rate Charge shortfalls to be paid by each non-defaulting Project Participant shall be a share of the total shortfall in the proportion of the non-defaulting Project Participant's Water Cost Proportionate Share in Section 1.47 bears to the sum of the Water Cost Proportionate Shares of all the non-defaulting Project Participants, as determined by the Project Board. Any failure by a Project Participant to pay its portion of the payment required by this Section 18.2 shall be deemed a failure to pay the Base Rate Charge when due, and shall be governed by this Section 18.2 as such, with the failing Project Participant deemed a defaulting Project Participant. In order to cure the default, the defaulting Project Participant(s) must repay to the Cooperative ~~itstheir~~ Base Rate Charge. Upon repayment of the Base Rate Charge by the defaulting Project Participant(s) plus any interest at the rate determined by the Project Board in accordance with Section 14.1, the Cooperative shall replenish the Reserves and/or credit the other Project Participants for payments made in order to avoid a shortfall.

Repayments to the Cooperative from a defaulting Project Participant(s) shall first be used to credit non-defaulting Project Participants for payments made in order to avoid a shortfall, and then be used to replenish Reserves. -If the defaulting Project Participant(s) makes partial repayments to the Cooperative, credits the repayment shall be issued used to reimburse the non-defaulting Project Participants in payor order of payment size with the largest payor receiving credits first until made whole, and the smallest payor receiving credits last until made whole, until all Project Participants are fully repaid non-defaulting Project Participants are fully repaid. Notwithstanding the foregoing, the application of payments hereunder shall first be applied in accordance with the applicable bond resolution and thereafter amounts shall be applied as provided herein.

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

**18.4 Suspension of Project Water Service in the Event of Non-Payment of the Water Charge.** A Project Participant that fails to pay its Water Charge or any portion thereof by the due date shall be in default of this Agreement and upon fifteen (15) days written notice, the Cooperative may suspend Project Water Service to a Project Participant and prohibit a Project Participant from using Water Offsets unless there is in mediation a good faith dispute or suspension of service compromises the health, safety, and welfare of the end water users. Suspension of Project Water Service to a Project Participant or prohibition of the use of Water Offsets by a Project Participant because of its failure to pay the Water Charge or any portion thereof shall not excuse the Project Participant from paying the Base Rate Charge, when it becomes due nor prohibit the

Cooperative from continuing to charge interest on the unpaid amount. Upon payment of all outstanding Water Charges, including any interest, the Cooperative shall immediately resume Project Water Service to the Project Participant or immediately allow a Project Participant to use a Water Offset. The Cooperative's decision to suspend Project Water Service to a Project Participant or to prohibit Water Offsets use by a Project Participant under this Section shall not be subject to the dispute resolution process in Section 17 and shall not be considered a default under Section 18. However, the Cooperative's failure to resume Project Water Service or to allow a Project Participant to use Water Offsets upon payment of all outstanding Water Charges, including any interest, may constitute a default under Section 18 and shall be subject to the dispute resolution process specified in Section 17.

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

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

outstanding, the Anchor Project Participants shall not withdraw from this Agreement unless (a) such withdrawal is approved by the lender of the Cooperative's Obligation or its successor or (b) such withdrawal is otherwise authorized under the instrument under which such Obligation is incurred.

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

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

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

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

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

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

assigned to the ~~substituting Party~~ existing Project Participant or Project Associate. If two or more existing Project Participants or Project Associates exercise their right of first refusal during this time period, then all of the substituted Project Participant's Water Allotment, if any, shall be reassigned in equal portions to the ~~substituting Parties~~ existing Project Participants or Project Associates. If none of the existing Project Participants or Project Associates commit to acquire the substituted Project Participant's entire Water Allotment, if any, during this sixty (60) day period, then the ~~Parties to this Agreement~~ other existing Project Participants and Project Associates shall be considered to have waived their right of first refusal. Any substitution under this Section 20.1 must be reviewed and approved by the Project Board as to technical feasibility. ~~Any new Party to this Agreement must be unanimously approved by the existing Project Participants~~. Once the substitution takes place, the substituted Project Participant shall withdraw from the ~~Project Agreement~~ and shall no longer be considered a voting member of the Project Board. Additionally, the substituted Project Participant shall cooperate with the Cooperative in any modifications to the Project Permits necessary to effectuate this substitution. The foregoing notwithstanding, for so long as any Obligation issued by the Cooperative for construction or expansion of the Project remains outstanding, the Anchor Project Participants shall not be substituted unless (a) such substitution is approved by the lender of the Cooperative's Obligation or its successor or (b) such substitution is otherwise authorized under the instrument under which such Obligation is incurred.

**20.2 Addition.** ~~A~~ Other than through substitution or assignment, a new party ~~Party~~ may only be added to this Agreement by the unanimous decision of all the current Project Participants.

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

**20.2.2 Amendment of Water Charge.** When a new Project Participant is added pursuant to this Section 20.2, the existing Project Participants must amend the Agreement to reflect the reassignment of Water Allotments among the existing Project Participants and the new Project Participant. The Project Board will also determine how the new Base ~~WaterRate~~ 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. The foregoing notwithstanding, for so long as any Obligation issued by the Cooperative for construction or expansion of the Project remains outstanding, there shall be no reduction of the Water Allotment for the Anchor Project Participants that reduces their Water Coast Proportionate Share existing on the Effective Date of this Agreement (a) unless such reduction is approved by the lender of the Cooperative's Obligation or its successor or (b) such reduction is otherwise authorized under the instrument under which such Obligation is incurred.

**20.3 Assignment.** As a matter of right, an existing Project Participant may assign a portion of its Water Allotment, if any, to a new Project Participant, an existing Project Participant, or an existing Project Associate, if the assignee agrees to fully perform all the obligations of the existing Project Participant. ~~Any new Party assignee must be unanimously approved by the existing Project Participants.~~ The complete assignment of an existing Project Participant's Water Allotment, if any, to a new Project Participant, an existing Project Participant, or an existing Project Associate shall be treated as a substitution under Section 20.1. Prior to the assignment taking effect, the existing Project Participant must notify the other existing Project Participants and Project Associates in writing of the assignment and offer the assignment on the same terms and conditions to the other existing Project Participants and Project Associates, who shall be provided at least sixty (60) days to exercise the right of first refusal. This right of first refusal shall only apply when the assignee is a new Party. If one of the existing Project Participants or Project Associates exercises its right of first refusal during this time period, then the portion of the assigning Project Participant's Water Allotment, if any, up for assignment shall be transferred to the existing Project Participant ~~or Project Associate.~~ If two or more existing Project Participants or Project Associates exercise their right of first refusal during this time period, then the portion of the assigning Project Participant's Water Allotment, if any, up for assignment shall be transferred in equal portions to the existing Project Participants and Project Associates. If none of the existing Project Participants or Project Associates commit to acquire the assigning Project Participant's Water Allotment, if any, up for assignment, then the ~~Parties to this Agreement~~ other existing Project Participants and Project Associates shall be considered to have waived their right of first refusal. ~~The right of first refusal shall not apply when an existing Project Participant or Project Associate is the assignee.~~ Any assignment under this Section 20.3 must be reviewed and approved by the Cooperative as to



technical feasibility. Once the assignment takes place, the assigning Project Participant shall still be a Party to the Agreement, but it shall forfeit or surrender the assigned portion of its Water Allotment to the assignee Project Participant, as well as its voting rights, proportionate to the extent of the assignment. Once assignment takes place, the assigning Project Participant shall cooperate with the Cooperative in any modification to the Project Permits necessary to effectuate this assignment. The foregoing notwithstanding, for so long as any Obligation issued by Cooperative for construction or expansion of the Project remains outstanding, an Anchor Project Participant shall not assign its interests and obligations under this Agreement (a) unless such assignment is approved by the lender of the Cooperative's Obligation or its successor or (b) such assignment is otherwise authorized under the instrument under which such Obligation is incurred.

## **21. PERMITS.**

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

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

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

**21.4** No Party shall legally challenge or support any legal challenge against any proposed or final agency action or any legal instrument with regard to any Project Permit sought

by the Cooperative, unless the proposed Project Permit directly threatens an existing legal right of ~~that~~ Party to use the water resources of the state, in existence prior to the date of the application for the Project Permit.

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

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

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

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

**22.3 Obligations.** The Project Participants shall cooperate with the Cooperative should the Cooperative decide in accordance with the Agreement to issue Obligations to fund any Capital Costs incurred by the Cooperative with regard to the Project. In said event, the Project Participants shall comply with the reasonable request of the Cooperative and will, upon such request, do as follows: (1) make available general material and financial information about itself;

(2) consent to publication and distribution of its financial information; (3) certify that any general material and financial information is accurate, does not contain any untrue statements of material fact and does not omit to state a material fact necessary to make the statements contained in the general material and financial information, in light of the circumstances under which they were made not misleading; (4) provide reasonable certifications to be used in a transcript of closing documents; (5) provide and pay for reasonable requested opinions of counsel as to the binding effect of this Agreement, the validity of actions taken as a result of the Agreement, title to real property, as applicable, and pending litigation which could materially affect the Party's performance under the Agreement; and, (6) provide guarantee agreements, if required in order to obtain the Obligation. In addition, each Project Participant agrees to take no action which shall adversely affect the exclusion from gross income of interest on the Obligations for purposes of federal income taxation.

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

**23. SOVEREIGN IMMUNITY AND INDEMNIFICATION.** The Parties intend to avail themselves of the benefits of Section 768.28, Florida Statutes, and any other statute and common law governing sovereign immunity to the fullest extent possible and nothing herein shall be construed as a waiver of sovereign immunity by these Parties. Additionally, the Project Participants are not jointly or severally liable for any torts attributable to the Cooperative and only the Cooperative shall be liable for torts attributable to it or for the torts of its officers, agents, attorneys or employees under this Agreement, and then only to the extent of the waiver of sovereign immunity or limitation specified in Section 768.28, Florida Statutes, regardless of

whether such claims are grounded in contract, statute, tort, negligence, product liability, strict liability, or otherwise. Finally, the Cooperative agrees to indemnify and hold the Project Participants harmless from any injury that the Project Participants or their officers, agents, attorneys, employees or invitees sustain while carrying out the Cooperative's obligations under this Agreement.

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

**25. NOTICES.**

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

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

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

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

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

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

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

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

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

City of Lakeland  
City Manager  
228 S Massachusetts Ave  
Lakeland, Florida 33801

863-834-6000

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

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

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

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

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

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

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

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

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

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

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

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

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

**30. SEVERABILITY.** If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, it shall be considered deleted, and shall not invalidate the remaining provisions. However, if the deleted language is considered a key provision of the Agreement, the Parties must agree to a substitute provision that will accomplish the original intent

of the Parties. If the Parties cannot agree to a substitute provision within ninety (90) days of the determination by the court, then the Agreement shall be deemed terminated.

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

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

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

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

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



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

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

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

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.

CITY COMMISSION OF THE  
CITY OF AUBURNDALE, FLORIDA

By: \_\_\_\_\_ Dorothea Taylor Bogert, Mayor

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

ATTEST:

By: \_\_\_\_\_ Jeffrey Brown, 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.

CITY COMMISSION OF  
THE CITY OF BARTOW,  
FLORIDA

By: \_\_\_\_\_ Steve Githens, Mayor

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

ATTEST:

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

Approved as to form and correctness:

Approved as to substance:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Sean R. Parker, City Attorney

George A. Long, City Manager

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

CITY COMMISSION OF THE  
CITY OF DAVENPORT,  
FLORIDA

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

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

ATTEST:

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

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
\_\_\_\_\_

Thomas A. Cloud, City Attorney

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

CITY COMMISSION OF THE  
CITY OF EAGLE LAKE,  
FLORIDA

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

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

ATTEST:

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

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
\_\_\_\_\_

Thomas A. Cloud, City Attorney

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

CITY COMMISSION OF THE  
CITY OF FT. MEADE,  
FLORIDA

By: \_\_\_\_\_ Robert Elliott, Mayor

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

ATTEST:

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

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
\_\_\_\_\_

Thomas A. Cloud, City Attorney

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

CITY COMMISSION OF THE  
CITY OF HAINES CITY,  
FLORIDA

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

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

ATTEST:

By: \_\_\_\_\_ Erica Anderson, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
\_\_\_\_\_

Fred Reilly, City Attorney



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

CITY COMMISSION OF THE  
CITY OF LAKE ALFRED, FLORIDA

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

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 have caused this Agreement to be duly executed and entered into.

CITY COMMISSION OF THE  
CITY OF LAKELAND,  
FLORIDA

By: \_\_\_\_\_ H. William Mutz, Mayor

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

ATTEST:

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

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
\_\_\_\_\_

Palmer Davis, City Attorney

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

CITY COMMISSION OF THE  
CITY OF LAKE WALES, FLORIDA

By: \_\_\_\_\_ Eugene Fultz, Mayor

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

ATTEST:

By: \_\_\_\_\_ Jennifer Nanek, City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
\_\_\_\_\_

Albert C. Galloway, Jr., City Attorney

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

CITY COMMISSION OF THE  
CITY OF MULBERRY,  
FLORIDA

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

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

ATTEST:

By: \_\_\_\_\_ Sharon Lauther, 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.

CITY COMMISSION OF THE  
CITY OF POLK CITY,  
FLORIDA

By: \_\_\_\_\_ Joe LaCascia, Mayor

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

ATTEST:

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

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
\_\_\_\_\_

Thomas A. Cloud, City Attorney

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

CITY COMMISSION OF THE  
CITY OF WINTER HAVEN, FLORIDA

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

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

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.

TOWN COMMISSION OF  
THE TOWN OF DUNDEE,  
FLORIDA

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

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

ATTEST:

By: \_\_\_\_\_ Jenn Garcia, Town 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.

TOWN COUNCIL OF THE  
TOWN OF LAKE HAMILTON, FLORIDA

By: \_\_\_\_\_ Mike Kehoe, Mayor

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

ATTEST:

By: \_\_\_\_\_ Sara Irvine, Town Clerk

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
\_\_\_\_\_

Heather Maxwell, Town Attorney



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

ATTEST:

POLK COUNTY, a political subdivision of the State of Florida

Stacy M. Butterfield  
Clerk to the Board of County Commissioners

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

By: \_\_\_\_\_  
Dr. Martha Santiago, 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 have caused this Agreement to be duly executed and entered into.

POLK REGIONAL WATER COOPERATIVE

By: \_\_\_\_\_  
Eugene Fultz, Chair

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

ATTEST:

By: \_\_\_\_\_  
Mayor H. William Mutz,  
Secretary/Treasurer

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
\_\_\_\_\_

Edward P. de la Parte, Legal Counsel