

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made and entered into as of this ____ day of _____, 2024 by and between **FLORIDA MIDLAND RAILROAD COMPANY, LLC**, a Florida corporation with an address of 3001 West Orange Avenue, Apopka, FL 32703 (“FMID”) **POLK REGIONAL WATER COOPERATIVE.**, a municipal corporation of Polk County, Florida with an address of 330 W Church St, Bartow, FL 33830 (the “Licensee”).

Preliminary Statement

- A. Licensee, for the economical and convenient conduct of Licensee’s business, desires to obtain from FMID a license to use a portion of FMID’s right of way leased to FMID pursuant to a lease agreement between FMID and CSX Transportation, Inc. (the “CSX Lease”), without establishing, claiming, or possessing any estate or interest therein (the “License”), for the benefit of Licensee.
- B. FMID has the right, power, and authority to enter into this License Agreement, pursuant to the CSX Lease.
- C. Licensee desires to construct and maintain an underground water main, (the “Pipe”) within the License Area, defined below.

NOW THEREFORE, in consideration of the mutual promises contained herein the parties agree as follows:

- 1. GRANT OF LICENSE
FMID hereby grants unto Licensee, its successors and assigns a License, with authority to enter upon, construct and maintain, pursuant to this License, the Pipe one under the FMID’s tracks and one hundred foot right of way near the intersection of Radford Rd , in the vicinity of Railroad Mile Post AW 847.47, DOT Crossing 623055J Bartow, Polk County Orange County, Florida (the “License Area”), described on Exhibit A, which is attached hereto and incorporated herein.
- 2. STATUS OF SUBCONTRACTORS
For purposes of this Agreement, all references to Licensee shall include Licensee, its contractors, subcontractors, agents, officers, employees, and others acting under its or their authority.
- 3. USE
Licensee shall use the License Area for the construction, maintenance and operation of the Pipe that are the subject of this Agreement only for the conveyance of water

within main, and any other purpose or use is prohibited. Notwithstanding any contrary provisions herein, Licensee agrees that this License shall not be used in any way that will inhibit the use of the License Area by FMID, its successors or assigns. The Pipe shall be constructed, maintained and operated by Licensee in accordance with Exhibit A.

4. CONDUCT OF WORK

All work connected with the construction, maintenance, repair, renewal, modification, relocation, reconstruction, or removal of the said Pipe shall be undertaken within the License Area. However, no such work shall be performed without prior written notice to, and approval of, FMID's General Manager. Any and all work shall be performed in a manner satisfactory to the FMID. All work shall be performed at times and in a manner which shall not disturb the reasonable operation of the business of FMID. At the sole discretion of FMID's General Manager, flag protection services may be required during construction and periods of maintenance. Licensee, in accordance with Paragraph 11 below, shall be responsible for all costs and expenses of any flagging service.

5. FEE

Licensee shall pay to FMID for this License a one-time fee of Twenty-Four thousand four hundred Dollars (\$24,400.00) per occupancy, (the "Fee") plus Fifteen Hundred Dollars (\$1,500.00) for application and document processing. Licensee shall pay the Fee to FMID within thirty (30) days after presentation of an invoice. Notwithstanding any contrary provisions herein, Licensee shall not access, enter upon, or use the License Area until FMID receives the Fee from Licensee.

6. TERM

The term of this License Agreement shall run for a period of one (1) year from the above date. Thereafter, this Agreement shall automatically renew for successive one-year periods unless or until it is terminated as provided below.

7. GOVERNMENT REQUIREMENTS

Installation of the Pipe pursuant to this License Agreement shall be performed in accordance with all appropriate governmental and administrative requirements for the use(s) for which such Pipe is to be maintained including CSX pipe standards.

8. FMID REGULATIONS

Licensee agrees that it shall observe and obey all regulations of FMID contained in **Exhibit A** (the Application) and **Exhibit B** (Special Provisions) respecting the use of the License and the License Area. In the event of a conflict between FMID's regulations and this License, the License shall control.

9. RISK, LIABILITY, INDEMNITY

9.1 Licensee shall defend, indemnify and save FMID and its officers, shareholders, directors, affiliates, parents, employees, and agents harmless, from and

against, any and all liability, loss, claim, suit, damage, charge, or expense (including reasonable attorney's fees and experts) which any such party may suffer, sustain, incur or in any way be subjected to, on account of death of, or injury to, any person and damage to or loss of or destruction of any property, arising out of, or resulting from, or in any way connected with, the construction, presence, existence, repair, maintenance, replacement, operation, use, or removal of Licensee's Pipe, the use of the License Area pursuant hereto or any structure in connection therewith, or restoration of the License Area to good order or condition.

9.2. Use of FMID's right of way involves certain risks of loss or damage as a result of FMID's operations. Licensee expressly assumes all risk of loss and damage to persons or Licensee's property or Pipe, in, on, over or under the License Area, including loss of or any interference with use thereof, regardless of cause, including derailment, arising out of FMID's operations. For purposes of this section, Licensee's property shall include the contents of the Pipe as well as property of third parties situated or placed upon FMID's right of way by Licensee or by such third parties at the request of or for the benefit of Licensee.

9.3 Without limiting the generality of other provisions herein, Licensee also expressly assumes all risk of loss which may result from Licensee's failure to maintain either the Pipe or the required depth and support for the Pipe.

9.4 Without limiting the generality of other provisions contained herein, Licensee assumes all responsibility for, and agrees to defend, indemnify and hold FMID and its officers, shareholders, directors, affiliates, parents, employees, and agents harmless from (a) all claims, costs and expenses, including reasonable attorneys' fees as a consequence of any pollution of air, water, land and/or ground water on or off the License Area, arising from, or in connection with, Licensee's use of this License Area or resulting from the leaking, bursting, spilling, or escape of the material transmitted in or through Licensee's Pipe; (b) any claim or liability arising under federal or state law dealing with pollution of air, water, land, and/or ground water arising from the circumstances referenced in (a) of this provision or the remedy thereof; and (c) any subsidence or failure of lateral or subjacent support of FMID's tracks caused by Licensee's use of the License Area or the presence of Licensee's facilities.

9.5 Obligations of Licensee hereunder to defend, indemnify and hold FMID harmless shall also extend to companies or other legal entities that control or are under common control with FMID and its/their respective officers, shareholders, directors, agents, and employees.

9.6 Nothing in this Agreement shall require Licensee to indemnify FMID or its other subsidiaries or affiliates or hold them harmless from damages caused exclusively by FMID's own willful misconduct or gross negligence.

10. NOTICES

All notices on the part of Licensee to FMID shall be given in writing to the General Manager, **FLORIDA MDLAND RAILROAD COMPANY, LLC.**, 3001 West Orange Avenue, Apopka, Florida 32703.

All notices on the part of FMID to Licensee shall be given in writing to the Attn:
Polk Regional Water Cooperative
330 West Church Street
Drawer AS05
Bartow, Florida 33830
Attn: Executive Director

All notices shall be delivered in person, or via overnight courier, or email.

11. FMID COSTS AND EXPENSES

Licensee agrees to pay to FMID all reasonable costs and expenses incurred by FMID due to FMID's granting of this License or due to the use, maintenance, or existence of said License by Licensee. Such costs and expenses shall include, but are not limited to, FMID's cost of providing flag protection services pursuant to Paragraph 4 above. Licensee's cost for such flag protection services shall be the then-current rate per day for the particular flag protection services that FMID determines, in its sole discretion, are required after reviewing the needs of the work site. These costs and expenses are in addition to the Fee paid to FMID pursuant to Paragraph 5.

12. NO WARRANTIES

This License is herein granted without any warranty, express or implied, and Licensee hereby agrees that no damages shall be recoverable from FMID because of any dispossession of Licensee or because of any failure of, defect in, cancellation of, or termination of, FMID's property interest in the License Area.

13. ASSIGNMENT

No assignment of rights or privileges hereunder by Licensee shall be valid unless the written consent of FMID is first obtained. FMID will consent to an assignment by the Licensee provided that the assignee assumes all obligations and duties of the Licensee to the reasonable satisfaction of FMID, and the Licensee and the assignee execute FMID's usual and customary assignment and assumption agreement.

14. FUTURE PARTIES

This License shall inure to the benefit of, and be binding upon, the Parties hereto and their respective, heirs, legal representatives, successors, and assigns.

15. REMEDIES

The remedies under this Agreement are cumulative and shall not exclude any other remedies to which any party may be lawfully entitled. The failure or delay of any party to insist upon the strict or timely performance of a covenant hereunder or any obligation hereunder, shall not be a waiver of such party's right to demand strict compliance therewith in the future.

16. CAPTIONS

All titles or captions are inserted for convenience only and they in no way shall be construed to define, limit, or describe the scope of this Agreement or any provision thereof.

17. SEVERABILITY

If any clause or provision of this Agreement shall be deemed to be invalid or unenforceable under present or future laws, then, in that event it is the intention of the Parties that the remainder of this Agreement shall not be affected thereby.

18. CHOICE OF LAW

This instrument is being delivered and is intended to be performed in the state of Florida and shall be construed and enforced in accordance with the laws of that state. Any aggrieved party may proceed to enforce its rights in the appropriate action at law or in equity. Venue for all suits arising out of this instrument shall lie exclusively in the Courts of Polk County, Florida. By execution or adoption of this agreement, each party hereby submits itself to the *in personam* jurisdiction of the Courts of Polk County, Florida.

19. INSURANCE

Licensee shall maintain insurance in the following amounts:

Licensee or Licensee agent (as applicable) shall maintain liability insurance coverage for the Permitted Use as follows:

- (a) Commercial General Liability – Five Million dollars (\$5,000,000) per occurrence / Ten Million dollars (\$10,000,000) per aggregate; CGL must include the Railroad Contractual Liability endorsement CG 2417 or equivalent, Additional Insured, Waiver of Subrogation and Primary Non-Contributory wording in favor of the railroad;
- (b) Contractual liability in the amount of Two Million dollars (\$2,000,000);
- (c) Worker's compensation, statutory limits or greater including waiver of subrogation in favor of railroad;
- (d) Automobile liability, One Million dollars (\$1,000,000) combined single limit including hired and non-owned auto coverage naming the railroad as Additional Insured; and
- (e) Railroad Protective Liability Two Million dollars (\$2,000,000) each occurrence and Six Million dollars (\$6,000,000) per annual aggregate; and

All such insurance shall name FMID as an additional insured. The original of the railroad protective liability policy shall be provided to FMID and certificates of insurance evidencing Licensee's compliance with subparagraphs (a), (b), (c), (d) and (e) above shall be forwarded to FMID prior to any work commencing on or within the License Area. Notwithstanding anything to the contrary, the insurance required under subparagraph (e) shall only be required during installation of the Pipe and whenever the Pipe will be reconstructed, updated, maintained, or otherwise improved.

20. MODIFICATION

All modifications or waivers to this License Agreement must be in writing and executed by both parties.

21. MERGER

This Agreement represents the final, complete, and exclusive understanding of the Parties of the subject matter hereto.

22. LICENSEE'S AUTHORITY TO EXECUTE THIS AGREEMENT

Licensee represents and warrants that it has taken all necessary actions required in order to enter into this License Agreement and cause it to be fully enforceable against Licensee, and that its agent below is authorized to execute this License Agreement.

[END OF AGREEMENT EXCEPT FOR SIGNATURE PAGE AND EXHIBIT]

IN WITNESS WHEREOF, the parties have executed this Agreement as a sealed instrument on the day, month and year first written above.

Signed and delivered in the presence of: **FLORIDA MIDLAND RAILROAD
COMPANY, LLC.**

By: _____

By: _____

LICENSEE

Witness
Print Name:

By: _____
Name:
Title:

Witness
Print Name:

EXHIBIT A
LICENSEE'S 2024 APPLICATION FOR PIPE CROSSING
(_ pages below)