

**CONSERVATION PROJECT AGREEMENT RELATING TO THE
DEVELOPMENT OF A POLK REGIONAL WATER COOPERATIVE
CONSERVATION PROGRAM**

THIS CONSERVATION PROJECT AGREEMENT RELATING TO THE DEVELOPMENT OF A POLK REGIONAL WATER COOPERATIVE CONSERVATION PROGRAM (the “Agreement”) is made and entered into as of the Effective Date as hereinafter defined, by and among the Polk Regional Water Cooperative (“Cooperative” or “PRWC”), whose address is 330 W. Church Street, Bartow, FL 33830 and the City of Auburndale whose address is P.O. Box 186, Auburndale, FL 33823, the City of Bartow whose address is P.O. Box 1069, Bartow, FL 33831, the City of Davenport whose address is P.O. Box 125, Davenport, FL 33836, the City of Eagle Lake whose address is P.O. Box 129, Eagle Lake, FL 33839, the City of Fort Meade whose address is P.O. Box 856, Fort Meade, FL 33841, the City of Frostproof whose address is P.O. Box 308, Frostproof, FL 33843, the City of Haines City whose address is 620 E. Main Street, Haines City, FL 33844, the City of Lake Alfred whose address is 120 E Pomelo Street, Lake Alfred, FL 33850, the City of Lakeland whose address is 228 S Massachusetts Ave., Lakeland, FL 33801, the City of Lake Wales whose address is P.O. Box 1320, Lake Wales, FL 33859, the City of Mulberry whose address is P.O. Box 707, Mulberry, FL 33860, the City of Polk City whose address is 123 Broadway Blvd SE, Polk City, FL 33868, the City of Winter Haven whose address is P.O. Box 2277, Winter Haven, FL 33883, the Town of Dundee whose address is P.O. Box 1000, Dundee, FL 33838, the Town of Lake Hamilton whose address is P.O. Box 126, Lake Hamilton, FL 33851 and Polk County, a charter county and political subdivision of the State of Florida, whose address is P.O. Box 9005, Bartow, Florida 33831, all of whom are collectively referred to as the “Parties.”

WHEREAS, this Agreement is being executed by the Parties pursuant to their March, 2017 Conservation Project Implementation Agreement (the “CPI Agreement”) and any terms from

the CPI Agreement used in this Agreement shall be defined in accordance with the CPI Agreement;
and

WHEREAS, the CPI Agreement provides for the Cooperative to act as the representative of its Members Governments with regard to the implementation of Conservation Projects pursuant to the Interlocal Agreement and Section 163.01 and 373.713 Florida Statutes; and

WHEREAS, the Cooperative and its Member Governments seek to enter into a Conservation Project Agreement to implement a conservation program which provides consumer-focused water conservation services to Member Governments (“Conservation Program”); and

WHEREAS, the Conservation Program is expected to include the implementation of a water savings rebate program, a system for reimbursement of funds to Member Governments for conservation activities, implementation of consumer-focused conservation outreach and advertising, provision of customer conservation evaluation services to Member Governments, record keeping and documentation related to the Conservation Program, installation and evaluation of irrigation conservation measures for Member Government customers, and other potential conservation initiatives; and

WHEREAS, the Cooperative has developed an initial scope of work for the Conservation Program which describes the initial scope of the Conservation Program, and which may be modified from time to time; and

WHEREAS, the Cooperative will need to retain a Contractor to manage, execute, and provide reporting for the Conservation Program in accordance with the terms of this Agreement;
and

WHEREAS, Section 163.01, Florida Statutes, the Florida Interlocal Cooperation Act of 1969, authorize local governments and special districts to enter into agreements for their mutual benefit;

NOW, THEREFORE, in consideration of the mutual promises stated herein 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. RECITALS. The foregoing recitals are true and correct and form a material part of this Agreement.

2. PURPOSE. This Agreement defines the duties and obligations of the Parties with respect to development and implementation of the Conservation Program.

3. DUTIES AND OBLIGATIONS.

3.1 The Cooperative shall engage a Contractor with the requisite education, experience, and ability to manage, execute, and provide reporting for the Conservation Program, consistent with the goals and the approved scope of work of the Conservation Program.

3.2 The Project Manager shall coordinate all matters relating to the Conservation Program between and among the Contractor, all the participating Parties, and any Cooperative Funding Agency, as applicable.

3.3 The Project Manager shall be responsible for the expenditure of funds authorized for use by the Parties in association with the Conservation Program. The annual budget and scope of work for the Conservation Program shall be as authorized by the Cooperative Board of Directors for the Conservation Program for the upcoming fiscal year. The annual budget may be comprised of Member Government annual contributions, funding from a Cooperative Funding Agency as available, and other potential funding sources, as approved by the Board of Directors.

All fees and expenditures associated with the Conservation Program shall not exceed the amount authorized by the Board of Directors for the fiscal year.

3.4 Each Member Government shall be responsible to pay its proportionate share of all fees, costs, and expenses (collectively, the “Conservation Program Cost”), based on the amount approved for the Conservation Program in the annual budget as described in Section 3.3. A Member Government’s proportionate share of the Conservation Program Cost shall be in proportion to the Member Government’s annual average water use in comparison to the total annual average water use by the Member Governments during the calendar year preceding the one in which the fiscal year budget is adopted. The Parties anticipate the Cooperative Funding Agency will provide funds equal to fifty percent (50%) of eligible Conservation Program Cost pursuant to a Cooperative Funding Agreement which would reduce the amount each Member Government must pay. However, each Member Government acknowledges its proportionate share payment obligation extends to the full amount of the Conservation Program Cost should funds not be available from the Cooperative Funding Agency.

3.5 The participating Parties will work closely with the Contractor to timely provide water use data, customer billing data, information necessary to process conservation-related reimbursements and rebates, customer conservation information, and other information necessary for implementation of the Conservation Program. The Contractor will coordinate with the participating Parties to assure that the required data and information is identified and provided.

3.6 The Cooperative shall require the Contractor to deliver, at regular intervals determined to be appropriate by the Project Manager, a report to the Project Manager which will include a detailed status update of the work conducted to date regarding the implementation and execution of the Conservation Program. The Project Manager shall provide copies of the

Contractor's report to each Party, upon the request of the Party, or as determined appropriate by the Project Manager.

3.7 The Contractor shall submit detailed invoices to the Project Manager on a quarterly. The Project Manager will review each Contractor invoice, then when determined to be accurate and consistent with this Agreement, any agreement(s) with the Contractor, the applicable fiscal year budget and scope of work, process for timely payment using the funds allocated for the Conservation Program by the Board of Directors for the fiscal year. The Project Manager shall provide copies of the invoices to each Party, upon the request of the Party, or as determined appropriate by the Project Manager.

4. MODIFICATION; ASSIGNMENT. This Agreement may be modified or amended only if the Parties agree. All modifications or amendments must be in writing signed by all the Parties. This Agreement, and each Party's rights and obligations hereunder, may not be assigned in whole or in part unless such assignment is approved by the unanimous written consent of all Parties.

5. TERM. The initial term of this Agreement shall commence on the Effective Date and unless terminated sooner will continue as long as funding for the Conservation Program is approved by the Board of Directors for a given fiscal year. The "Effective Date" of this Agreement is the date the last Party executes the Agreement and it is filed with the Clerk of the Circuit Court of Polk County.

6. NOTICES. 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 Party by email.

6.1 All notices shall be delivered or sent to the Parties at their respective addresses shown below or such other addresses as a Party may designate by prior notice given in accordance with this provision to the other Parties:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.2 All notices shall also be sent to the Cooperative, to the attention of its Project Administrator, with a separate copy to its legal counsel.

6.3 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.

7. LIMIT OF PARTIES' LIABILITY. IN NO EVENT SHALL ANY PARTY BE LIABLE TO THE OTHER PARTIES OR TO ANYONE CLAIMING FOR, BY, OR THROUGH A PARTY, TO INCLUDE, BUT NOT LIMITED, TO A PARTICIPANT OR CONTRACTOR, FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY A PARTY WHETHER BASED IN CONTRACT, COMMON LAW,

WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

8. DEFAULT AND REMEDY. If any Party fails to observe, comply, perform or maintain in any material way, any term, covenant, condition, duty, obligation, representation, or warranty contained in or arising under this Agreement, such action shall constitute a default, and the other Parties may seek the remedies stated in this section if that default is not timely cured within thirty (30) days, unless the default cannot be reasonable cured within that time period in which case the Party must cure the default as soon as practicable. 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.

9. ATTORNEY'S FEES AND COSTS. Each Party shall be responsible for its own legal and attorney's fees, costs and expenses incurred in connection with any dispute or any litigation arising out of, or relating to this Agreement, including attorney's fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.

10. GOVERNING LAW; VENUE. The interpretation and performance of this Agreement shall be governed by the laws of the State of Florida; venue for any such litigation with respect to the Agreement shall be in Polk County, Florida.

11. INTEGRATION. This instrument constitutes the entire Agreement between the Parties and supersedes all previous discussions, understandings, and agreements relating to the Conservation Projects. The Parties do not intend by this provision to amend, modify or supersede the Conservation Project Implementation Agreement or the Interlocal Agreement.

12. 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.

13. 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.

14. 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.

15. 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.

16. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original and all of which collectively shall constitute one and the same instrument.

17. INTERLOCAL AGREEMENT; FILING. This is an interlocal agreement entered into by the parties pursuant to Section 163.01, Florida Statutes, the Florida Interlocal Cooperation Act of 1969. This Agreement and any amendment thereto shall be filed with the Clerk of the Circuit Court of Polk County, Florida.

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

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK;
THE AGREEMENT CONTINUES ON THE FOLLOWING PAGE
WITH THE PARTIES' SIGNATURES.**

IN WITNESS WHEREOF, the undersigned has caused this Conservation Project Agreement Relating to the Development of a Polk Regional Water Cooperative Water Demand Management Plan to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF AUBURNDALE, FLORIDA

By: _____

Date: _____

ATTEST:

By: _____

APPROVED AS TO FORM AND CORRECTNESS:

IN WITNESS WHEREOF, the undersigned has caused this Conservation Project Agreement Relating to the Development of a Polk Regional Water Cooperative Water Demand Management Plan to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF BARTOW, FLORIDA

By: _____

Date: _____

ATTEST:

By: _____

IN WITNESS WHEREOF, the undersigned has caused this Conservation Project Agreement Relating to the Development of a Polk Regional Water Cooperative Water Demand Management Plan to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF DAVENPORT, FLORIDA

By: _____

Date: _____

ATTEST:

By: _____

IN WITNESS WHEREOF, the undersigned has caused this Conservation Project Agreement Relating to the Development of a Polk Regional Water Cooperative Conservation Program to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF EAGLE LAKE, FLORIDA

By: _____

Date: _____

ATTEST:

By: _____

IN WITNESS WHEREOF, the undersigned has caused this Conservation Project Agreement Relating to the Development of a Polk Regional Water Cooperative Conservation Program to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF FT. MEADE, FLORIDA

By: _____

Date: _____

ATTEST:

By: _____

IN WITNESS WHEREOF, the undersigned has caused this Conservation Project Agreement Relating to the Development of a Polk Regional Water Cooperative Conservation Program to be duly executed and entered into as of the Effective Date.

CITY COUNCIL OF THE
CITY OF FROSTPROOF, FLORIDA

By: _____

Date: _____

ATTEST:

By: _____

IN WITNESS WHEREOF, the undersigned has caused this Conservation Project Agreement Relating to the Development of a Polk Regional Water Cooperative Conservation Program to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF HAINES CITY, FLORIDA

By: _____

Date: _____

ATTEST:

By: _____

APPROVED AS TO FORM AND CORRECTNESS:

IN WITNESS WHEREOF, the undersigned has caused this Conservation Project Agreement Relating to the Development of a Polk Regional Water Cooperative Conservation Program to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF LAKE ALFRED, FLORIDA

By: _____

Date: _____

ATTEST:

By: _____

APPROVED AS TO FORM AND CORRECTNESS:

IN WITNESS WHEREOF, the undersigned has caused this Conservation Project Agreement Relating to the Development of a Polk Regional Water Cooperative Conservation Program to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF LAKELAND, FLORIDA

By: _____

Date: _____

ATTEST:

By: _____

APPROVED AS TO FORM AND CORRECTNESS:

IN WITNESS WHEREOF, the undersigned has caused this Conservation Project Agreement Relating to the Development of a Polk Regional Water Cooperative Conservation Program to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF LAKE WALES, FLORIDA

By: _____

Date: _____

ATTEST:

By: _____

APPROVED AS TO FORM AND CORRECTNESS:

IN WITNESS WHEREOF, the undersigned has caused this Conservation Project Agreement Relating to the Development of a Polk Regional Water Cooperative Conservation Program to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF MULBERRY, FLORIDA

By: _____

Date: _____

ATTEST:

By: _____

IN WITNESS WHEREOF, the undersigned has caused this Conservation Project Agreement Relating to the Development of a Polk Regional Water Cooperative Conservation Program to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF POLK CITY, FLORIDA

By: _____

Date: _____

ATTEST:

By: _____

IN WITNESS WHEREOF, the undersigned has caused this Conservation Project Agreement Relating to the Development of a Polk Regional Water Cooperative Conservation Program to be duly executed and entered into as of the Effective Date.

CITY COMMISSION OF THE
CITY OF WINTER HAVEN, FLORIDA

By: _____

Date: _____

ATTEST:

By: _____

APPROVED AS TO FORM AND CORRECTNESS:

IN WITNESS WHEREOF, the undersigned has caused this Conservation Project Agreement Relating to the Development of a Polk Regional Water Cooperative Conservation Program to be duly executed and entered into as of the Effective Date.

TOWN COMMISSION OF THE
TOWN OF DUNDEE, FLORIDA

By: _____

Date: _____

ATTEST:

By: _____

APPROVED AS TO FORM AND CORRECTNESS:

IN WITNESS WHEREOF, the undersigned has caused this Conservation Project Agreement Relating to the Development of a Polk Regional Water Cooperative Conservation Program to be duly executed and entered into as of the Effective Date.

TOWN COUNCIL OF THE
TOWN OF LAKE HAMILTON, FLORIDA

By: _____

Date: _____

ATTEST:

By: _____

IN WITNESS WHEREOF, the undersigned has caused this Conservation Project Agreement Relating to the Development of a Polk Regional Water Cooperative Conservation Program to be duly executed and entered into as of the Effective Date.

ATTEST:

POLK COUNTY, a political subdivision of the State of Florida

Stacy M. Butterfield
Clerk to the Board

By: _____
Deputy Clerk

By: _____

Dated and signed by the Chairman: _____

Reviewed as to form and legal sufficiency:

County Attorney's Office

IN WITNESS WHEREOF, the undersigned has caused this Conservation Project Agreement Relating to the Development of a Polk Regional Water Cooperative Conservation Program to be duly executed and entered into as of the Effective Date.

POLK REGIONAL WATER COOPERATIVE,
a public agency and unit of special purpose government

By: _____
George Lindsey, Chair

Date: _____

Approved as to form:

Edward P. de la Parte, Legal Counsel