

WORKSHOP ITEM 1

Master Water Supply Contract (MSWC) – Discussion of Proposed MWSC Revisions

DRAFT UPDATE 3.4.2022

**AMENDED PEACE RIVER/MANASOTA REGIONAL WATER SUPPLY AUTHORITY
MASTER WATER SUPPLY CONTRACT**

THIS CONTRACT, entered into this 5th day of October, 2005, by and between the **PEACE RIVER/MANASOTA REGIONAL WATER SUPPLY AUTHORITY**, a regional water supply authority created and existing pursuant to Sections 373.196, 373.1962 and 163.01, Florida Statutes, and other applicable law, acting by and through its Board of Directors, the governing board thereof (“Authority”); **MANATEE COUNTY**, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, the governing board thereof (“Manatee”); **CHARLOTTE COUNTY**, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, the governing board thereof (“Charlotte”); **DeSOTO COUNTY**, a political subdivision of the State of Florida, acting through its Board of County Commissioners, the governing board thereof (“DeSoto”); **SARASOTA COUNTY**, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, the governing board thereof (“Sarasota”); and the **CITY OF NORTH PORT**, a municipal corporation of the State of Florida, acting by and through its Board of City Commissioners, the governing board thereof (“North Port”) (collectively “Customers”).

WITNESSETH:

WHEREAS, the Authority was created for the purpose of developing, storing and supplying water for county and municipal purposes and exists pursuant to the Second Amended Interlocal Agreement Creating the Peace River/Manasota Regional Water Supply Authority executed concurrent with this Contract; and

WHEREAS, the Authority has determined that the potable water supply needs for citizens residing within Charlotte, Manatee, DeSoto and Sarasota Counties and North Port, can best be met in whole or in part by expanding the Authority Water Supply Facilities, in a cooperative and coordinated manner; and

WHEREAS, the Authority and the Customers agree it is necessary to expand ~~the Peace River Regional Water Treatment Facility to be known as the Regional Expansion Program (“REP”), as more specifically set forth in Exhibit “G” and incorporated herein by reference in~~

~~order to provide a total of 32.7 MGD of water to meet the~~ Authority Water Supply Facilities to meet the future water supply needs of the Authority's Customers; and

WHEREAS, it is the intent of the Parties that this Contract govern the operation, maintenance, alteration, replacement and expansion of the Authority Water Supply Facilities; and

~~WHEREAS, the Authority has applied and the Southwest Florida Water Management District ("SWFWMD") has provided New Water Source Initiative funds to assist in development and construction of the REP; and~~

WHEREAS, the Authority and its Customers recognize that as a result of increased Customers' demands, the ~~REP~~ Authority Water Supply Facilities will not satisfy all future Customers' demands and the Authority has begun developing other water supplies; and

~~WHEREAS, Manatee has adopted Resolution No. R-05-108 on June 7, 2005 conditionally requesting the development projected that it will require of potable water by from the Authority for Manatee beginning January of 2014 by 2038; and~~

WHEREAS, expansions to the Authority Water Supply Facilities and the design and construction of new Water Supply Sources may be financed for the Customer(s) through the issuance of Authority revenue bonds, capital contributions from the Customer(s), capital contributions from SWFWMD, or other governmental grants, or any combination thereof; and

WHEREAS, the Customers desire to purchase water from the Authority according to the terms and conditions of this Contract, and the Authority desires to provide the Customers water according to the terms and conditions of this Contract; and

WHEREAS, recognizing the benefits provided ~~by the REP~~ existing and future Water Supply Sources, the Customers and the Authority agree that the Authority shall implement a common Debt Service Cost for the Water Rate only for ~~the REP and~~ all future Water Supply Source projects of the Authority; and

WHEREAS, the Customers desire that the Authority facilitate the transfer of Authority water among Customers, with such transfers being made through the Authority at the same Water Rate assessed by the Authority; and

WHEREAS, this Contract is intended to constitute the entire agreement ~~of between~~ the Authority, and Manatee, Charlotte, DeSoto, Sarasota and North Port with respect to the Water Allocations and the terms and conditions contained herein; and

NOW, THEREFORE, in consideration of the foregoing premises, which shall be deemed an integral part of this Contract and of the mutual covenants and agreements hereafter set forth, the Authority and the Customers intending to be legally bound hereby agree as follows:

1. ~~1.~~ **DEFINITIONS.** In the absence of a clear implication otherwise, capitalized terms used in this Contract and in the attached exhibits shall have the following meanings:

1.1 Annual Average Daily Quantity. The total water quantity provided by the Authority to a Customer in a Contract Year divided by 365 as set by its Water Allocation.

1.2 Authority. The Peace River/Manasota Regional Water Supply Authority.

1.3 Authority Board. The Authority's governing body.

1.4 Authority Water Supply Facilities. All real property, interest in real property, fixtures, personal property, wells, treatment systems, pumps, pipes, storage facilities, reservoirs, aquifer storage and recovery facilities, water transmission mains, any future expansion of said facilities and appurtenant or associated installations owned, leased or otherwise controlled by the Authority and used for the provision of potable water supply.

~~1.5~~ Authority Water Supply Source. ~~Any project, construction, acquisition, transfer or transaction creating a new water source or expanding an existing water source developed by the Authority.~~

~~1.5.6~~ Available Water. That portion of a Customer's Water Allocation that is temporarily available to other Customers ~~through the Redistribution Pool.~~

~~1.6.1.7~~ Base Rate Charge. For any Contract Year, the rate established by resolution of the Authority for payment of the Authority Obligations, Bond Coverage Costs, Debt Service Costs, ~~Charlotte Oversized Facilities Payment, Capital Component Charge,~~ Hydraulic Pipeline Capacity Entitlement Cost and Renewal and Replacement Costs for the Authority Water Supply Facilities. The Base Rate Charge also includes the Fixed Operations and Maintenance Costs budgeted by the Authority for expanding, operating, repair and replacement, maintaining and securing the Authority Water Supply Facilities regardless of the quantity of water, if any, being produced or delivered by the Authority, with such fixed costs being assessed proportionately in accordance with the Annual Average Daily Water Allocation.

~~1.7~~1.8 Bond Coverage Costs. The costs of providing the coverage requirements established by the Financing Documents.

~~1.8~~ ~~1.8~~ ~~Capital Component Charge~~. For any Contract Year, the charge established by resolution of the Authority for payment of the Capital Component Charge paid to Charlotte for the transfer of the Peace River Regional Water Treatment Facility. The Capital Component Charge shall be assessed by the percentages in Exhibit "F" for the Peace River Regional Water Treatment Facility.

~~1.9~~ ~~1.9~~ ~~Charlotte Oversized Facilities Payment~~. The 1991 Facility was stated to possess certain components that had a larger capacity than the 1991 Facility treatment capacity. Charlotte acquired the 1991 Facility then transferred to the Authority the entire 1991 Facility. However, payment for the oversized components was deferred until the Authority used these oversized components. Under the PRO and REP, the Authority will pay for all the remaining oversized components.

~~1.9~~ ~~Capital Improvement Plan~~. A running five-year plan amended and approved annually by the Authority Board of Directors for projects and capital expenditures.

~~1.10~~ Capital Needs assessments. A running twenty-year plan amended and approved annually by the Authority Board of Directors identifying projects and expected project funding required to meet regional goals during the 20-year planning horizon.

~~1.10~~1.11 Conservation Rate. For any Contract Year, the charge established by resolution by the Authority to any Customer that exceeds its Water Allocation set forth in Exhibit "B".

~~1.11~~1.12 ~~Contract Year~~. The period between execution of the Contract and September 30, ~~2005~~2021, and each fiscal year of the Authority (beginning on each October 1, and ending on the immediately following September 30) thereafter during the term of this Contract.

~~1.12~~1.13 Customers. Manatee, DeSoto, Charlotte, Sarasota and North Port.

~~1.14~~ Customer Water Supply Source. Any project, construction, acquisition, transfer or transaction creating a new water source or expanding an existing water source developed by Manatee, DeSoto Charlotte, Sarasota or North Port

~~1.13~~1.15 Debt Service Cost(s). For any Contract Year, all costs including reserve or coverage requirement, if any, incurred by the Authority during such Contract Year in connection with the Authority Water Supply Facilities for principal payments, interest

payments, redemption premiums, if any, and service charges with respect to payment of Obligations.

~~1.14~~1.16 Delivery Point(s). The point(s) of connection between the Regional Transmission System and the distribution system of the Customers to this Contract having a Water Allocation. The existing Delivery Point(s) for each Customer is attached hereto as Exhibit “D.” Delivery Points may be changed or added, if there is available hydraulic capacity in the pipeline, by agreement of the Customer and Authority and an exhibit of all current Delivery Points shall be maintain by the Authority.

~~1.15~~1.17 DeSoto Payment. For any Contract Year, an amount included in the Water Rate, transmitted by the Authority to DeSoto in the amounts set forth on Exhibit” A” for the term of the Contract. ~~The DeSoto Payment as defined herein supersedes the “Facility Use Cost” as defined in Section 1.8 of the Peace River Regional Water Supply Contract dated May 21, 1991.~~

~~1.16~~1.18 Exclusive Provider Customer. A subset of Customers that ~~includes only DeSoto~~ designate the Authority as its exclusive provider of new potable water supply in this ~~Master Water Supply Contract~~ MWSC.

~~1.17~~1.19 Financing Documents. Any resolution or resolutions of the Authority, as well as any indenture of trust, trust agreement or similar document relating to the issuance or security of the Obligations.

~~1.18~~1.20 Fixed Operating and Maintenance Costs. All operating and maintenance costs and expenses other than Variable Operating and Maintenance Costs incurred by the Authority for the operation, maintenance, management, security and development of the Authority Water Supply Facilities.

~~1.19~~1.21 Hydraulic Capacity Entitlement. ~~The Hydraulic Capacity Entitlement is depicted as a percentage of the then existing hydraulic capacity of the specified pipeline. The existing Hydraulic Capacity Entitlement for the Regional Transmission System for each Customer is attached as Exhibit “E.”~~ Hydraulic Capacity Entitlement may be changed by agreement of the Customer and Authority and an exhibit of all current Hydraulic Capacity Entitlements by Customers shall be maintain by the Authority.

~~1.20~~1.22 Hydraulic Capacity Entitlement Cost. The debt service cost associated with Customers’ Hydraulic Capacity Entitlement.

~~1.21~~1.23 Maximum Daily Quantity. The maximum water quantity to be provided by the Authority to a Customer for any given day as set by its Water Allocation.

~~1.22~~1.24 Member Governments. Members of the Authority. This term refers jointly to Charlotte, DeSoto, Manatee and Sarasota.

~~1.23~~1.25 MGD. Million gallons per day.

~~1.24~~1.26 New Water Supply Demands. ~~The new water supplies the Authority is committed by this Contract to develop and complete to meet Customer demands as shown on Exhibit "C" as updated annually pursuant to Section 11~~The request and commitment by contract between a Customer and the Authority for the provision of Authority Water Supply Source. The Authority shall maintain a current tabulation of Water Allocation allotted to each Customer.

~~1.25~~1.27 Obligation(s). A series of bonds or other evidence of indebtedness, including but not limited to, Financing Documents, notes, commercial paper, capital leases or any other debt of the Authority issued or incurred.

~~1.26~~1.28 Operating and Maintenance Cost(s). For any Contract Year, all costs budgeted and reserves established by the Authority for operating, maintaining and securing the Authority Water Supply Facilities during such Contract Year, including, but not limited to: a) personnel, staffing and operating costs of the Authority related to the operation, maintenance and security of the Authority Water Supply Facilities; b) the general and administrative costs of the Authority related to the operation, maintenance and security of the Authority Water Supply Facilities; c) minor capital expenditures of the Authority for items such as tools, parts, and other equipment and vehicles necessary for the operation, maintenance and security of the Authority Water Supply Facilities; and, d) all costs incurred in obtaining and maintaining the Permits for the Authority Water Supply Facilities.

~~1.27~~1.29 ~~1.27~~ Party or Parties. Party shall mean a signatory to this Contract. Parties shall mean DeSoto, Charlotte, Sarasota, Manatee, North Port and the Authority.

~~1.28~~ 1.28 ~~Peace River Regional Water Treatment Facility (the "1991 Facility"). All real property, interest in real property, fixtures, personal property, wells, buildings, treatment systems, pumps, pipes, storage facilities, reservoirs, aquifer storage facilities and appurtenant or associated facilities located in DeSoto and Sarasota, which were transferred~~

~~by Charlotte to the Authority pursuant to that certain "Acquisition Agreement" dated May 21st, 1991 by and among the Authority, Charlotte, DeSoto, Manatee, Sarasota and the Southwest Florida Water Management District and any expansion of said facilities undertaken pursuant to that certain "Peace River Water Supply Contract" dated May 21st, 1991 by and among the Authority, Charlotte, DeSoto, Manatee and Sarasota. The foregoing notwithstanding, this term shall not include the construction, acquisition or use of any groundwater production wells. "Groundwater production wells" shall not include facilities withdrawing water from the Peace River through the use of horizontal wells not more than 50 feet deep or aquifer storage and recovery wells.~~

~~1.29~~1.30 ~~1.29~~ Peak Month Average Daily Quantity. Authority during the calendar month of the Customer's highest water use, divided by the number of days in that month and expressed in MGD as set by the Customer's Water Allocation.

~~1.30~~1.31 ~~1.30~~ Permits. All licenses, permits, authorizations or other approvals from any government or governmental agency, whether federal, state, regional or local, necessary or convenient for the acquisition, construction, expansion and operation of Water Supply Facilities and Water Supply Sources, including but not limited to any general water use permit, temporary water use permit or individual water use permit issued by the Southwest Florida Water Management District or any entity.

~~1.31~~1.32 ~~1.31~~ PRO. The Amended Peace River Option Water Supply Contract dated March 8th, 1996 that expanded the Peace River Regional Water Treatment Facility by adding 6 MGD annual average daily quantity of water to the System Capacity.

~~1.32~~1.33 ~~1.32~~ Redistribution Pool. A depository of each Customer's Available Water for any Contract Year for purchase by all Customers.

~~1.33~~1.34 ~~1.33~~ Regional Transmission System. Those facilities, including appurtenant and associated facilities, owned by the Authority pertaining to the delivery and measurement of potable water to the Customers of the Authority including but not limited to primary transmission pipes, real property, interest in real property, fixtures and personal property. Regional Transmission System does not include the Aquifer, Storage and Recovery ("ASR") system or its connecting piping.

~~1.34~~1.35 ~~1.34~~ Regional Water System. All real property, interest in real property, fixtures, personal property, wells, buildings, treatment system, pumps, pipes, storage facilities,

reservoir(s), aquifer storage and recovery facilities and appurtenant or associated facilities owned by the Authority, excluding the Regional Transmission System.

~~1.35~~ 1.36 ~~1.35~~ Renewal and Replacement Charges. The charges established by the Authority for the exclusive purpose of funding renewals and replacements of the Authority Water Supply Facilities. The charges will be established to satisfy the requirements of the Authority's Obligations and shall be set forth in the annual budget approved by the Authority for the ordinary renewal, replacement, upgrade and betterment of the Authority Water Supply Facilities. Renewal and Replacement Costs do not include capital expenditures associated with the expansion or addition of water treatment, storage, pumping or transmission capacity.

~~1.36~~ 1.37 ~~1.36~~ Renewal and Replacement Costs. The capital expenditures set forth in the annual budget approved by the Authority for the ordinary renewal, replacement, upgrade, and betterment of the Authority Water Supply Facilities. ~~Renewal and Replacement Costs do not include capital expenditures associated with the expansion or addition of water treatment, storage, pumping or transmission capacity or the costs associated with reconstruction of any major components of the Authority Water Supply Facilities.~~

~~1.37~~ 1.38 ~~1.37~~ Renewal and Replacement Fund. The fund established by the Authority for the exclusive purpose of funding renewals and replacements of the Authority Water Supply Facilities. The deposits to such fund shall be made in accordance with the requirements of the Financing Documents of the Authority. The balances on deposit in the Renewal and Replacement Fund will be expended for those Renewal and Replacement Costs specifically identified in the annual budget approved by the Authority.

~~1.38~~ 1.39 ~~1.38~~ Second Amended Interlocal Agreement. The Second Amended Interlocal Agreement Creating the Peace River/Manasota Regional Water Supply Authority executed concurrently with this Contract.

~~1.39~~ 1.40 ~~1.39~~ System Capacity. The total combined capacities of the various components of the Regional Water System in terms of a quantity of water on an average annual daily basis expressed in MGD.

~~1.40~~ 1.41 ~~1.40~~ Variable Operating and Maintenance Costs. All operating and maintenance costs and expenses of the Authority for the operation, maintenance and management of the Authority Water Supply Facilities that change in proportion to changes in the volume of

water produced by the Authority, including, but not limited to, power, chemicals and water purchases.

~~1.41~~1.42 ~~1.41~~ Water Allocation. The portion of the System Capacity of the Regional Water System allotted to a Customer for the term of this Contract as initially specified at Exhibit “B” as increased from time to time pursuant to Section 11.

~~1.42~~1.43 ~~1.42~~ Water Rate. For any Contract Year, the rate established by resolution of the Authority for the sale of water, which, to the extent applicable, shall be comprised of a Base Rate Charge, the DeSoto Payment, and a Water Use Charge.

~~1.43~~1.44 ~~1.43~~ Water Supply Emergency. A loss or reduction in System Capacity caused by drought or a sudden, unexpected, unavoidable interruption in water delivery as declared by resolution by the Authority Board.

~~1.44~~1.45 ~~1.44~~ Water Supply Facilities. All real property, interest in real property, fixtures, personal property, wells, treatment systems, pumps, pipes, storage facilities, reservoirs, aquifer storage and recovery facilities, water transmission mains, any future expansion of said facilities and appurtenant or associated installations owned, leased or otherwise controlled by Charlotte, DeSoto, Manatee, North Port, Sarasota or the Authority and used for the provision of potable water supply.

~~1.45~~ ~~1.45~~ ~~Water Supply Source~~. ~~Any project, construction, acquisition, transfer or transaction creating a new water source or expanding an existing water source developed by the Authority, Charlotte, Sarasota, Manatee, DeSoto or North Port.~~

1.46 ~~1.46~~ Water Use Charge. For any Contract Year, the rate established by the Authority for payment of the Variable Operating and Maintenance Costs. This Water Use Charge shall be based on Customer metered water usage and shall be the same charge per thousand gallons used for each Customer.

2. **TERM.** The term of this Contract shall begin on the date of its complete execution by all Parties and end on the last day of the Contract Year in which the thirty-fifth (35th) anniversary of the execution date falls. The rights and obligations of any Customer may be extended prior to expiration of the initial term at the option of that Customer for another thirty-five (35) years, said extension to expire on the last day of the Contract Year in which the seventieth (70th) anniversary of the execution date falls. Such option must be exercised at least two (2) years prior to expiration. If during the Contract term, the Authority issues Obligations to construct

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additional System Capacity to provide additional or maintain existing Water Allocation of the Customers that is secured from the payments made by the Customers for service from the Authority and which repayment period extends beyond the termination date of the Contract as set forth above, the Contract will automatically be extended to include the last payment date of such additional Obligations. Before the expiration of this Contract, the Authority and Customers recognize that a new contract or extension of this Contract will need to be in place to provide ongoing water service from the Authority Water Supply Facilities and all Parties agree to work together in good faith to extend this Contract or create a new contract prior to this Contract's expiration date to meet the overall intent of the Authority to provide regional drinking water.

3. **AUTHORITY CAPACITY.** The Authority ~~shall not be prohibited from maintaining unallocated~~ is authorized to maintain capacity of the Authority Water Supply Facilities.

~~4. **CONDITIONS PRECEDENT.** All rights, obligations and liabilities of the Authority and the Customers shall be subject to the satisfaction of the conditions precedent identified in Section 4.1.~~

~~4.1 Conditions Precedent. The following are conditions precedent to the Parties' rights, obligations and liabilities under this Contract:~~

~~4.1.1 The complete execution of this Contract by the Authority and the Customers.~~

~~4.1.2 The representations set forth in Section 8 are true and correct as of the date this Contract is fully executed by all Parties.~~

~~4.1.3 No change shall have occurred on or before the date this Contract is fully executed by all the Parties in any applicable federal, state or local law, or any applicable federal, state or local rule, regulation or ordinance thereunder, or an interpretation thereof by any applicable regulatory authority or court of competent jurisdiction, that would make the execution or delivery of this Contract, or that would make compliance by the Parties with the terms and conditions of said Contract or the consummation by the Parties of the transactions contemplated thereunder, a violation of such law, rule, regulations or ordinance.~~

~~4.1.4 The Authority and North Port shall execute a Settlement Agreement that requires North Port to file a Voluntary Dismissal with prejudice in *City of North Port v. Peace River/Manasota Regional Water Supply Authority*, Case No. 05-05254, Thirteenth Judicial Circuit in and for Hillsborough County, Florida within ten (10) days of execution of this Contract.~~

~~4.1.5 DeSoto and the Authority shall execute a transfer agreement pursuant to Section 21 herein.~~

~~4.1.6 Notwithstanding Paragraphs 8.4 and 10.5 herein, Charlotte and Sarasota shall establish a means to settle their disagreement over the "Water Sale and Purchase Agreement" between Charlotte and Sarasota dated March 8, 1996.~~

~~4.2 Satisfaction of the Conditions Precedent. The Parties shall exercise good faith and due diligence in satisfying the conditions precedent set forth above and the Authority shall give prompt notice to the other Parties when the foregoing conditions precedent have been satisfied or waived in writing by all the Parties.~~

~~5. FUNDING FROM THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY ("EPA"). The funding from the EPA grant dated March 28, 1995 shall be used for the construction of the REP.~~

64. INTANGIBLE ASSETS OF THE CUSTOMERS. Each Customer's Water Allocation and Hydraulic Capacity Entitlement is an intangible asset of that Customer's utility system pursuant to the terms and conditions of the Contract.

75. FUNDING FROM SWFWMD. ~~The funding from the SWFWMD New Water Sources Funding Agreements shall be used for the construction of the REP.~~ All Parties shall ~~work to obtain~~support obtaining the maximum amount of funding from SWFWMD for ~~the REP~~, any future expansion of or addition to the Authority Water Supply Facilities and new Authority Water Supply Sources.

86. REPRESENTATION OF THE PARTIES. The Authority, Manatee, Charlotte, DeSoto, Sarasota and North Port make the following representations:

86.1 Each Party is duly organized and existing in good standing under the laws of the State of Florida and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Contract.

86.2 Each Party has the power, authority and legal right to enter into and perform its obligations set forth in this Contract, and the execution, delivery and performance hereof by it a) has been duly authorized by its governing board; b) does not require any other approvals by any other governmental officer or body; c) does not require any consent or referendum of the voters for Authority financed projects; d) will not violate any judgment, order, law or regulation applicable to the Party; and e) does not constitute a default under, or result in

the creation of, any lien, charge, encumbrance or security interest upon the assets of the Party under any agreement or instrument to which it is a Party or by which the Party and its assets may be found or affected except as provided herein under Sections 16.5 and 16.6.

§6.3 This Contract has been duly entered into and delivered by the respective governing boards and, as of the date of its full execution by all Parties, constitutes a legal, valid and binding obligation of said Party, fully enforceable in accordance with its terms provided the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

§6.4 There is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of the Party's knowledge, threatened against the Party which is not resolved by the execution of this Contract, wherein any unfavorable decision, ruling or finding would materially adversely affect the performance by the Party of its obligations hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Contract, or any other agreement or instrument entered into by the Party in connection with the transaction contemplated hereby. ____

~~9. — **REP CONSTRUCTION.** In consideration for financial and other commitments made by the Customers herein, the Authority agrees to permit and construct the REP as a necessary Water Supply Source for the Water Allocations. The cost of construction and construction schedule are attached as Exhibit "G". The Authority agrees to use its best efforts to construct the REP in accordance with the schedule set forth in Exhibit "G". The Customers recognize that the construction schedule may be affected by circumstances beyond the control of the Authority including, but not limited to, weather, availability of material and contractors, governmental approvals, and other force majeure. The Authority agrees to keep the Customers apprised of the progress made in construction of the REP and of any delays that may affect the scheduled completion date.~~

~~9.1. — Cost of Construction. The Authority will use its best efforts to complete the REP construction project within the budgeted amount shown in Exhibit "G". The Authority will comply with its procurement procedures in the construction of the REP.~~

~~9.2. Insurance. The Authority shall require suitable payment and performance bonds from all principal contractors working on the construction of the project. The Authority shall further require the provision by the principal contractors of hazard insurance, general liability insurance, and worker's compensation insurance from such carriers and at such limits as are customary.~~

~~107.~~ **DELIVERY OF WATER.** During each Contract Year, the Authority shall deliver water to each Customer in accordance with their Water Allocations and the terms and conditions of this Contract. Customers shall pay for and the Authority shall timely develop and deliver new Water Supply Sources and facilities to meet the needs of its Customers as set forth in Sections 11 and 12 herein.

~~107.1~~ Allocation. The Authority shall be required to deliver water for a Customer's water demand from its Water Allocation. Future Water Allocations will be delivered only in accordance with a Customer's New Water Supply Demands in Exhibit "C" as modified by projected water demands pursuant to Section 11 herein. If a Customer meets its payment obligations to the Authority, the Authority shall have the absolute and unequivocal obligation to develop and provide for the Customer's permittable future potable water demand in its Water Allocation and New Water Supply Demands.

~~107.2~~ Limitation of Allocation. The Authority shall not be required to deliver water to a Customer if prohibited by any applicable federal, state, regional or local statute, rule, ordinance, law, administrative order or judicial decree or in violation of applicable Permits. If, at any time, there is insufficient potable water available to fully meet the Water Allocations described above for any reason, then the Customers shall have their Water Allocations reduced on a pro-rata basis.

~~107.3~~ Delivery Point. The Authority shall deliver water through the Regional Transmission System to each Customer only at their respective Delivery Point(s) as identified ~~in Exhibit "D"; and maintain by the Authority.~~ Additional Delivery Point(s) may be added by mutual agreement of the Authority and receiving Customer(s).

~~107.4~~ Exceedance of Delivery Schedule. Subject to Section 10.5 herein, in the event a Customer should receive delivery of water in excess of its Peak Month Average Daily Quantity, its Maximum Daily Quantity, and/or its Annual Average Daily Quantity of its Water Allocation, the Customer shall pay a Conservation Rate as set forth in the Water Rate

resolution. During emergency conditions as declared by resolution of the Authority Board, the Authority shall not charge the Conservation Rate for water delivery in excess of the Water Allocation. Exclusive Customer water allocation is determined by the Authority; therefore, Exclusive Customer(s) shall not be assessed exceedance charges.

~~107.5~~ Authority Water Transfers. ~~Upon execution of this Contract by all Customers, all prior contracts transferring Authority water between any of the Customers shall terminate.~~ All Authority water transfers shall be provided solely through the Authority. ~~Notwithstanding the termination of the Water Sale and Purchase Agreement between Charlotte and Sarasota pursuant to this paragraph, both Charlotte and Sarasota hereby reserve and do not in any manner waive any rights or causes of action that one may have against the other with regard to any past due obligations or debts arising out of said Water Sale and Purchase Agreement, to be resolved pursuant to Section 4.1.6.~~ As part of the New Water Supply Demands process set forth below, each Customer shall annually provide to the Authority its projected Authority Water Demands for the next twenty (20) years. The Authority shall then determine the total Customer demands for Authority Water. The Authority shall determine the difference between each Customer's Water Allocation and projected water demands for the next ten (10) years on an annual basis. By February 15 of each year, the Authority shall provide each Customer with a Notice of Available Water indicating the amount of Water Allocation, if any, above the Authority's projected water demands for each of the next ten (10) years. Each Customer shall file a response with the Authority within thirty (30) days of receipt of the Notice of Available Water, either accepting the Available Water quantities as determined by the Authority or providing alternative Available Water quantities, if any, for each of the next ten (10) years. If the Customer supplies alternative Available Water quantities, this quantity shall be placed in the Redistribution Pool. Failure of a Customer to respond within thirty (30) days shall result in that Customer's Available Water quantity as determined by the Authority, being transferred into the Redistribution Pool. Nothing herein shall be construed to require any Customer that timely responds to the Notice of Available Water to provide any of its Water Allocation to the Redistribution Pool. The Redistribution Pool shall be maintained by the Authority to provide the amount of Available Water by Contract Year for up to ten (10) years. Each year shall have a separate Redistribution Pool of water quantities designated. A receiving Customer's failure

to pay for water transferred from the Redistribution Pool shall be treated as a default of this Contract. The Authority shall not transfer more water than the amount of Available Water ~~placed~~ in the Redistribution Pool. Nothing in this Section shall relieve a Customer from the irrevocable commitment to pay for its Water Allocations in this Contract.

~~107.5.1~~ Assignment and Payment. The Authority shall assign the Available Water based upon Customer request and written confirmation by their governing body of the corresponding payment obligations under this Contract. Customers may request Available Water from the Redistribution Pool for the corresponding time frame of their need for additional water. If there is more demand for water than there is Available Water in a given year, the Authority shall distribute the water on pro-rata basis based on the proportionate Customer demand in the New Water Supply Demands for the year at issue.

~~107.5.2~~ Payment. Payment adjustments to the Customers supplying Available Water shall be on a pro-rata basis, based on the percentage of water supplied to the Redistribution Pools for water sold from each Redistribution Pool.

~~107.5.3~~ Assessment of Conservation Rate. Only for purposes of calculating the assessment of the Conservation Rate, the Water Allocation of the Customer(s) receiving the Available Water and the Customer(s) providing the Available Water to the Redistribution Pool will be adjusted by the transferred water quantity.

~~107.6~~ Water Supply Emergency. The Authority and its Customers shall seek the interconnection of the Water Supply Facilities with other water supply facilities in the region and the Authority's Water Supply Facilities for the purpose of facilitating the transfer of water among the Authority and the Customers under emergency conditions. The Authority and its Customers shall make available capacity, if any, in their respective Water Supply Facilities to the Customers experiencing a Water Supply Emergency at the established rate of the supplying entity. In a Water Supply Emergency, Conservation Rates, inclining block rates, or excess demand charges of any type shall be waived by all Parties to this Contract for the duration of the declared Water Supply Emergency.

~~118.~~ **FUTURE WATER SUPPLY PROCEDURE.** It is the intention of the Parties that this Section set forth the manner in which each Customer will request, and the Authority will provide, future water supply from the Authority Water Supply Facilities. The Customers

acknowledge that a procedure is necessary to provide the Authority with sufficient lead-time for planning and development of newAuthority Water Supply Sources to meet New Water Supply Demands.

~~18~~.11 No later than January 15th of each Contract Year, each Customer shall submit to the Authority a report which identifies the following:

- (i) Total projected water demand by Contract Year for the next 20 years (“Total 20 Year Demand”);
- (ii) That portion of the Total 20 Year Demand the Customer requires the Authority to fulfill (“Authority Supplied Water”) in terms of Annual Average Daily Quantity, Peak Month Average Daily Quantity and Maximum Daily Quantity; and
 1. (iii) The basis for each projection.

The Authority shall review, coordinate, and compile the submitted Total 20 Year Demand and Authority Supplied Water and provide such information to all Customers and the Authority Board. The Authority shall also report to the Customers and Authority Board, its estimation of water demand projections to be supplied by the Authority for its Customers on an annual basis for the applicable twenty-year planning period. The Authority shall use this data, as well as other population and water demand data, as a basis for the planning and development of newAuthority Water Supply Sources to meet New Water Supply Demands. Each Customer may modify its Total 20 Year Demand and projections for Authority Supplied Water with each subsequent annual filing, subject to the provisions in this Section.

~~18~~.2 By submitting its projections for Authority Supplied Water, each Customer is identifying that quantity of water it shall purchase from the Authority in the designated Contract Year. For the initial time period through Contract Year 2013, the New Water Supply Demands as modified at Exhibit “C” shall be the water each Customer irrevocably commits to purchase from the Authority, and the Authority agrees to supply such water. After Contract Year 2013, by submitting its projection for Authority Supplied Water each Customer agrees to purchase, and the Authority agrees to supply, that quantity of Authority Supplied Water identified in the first seven (7) Contract Years of the Total 20 Year Demand. Each Customer may annually update its Total 20 Year Demand and its projection of Authority Supplied Water. However, unless it otherwise has excess water capacity available, the Authority shall not be obligated to accept any change in demand for Authority Supplied

Water within the upcoming seven (7) Contract Year period. Annually, the Authority shall issue an addendum to the Contract to update the New Water Supply Demands table at Exhibit “C” for the applicable years beyond Contract Year 2013 to reflect the first seven (7) Contract Years of projected demand for Authority Supplied Water by the Customers.

118.3 The parties acknowledge that the planning, permitting and construction of new Authority Water Supply Sources cannot exactly match the annual New Water Supply Demands. Therefore, the Authority will, from time to time, develop new Authority Water Supply Sources with water quantities that exceed immediate Customer demands. Upon the Authority determination to develop a specific Authority Water Supply Source, the Authority shall assign a proportionate share of the new Authority Water Supply Source Water Allocation to the Customers, to the extent practicable, by applying the new ~~Water Supply Source~~water supply source project quantity to the most immediate New Water Supply Demands. The Authority shall assign Water Allocations to the Customers pro-rata based on their proportionate New Water Supply Demands at the time when the new Authority Water Supply Source Water Allocation would be fully utilized ~~by the total New Water Source Demand~~. For example, in year ~~2006~~2026, the Authority designates a new Authority Water Supply Source project for 6 MGD to provide water by 2008. The total of New Water Supply Demands does not exceed 6 MGD until ~~2010~~2030, when it is 6.7 MGD. The Water Allocation assigned by the Authority to Customer A for the 6 MGD project is calculated by taking Customer A’s New Water Supply Demand of 2.3 MGD for ~~2010~~2030 divided by the total of all the Customers’ New Water Supply Demands of 6.7 for ~~2010~~2030 to determine the Customer Water Allocation Cost Percentage of 34.33%. When the Authority approves a new Authority Water Supply Source project, it shall issue addendum to the following: (1) to increase and update the Water Allocation table at Exhibit “B;” (2) to update the ~~Cost Allocation Percentages~~cost allocation percentages table at Exhibit “F” to show the new project’s cost allocation percentages; and, (3) to update the table at Exhibit “H” to show the new project water quantity allocation. The Customers may only be assigned a Water Allocation for their New Water Supply Demands. All costs associated with a new Authority Water Supply Source project, including, but not limited to, planning, design, and construction, shall be recovered from the ~~Customer~~Customers receiving the Water Allocations of the new Authority Water Supply Source project.

Commented [MC2]: Consistent with definition in 1.15

129. DESOTO DESIGNATION OF THE AUTHORITY AS ITS EXCLUSIVE PROVIDER OF WATER. Notwithstanding the foregoing and pursuant to Section 8.1 of the Second Amended Interlocal Agreement, DeSoto elects to be an Exclusive Provider Customer. DeSoto agrees not to develop any additional Water Supply Sources beyond those currently existing identified in Exhibit “I” unless as a joint project with the Authority. If DeSoto meets its payment obligations to the Authority, the Authority shall have the absolute and unequivocal obligation to develop and provide adequate potable water for DeSoto based upon its permittable future potable water demand as outlined herein. The Authority is free to meet DeSoto’s water demands by any means it deems fit, including but not limited to using water from the Redistribution Pool or assignment of Water Allocation to meet DeSoto’s demands and assigning the associated cost of constructing that portion of new Water Supply Sources to DeSoto as outlined herein.

129.1 Exclusive Provider Customer Water Allocation. DeSoto and the Authority agree that the current Water Allocation system must be adapted to assure that the Authority maintains its absolute and unequivocal obligation to provide adequate potable water for DeSoto and still assure that DeSoto pays its fair share of new water source development costs. For New Water Supply Demands, DeSoto has provided and agrees to continue to provide the Authority water demand projections in the same manner as other Customers pursuant to Section 11; however, the Authority shall use DeSoto’s projections as well as other data collected by the Authority to set DeSoto’s New Water Supply Demands for each Contract Year. DeSoto shall provide water demand projections in good faith and the Authority shall use its best efforts to match DeSoto’s water demand to its assigned Water Allocation. This Water Allocation shall be used to determine DeSoto’s Base Rate Charge and other share of costs in the same manner as all other Customers. Nothing in Section 12 shall allow the Authority to assign all or any portion of another Customer’s Water Allocation to DeSoto.

129.2 Exclusive Provider Customer Water Allocation for the Redistribution Pool. The Authority may designate any portion of the DeSoto’s Water Allocation as part of the Redistribution Pool. __

~~13. **ALTERNATIVE DELIVERY.** The Authority shall consider alternative delivery, such as design build, when developing new Water Supply Sources, including the REP.~~

~~14. **REFUNDING THE PRO BONDS.** The Authority shall issue Obligations to refund any and all debt outstanding and provide for the rights of bond holders for the PRO. Such~~

~~refunding obligations shall be issued in an amount sufficient to provide for the payment of the principal of, redemption premium, if any, and interest on the outstanding debt to be refunded.~~

~~4510.~~ **SUPERSEDING AND REPLACING ALL PRIOR WATER SUPPLY CONTRACTS.** Upon full execution of this Contract ~~and payment described in Section 14,~~ this Contract shall supersede and replace the ~~Amended Peace River Option Water Supply Contract dated March 8, 1996. Upon full execution of this Contract, this Contract shall supersede and replace all other water supply contracts with the Authority, including but not limited to the Peace River Option Water Supply Contract, dated September 20, 1995; the Peace River/Manasota Regional Water Supply Authority/City of North Port, Florida dated May 30, 1991; Peace River Water Supply Contract dated May 21, 1991; and the Acquisition Agreement dated May 15, 1991~~ October 5, 2005.

~~4611.~~ **WATER RATE.** For each Contract Year, each Customer with a Water Allocation from the Regional Water System shall pay the Authority the Water Rate adopted by resolution of the Authority Board.

~~4611.1~~ Rate Setting. In conjunction with the Authority's annual budget development and adoption process, the Authority shall fix a Water Rate consisting of the Base Rate Charge (adjusted as necessary for customer financing), DeSoto Payment, and Water Use Charge to be paid on a monthly basis by the Customers for water furnished by the Authority. The Authority shall charge and collect rates that are reasonable and just for all Customers. The rates are not subject to the supervision or regulation by any other commission, board, bureau, agency or other political subdivision or agency of the county or state. ~~Unless a common rate is established for all Debt Service Cost components of the Authority Water Supply Facilities,~~ in ~~Until 2028 when debt service payments for the PRO are fulfilled,~~ In determining a Customer's Water Rate, the Authority shall allocate to each Customer, a Base Rate Charge as follows: (1) the Base Rate Charge for ~~4215~~ 1215 MGD 1991 Facility known as the Peace River Regional Water Treatment Facility pursuant to the 1991 Facility percentages set forth on Exhibit "F", (2) the 6 MGD PRO shall be allocated pursuant to the PRO percentages set forth on Exhibit "F", and (3) the Base Rate Charge for the 14.7 MGD REP shall be allocated pursuant to the REP percentages set forth on Exhibit "F". ~~After the Debt Service is paid for the 1991 Facility and the PRO, all~~ After the Debt Service is paid for the 1991 Facility and the PRO, all Debt Service Cost for new Authority Water Supply Sources and other costs associated therewith, such as reserves, coverages,

expansion of existing water supply, or the fixed water purchase costs associated with a new Authority Water Supply Source shall be combined with the REP Debt Service Cost for the common Debt Service Cost in the Water Rate. Provided, however, any Customer has the right to carry its own financing or pay in advance for their portion of a new Water Supply Source or expansion of the Authority Water Supply Facility and, in such event, the Debt Service Costs component of the Water Rate shall be adjusted accordingly.

~~1611.2~~ Customer Financing. Each Customer shall have the option to issue their own debt or pay with its available money with respect to its portion of any new Authority Water Supply Source. The entire payment for a Customer's proportionate share shall be made to the Authority within fourteen (14) days of the Authority bond closing. The Authority shall provide notice to all Customers of the Authority bond closing date thirty (30) days prior to the Authority bond closing. To the extent not inconsistent with the Financing Documents, the Base Rate Charge for a Customer who issues its own debt or pays in advance for any such new Water Supply Source (including the REP) shall be adjusted to remove that Customer's Debt Service Costs attributed to the Customer's Water Allocation corresponding to the payment by the Customer for that new Water Supply Source or expansion.

~~1611.3~~ Accounting, Audits and Adjustments. The Authority shall maintain accounts and records for all funds received and disbursed by it with respect to the Authority Water Supply Facilities in accordance with generally accepted accounting practices applicable to governmental owned and operated water utilities. On an annual basis, the Authority shall provide for an audit to be conducted by a recognized certified public accounting firm experienced in water utility audits.

~~16.4~~ ~~Joint Authority and Customer REP Review and Oversight. Each Party shall designate a staff representative for a joint Authority and Customer committee for the review and oversight of the REP design and construction activities. The Executive Director of the Authority shall be the Authority representative on the committee.~~

~~1611.5~~ Water Charge to Customers. Each Customer shall pay the Authority its invoiced Water Rate and any applicable Conservation Rate charges on a monthly basis following the calendar month in which the charges were incurred and invoiced. The Customers shall submit payment to the Authority for the monthly charges within thirty (30) days of receipt

of the invoice. Failure to pay monies shall create a debt with respect to the non-paying Customer's utility system. A Customer that fails to pay within ninety (90) days after the Authority has mailed its invoice shall be in default pursuant to this Contract. Upon thirty (30) days written notice, the Authority may discontinue delivery of water to any Customer in default for nonpayment and/or may transfer the defaulting Customer's Water Allocation in whole or in part to another Customer in good standing, for the remaining term of this Contract.

~~1611.6~~ Source of Payments. Each Customer's obligation to pay any monies due under this Contract does not constitute general indebtedness. Neither the Authority nor the holders of any obligations issued by the Authority in order to finance or refinance the expansion, alteration, improvement, replacement or operation of the Authority Water Supply Facilities shall have a right to require or compel any Customer to exercise its ad valorem taxing power to pay its obligations and liabilities under this contract or to compel payment from any source other than as indicated in this Section. Each of the Customers, however, shall and do hereby covenant to set water rates for its respective customers at a level sufficient to pay all monies due the Authority under this Contract.

~~1611.7~~ DeSoto Payment. The Authority shall collect from its Customers in accordance with Exhibit "A", the DeSoto Payment and remit it to DeSoto. If the quantities of water allocated to the Authority under SWFWMD Water Use Permit Number 2010420.01 ~~issued in 1996 for 32.7 MGD annual average water use~~¹¹ are ~~modified~~increased or if additional entities become Customers of the Authority, then the amount and methodology of the DeSoto Payment to be paid to DeSoto shall be readdressed by all Parties to this Contract.

~~1712.~~ **FUNDING FOR MANAGEMENT AND PLANNING**. It is acknowledged that Management and Planning Costs of the Authority may be obtained from the Customers in a manner determined by the Authority Board, and that additional funds available for Management and Planning Costs shall be sought by the Authority from the federal and state government, including but not limited to the Florida Department of Environmental Protection, ~~Florida Department of Community Affairs~~, the Southwest Florida Water Management District, ~~the Basin Boards of the Southwest Florida Water Management District~~, and appropriate utilities and agencies.

~~18. — PAYMENT TO CHARLOTTE FOR OVERSIZED FACILITIES. Pursuant to prior contract provisions, payment is due to Charlotte for certain oversized facilities. Any~~

~~Customer may prepay its portion of the Charlotte Oversized Facilities Payment directly to Charlotte, but must elect to do so on or before October 15, 2005 with immediate notice to the Authority and payment to Charlotte by November 30, 2005.~~

~~18.1 Payment for Oversized Facilities for the PRO. The PRO oversized facility payment was made to Charlotte in the amount of \$3,191,883.00. When the PRO bonds are refunded, Customers other than Charlotte are to pay the Debt Service Cost on the remaining financed portion of the \$3,191,883.00 with Sarasota paying 87.5% and DeSoto paying 12.5%.~~

~~18.2 Payment for Oversized Facilities for the REP. The Authority shall pay Charlotte all remaining oversized facility charges totaling \$3,287,098.00 upon closing of the bond issuance for the REP. This payment is calculated as the total oversize facility charge of \$4,515,864.00 less Charlotte's portion of 27.21% of the REP allocation percentage from Exhibit "F", or \$1,228,766.00. All obligations to Charlotte for oversized facilities payment set forth in all previous contracts or agreements, including but not limited to, the Peace River Water Supply Contract dated May 21, 1991; the Amended Interlocal Agreement creating the Peace River/Manasota Regional Water Supply Authority dated May 21, 1991; and the Acquisition Agreement dated May 21, 1991, shall be satisfied upon receipt of the payment by Charlotte of the \$3,287,098.00. The REP oversized facilities payment is to be paid by Customers other than Charlotte, and shall be based on the Debt Service Cost associated with financed portion of the oversized facilities payment to Charlotte of \$3,287,098.00 for the REP and shall be allocated with Sarasota paying 85.62%, North Port paying 13.28% and DeSoto paying 1.1%.~~

~~19. **PAYMENT TO CHARLOTTE FOR PEACE RIVER REGIONAL WATER TREATMENT FACILITY ("1991 FACILITY").** Upon payment of the \$3,287,098.00 specified above, the Authority's total debt to Charlotte for the transfer from Charlotte of the 1991 Facility shall be \$18,299,274.17 with the Authority annually paying \$1,971,557.00 in equal installments on a monthly basis, with the last payment being on October 1, 2021. The redemption of this debt shall be governed by Exhibit "J". The Authority's payment to Charlotte for the 1991 Facility shall be allocated among DeSoto, Charlotte and North Port pursuant to the 1991 Facility cost allocation percentages set forth on Exhibit "F". This payment schedule shall supersede and replace any prior agreement, contract or other document for any payment or Obligation to Charlotte for transfer of the~~

~~1991 Facility or any other assets, real estate, facilities or any other property or service to the Authority prior to the date of this Contract.~~

~~20. **NORTH PORT PAYMENT TO CHARLOTTE.** Pursuant to the Peace River/Manasota Regional Water Supply Authority/City of North Port, Florida Water Supply Contract dated May 30, 1991, Charlotte reserved water capacity for a period of time for North Port. North Port was then obligated to repay the cost of the water reservation to Charlotte. Payment by North Port through the Authority to Charlotte has been made since 1992 at a monthly amount of \$398.42. Since the Master Water Supply Contract supersedes the Peace River/Manasota Regional Water Supply Authority/City of North Port, Florida Water Supply Contract dated May 30, 1991, this North Port obligation is established in this Contract. North Port shall pay the Authority \$398.42 monthly with the last payment on October 1, 2021. The Authority shall pass through the payment being made to Charlotte each month.~~

~~21. **TRANSFER OF DESOTO FACILITY.** Provided a transfer agreement is executed by DeSoto and the Authority, the Authority shall pay DeSoto \$800,000.00 for DeSoto to transfer to the Authority the real property and water well, appurtenances and any necessary permits for use of the water well and specified facilities in place identified in the transfer agreement. This payment from the Authority shall be funded from REP Debt Service Cost. The payment to DeSoto will be in the form of a credit for DeSoto's payment obligation pursuant to the DeSoto County Regional Pipeline Extension Amended Pipeline Agreement dated June 21, 2004.~~

~~2213. **DEVELOPMENT OF FUTURE WATER SOURCES.** The Authority and its Customers shall develop new Water Supply Facilities as follows:~~

~~2213.1 **General.** The Authority shall develop new Authority Water Supply Facilities to meet the water demands of its Customers as shown in Exhibits "B" and "C" their New Water Supply Demands which will reflect the projections provided as specified above or Water Allocation at the determination of the Authority for DeSoto-Exclusive Customer(s).~~

~~2213.2 **Procedures for New Authority Water Supply Facilities.** The Authority shall have written consent of the governing body of a Customer in whose jurisdiction the Authority intends to acquire, develop, construct or operate new Authority Water Supply Facilities. For new Authority Water Supply Facilities located or proposed to be located within the jurisdiction of North Port, North Port shall be the salesole entity that grants or denies consent to the Authority.~~

~~2213~~.1.1. The Authority shall provide written notification of its intention to apply or seek the transfer of a Permit for new Authority Water Supply Facilities to the Customer in whose jurisdiction the Authority Water Supply Facilities are located or will be located. Such notification shall be given no less than sixty (60) days prior to submitting the Permit application or requesting the Permit transfer. The Customer shall notify the Authority within sixty (60) days of its decision to grant or deny consent to the Authority to acquire, develop, construct or operate the new Authority Water Supply Facilities within its jurisdiction. If a Customer denies consent, the Customer's notification shall provide an explanation of the reasons for denial.

~~2213~~.2.2. Upon notification of denial by a Customer to the Authority, a meeting between the staff of the Authority and the Customer shall be held within forty-five (45) days of the notification of denial. This meeting shall be organized and scheduled by the Authority. During this meeting, the staff of the Authority and the Customer shall attempt to reach an agreement to grant consent to the Authority to acquire, develop, construct or operate new Authority Water Supply Facilities within the Customer's jurisdiction.

~~2213~~.2.3. If no agreement is reached within forty-five (45) days of notification of denial, the Authority and the Customer shall participate in mediation, the costs of which shall be equally divided between them. The Authority and the Customer shall endeavor in good faith to select a mutually acceptable mediator. If the Authority and the Customer are unable to mutually agree on a mediator within fourteen (14) days after the staff meeting held pursuant to paragraph 22.2.2., the Authority and the Customer shall agree to accept a mediator selected by the Florida Conflict Resolution Consortium. Upon the selection of a mediator, the Authority and the Customer shall schedule mediation to occur within fourteen (14) days. Mediation shall be completed within forty-five (45) days of the first mediation conference unless extended by mutual written agreement of the Authority and the Customer. Subsections (b), (c), (d), and (e) of Rule 1.720 of the Florida Rules of Civil Procedure are applicable to the mediation proceedings. Designees of the

Authority and the Customer attending the mediation shall include a governing body member who has the full authority to negotiate on behalf of its entity and to recommend an agreement to its governing body. In the event of any breach or failure to perform mediation under this section, the Authority or Customer may seek appropriate remedies to mandate this mediation process.

~~22~~13.2.4. If consent to the Authority by a Customer is not agreed to at the mediation, the Authority shall withdraw the Permit application or request for Permit transfer.

~~22~~13.3 Procedure for the Authority's Customers. Whenever a Customer ("Applicant Customer") intends to apply or seek the transfer of a Permit for Water Supply Facilities located or that will be located within the jurisdiction of another Customer, the Applicant Customer shall provide written notification of its intention to apply or seek the transfer of a Permit for Water Supply Facilities to the Customer ("Host Customer") in whose jurisdiction the Water Supply Facilities are located or will be located. Such notification shall be given no less than sixty (60) days prior to submitting the Permit application or requesting the Permit transfer. The Host Customer shall notify the Applicant Customer within sixty (60) days of its decision to grant or deny consent to the Applicant Customer to acquire, develop, construct or operate the Water Supply Source within its jurisdiction. If a Host Customer denies consent, the Host Customer's notification shall provide an explanation of the reasons for denial. The Applicant Customer shall immediately withdraw its Permit application or request for transfer of a Permit upon notification of denial by the Host Customer.

~~23~~14. **HYDRAULIC CAPACITY ENTITLEMENT IN REGIONAL TRANSMISSION SYSTEM.** Each Customer shall be provided its respective Hydraulic Capacity Entitlement of the hydraulic capacity in the transmission facilities that has been constructed at the time of execution of this Contract or will be constructed by the Authority during the term of this Contract for the benefit of such Customer(s) to deliver potable water from the Regional Water System to the respective Customer(s) Delivery Point. Each Customer's current Hydraulic Capacity Entitlement percentage or amount in the current Regional Transmission System is set forth on Exhibit "E". A Customer's Hydraulic Capacity Entitlement in segments of the Regional

Transmission System constructed after the date of this Contract will be determined on a transmission line segment basis by the Authority. On an annual basis, the Authority shall update and maintain a current tabulation of all Customer Hydraulic Capacity Entitlement and Authority hydraulic capacity in pipelines. All Hydraulic Capacity Entitlement Cost of the Hydraulic Capacity Entitlement will be the sole responsibility of the Customer(s) benefiting from such facilities. If more than one Customer uses the same transmission segment as designated by the Authority, then each shall pay their proportionate share of the Hydraulic Capacity Entitlement Cost.

~~23.14.1~~ In the event a Customer requests capacity in a transmission line segment that is an existing component of the Regional Transmission System, and the capacity percentage of which has been fully allocated, the Authority shall not grant capacity to the requesting Customer without first obtaining approval from the Customer(s) to whom the hydraulic capacity in that transmission line has previously been allocated. In the event the Authority modifies the Hydraulic Capacity Entitlement, the application of all future service rates and charges will be adjusted accordingly.

~~23.2~~ ~~If requested by North Port, the Authority shall construct, and North Port shall pay for its proportional share of the Hydraulic Capacity Entitlement Cost of a new segment of the Regional Transmission System between Delivery Points identified by North Port and acceptable to the Authority on the basis of system hydraulics. The Authority and North Port may agree to a water delivery alternative utilizing the existing stub-outs along the 42-Inch RTS (2) transmission main identified in Exhibit "D", subject to the change of apportionment of Hydraulic Capacity Entitlement Cost on terms mutually agreeable to North Port, Sarasota and Authority.~~

24.15. ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS

OF THE AUTHORITY. The Authority hereby represents, warrants and covenants to the Customers as follows:

24.15.1 System Operation. Operation and maintenance of the Authority Water Supply Facilities shall be the responsibility and the obligation of the Authority. The Authority shall be responsible to adopt an adequate budget to pay all of the Operating and Maintenance Costs of the Authority, to satisfy all the Authority's Obligations, to provide for the requisite Bond Coverage Costs to meet all required tests set forth in the Financing Documents, to provide

for renewal and replacement costs to keep the Authority Water Supply Facilities in good operating order and to provide for any sinking funds and other reserves necessary to provide the water service as set forth in this Master Water Supply Contract. The Authority shall provide sufficient personnel, with appropriate experience to undertake all regulatory requirements, including, but not limited to, those imposed by the Florida Department of Environmental Protection, the Southwest Florida Water Management District, the State of Florida Department of Health and the United States Environmental Protection Agency. If new regulatory requirements necessitate capital improvements or budget amendments, the Authority shall take all necessary actions to accomplish the same. The Authority 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 and agents in the day-to-day operations of the Authority Water Supply Facilities; or (2) the failure of the Authority to timely proceed administratively to undertake or complete a requirement imposed by any regulatory agency in any consent order or operating permit. The Authority shall maintain adequate catastrophic insurance on the Authority Water Supply Facilities on such terms and amounts as established by the Authority.

2415.2 Water Quality. The Authority shall use its best efforts to deliver water of good and uniform quality from the Authority Water Supply Facilities to the Delivery Point(s). The water delivered by the Authority to the Delivery Point(s) shall be stabilized and shall meet all federal, state or regional regulations and orders relating to drinking water, which are applicable to water produced, stored and transported at and through the Authority Water Supply Facilities.

2415.3 Water Measurement. The Authority shall use its reasonable efforts to measure all water delivered to the Delivery Point(s) of Customers. The Authority shall own and maintain the meters at all Delivery Point(s). The Authority shall maintain complete and accurate records of its water measurements. Water flow measurements recorded by the Authority shall be the exclusive means of determining the quantity of water delivered to the Delivery Point(s) under this Contract. The metering equipment shall be of standard make and type, installed at a readily accessible location, and shall record flow with accuracy sufficient to meet all applicable reporting requirements. The Authority will check the accuracy of the meters

annually, provide a report regarding the condition, accuracy and state of the meters and provide for a certified calibration test and any appropriate recalibration. Upon request and at the expense of the Customer, the Authority shall make arrangements for a meter test to be conducted by an independent testing facility who shall conform to the manufacture's standards and where appropriate conduct the test as a field test. The Customers may be present when the meters are checked for accuracy, and the test records shall be made available for inspection by the Customers upon reasonable request. If the accuracy of the meter is determined to be at least four (4) percent beyond the limits prescribed by the manufacturer, the meter will be assumed to have been inaccurate from the mid-point of the time since the last annual inspection, or the last calibration, or the last independently certified test, or the last six (6) months whichever is less. 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 respective Customer for the metered flow for that period.

2415.4 Permits. The Authority shall use its best efforts to obtain all Permits necessary to provide the Customers with water in accordance with the Water Allocations, New Water Supply Demands and its duty to its Exclusive Provider Customer(s).

2415.5 Financing the Authority Water Supply Facilities. The Authority shall use its best efforts to borrow funds and to set adequate reserves and budgeted expenditures necessary to cover costs to be incurred in constructing, acquiring, operating, maintaining, repairing, replacing or upgrading the Authority Water Supply Facilities.

2415.6 Acquisition of Real Property. The Authority shall use its best efforts to acquire all interest in real and personal property (if any) necessary for the expansion, construction, management and operation of the Authority Water Supply Facilities. The Authority shall retain in its own name any interest in real property acquired in connection with the Authority Water Supply Facilities.

2415.7 Water Pressures. The Authority shall use its best efforts to supply water under normal operating conditions at the Annual Average Daily Quantity at a pressure not less than 65 psi at the Customer Delivery point(s) to the Customer unless a different pressure is specified in Exhibit "D". The Authority will not be responsible for interruptions or abnormal operating conditions that cause reduced pressures for interim periods that are beyond the Authority's control.

2415.8 Priority of Payment. All monies received by the Authority from the Customers pursuant to this Contract shall be applied in the following order of priority:

FIRST: To the payment of Operating and Maintenance Cost (other than renewal of replacement costs) as provided in the Financing Documents for the Obligations;

SECOND: To the payment of Debt Service Cost as provided in the Financing Documents for the Obligations;

THIRD: To the payment of the renewal and replacement costs;

FOURTH: To the payment of the DeSoto Payment ~~and Charlotte Obligations~~;

FIFTH: To the payment of any charges or Obligations due and owing by the Authority.

2516. **ADDITIONAL REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CUSTOMERS**. The Customers hereby represent, warrant and covenant to the Authority as follows:

2516.1 Irrevocable Commitment to Pay. The Customers recognize that circumstances, such as equipment maintenance or failure, construction delays, failure to obtain Permits, limitations on Permits, transmission line ruptures or defects, acts of God, etc., may prevent the performance by the Authority of its obligations pursuant to this Contract. Under such circumstances, the Customers shall continue to pay their respective Water Rate throughout the term of this Contract. Said payments by the Customers shall be made without notice or demand and without set-off, counterclaim, abatement, suspension or deduction. The Authority ~~is undertaking construction of the REP and~~ will construct additional water supply projects and operation and maintenance of the Authority Water Supply Facilities based in part on the representations, warranties and covenants of the Customers set forth in this Contract.

2516.2 Acquisition of Real Property. Subject to Section 22 herein, the Customers shall promptly cooperate with the Authority in acquiring all interests in real property necessary to construct, manage and operate the Authority Water Supply Facilities and Authority Water Supply Sources.

2516.3 Utility System Charges. The Customers shall fix, revise, maintain and collect such fees, rates, tariffs, rentals or other charges for the use of products, services and facilities of their water utility systems as shall-be necessary to fund the timely payment of their respective

obligations and liabilities under this Contract as well as all other obligations payable from the revenues of their water systems.

2516.4 Cooperation on Permits. Subject to Section 22 herein, for the construction and operation of the facilities necessary for ~~the REP and~~ future Authority Water Supply Sources and Authority Water Supply Facilities, the Customers shall promptly cooperate with the Authority in obtaining any and all Permits necessary or convenient for construction, expansion, alteration, replacement or operation.

2516.5 Cooperation on the REPProjects. The Customers shall promptly cooperate with the Authority in property acquisition or other actions necessary for operating or expanding ~~for the REP~~ Authority Water Supply Facilities.

2516.6 Utility System Operation and Maintenance Account. Each Customer shall maintain its water utility system operation and maintenance accounts throughout the term of this Contract for the purpose of paying its obligations and liabilities under this Contract. At all times during the term of this Contract, the Customers' obligations and liabilities under this Contract shall be considered an operating expense of its water utility systems and shall be paid from its water utility systems operation and maintenance accounts or capacity fee account or facility investment fees, if appropriate; provided, however, that such obligations and liabilities of a Customer shall not be considered an operating expense of its water utility system nor need it be paid from the operation and maintenance account to the extent the Customer has budgeted and appropriated legally available moneys for such purpose and is current on all its obligations arising hereunder. For the purpose of paying their obligations and liabilities under this Contract, Customers may utilize, in addition to their water utility operation and maintenance accounts, facility investment fees or other capacity fees as identified in their adopted rate resolutions.

2516.7 Cooperation on Issuance of Authority Obligations. Each Customer shall cooperate with the Authority in issuance of the Authority's Obligations. In such connection, each Customer and the Authority shall comply with reasonable requests of each other and will, upon request, do as follows: (i) make available general and financial information about itself; (ii) consent to publication and distribution of its financial information; (iii) certify that its general and financial information is accurate, does not contain any untrue statements of a material fact and does not omit a material fact necessary to make the

statements in the information, in light of circumstances under which they are made, not misleading; (iv) make available certified copies of official proceedings; (v) provide reasonable certifications to be used in a transcript of closing documents; and (vi) provide and pay for reasonable requested opinions of counsel as to the validity of its actions taken in respect to and the binding effect of the Second Amended Interlocal Agreement and this Contract, and pending litigation which could materially affect its performance hereunder. Each Customer shall provide the Authority reasonable assurance that no actions taken by it shall adversely affect the exclusion from gross income of interest on the Authority's Obligations for purposes of federal income taxation. Each Customer covenants to assist the Authority in any reasonable manner with respect to the issuance of such Obligations, including but not limited to participation and assistance with any court proceeding seeking to validate the Obligations pursuant to Chapter 75, Florida Statutes.

2516.8 Payment for Obligations. If a Customer defaults on the payment of its Water Rate established pursuant to this Contract, each non-defaulting Customer shall have the option to take the defaulting Customer's pro-rata share (based of each Customer's percentage of the total Water Allocation of the Authority) and corresponding payment obligation of the defaulting Customer's Water Allocation within sixty (60) days of notice of the defaulting Customer's Water Allocation from the Authority. If any of the defaulting Customer's Water Allocation remains after the expiration of sixty (60) days notice period, then each non-defaulting Customer may by mutual agreement with the Authority take any or all of the remaining Water Allocation and corresponding payment obligation created by the default. Any portion of the defaulting Customer's Water Allocation that remains unallocated shall be added to the Redistribution Pool or designated as Authority water capacity; however, these actions shall not relieve the defaulting Customer of its payment obligation to the Authority.

2617. PLEDGE OF CONTRACT REVENUES. The Authority may pledge any payments, interest or other income or revenues derived under this Contract for the purpose of securing any revenue bonds issued by the Authority to finance the ~~REP and new water supply~~ Authority Water Supply Source or other projects of the Authority Water Supply Facilities.

2718. NORTH PORT'S OPTION TO BECOME A MEMBER. If the Authority pursuant to the process set forth in the Second Amended Interlocal Agreement, adds a municipality

as an Authority Member Government, then North Port at its option may become a member of the Authority upon the same terms and conditions as the new municipality member. North Port must exercise its option within thirty (30) days of the effective date of the amendment to the Second Amended Interlocal Agreement adding the new municipality as a member.

~~28. **IMPLEMENTATION AGREEMENT.** An Implementation Agreement dated March 8, 1996 was entered into by the Authority and Charlotte that provides, in part, that no further expansion of the Peace River Regional Water Treatment Facility beyond the PRO can be implemented without the Southwest Florida Water Management District setting the Minimum Flow and Levels for the Peace River. Charlotte, without waiving the application of the Implementation Agreement to any further expansion of the Authority Water Supply Facilities beyond the REP, agrees not to apply the provision of the Implementation Agreement to the development, construction or operation of the REP. However, the Implementation Agreement applies to any further expansion of the Peace River Regional Water Treatment Facility beyond the REP; and it requires that before any further expansion is implemented, Minimum Flows and Levels must be set for the Peace River or the Authority must complete a Section 403.412, Florida Statutes, action including an appeal of an adverse ruling of the lower tribunal, against the District to require it to set Minimum Flows and Levels for the Peace River.~~

2919. RE-RATING REGIONAL WATER SYSTEM. To the extent that any component of the Regional Water System is re-rated or treatment capacity is modified with the appropriate regulatory agencies (either an increase or decrease in capacity), then each Customer's corresponding Water Allocation will be adjusted pro-rata on a basis consistent with the Cost Allocation percentage of each Customer, as of the date of the re-rating occurs. The Authority agrees not to initiate a re-rating process with the intent to reduce System Capacity. For example, a Customer with a Water Allocation of 10 would receive an increase in Water Allocation of 100,000 gallons per day for a 1,000,000 gallon per day re-rating increase. To the extent that the re-rating of the Regional Water System results in the incurrence of additional capital expenditures, the Authority will notify the affected Customers of such expenditures. The expenditures required for and the associated re-rating will be allocated proportionately pursuant to the Water Allocation percentage unless any Customer(s) decide not to participate in the cost and associated benefits of the re-rating. If a Customer does not participate in the re-rating, then the change in Water Allocation and the expenditures will be allocated pro-rata to the participating Customers in

accordance with their Water Allocation. All expenditures associated with re-rating will be the responsibility of the participating Customers and are to be paid to the Authority in accordance with the Contract. To the extent any increase in Water Allocation is not allocated to the Customers, it shall be ~~transferred to the~~ held as Authority capacity that may be placed in the Redistribution Pool.

3020. DEFAULT AND REMEDY. Recognizing the region's paramount need for a safe and dependable source of water supply, the Parties agree this Contract may not be terminated prior to the normal expiration date specified in Section 2 and the remedy for a breach of the Contract shall be specific performance, injunctive relief and any other equitable relief, as well as monetary damages.

3121. DESIGNATION AS REPRESENTATIVE AND CO-APPLICANT STATUS. The Authority and the Customers shall be co-applicants for any SWFWIID water use permits needed for the Authority Water Supply Facilities and Authority Water Supply Sources. Subject to Section 22 herein, the Customers shall waive all objections to the Permit applications relating to the acquisition, operation, replacement or expansion of the Authority Water Supply Facilities and Authority Water Supply Sources issued by a federal, state, or regional governmental entity. The Customers hereby designate the Authority as their representative with respect to any such Permit or in any administrative or judicial proceeding relating thereto.

3222. APPLICABLE LAW AND VENUE. The laws of the State of Florida govern the validity, interpretation, construction and performance of this Contract and venue for any suit involving this Contract shall be in Hillsborough County, Florida.

3323. NO ASSIGNMENT. The rights, obligations and interests of the Customers and Authority under this Contract may not be wholly or partially sold, assigned, transferred, pledged or hypothecated unless approved in writing by all Parties.

3424. NOTICE. All notices, demands, requests and other communications shall be deemed sufficient and properly given, if in writing and delivered in person to the following addresses, sent by certified or registered mail, or by overnight delivery, postage prepaid with return receipt requested, at such addresses; provided, if such notices demands, requests or other communications are sent by mail or overnight delivery, they shall be deemed as given on the third day following such mailing which is not a Saturday, Sunday or a day on which United States mail is not delivered: The Authority's Executive Director's Office, ~~1645 Barber Road, Suite A, Sarasota,~~ 9415 Town Center Parkway, Lakewood Ranch,, Florida 3424034202; the Charlotte

County Administrator's Office, Charlotte County Administration Center, 18500 Murdock Circle, Port Charlotte, Florida 33948-1094; Manatee County Administrator's Office, Manatee County Administration Center, 1112 Manatee Avenue West, Suite 920, Bradenton, Florida 34205; the DeSoto County Administrator's Office, 201 East Oak Street, Arcadia, Florida 34266; the Sarasota County Administrator's Office, 1660 Ringling Boulevard, Sarasota, Florida 34236; and the North Port City Manager's Office, ~~5650 North Port~~4970 City Hall Boulevard, North Port, Florida ~~34287~~34286. Any Party may, by like notice, designate any further or different addresses to which subsequent notices shall be sent.

3525. RELATIONSHIP OF THE PARTIES. Nothing herein shall be deemed to constitute any Party a partner or joint venturer, or to create any fiduciary relationship among the Parties.

3626. THIRD PARTY BENEFICIARIES. No right or cause of action shall accrue upon or by reason hereof, or for the benefit of any person not expressly named as a Party in this Contract, except for any holders of Obligations and/or credit enhancers relating to Obligations who shall be third party beneficiaries of this Contract.

3727. WAIVER. Unless otherwise specifically provided by the terms of this Contract, no delay or failure to exercise a right resulting from any breach of this Contract shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the Party granting such waiver. If any representation, warranty or covenant contained in this Contract is breached by any Party and thereafter waived by another Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive, either expressly or impliedly, any other breach under this Contract.

3828. AUTHORIZED REPRESENTATIVES. For purposes of this Contract, the Parties authorized representatives are as follows: the Authority Executive Director, the Charlotte County Administrator, the DeSoto County Administrator, the Manatee County Administrator, the Sarasota County Administrator, and the City of North Port City Manager. Any Party may change its authorized representative at any time by written notice to all other Parties.

3929. SECTION CAPTIONS AND REFERENCES. The section headings and captions contained herein are included for convenience only and shall not be considered part of

this Contract or affect in any manner its construction or interpretation. Except as otherwise indicated, all references herein to sections are to sections of this Contract.

~~40~~30. **SEVERABILITY.** In the event any provision of this Contract shall, for any reason, be determined invalid, illegal or unenforceable in any respect, the Parties shall negotiate in good faith and agree to such amendments, modifications or supplements to this Contract or such other appropriate actions as shall, to the maximum extent practicable in the light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Contract, as amended, modified, supplemented or otherwise affected by such action, shall remain in full force and effect.

~~41~~31. **ATTORNEYS FEES AND COST.** In the event there is litigation arising under or related to this Contract, the losing Party or Parties shall pay to the successful Party or Parties all attorney's fees and costs and expenses incurred in enforcing the Contract, including attorneys' fees incurred on appeal, in adversarial administrative proceedings and in connection with bankruptcy proceedings, to the extent allowed by law. This provision shall survive the termination of this Contract.

~~42~~32. **AMENDMENT.** This Contract may only be amended by a writing duly executed by the Authority, Manatee, Charlotte, DeSoto, Sarasota and North Port and only to the extent permitted by the Financing Documents authorizing the issuance of the Obligations.

~~43~~33. **ENTIRE AGREEMENT.** This Contract shall constitute the entire agreement of the Authority, Charlotte, Manatee, DeSoto, Sarasota, and North Port with respect to the Authority's provision of drinking water supply.

~~44~~34. **FURTHER ASSURANCES.** The Authority, Manatee, Charlotte, DeSoto, Sarasota, and North Port each 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 Contract and not involving the assumption of obligations or liabilities different from, in excess of or in addition to those expressly provided for in this Contract to carry out the intent of this Contract.

~~45~~35. **CONSENTS.** To the extent that the consent of any Party to this Contract is required as a condition to the action of other Parties, such consent shall not be unreasonably withheld.

4636. SUCCESSORS AND ASSIGNS. This Contract shall be binding upon and inure to the benefit of the respective successors, permitted assigns, administrators and trustees of the Authority, Manatee, Charlotte, DeSoto, Sarasota, and North Port.

4737. EXECUTION OF DOCUMENTS. This Contract shall be executed in fifteen (15) 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.

4838. INTERLOCAL AGREEMENT. This Contract shall constitute an interlocal agreement pursuant to Section 163.01, Florida Statutes. A true and correct copy of this Contract and any subsequent amendments shall be recorded by the Authority with the clerk of the circuit court in Manatee, Charlotte, DeSoto and Sarasota.

4939. AMBIGUITY. The Parties agree that each one has played an equal part in the negotiation and drafting of this Contract, and in the event any ambiguity should be asserted or realized in the interpretation or construction of this Contract, the result of such ambiguity shall be equally assumed and realized by each Party.

5040. SOVERIGN IMMUNITY. The Customers intend to avail themselves to the benefits of Sections 768.28 and 163.01(9)(c), Florida Statutes, and of other statutes and common law governing sovereign immunity to the fullest extent possible. In accordance with Section 163.01(5)(0), Florida Statutes, therefore the Customers are not jointly liable for the torts of the officers or employees of the Authority, or any other tort attributable to the Authority, and that only the Authority shall be liable for torts attributable to it or for torts of its officers or employees, and then only to the extent of the waiver of sovereign immunity or limitation of liability specified in Section 768.28, Florida Statutes. The Customers intend the Authority to have all the privileges and immunities from liability and exemptions from laws, ordinances, rules and common law which apply to the municipalities and counties of the State of Florida. Nothing in this Contract is intended to inure to the benefit of any third-party for the purposes of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

5141. CONFLICT WITH INTERLOCAL AGREEMENT. To the extent any provision herein shall conflict with a provision in the Second Amended Interlocal Agreement, the provision in the Second Amended Interlocal Agreement shall be controlling.

5242. GOOD FAITH. The Parties agree to exercise good faith and fair dealing in respect to all matters relating to this Contract.

~~5343~~. **WATER PURCHASE.** The Customers shall have a preferential right to purchase water from the Authority. The Authority may purchase water from any source available.

IN WITNESS WHEREOF, the Authority, Manatee, Charlotte, DeSoto, Sarasota, and North Port have executed this Contract on the day, month and year first above written.

PEACE RIVER/MANASOTA REGIONAL
WATER SUPPLY AUTHORITY
WITNESS:

By: _____

Date: _____

Approved as to form:

Attorney for Peace River/Manasota
Regional Water Authority

STATE OF FLORIDA
COUNTY OF SARASOTA

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, personally appeared, _____ to me known to be the person described in and who executed the foregoing instrument on behalf of the Peace River/Manasota Regional Water Supply Authority, and acknowledged before me that he/she executed same as a free act and deed for the uses and purposes therein stated.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 20__.

Notary Public
My Commission
Expires: _____