

November 17, 2014

**CHARLOTTE COUNTY AND  
PEACE RIVER MANASOTA REGIONAL WATER SUPPLY AUTHORITY**

**Joint Resolution 2014-01**

**THE FOLLOWING RESOLUTION WAS ADOPTED BY THE  
BOARD OF COUNTY COMMISSIONERS OF CHARLOTTE  
COUNTY AND THE BOARD OF DIRECTORS OF THE  
PEACE RIVER MANASOTA REGIONAL WATER SUPPLY  
AUTHORITY AT THEIR SPECIALLY SCHEDULED JOINT  
MEETING OF NOVEMBER 17, 2014**

**WHEREAS**, the Peace River Manasota Regional Water Supply Authority (“Authority”) is a special district of the State of Florida, created pursuant to Section 373.1962, Florida Statutes (subsequently reenacted as Section 373.713, Florida Statutes), and interlocal agreement pursuant to Section 163.01, Florida Statutes; and

**WHEREAS**, Charlotte County (County), is a member and water customer of the Authority; and

**WHEREAS**, on or about December 4, 2013, the Authority adopted the amended Final FY 2014 Budget, a “Resolution Setting Forth Cost Allocations” (Resolution 2013-07) and a “Resolution Setting Forth Cost Policy to Credit Participating Customers for Project Savings” (Resolution 2013-08). Resolution 2013-07 allocated \$1,955,103 from the Authority’s R&R Fund, \$900,000 from the Authority’s General Fund and \$9,973,656 from the Authority’s CIP Fund to pay for the total \$12,828,759 Project costs. Of this total, \$10,873,656 was to be reimbursed by water customer cost allocations to be collected through the Water Rate. Resolution 2013-08 allocated 78.67% or \$8,554,305 million of the \$10,873,656 Project costs to the County; mandated that unless a common rate is established for all components of the Authority System prior to FY 2015, these allocations will be used to determine the FY 2015 Water Rate effective October 1, 2014; and, provided that when integrated into the FY 2015 Water Rate, the County would have to pay its 78.67% or \$8,554,305 cost allocation as a single lump sum payment or, at its request, financed by the Authority and assessed on an annual basis for 20 years; and

**WHEREAS**, on or about February 20, 2014 the Authority added an expansion component to the Project increasing the water treatment capacity of the 1991 Peace River Facility from 12 MGD to 15 MGD, when it applied for \$1,500,000 of state grant funds and designated these expenditures the “Peace River Facility Treatment Capacity Expansion – Phase I” (Project Expansion);

**WHEREAS**, on or about April 2, 2014 the Authority formally described the Project Expansion as increasing the water treatment capacity of the 1991 Peace River Facility to 15 MGD treatment capacity and adding 2 MGD annual average of water supply capacity and ratified the Authority’s application for \$1,500,000 of state funding for the Project Expansion;

**November 17, 2014**

**WHEREAS**, on or about June 2014, the Florida Legislature approved and the Governor signed HB 5001 ER setting forth state appropriations for FY 2015 and specifically approving a \$1,500,000 appropriation for the Project Expansion and the Authority applied to the Southwest Florida Water Management District (SWFWMD) for \$750,000 of grant funding for the Project Expansion, which request was subsequently approved by the SWFWMD Governing Board;

**WHEREAS**, on September 9, 2014 at a duly noticed meeting, the County Board of County Commissioners adopted Resolution 2014-151, a copy of which is attached as Exhibit A, initiating the conflict resolution process specified in Chapter 164, Florida Statutes against the Authority regarding the cost and water allocations established by the Authority for the Project and other related issues, as more specifically described in Resolution 2014-151; and

**WHEREAS**, within 5 days after passage of Resolution 2014-151, by letter dated September 12, 2014, a certified copy of the resolution was provided to the Authority Executive Director initiating the conflict resolution process; and

**WHEREAS**, after initiation of the conflict resolution procedure, and after proper notice, a conflict assessment meeting was held between the County and Authority on September 29, 2014 pursuant to Section 164.1053; and

**WHEREAS**, when a tentative resolution of the dispute between the County and Authority could not be agreed to by the parties at the conflict assessment meeting, a joint public meeting of the County Board of County Commissioners and the Authority Board of Directors was scheduled pursuant to Sections 164.1053(3) and 164.1055, Florida Statutes on November 17, 2014 for the purpose of seeking an agreement and resolution of the dispute; and

**WHEREAS**, the joint public meeting of the County Board of County Commissioners and the Authority Board of Directors scheduled on November 17, 2014 was timely noticed and neither the County nor the Authority object to the date, location and timing of the meeting; and

**WHEREAS**, the County Board of County Commissioners and the Authority Board of Directors were successful in achieving an agreement and resolution of the dispute at the joint public meeting held on November 17, 2014 and wish to express the terms and conditions of this agreement in a Joint Resolution subject to execution of an interlocal agreement pursuant to Section 164.1057 on or before December 3, 2014.

**NOW THEREFORE, BE IT JOINTLY RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CHARLOTTE COUNTY AND BOARD OF DIRECTORS OF THE PEACE RIVER MANASOTA REGIONAL WATER SUPPLY AUTHORITY, THAT:**

1. The County's portion of the Project costs to be reimbursed by the Authority's water customers shall not exceed \$4,475,000. The Authority shall not require reimbursement by the County of any money withdrawn from the Authority's reserve funds for the purpose of paying Project costs. Finally, the County's Project cost allocation will be reduced proportionally along with the

**November 17, 2014**

cost allocations for the Authority's other water customers, if the total Project costs to be reimbursed by the Authority's water customers is reduced below \$7,723,000.

2. The Authority shall modify its FY 2015 Budget and Resolution 2014-05 and set future budgets and establish future rates, fees and charges consistent with the limitations specified herein regarding the County's Project cost allocation.

3. The County shall relinquish its right under the Master Water Supply Contract to 2 MGD annual average of additional water made available by the Project Expansion. However, the County will continue to retain its rights under the Master Water Supply Contract to any additional water above 2 MGD annual average made available by the Project Expansion or any new water made available from any other expansion of the Peace River Facility or by any new Authority Water Supply Source.

4. The Parties agree to cooperate in the allocation and permitting of the County relinquished 2 MGD annual average water allocation with Sarasota County to receive 1.835 MGD annual average and the City of North Port to receive 0.165 MGD annual average, including implementation of the resulting changes in water allocation through an appropriate amendment to Exhibit B of the Master Water Supply Contract.

5. The County and the Authority acknowledge and agree that this settlement resolves all the issues raised in Resolution 2014-151, a copy of which is attached as Exhibit A.

6. The County has chosen the option under the Master Water Supply Contract to prepay the Authority for the agreed to \$4,475,000 of Project costs, which payment shall be made within thirty (30) days after the execution of interlocal agreement referred to below.

7. The Parties agree to support the amendment of the Master Water Supply Agreement to modify paragraph 1.36 as shown: "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.~~"

8. The Parties agree that an interlocal agreement reasonably limited to implementing the terms of this Resolution and shall be executed by the County and the Authority no later than December 3, 2014, unless this deadline is extended by mutual agreement of the Parties. Failure to execute an interlocal agreement by December 3, 2014 or any extension of this deadline shall render this Joint Resolution null and void and, should that occur, the Parties agree such action shall constitute a failure to resolve the conflict through the procedures specified in Sections 164.1053 and 164.1055, Florida and the County and Authority may at that time avail themselves of any otherwise available legal rights in accordance with Section 164.1056, Florida Statutes.

**November 17, 2014**

**ADOPTED** this 17th day of November of 2014 in Port Charlotte, Florida.

**CHARLOTTE COUNTY**

ATTEST:  
Barbara T. Scott, Clerk of Circuit  
Court and Ex-Officio Clerk to the  
Board of County Commissioners

Board of County Commissioners  
Charlotte County

By: \_\_\_\_\_

By: \_\_\_\_\_  
Kenneth W. Doherty, Chairman

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:**

By: \_\_\_\_\_  
Janette S. Knowlton, County Attorney

ATTEST:

**PEACE RIVER MANASOTA REGIONAL  
WATER SUPPLY AUTHORITY**

\_\_\_\_\_  
Patrick J. Lehman  
Executive Director

\_\_\_\_\_  
Commissioner Elton A. Langford  
Chair

Approved as to Form:

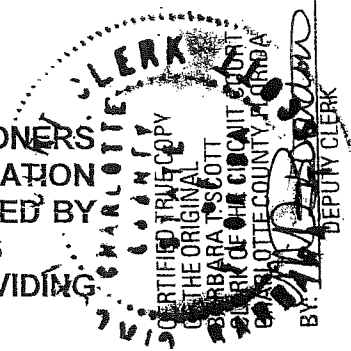
\_\_\_\_\_  
Douglas Manson, General Counsel  
Peace River Manasota Regional  
Water Supply Authority

**EXHIBIT A**

**CHARLOTTE COUNTY RESOLUTION 2014-151**

RESOLUTION  
NUMBER 2014-151

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF CHARLOTTE COUNTY, FLORIDA RELATING TO INITIATION OF THE CONFLICT RESOLUTION PROCEDURES PROVIDED BY CHAPTER 164, FLORIDA STATUTES TO RESOLVE ISSUES RELATING TO THE 1991 REBUILD PROJECT AND PROVIDING AN EFFECTIVE DATE.



RECITALS

**WHEREAS**, Charlotte County (County), is a member and water customer of the Peace River/Manasota Regional Water Supply Authority (Authority);

**WHEREAS**, on or about April 11, 2013, the Authority Board adopted a “Resolution Setting Forth Preliminary Schedules of Rates, Fees and Charges for FY 2014” (Resolution No. 2013-04) approving the Tentative Budget for FY 2014, which included costs for the 1991 Peace River Facility Rebuild Project (Project)<sup>1</sup>, but did not include an approved plan for paying the Project Cost through either the Authority Water Rate or from some other source of Authority funds and establishing the preliminary Water Rate for FY 2014;

**WHEREAS**, on or about September 3, 2013, the Authority adopted a “Resolution Setting Forth Rates, Fees and Charges for FY 2014” (Resolution No. 2013-06) approving the Final FY 2014 Budget, which did not include Project costs, and establishing the Final FY 2014 Water Rate;

**WHEREAS**, on or about October 2, 2013, the Authority adopted a resolution amending Resolution 2013-06 to update the Final FY 2014 Budget to include Project costs, allocate Project costs among the Authority’s water customers with the County required to pay 74.18% or approximately \$9.5 million of the Project costs and

<sup>1</sup>The Project refers to a series of maintenance, renewal and replacement activities within an estimated cost of approximately \$12.8 million intended to renew and restore the 1991 Peace River Facility, which is the original 12 MGD component of the current 48 MGD Peace River Facility, to conditions suitable for continued reliable service without any increase in water supply capacity.

establishing a revised FY 2014 Water Rate requiring repayment of Project costs in a single lump sum payment or at the request of a customer to be financed by the Authority and assessed on an annual basis for 20 years. Amended Resolution 2013-06 also re-assigned \$10,848,937 from the Authority's CIP Fund consisting of \$2,081,569 of excess funds pre-paid by the County for the Regional Expansion Project (REP) and excess bond funds of \$8,767,368 issued by the Authority to fund the REP and various pipeline projects to pay the Project costs;

**WHEREAS**, on or about December 4, 2013, the Authority held a public hearing to consider an amendment to the Final FY 2014 Budget to include Project costs. The Authority adopted the Final FY 2014 Budget, a "Resolution Setting Forth Cost Allocations for 1991 Peace River Facility Rebuild Project" (Resolution 2013-07) and a "Resolution Setting Forth Cost Policy to Credit Participating Customers for Project Savings" (Resolution 2013-08). Resolution 2013-07 allocated 74.18% or approximately \$9.5 million of Project costs to the County; mandated that unless a common rate is established for all components of the Authority System prior to FY 2015, these allocations will be used to determine the FY 2015 Water Rate effective October 1, 2014; and, provided that when integrated into the FY 2015 Water Rate, the County would have to pay \$8.5 million of its \$9.5 million cost allocation as a single lump sum payment or, at its request, financed by the Authority and assessed on an annual basis for 20 years. Resolution 2013-07 also re-assigned \$10,848,937 from the Authority's CIP Fund consisting of \$2,081,569 of excess funds pre-paid by the County for the Regional Expansion Project (REP) and excess bond funds of \$8,767,368 issued by the Authority to fund the REP and various pipeline projects to pay the Project costs. Resolution 2013-08 obligated the Authority to refund the \$10,848,937 re-assigned from the REP and pipeline projects upon payment of the Project costs through the FY 2015 water rate. Finally, at this meeting, the Authority did not rescind, modify or reconfirm the resolution adopted at the October 2, 2013 meeting amending Resolution 2013-06;

**WHEREAS**, on or about February 20, 2014 the Authority re-characterized the Project as increasing the water supply capacity of the 1991 Peace River Facility to 15

MGD, when it applied for 50% state funding of approximately \$3 million of the original \$12.8 million estimated cost of the Project and designated these expenditures the "Peace River Facility Treatment Capacity Expansion – Phase I" (Project Expansion);

**WHEREAS**, on or about April 2, 2014 the Authority formally re-characterized the Project as increasing the water supply capacity of the 1991 Peace River Facility to 15 MGD and ratified the Authority's application for 50% state funding of approximately \$3 million of the original \$12.8 million estimated cost of the Project for the Project Expansion;

**WHEREAS**, on or about June 2014, the Florida Legislature approved and the Governor signed HB 5001 ER setting forth state appropriations for FY 2015 and specifically approving a \$1.5 million appropriation for the Project Expansion and the Authority applied to the Southwest Florida Water Management District (SWFWMD) for \$750,000 of grant funding for the Project Expansion, which request was subsequently approved by the SWFWMD Governing Board;

**WHEREAS**, on or about August 25, 2014, the Authority held a public hearing to consider adoption of the Final FY 2015 Budget to include Project costs. The Authority adopted the Final FY 2015 Budget and a "Resolution Setting Forth Rates, Fees and Charges for FY 2015" (Resolution 2014-05). Resolution 2014-05 effectively increased the Project cost by \$500,000 from approximately \$12.8 million to \$13.3 million to reflect estimated additional construction costs, then applied \$1,955,103 from the R&R Fund (to which the County contributed at least 49.2% or approximately \$962,693) to reduce the remaining Project costs to approximately \$11.4 million, then applied \$1.5 million of state appropriations to reduce the remaining Project cost to approximately \$9.9 million, allocated 78.67% or approximately \$7.8 million of the remaining Project cost to the County and re-assigned \$3,668,661 from the Authority's CIP funds consisting of \$2,081,569 of excess funds pre-paid by the County for the REP and excess bond funds of \$1,587,092 issued by the Authority to fund the REP and various pipeline projects to pay the Project cost. Also, although Resolution 2014-05 identifies the County's cost



allocation as \$4,112,636, the actual \$497,600 cost assessed to the County in the FY 2015 Water Rate represents an effective cost allocation of \$6,472,736 amortized at 4.5% for 20 years, which effective cost allocation does not take into account either the \$1.5 million state appropriations or the additional \$500,000 of construction costs. Finally, contrary to Resolution 2013-07, neither the Final FY 2015 Budget nor Resolution 2014-05 required the County to pay its cost allocation as a single lump sum payment. Instead, without the County's permission, the Final FY 2015 Budget and Resolution 2014-05 in essence finances the County's cost allocation over a period of 20 years at an interest rate of 4.5% per year; and

**WHEREAS**, prior to initiating court action against the Authority regarding the Final FY 2014 Budget, the October 2, 2013 amendment to Resolution 2013-06, Resolution 2013-07, Resolution 2013-08; the Final FY 2015 Budget, Resolution 2014-05 and related actions, the County wishes to initiate the conflict resolution procedures in Chapter 164, Florida Statutes.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CHARLOTTE COUNTY, THAT:**

1. Charlotte County initiates the conflict resolution procedures with regards to the Authority's Final FY 2014 Budget, the October 2, 2013 amendment to Authority Resolution 2013-06, Authority Resolution 2013-07, Authority Resolution 2013-08; the Authority's Final FY 2015 Budget, Authority Resolution 2014-05 and related actions.

2. The issues in conflict between the County and the Authority are as follows:

- a. Whether the Authority is legally authorized to adopt the Final FY 2014 Budget, set the Final FY 2014 Water Rate, adopt the October 2, 2013 amendment to Resolution 2013-06, adopt Resolution 2013-07, adopt Resolution 2013-08, adopt the Final FY 2015 Budget, set the Final FY 2015 Water Rate, adopt Resolution 2014-05, proceed with the Project and Project Expansion, allocate Project costs among its water customers and

- allocate 3 MGD of additional water supply capacity at the 1991 Peace River Facility among its water customers, since the "Second Amended Interlocal Agreement Creating the Peace River/Manasota Regional Water Supply Authority" (Interlocal Agreement) dated October 5, 2005 was never approved by the Florida Department of Environmental Protection, as required by Section 373.713(1), Florida Statutes;
- b. Whether the October 2, 2013 amendment to Authority Resolution 2013-06 is legally effective;
  - c. Whether, as amended on October 2, 2013, the FY 2014 Water Rate was adopted in accordance with the requirements of the "Peace River/Manasota Regional Water Supply Authority Master Water Supply Contract" (Master Water Supply Contract) dated October 5, 2005 and Section 373.713(2), Florida Statutes;
  - d. Whether the inclusion of the County's Cost Allocation in the FY 2014 Water Rate, as amended on October 2, 2013, will result in an inequitable and unreasonable rate in violation of the Master Water Supply Contract and Section 373.713(2), Florida Statutes;
  - e. Whether Resolution 2013-07 is a de facto water rate not adopted in accordance with the requirements of the Master Water Supply Contract and Section 373.713(2), Florida Statutes;
  - f. Whether the Authority's plan, as expressed in Resolution 2013-07, to include the County's Cost Allocation in the FY 2015 Water Rate would result in an inequitable water rate in violation of the Master Water Supply Contract and Section 373.713(2), Florida Statutes;
  - g. Whether the FY 2015 Water Rate as adopted is in accordance with the Master Water Supply Contract and Section 373.713(2), Florida Statutes;
  - h. Whether the inclusion of the County's Cost Allocation in the FY 2015 Water Rate will result in an inequitable and unreasonable rate in violation of the Master Water Supply Contract and Section 373.713(2), Florida Statutes;

- i. Whether the Authority has the legal authority under the Interlocal Agreement, the Master Water Supply Contract and Section 373.713, Florida Statutes to re-assign the \$2,081,569 of excess funds pre-paid by the County for the REP to pay the Project costs, as reflected in the FY 2014 Water Rate and the FY 2015 Water Rate;
- j. Whether the Authority has the legal authority under the Interlocal Agreement, the Master Water Supply Contract and Section 373.713, Florida Statutes to re-assign excess bond funds issued by the Authority to fund the REP and various pipeline projects to pay the Project costs, as reflected in the FY 2014 Water Rate and the FY 2015 Water Rate;
- k. Whether the Authority has the legal authority under the Interlocal Agreement, the Master Water Supply Contract and Section 373.713, Florida Statutes to require the County to repay excess bond funds issued by the Authority to fund the REP and various pipeline projects through the water rate, as set forth in Resolution 2013-08;
- l. Whether the Authority has the legal authority under the Interlocal Agreement, the Master Water Supply Contract and Section 373.713, Florida Statutes to in essence finance the County's Cost Allocation for the Project without the County's permission and to assess the resulting costs on an annual basis through the water rate for a period of 20 years;
- m. Whether the Authority has failed to properly maintain and/or address deficiencies in the 1991 Peace River Facility and to adopt adequate budgets to provide for renewal and replacement costs to keep the Authority System in good working, in violation of the Master Water Supply Contract and Section 373.713(2), Florida and, whether such failures resulted in a need for the Project and the County Project Cost Allocation, as set forth in Resolutions 2013-07 and 2014-05, the Final FY 2014 and 2015 Budgets and the Final FY 2014 and 2015 Water Rates;
- n. Whether the Authority failed to utilize budgeted funds collected from the County as part of FY 1991 through FY 2013 water rates for renewal and replacement of the 1991 Peace River Facility and, if those funds had

properly been utilized by the Authority for renewal and replacement, would the estimated \$12.8 million Project costs have been reduced;

- o. Whether the 1991 Peace River Facility was inherently capable of producing 15 MGD without the Project;
  - p. Whether the Project Expansion is a valid new Authority Water Supply Source project under the Master Water Supply Contract;
  - q. Whether the additional 3 MGD capacity available at the 1991 Peace River Facility should be allocated among the Authority's water customers pursuant to Paragraph 29 of the Master Water Supply Contract, as a re-rating of a component of the Regional Water System, or pursuant to Paragraph 11 of the Master Water Supply Contract, as a new Authority Water Supply Source project;
  - r. Whether the County is entitled to a declaratory judgment, an injunction and other relief with respect to Issues 2.a through 2.q;
  - s. Whether Issues 2.a through 2.q have resulted in a breach of the Master Water Supply Contract entitling the County to damages, specific performance, attorney's fees and other relief; and
  - t. Whether Issues 2.a through 2.q have violated Florida's Deceptive and Unfair Trade Practices Act (Section 501.201, Florida Statutes) entitling the County to an injunction, attorneys fees and costs and other relief.
3. The County Administrator is directed to mail a certified copy of this resolution by letter meeting the requirements of Section 164.1052, Florida Statutes by certified mail, return receipt requested to the Executive Director of the Authority and provide copies of the resolution and letter to the county administrators for Manatee, Sarasota, and DeSoto counties and the City Manager of the City of North Port, within five (5) days of the enactment of this resolution.

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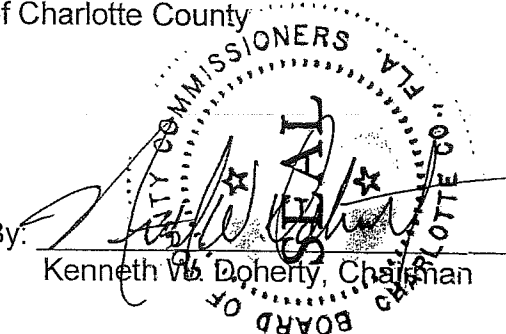
PASSED AND DULY ADOPTED this 9<sup>th</sup> day of September, 2014.

ATTEST:  
Barbara T. Scott, Clerk of Circuit  
Court and Ex-Officio Clerk to the  
Board of County Commissioners

By: McD. Beardino  
Deputy Clerk

Board of County Commissioners  
of Charlotte County

By: Kenneth V. Doherty  
Kenneth V. Doherty, Chairman



APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

By: Janette S. Knowlton  
Janette S. Knowlton, County Attorney  
LR2014-2725