

COST PARTICIPATION AGREEMENT NO. 1
FOR CONSTRUCTION AND OPERATION AND
MAINTENANCE OF THE BLACK CREEK
WATER RESOURCE DEVELOPMENT PROJECT

THIS AGREEMENT is entered into as of this ____ day of July 2021 (Effective Date) by and between City of Gainesville d/b/a Gainesville Regional Utilities (GRU), whose address is P.O. Box 147117, Sta. A122, Gainesville, Florida 32614-7117, and the St. Johns River Water Management District, a special taxing district created by Chapter 373, Florida Statutes, (the District), whose address is 4049 Reid Street, Palatka, Florida 32177-2529.

RECITALS:

A. The District is charged with the responsibility to prevent harm to the water resources of the District and to administer and enforce Chapter 373, Florida Statutes (F.S.), and the rules promulgated thereunder.

B. The District administers the consumptive use permitting program in part II of Chapter 373, F.S., and has implemented that program, in part, through chapter 40C-2, Florida Administrative Code (F.A.C.), including the Applicant's Handbook: Consumptive Uses of Water (August 29, 2018) (A.H.) incorporated by reference in rule 40C-2.101(1)(a), F.A.C.

C. The District is authorized and directed to develop and implement minimum flows and minimum water levels in sections 373.042 and 373.0421, F.S., and has implemented this program in part through chapter 40C-8, F.A.C.

D. The District issued GRU consumptive use permit (CUP) number 11339-6 (GRU CUP) on September 10, 2014. The GRU CUP authorizes GRU to withdraw 10,950.0 million gallons per year (30.0 million gallons per day, or MGD, annual average) for public water supply purposes through September 10, 2034.

E. Condition number 10 of the GRU CUP provides as follows:

The permittee's consumptive use of water as authorized by this permit shall not reduce a flow or level below any minimum flow or level established by the District or the Department of Environmental Protection pursuant to Section 373.042 and 373.0421, F.S. If the permittee's use of water causes or contributes to such a reduction, then the District shall revoke the permit, in whole or in part, unless the permittee implements all provisions applicable to the permittee's use in a District approved recovery or prevention strategy.

F. Condition number 39 of the GRU CUP provides as follows:

The permittee shall participate in developing and implementing any MFL prevention/recovery strategy approved by the Governing Board for the Clay/Putnam Lakes (i.e., Lakes Brooklyn, Geneva, Grandin and Cowpen) or approved by the Florida Department of Environmental Protection for the Lower Santa Fe River and Ichetucknee Rivers and Associated Priority Springs. The permittee's participation in developing and implementing an approved MFL prevention/recovery strategy shall be limited to offsetting or mitigating the impact of the permittee's groundwater allocation and shall not extend to offsetting or mitigating the impact of other water uses or changes and structural alterations to the watershed, surface water, and aquifers and the effects that such changes or alterations have had or will have, and the constraints that such changes or alteration have placed or will place, on the hydrology of the affected watershed. If approved as part of the regional water supply plan or plan amendment, and adopted by rule, if required, such a prevention/recovery strategy may include without limitation any of the following actions or combinations of them:

- a) Identifying and developing additional water supplies and other actions, consistent with the authority granted under chapter 373;
- b) Promulgation of a rule or orders setting forth phasing or a timetable, which will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses, including development of additional water supplies and implementation of conservation and other efficiency measures concurrent with, to the extent practical, and to offset, reductions in permitted withdrawals, consistent with the provisions of chapter 373;
- c) Actions taken by the District or water users, which cause any lake within the Clay/Putnam area to meet their minimum levels established in rule chapter 40C-8;
- d) Elimination or reduction of permitted water uses; or
- e) A lake impact avoidance/mitigation plan approved by the District, which by surface water augmentation, groundwater recharge, alternative water supply sources or other means offsets or mitigates the impact of the permittee's groundwater allocation on any Clay/Putnam area lake.

The District shall revoke the permit in whole or in part, if the permittee fails to implement its portion of any approved prevention/recovery strategy for any of these

waterbodies in accordance with the schedule included in the strategy, as required by this condition.

G. On April 14, 2021, at the District’s request, a notice of proposed rule was published in the Florida Administrative Register. This notice of proposed rule would establish the following new MFLs for Lakes Brooklyn and Geneva:

System Name	County	Minimum Level	Level (ft NAVD)
Brooklyn	Clay	P25	111.5
		P50	106.2
		P75	98.6
Geneva	Bradford,	P25	101.7
	Clay	P50	98.3
		P75	89.3

The minimum P25, P50, and P75 levels for Lake Brooklyn are based on the MFLs condition lake level time series (7/17/1957 – 12/31/2018), effective *{effective date}*, which is incorporated by reference and available at *{insert URL}* and upon request from the St. Johns River Water Management District, 4049 Reid Street, Palatka, FL 32177-2529.

MFL status of Lake Brooklyn will be assessed by comparing the minimum P25, P50, and P75 to the current P25, P50, and P75, respectively. The current P25, P50, and P75 for Lake Brooklyn are calculated by updating the current pumping condition lake level time series (7/17/1957 – 12/31/2018) with post-2018 observed data at SJRWMD gage 3360373. The current-pumping condition lake level time series is incorporated by reference and available at *{insert URL}* and upon request from the St. Johns River Water Management District, 4049 Reid Street, Palatka, FL 32177-2529.

The minimum P25, P50, and P75 levels for Lake Geneva are based on the MFLs condition lake level time series (7/1/1957 – 12/31/2018), effective *{effective date}*, which is incorporated by reference and available at *{insert URL}* and upon request from the St. Johns River Water Management District, 4049 Reid Street, Palatka, FL 32177-2529.

MFL status of Lake Geneva will be assessed by comparing the minimum P25, P50, and P75 to the current P25, P50, and P75, respectively. The current P25, P50, and P75 for Lake Geneva are calculated by updating the current pumping condition lake level time series (7/1/1957 – 12/31/2018) with post-2018 observed data at SJRWMD gage

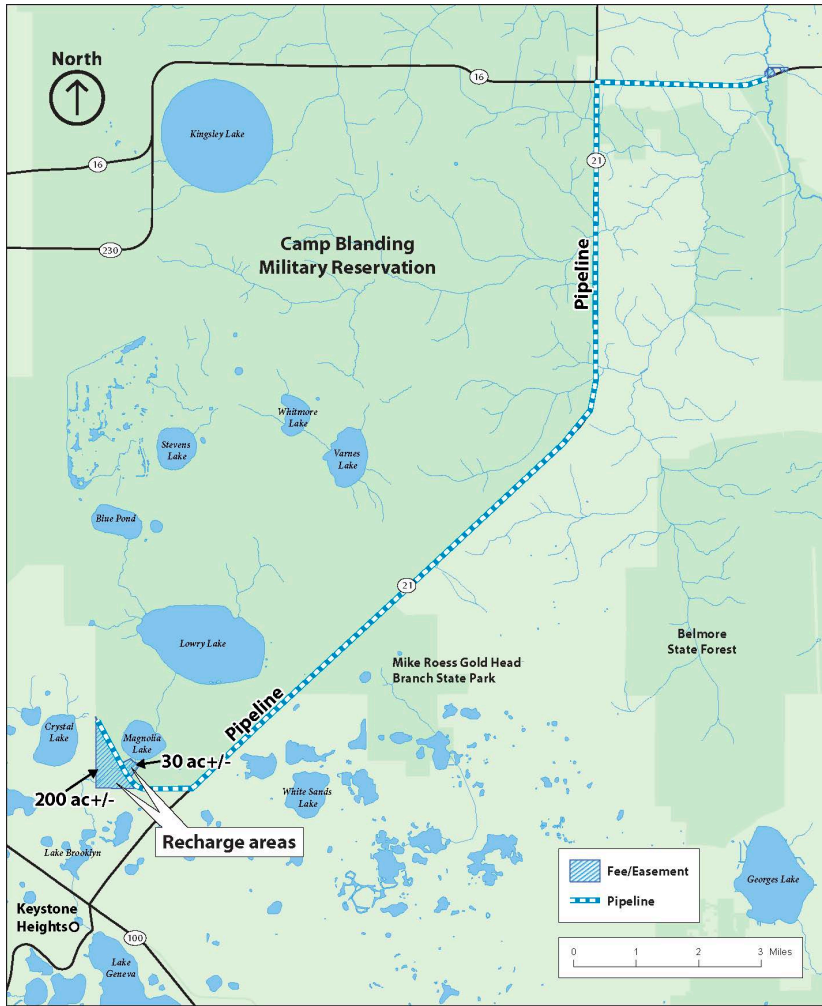
11590497. The current-pumping condition lake level time series is incorporated by reference and available at {insert URL} and upon request from the St. Johns River Water Management District, 4049 Reid Street, Palatka, FL 32177-2529.

H. At its May 11, 2021, Governing Board meeting, the District's Governing Board voted to adopt the proposed MFLs rule referenced in paragraph G above.

I. By an Order dated May 11, 2021, the District determined that Lakes Brooklyn and Geneva were not meeting (i.e., were below) these new MFLs. That same Order additionally determined that Lakes Brooklyn and Geneva were in recovery and approved a recovery strategy (B&G Recovery Strategy). This recovery strategy estimated a P50 deficit for Lakes Brooklyn and Geneva of 3.9 feet and 1.5 feet, respectively by the year 2045. The B&G Recovery Strategy provides that "[u]pon determination that groundwater withdrawals authorized by individual consumptive use permits held by a permittee will cause or contribute, individually or cumulatively, to a violation of the MFLs for Lakes Brooklyn or Geneva, the District will notify them pursuant to the standard limiting conditions ...of their responsibility to address their proportional share of the required recovery of the MFLs." A copy of B&G Recovery Strategy is attached as "Attachment 1."

J. The District will construct, operate and maintain the Black Creek Water Resource Development Project (Black Creek WRD). The Black Creek WRD is described in the B&G Recovery Strategy. The Black Creek WRD is also described in the North Florida Regional Water Supply Plan (NFRWSP). Among other things, the Black Creek WRD involves the construction of an intake facility at Black Creek, a 17-mile transfer pipeline, and a treatment and distribution system at Alligator Creek, which flows into Lake Brooklyn.

K. The Black Creek WRD is illustrated by the following graphic:



L. The Black Creek WRD will directly augment Lakes Brooklyn and Geneva and also recharge the Floridan Aquifer in the vicinity of Lakes Brooklyn and Geneva sufficiently to enable these lakes to meet the MFLs described in section G above until at least the year 2045.

M. In the B&G Recovery Strategy, the District allows entities holding CUPs whose authorized water withdrawals contribute to the deficit for the Lakes Brooklyn and Geneva MFLs to participate financially in the construction and operation of the Black Creek WRD as a means of addressing their proportional share of the required recovery of the MFLs for Lakes Brooklyn and Geneva and to ensure their future water use complies with the Lakes Brooklyn and Geneva MFL criteria by not causing a violation of the Lakes Brooklyn and Geneva MFLs. As used in this Agreement, the phrase “impacts to the Lakes Brooklyn Geneva MFLs” means GRU’s proportionate

share of the required recovery of the MFLs for Lakes Brooklyn and Geneva and compliance with the Lakes Brooklyn and Geneva MFL criteria to ensure no violations of the Lakes Brooklyn and Geneva MFLs, all as specified in the B&G Recovery Strategy.

N. Subject to the terms of this Agreement, GRU has elected to participate financially in the construction, operation, and maintenance of the Black Creek WRD to address GRU's impacts to the Lakes Brooklyn and Geneva MFLs to the extent described herein.

O. Subject to the terms of this Agreement, the District has elected to allow GRU to participate financially in the construction, operation, and maintenance of the Black Creek WRD to address GRU's impacts to the Lakes Brooklyn Geneva MFLs to the extent described herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits to be derived here from, the District and GRU agree as provided herein.

Incorporation of Recitals

1. The recitals set forth above are incorporated herein by reference and made a part hereof as fully as if set forth herein verbatim.

GRU's Purchase of Offsets and Payment for Black Creek WRD

2. The Black Creek WRD has an estimated construction project cost of between \$63.8 and \$82.9 million. As used herein, "construction cost" means actual costs of constructing project facilities, including construction management. The term "construction cost" does not include land acquisition, engineering design, permitting, and solicitation costs. The Black Creek WRD is projected to raise the P50 elevation of Lake Brooklyn by 9.9 feet. Therefore, the initial estimated construction cost per each 0.1-foot rise in the elevation of Lake Brooklyn's water level (hereafter referred to as "lift" or "offset") achieved by the Black Creek WRD would be approximately \$644,444 to \$837,778, but in no case shall the total cost per 0.1 foot of lift used to determine GRU's

construction cost participation payment exceed \$837,778.00. This lift is also sufficient to raise the P50 elevation in Lake Geneva by 4.9 feet.

3. The Black Creek WRD has an estimated initial annual total operation and maintenance cost of \$1,230,000. The 20-year net present value of this annual operation and maintenance cost was calculated to be \$24,406,674 using an annual inflation rate of 1.4% and a discount factor of 1.34%. The resulting GRU payment for each 0.1 foot of lake level lift for Black Creek WRD operation and maintenance is \$246,532.00.

4. GRU has elected to purchase 0.25 feet of lift. That purchase consists of 0.10 feet of lift for GRU's proportionate share of the impact from its 2014 – 2018 average water use towards the 1.6 feet of existing needed recovery in Lake Brooklyn and the 0.3 feet of existing needed recovery in Lake Geneva, and also 0.15 feet of lift so as to offset the impact from GRU's water use over and above its 2014-2018 average use towards the 3.9 feet of future recovery in Lake Brooklyn and 1.5 feet of future recovery in Lake Geneva.

5. Based on the 0.25 feet of lift that GRU is purchasing, the total maximum construction cost GRU will pay based on the 0.1-foot lake level increase construction cost estimate of \$837,778 is \$2,094,444. This maximum construction cost payment may be lower based on the payment methodology in paragraph 6 below. Not later than November 1, 2021, GRU will pay, deposit and deliver, in escrow, to the Florida Department of Financial Services (DFS) as Escrow Agent under the terms of an Escrow Agreement to be entered into among GRU, the District, and DFS (Escrow Agreement), cash or cash equivalent in the principal sum of \$1,047,222 representing one-half of GRU's total proportional share of the Black Creek WRD construction cost for the amount of lift GRU is purchasing. After GRU pays the Escrow Agent this amount, the District will determine the final award for the construction bid for the Black Creek WRD, and based on that bid award, within 30 days thereafter, the District will notify GRU of the final construction cost per 0.1

feet of lift and notify GRU of the dollar amount of the remaining portion of the Black Creek WRD construction cost GRU must pay the escrow agent (determined by final construction cost per 0.1 feet of lift multiplied by feet of lift the GRU is purchasing). However, regardless of the final construction cost per 0.1 of lift, GRU's remaining construction cost payments under this Agreement shall not exceed \$1,047,222. After the District notifies GRU of the final construction cost per 0.1 foot of lift multiplied by the feet of lift GRU is purchasing, and accounting for GRU's initial construction cost payment specified above, then not later than November 1, 2022, GRU will pay, deposit, and deliver, in escrow, to the Escrow Agent, the remaining amount of GRU's construction cost payment. These construction cost payments are valid for the term of this Agreement and any extensions of this Agreement.

6. As another component of GRU's lift purchase, GRU will pay for GRU's share of the Black Creek WRD operation and maintenance costs as a lump sum payment, representing the net present value of 20 years of annual operation and maintenance costs using an annual inflation rate of 1.4% and a discount factor of 1.34%. Based on the 0.25 feet of lift that GRU is purchasing, and the net present value operation and maintenance cost of \$246,532 per 0.1 feet of lift, GRU will pay an amount of \$616,330. GRU will pay this amount in two payments. Therefore, in addition to the construction cost payments specified above, by November 1, 2021, GRU will pay to the Escrow Agent the amount of \$308,165. By November 1, 2022, GRU will pay to the Escrow Agent the amount of \$308,165. This operation and maintenance payment amount is valid only for the term of this Agreement. If GRU wishes to extend the term of this Agreement, additional sums based on actual costs to operate and maintain the Black Creek WRD must be provided.

Access of Funds Via Escrow Agent

7. After GRU transfers the above referenced amounts to the Escrow Agent, the District shall access funds from the Escrow Agent pursuant to the terms of the Escrow Agreement to

construct, operate and maintain the Black Creek WRD. When requesting disbursements, the District shall use the prescribed forms of DFS and will provide a cover letter to DFS with a copy to GRU stating the following:

In accordance with Cost Participation Agreement Number [], I request disbursement of funds in the amount of _____ DOLLARS (\$ _____) and certify that an equal amount has been expended by the District for construction or operation and maintenance of the Black Creek Project.

District Design, Permitting and Operation of Black Creek WRD

8. The District will undertake all reasonable efforts to design, permit, construct, operate, and maintain the Black Creek WRD up to its 10 MGD capacity, and in a manner which maximizes the flowrate discharged and aquifer recharge to raise the lake levels of Lakes Brooklyn and Geneva to the levels required to achieve compliance with the applicable minimum levels contained in Chapter 40C-8, F.A.C.

9. The District will use funds disbursed by the Escrow Agent for the sole purpose of payment for the construction or operation and maintenance of the Black Creek WRD.

10. In exchange for GRU's financial participation in the Black Creek WRD provided in this Agreement, the District assumes all liability and responsibility, through the operation of the Black Creek WRD, of ensuring that sufficient lake augmentation or other water conveyance occurs to enable Lakes Brooklyn and Geneva to meet the applicable minimum levels set forth in Chapter 40C-8, F.A.C., and to address GRU's impacts to the Lakes Brooklyn and Geneva MFLs to the quantity of lift GRU has purchased. The District's liability and responsibility includes addressing and resolving any shortfalls in Black Creek WRD function or design, including shortfalls in effective lake augmentation, aquifer recharge and shortfalls or other impediments that may result in lake levels not increasing to the projected levels including, but not limited to, sinkhole formation, water quality issues, regulatory issues, third party lawsuits, and project cost overruns.

11. Any failure to design, permit, construct, operate or maintain the Black Creek WRD in a timely or sufficient manner, and any consequences resulting from the same, shall be the District's sole responsibility.

12. While the Black Creek WRD may provide regional recharge benefits beyond eliminating the recovery deficit of the Lakes Brooklyn and Geneva MFLs, the District will prioritize the design, permitting, construction, operation and maintenance of the Black Creek WRD to eliminate the recovery deficit of the Lakes Brooklyn and Geneva MFLs and to address GRU's impacts to the Lakes Brooklyn and Geneva MFLs to the quantity of lift GRU has purchased before any regional recharge or other non-MFL benefits.

No Ownership of Control by GRU of Black Creek WRD

13. GRU will have no ownership in or operational control over the Black Creek WRD, including no ownership or control over any real estate interest needed to support the Black Creek WRD. GRU shall have no obligation to design, permit, construct, operate or maintain any portion of the Black Creek WRD. Nothing in this Agreement shall be construed to create a joint venture, partnership, or any other co-ownership arrangement between the District and GRU. GRU has no obligation to any contractors, materialmen, suppliers, or any other entities performing work on the Black Creek WRD. All contracts or agreements for work on the Black Creek WRD shall be solely between the contractor and the District.

14. Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party, its officers, employees and agents. District accepts all risks arising from construction or operation of the Black Creek WRD. Nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available under the laws of the state of Florida, nor as a waiver of sovereign immunity of the state of Florida, or of any political subdivision of the state of Florida, or of GRU, beyond the waiver provided for in §768.28,

Fla. Stat., as amended. The District shall acquire and maintain throughout the term of this Agreement such liability, workers' compensation, and automobile insurance as required by its current rules and regulations.

**District Representations Regarding GRU's Financial
Participation in the Black Creek WRD**

15. The District represents and warrants to GRU that the quantity of lift, lake augmentation, aquifer recharge or other benefit from the Black Creek WRD accrued to GRU by virtue of GRU's financial participation in the Black Creek WRD is in excess of any water resource development or general public benefit of that project such as, but not limited to, one or more of the following:

- a. quantities reserved or otherwise designated for the benefit of the water resource or for water resource development;
- b. quantities needed to offset of deficits associated with existing exempt and sub-threshold consumptive uses;
- c. quantities needed to offset deficits associated with anticipated future exempt and sub-threshold consumptive uses;
- d. quantities needed to offset deficits associated with permitted consumptive uses located in other water management districts or consumptive uses located outside the State of Florida; and
- e. quantities accrued to other participants by virtue of their financial participation in the Black Creek WRD.

16. The District has full authority and ability to enter into this Agreement. The provisions of this Agreement do not conflict with any District regulatory program.

17. The District understands and recognizes that GRU intends to rely on the District's implementation and operation of the Black Creek WRD as the sole means for GRU to demonstrate compliance with the Lake Brooklyn and Lake Geneva MFLs and to address GRU's impacts to the Lakes Brooklyn and Geneva MFLs to the quantity of lift GRU has purchased to enable GRU to provide water for public supply purposes pursuant to the terms of the GRU CUP.

**Compliance with Consumptive Use Permit and Brooklyn and Geneva MFLs
and Recovery Strategy**

18. If GRU applies to renew or modify the GRU CUP, the District shall accept this Agreement, for its duration, to demonstrate compliance with the requirements of Rule 40-2.301(2)(h), F.A.C. and sections 2.3(h) and 3.8 of the A.H. relative to the Lake Brooklyn and Lake Geneva MFLs and GRU's proposed groundwater withdrawals up to the amount of lift purchased by GRU to offset its impacts to the Lakes Brooklyn and Geneva MFLs. GRU and the District will use the North Florida Southeast Georgia Regional Groundwater Flow Model version 1.1 (NFSEG) in combination with the KHTM local scale model version 2.0 to determine the deficit in Lake Brooklyn MFL caused by GRU's proposed groundwater withdrawals to be compared to the amount of lift GRU has purchased under this Agreement. Upon mutual agreement of the parties, alternative groundwater flow models or future updates to the NFSEG Model version 1.1 or KHTM local scale model version 2.0 may be utilized for the determination of deficits and lift.

19. This section shall remain valid regardless of the design, permitting, construction or operational status of the Black Creek WRD.

20. From the Effective Date through the duration of this Agreement, GRU will bear no responsibility for taking actions to offset lake stage deficits of either Lake Brooklyn or Lake Geneva resulting from GRU's groundwater withdrawals up to the amounts of lift specified in this Agreement.

21. If GRU timely makes the payments provided herein, GRU shall, for the duration of this Agreement, be deemed to have fully complied with the requirements of conditions 10 and 39 of the GRU CUP(s) and with the requirements of Rule 40C-2.301(2)(h), F.A.C., and Sections 2.3(h) and 3.8 of the Consumptive Uses of Water Applicants Handbook (A.H.), and any statutory provisions, regarding minimum levels for Lakes Brooklyn and Geneva, and recovery for the same,

up to the amounts of lift specified in this Agreement, regardless of any or all of the following:

- a. the status of the District's construction, implementation, or operation of the Black Creek WRD;
- b. any changes occurring to the construction or operation of the Black Creek WRD;
- c. the cost of constructing the Black Creek WRD increasing beyond the amounts used in this Agreement;
- d. any changes to permitted consumptive uses located in other water management districts or consumptive uses located outside of the State of Florida;
- e. the effectiveness or lack thereof of the Black Creek WRD in increasing lake levels of Lakes Brooklyn and Geneva; and
- f. subsequently approved changes or revisions to the B&G Recovery Strategy.

22. GRU's ability to address GRU's impacts to the Lakes Brooklyn and Geneva MFLs to the quantity of lift GRU purchased, or to be deemed in compliance with the aforementioned permit, rule, B&G Recovery Strategy, and any statutory obligation related to the Lakes Brooklyn and Geneva MFLs, shall not be contingent on the District's construction, operation or maintenance of the Black Creek WRD.

23. Within 90 days of executing this Agreement, the District will amend the B&G Recovery Strategy to include the following language: "Entities who have executed agreements to participate in the Black Creek WRD project have addressed their proportional share of impacts to the MFLs and are in compliance with the B&G Recovery Strategy up to the amount of lift purchased by that Entity." In the interim, this Agreement shall be deemed by the District to satisfy the B&G Recovery Strategy. The District's failure to amend the B&G Recovery Strategy to include this language within the specified timeframe shall not affect the determination that by entering into this Agreement GRU has addressed its impacts to the Lakes Brooklyn and Geneva MFLs referenced in section G above and is in compliance with the B&G Recovery Strategy up to the amount lift

purchased by GRU.

24. GRU may submit and the District will accept this Agreement as “good cause” justifying GRU to apply to renew the GRU CUP more than one year before the CUP expiration date as required by rule 40C-2.361(1), F.A.C.

25. If GRU fails to make any of the payments of its proportionate share of the Black Creek WRD construction costs or operation and maintenance costs specified herein, the District may enforce the terms of this Agreement and GRU shall not be entitled to use this Agreement to demonstrate compliance with the requirements of Rule 40C-2.301(2)(h), F.A.C. and sections 2.3(h) and 3.8 of the A.H. relative to the Lake Brooklyn and Lake Geneva MFLs.

**Use of GRU’s Lift Purchased from Black Creek WRD
for Other MFLs and Environmental Resources**

26. The benefits from the Black Creek WRD associated with GRU’s payments herein will also be considered an offset or benefit toward addressing impacts or deficits of other water bodies with established minimum flows or levels or with other environmental resource impacts attributable to the GRU CUP authorized withdrawals to the extent operation of the Black Creek WRD creates such benefits. To the extent permitted by the Florida Department of Environmental Protection’s rules, the District shall consider such offset or benefit toward addressing impacts or deficits to the re-evaluated minimum flow or level and recovery or prevention strategy for the Lower Santa Fe and Ichetucknee Rivers and associated priority springs. When the District issues a notice of proposed rule development to establish a new or re-evaluated minimum water flow or water level for waterbodies other than Lakes Brooklyn and Geneva or new minimum levels for groundwater, the District will evaluate the extent to which the operation of the Black Creek WRD provides benefits to, or offsets impacts from groundwater withdrawals to such other minimum water levels or water flows or environmental resource impacts and inform GRU of same.

Option for Additional Participation

27. For the duration of this Agreement, GRU has the option to pay the District for the right to use additional Black Creek WRD benefits to offset future impacts to the Lakes Brooklyn and Geneva MFLs and other impacts or deficits of other water bodies with established minimum flows or levels or with other environmental resource impacts resulting additional quantities of groundwater GRU would seek authorization to withdraw under the GRU CUP, including and modifications of that CUP, at the same cost per foot of recovery used to calculate GRU's original participation costs described herein (i.e., construction, operation and maintenance costs). This option remains so long as the Lakes Brooklyn and Geneva water level augmentation capabilities of the Black Creek WRD have not been otherwise been assigned. If GRU desires to execute this option, GRU shall notify the District of the same along with an offer of the additional payment for the right to use the requested additional benefits. Upon receiving the GRU's notice, the District shall determine whether adequate benefits from the Black Creek WRD remain available for GRU's use and whether GRU has correctly calculated the amount of the additional payment required for such use. If the District determines that additional benefits are available for GRU's use and determines the correct payment amount for such additional benefits, GRU and the District will amend this Agreement to reflect the payment and use of such additional benefits.

Miscellaneous

28. All notices or other communications which may be required under the terms of this Agreement shall be in writing and shall be deemed to have been duly given if sent by overnight courier (e.g., Federal Express), or if mailed by United States certified mail, return receipt requested, postage prepaid, addressed to the respective party at the addresses set forth below:

If to GRU: Supervising Engineer
P.O. Box 147117, Station A136
301 S.E. 4th Avenue
Gainesville, FL 32614-7117

With copy to: Hopping Green and Sams
P.O. Box 6526
Tallahassee, FL 32314

If to District: St. Johns River Water Management District
4049 Reid Street
Palatka, FL 32177-2529
Attn: Office of General Counsel

29. GRU will take no action opposing (or encourage any other person or entity to oppose) the District's application to any government body or special district for authorization to construct, operate, and maintain the Black Creek WRD.

30. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida.

31. This Agreement constitutes the entire understanding and agreement between the parties hereto with respect to the subject matter hereof. This Agreement may not be modified or amended except by the written agreement of the parties to be bound thereby.

32. In the event of any legal or administrative proceedings arising from or related to this Agreement, including appeals, each party shall bear its own attorney's fees.

33. Two (2) originals of this Agreement shall be executed, with each party provided one (1) fully executed original.

34. The parties intend this Agreement to be an interlocal agreement pursuant to section 163.01, FS., and GRU shall record this Agreement at GRU's expense with the Clerk for the Circuit Court in and for Putnam and Alachua Counties, Florida.

35. The fact that one of the parties may be deemed to have drafted or structured any provision hereof shall not be considered in construing the particular provision either in favor of or against such party.

36. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable, the same as if the invalid or unenforceable provision had never been a part of the Agreement; and the remaining provisions of the Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement.

37. The terms of this Agreement shall inure to the benefit or obligation of the successors and assigns of the parties. In addition, for the duration of this Agreement, if GRU determines that it no longer requires all or a portion of the amount of lift GRU purchased under this Agreement, GRU may tender all or a portion of that amount of lift to the District. If the District agrees to accept the amount of lift GRU is tendering, GRU and the District shall enter into an amendment of this Agreement specifying the terms for GRU's return of that amount of lift to the District. In general, as of the Effective Date, the parties envision that an amendment to this Agreement allowing GRU to return to the District all or a portion of the amount of lift purchased will require the District to pay to GRU an amount of money representing the cost of such lift under the lift payment formulas specified herein. The parties also envision that the District may also sell to a third party some or all of the amount of lift GRU is returning to the District. GRU may not directly sell or resell to a third party all or a portion of the amount of lift GRU has purchased under this Agreement. This Agreement does not create any obligation for the District to purchase any part of the lift tendered by GRU nor create any expectation in GRU that the District would agree to such purchase.

38. The District shall provide no input nor attempt to influence in any way the source or method GRU employs to recover costs associated with GRU's participation in this Agreement or

the Black Creek WRD. This prohibition shall not apply if GRU requests the District input. In such case, the District's input shall be limited to the extent of GRU's request.

39. This Agreement shall remain in effect through December 31, 2045.

40. GRU's participation in this Agreement shall not be construed in any way to prejudice GRU's future ability to rely on other projects or action of the District or other entities for additional benefits or offsets to the Lakes Brooklyn and Geneva MFLs, other established minimum water levels or water flows and associated prevention or recovery strategies, and other water resource impacts.

41. This Agreement may be enforced through specific performance. This Agreement may also be used in any legal or administrative proceeding involving GRU and the Lakes Brooklyn and Geneva MFLs.

42. Any party to this Agreement may publish notice of the Agreement. If this Agreement is challenged or opposed by a third party, the District and GRU will jointly defend against such challenge, including any subsequent appeals.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates set forth below.

[SIGNATURES ON FOLLOWING PAGES]

Attest:

Omichele D. Gainey, City Clerk

CITY OF GAINESVILLE

BY: _____

Mayor Lauren Poe

Date of Execution: _____

Approved as to form and legality:

By: _____

Name: _____

City Attorney

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

By: _____
Douglas Burnett, Chairman

Attest: _____
Susan Dolan, Secretary

(SEAL)

Approved as to Legal Form and Content:

Mary Ellen Winkler, General Counsel

Filed on this _____ day of _____, 2021.

District Clerk

ATTACHMENT 1

RECOVERY STRATEGY FOR IMPLEMENTATION OF LAKES BROOKLYN AND GENEVA MINIMUM LEVELS