

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: August 15, 2022

RE: Emergency Water Service Agreement with Polk City to Continue Providing Both Parties Temporary Water Service on an Emergency Basis Through Existing Interconnect Facilities

Attached for your approval is an Emergency Water Service Agreement to permit the City of Lakeland and Polk City to continue providing both parties temporary water service on an emergency basis using the existing interconnect facilities.

In 2011, an emergency interconnect facility to serve Polk City and City of Lakeland was constructed and placed into service to provide temporary potable water service to both parties on an emergency basis. An interconnect agreement was approved by the City Commission on June 6, 2011, and was fully executed by both parties with an effective date of July 11, 2011.

The initial term of the agreement was ten years with options for extensions of four (4) five (5) year consecutive terms upon mutual written consent by both parties. In the absence of a written signed extension, the agreement was set to expire on its own accord. Neither party initiated a request for an extension of the agreement within the initial ten-year period; thus, the original agreement expired on July 11, 2021.

The uninitiated request for the extension was simply an oversight and both parties desire to continue providing emergency water service through the interconnect facilities. The original agreement was updated and has been reviewed by the City Attorney of both parties.

It is recommended that the City Commission approve the Emergency Water Service Agreement with Polk City to continue providing both parties temporary water service on an emergency basis through existing interconnect facilities and that the appropriate City officials be authorized to execute the Agreement.

Attachment

EMERGENCY

WATER SERVICE AGREEMENT

THIS AGREEMENT is made and entered in this 15th day of August, 2022, by and between the CITY OF LAKELAND, FLORIDA, a municipal corporation, hereinafter referred to as “Lakeland” and the POLK CITY, FLORIDA, a municipal corporation, hereinafter referred to as “Polk City”.

WHEREAS, Lakeland owns and operates a potable water system located in Polk County, Florida, hereinafter referred to as the “Lakeland Water System”; and,

WHEREAS, Polk City owns and operates a potable water system located in Polk County, Florida, hereinafter referred to as the “Polk City Water System”; and,

WHEREAS, Polk City has established an emergency interconnect to Lakeland and cooperates in the sale and/or purchase of emergency water service, subject to the terms and conditions of this Agreement; and,

WHEREAS, Lakeland has established an emergency interconnection to Polk City and cooperates in the sale and/or purchase of emergency water service, subject to the terms and conditions of this Agreement.

ACCORDINGLY, in consideration of the above stated recitals, mutual covenants, agreements, and promises contained herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the parties hereby covenant and agree as follows:

1.0 RECITALS

The foregoing recitals are true and correct, and form a material part of this Agreement.

2.0 DEFINITIONS

The parties agree that in construing the Agreement, the following words, phrases, and terms shall have the following meanings unless the context indicates otherwise:

2.1 “Agreement” means this Emergency Water Service Agreement as it may from time to time be modified.

2.2 “Distribution Facilities” means those Polk City facilities used to receive or in the future to deliver potable water from the Lakeland Transmission Facilities; or those Lakeland facilities used to deliver or in the future receive potable water from the Polk City Transmission Facilities .

2.3 "Emergency" means a random and infrequent occurrence, which results from an equipment or main failure and the consequential decrease in water available for distribution by either party to its customers. It shall not include insufficient water available where such a situation results from insufficient plant capacity, inadequate storage facilities, continuing operational deficiencies or some other occurrence of a similar kind. An emergency is an unpredictable development with significant impacts that is outside the direct control of the parties.

2.4 "GPD" means gallons per day.

2.5 "Lakeland Water System" means those facilities from which Polk City can received Emergency Water Service on an emergency wholesale basis and which are operated, maintained, and replaced by Lakeland.

2.6 "Polk City Water System" means those facilities from which Lakeland is receiving Emergency Water Service on an emergency wholesale basis and which are operated, maintained, and replaced by Polk City.

2.7 "Providing Entity" means the entity which is providing Emergency Water Service through this Agreement.

2.8 "Receiving Entity" means the entity which is receiving Emergency Water Service through this Agreement.

2.9 "Requesting Entity" The Receiving Entity requesting Emergency Water Service from the Providing Entity through this Agreement.

2.10 "Transmission Facilities" means those lines, pipes, water mains, meters, and appurtenant equipment used to transmit potable water from the Lakeland System or from the Polk City System to the point of connection with the Distribution Facilities of Polk City or in the future Lakeland for emergency purposes.

2.11 "Water Service" means potable water which is pumped from the ground, treated, transmitted, and distributed in accordance with applicable current governmental requirements and regulations.

3.0 PURPOSE

An interconnection has been established between Lakeland's water system and Polk City's water system at a general location as shown in Exhibit A. Subject to the terms and conditions hereinafter set forth, the Providing Entity shall sell and deliver Water Service for emergency use to the Receiving Entity and; the Receiving Entity shall purchase and receive Water Service from the Providing Entity in the event of an emergency. It is mutually acknowledged by both parties that the intent of this Agreement is to meet an emergency need of the parties. The Providing Entity

agrees to furnish Emergency Water Service to the Receiving Entity provided that such emergency is of such nature and duration as to justify a demand by the Receiving Entity to have water furnished by the Providing Entity. The Providing Entity shall have no obligation to make emergency water available, shall have no liability for denial of emergency water service, shall have the express right to determine whether such an emergency actually exists, shall have the right to determine its ability to provide any, part or all of the Receiving Entity's emergency needs and shall have the right to discontinue such emergency service at any time for any reason without any liability to the Receiving Entity.

4.0 TERM

This Agreement shall continue in effect unless terminated pursuant to Section 15 below.

5.0 PROVISION OF WATER SERVICE

Lakeland shall provide Emergency Water Service to Polk City, its successors, and assigns and Polk City shall provide Emergency Water Service to Lakeland, its successors, and assigns in the following manner and subject to the following terms and conditions:

5.1 Connection to Transmission Facilities:. Operation, maintenance, and replacement of all pipes, fittings, valves, and appurtenances, including the Transmission Facilities, up to the point of connection into the distribution system and the water plant of providing capacity shall be the responsibility of the Providing Entity except for those Transmission Facilities located within the Receiving Entity's Water System, which shall be operated and maintained by the Receiving Entity. Operation, maintenance, and replacement of the Distribution Facilities and the water flow meter from the point of connection shall be the responsibility of the Receiving Entity.

5.2 Connection Fees: As long as Water Service is provided in accordance with Article 3 of this Agreement (non-firm basis), connection or capacity impact fees will not be charged to either party for the interconnection specified in this Agreement. Neither party shall use this water capacity to meet permanent water demands, peak demands or to otherwise rectify continuing water supply deficiencies.

5.3 Metering:

5.3.1 Lakeland shall own, operate and maintain the meter used for measuring all water flowing from the Transmission Facilities of Lakeland to the Distribution Facilities of Polk City. Metering equipment shall remain the property of Lakeland.

5.3.2 Polk City shall own, operate and maintain the meter used for measuring all water flowing from the Transmission Facilities of Polk City to the Distribution Facilities of Lakeland. Metering equipment shall remain the property of Polk City.

5.3.3 The metering equipment serving Polk City shall be of Lakeland's choice, and the metering equipment serving Lakeland shall be of Polk City's choice. All metering equipment shall be installed at a readily accessible location and shall record flow with an error not to exceed plus or minus two percent (2%) of full-scale reading, suitable for billing purposes.

5.3.4 Polk City and Lakeland agree to own, operate and maintain their own respective metering equipment without charging the other party a maintenance fee of any type, fixed or otherwise.

5.4 Water Service: Both parties mutually agree that after connection of the Distribution Facilities of the Receiving Entity to the Transmission Facilities of Providing Entity as provided herein, the Providing Entity will then provide Emergency Water Service, subject to Article 3 herein, at the available Providing Entity system pressure and at the rate provided by Article 6 herein. Total water flow by the Providing Entity shall be calculated by the Providing Entity and submitted to the Receiving Entity.

6.0 PAYMENT: WATER USER CHARGES

The Providing Entity agrees to provide potable water for Emergency use by the Receiving Entity in accordance with the terms and conditions hereof at the highest current commercial flat rate (unit price) charged by either party shall be the prevailing rate that the Providing Entity shall charge the Receiving Entity. As long as Water Service is provided in accordance with Article 3 of this Agreement, neither party shall charge the other a fixed charge and only volume charges shall apply.

7.0 TEMPORARY SERVICE

The parties hereby recognize and state that service to either party under this Agreement is considered to be temporary on an emergency basis. This service is not intended to provide for improved system reliability, assist in fire expected/designed fire protection, meet peaking needs of either party, or to provide capacity on an interim basis to accommodate the capital improvement programs of either party. It should not be construed that either party to this Agreement is permanently allocating capacity under the terms and conditions of this Agreement.

8.0 DEMAND LIMITATIONS

In an emergency situation, which shall be defined as limited to ninety-six (96) hours, the Providing Entity shall have the right to regulate and control the volumes of water furnished to the Receiving Entity and such emergency service controls may cause reduced level of service to the Receiving Entity's customers. Such emergency situations shall occur only when the public health, safety, or

welfare are endangered. Otherwise, the Providing Entity may restrict flows to the Receiving Entity such that the Providing Entity has the aforesaid option due to the nature of the emergency service being provided. The Receiving Entity recognizes and accepts that the service provided by the Providing Entity is interruptible and shall not be relied upon as anything other than emergency water.

9.0 REGULATORY COMPLIANCE AND DISCLOSURE

Both parties shall at all times endeavor to provide its best effort to comply with all local, state, and federal regulations regarding Emergency Water Service. This Agreement does not contemplate that the Providing Entity will be considered more than an emergency source for potable water service or supplemental potable water resource during an extreme fire protection occurrence to the Receiving Entity. If, for some reason, the Providing Entity is not in compliance with local, state, and/or federal regulations concerning potable Water Service, then the Providing Entity shall have the right to discontinue service to the Receiving Entity for the duration of the time period of noncompliance with such aforesaid regulations.

10.0 RETAIL SERVICE AREAS

Both Lakeland and Polk City mutually agree that the planned service areas of each entity are as delineated on and as described in Exhibits "B" and "C", respectively, both of which are attached hereto and made a part hereof. Neither party shall provide or offer to provide service within the service area of the other party without the consent of that party.

11.0 DISCLAIMER OF THIRD-PARTY BENEFICIARIES

This Agreement is solely for the benefit of the formal parties herein, and no right or cause of action shall accrue upon or by reason hereof to or for the benefit of any third party not a formal party hereto.

12.0 DISCLAIMER OF SECURITY

Notwithstanding any other provisions of this Agreement, Lakeland and Polk City expressly acknowledge that they have no pledge of or lien upon any real property, personal property, or any existing or future revenue source of the other as security for any amounts of money payable by the other under this Agreement.

13.0 DEFAULT NOTICE: PROPER FORM

In the event of a default by the Receiving Entity under the provisions herein, the Providing Entity shall have the option of discontinuing and disconnect Emergency Connection Service no sooner than thirty (30) days from the time of delivery of notice to the Receiving Entity. Any notice required or allowed to be delivered hereunder shall be in writing and deemed to be delivered when: (a)

hand delivered to the official hereinafter designated; or (b) upon receipt of such notice when mailed by certified U.S. mail, postage prepaid, return receipt requested, addressed to the party at the address set forth below or at such other address as the party shall have specified by written notice to the other party delivered in accordance herewith:

For Polk City:

Polk City
Attention City Manager
123 Broadway Blvd. S.E.
Polk City, Florida 33868
(863) 984-1375

For Lakeland:

City of Lakeland, Department of Water Utilities
Attention Director of Water Utilities
501 E. Lemon Street, Mail Code W-ADMN/ENG
Lakeland, Florida 33801
(863) 834-8316

14.0 SEVERABILITY

If any part of this Agreement is found to be invalid or unenforceable by a court of competent jurisdictions, such invalidity or unenforceability shall not affect the other parts of this Agreement of the rights and obligations of the parties contained herein are not materially prejudiced and of the intentions of the parties can continue to be effected. To that end, this Agreement is declared severable.

15.0 TERMINATION

This Agreement can be terminated upon 60-days written notice by either party to the other.

16.0 HOLD HARMLESS/INDEMNIFICATION

Each party shall be liable for its own actions and negligence, to the extent permitted by the monetary provisions of Section 768.28 Florida Statutes. Polk City, additionally, agrees to indemnify, release, and hold forever harmless, Lakeland, its agents, employees, and elected officers against any claims, liability, expense, loss, cost, damages or causes of action of every kind or character, arising out of Polk City's operation of the Polk City Public Utilities System. The provisions of this paragraph shall survive termination or expiration of this Agreement.

17.0 APPLICABLE LAW

This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida and venue shall be the Circuit Court of the 10th Judicial Circuit Polk County, Florida.

18.0 ENTIRE AGREEMENT

This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this Agreement. Amendments to and waivers of the provisions herein shall be made by the parties in writing by formal amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the duly authorized representatives as of the date first written above.

CITY OF LAKELAND, FLORIDA

POLK CITY, FLORIDA

By: _____

By: _____

H. WILLIAM MUTZ
Mayor

STEVE KARSJEN
Mayor

Attest: _____

Attest: _____

KELLY S. KOOS
City Clerk

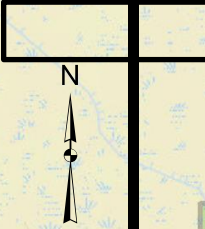
PATRICIA JACKSON
City Clerk

APPROVED AS TO FORM
AND CORRECTNESS:

APPROVED AS TO FORM
AND CORRECTNESS:

PALMER C. DAVIS
City Attorney

THOMAS A. CLOUD, Esq.
Gray-Robinson, P.A.
City Attorney

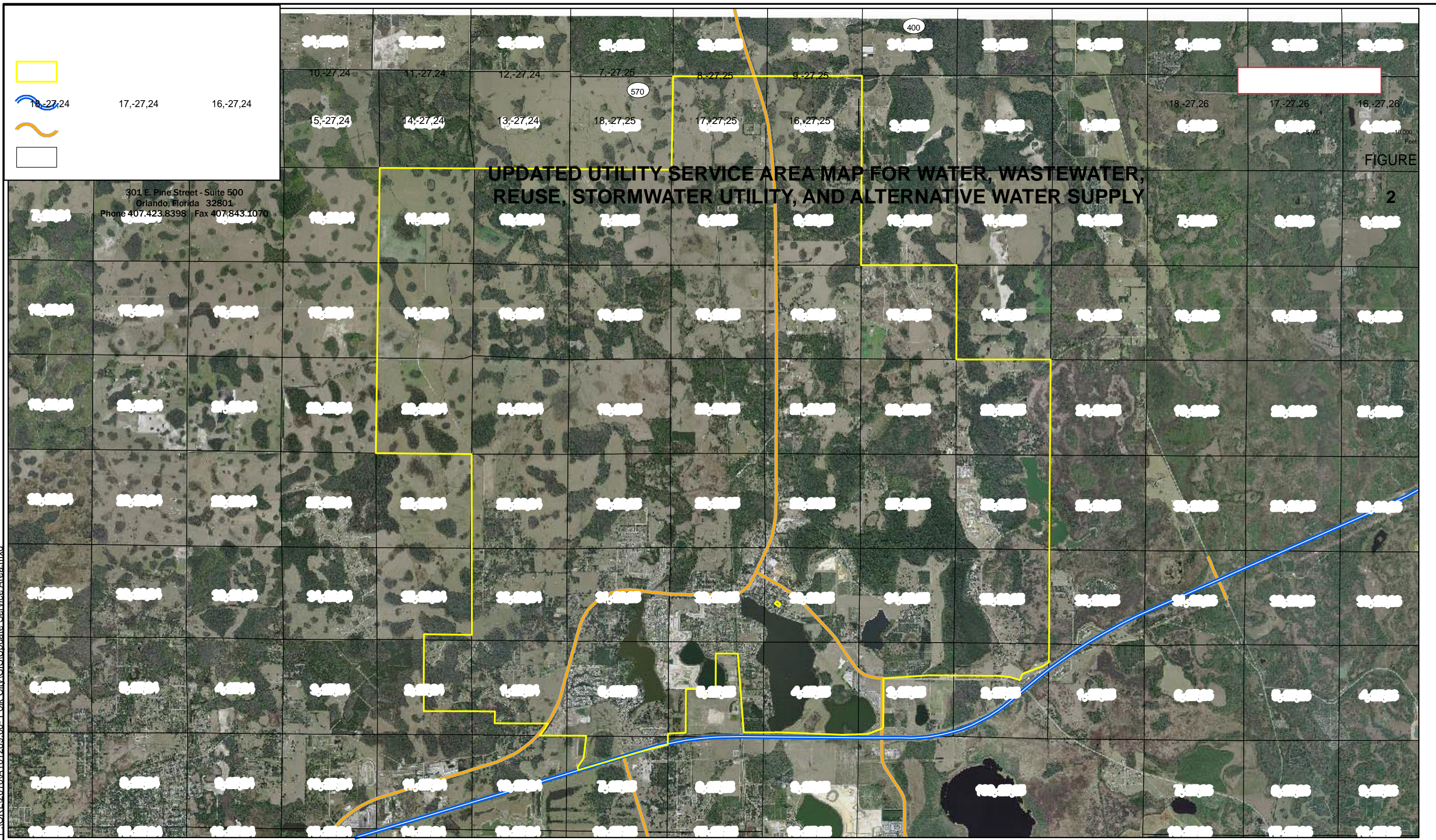


COL WASTE WATER SERVICE AREA

COL WATER SERVICE AREA

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