



## Interoffice Memorandum

February 7, 2023

**TO:** Mayor Jerry L. Demings  
-AND-  
County Commissioners

**FROM:** Ed Torres, M.S., P.E., LEED AP, Director  
Utilities Department

A handwritten signature in black ink, appearing to read "Ed Torres", with a long horizontal stroke extending to the right.

**SUBJECT: BCC AGENDA ITEM – Consent Agenda  
March 07, 2023 BCC Meeting  
Interlocal Agreement Relating to the Governance of the Cypress Lake  
Alternative Water Supply Project  
Contact Person: Teresa Remudo, P. E., Deputy Director  
Utilities Department  
407-254-9803**

On August 30, 2011, the Board approved the Interlocal Agreement Amongst the Water Cooperative of Central Florida, Orange County and Reedy Creek Improvement District Relating to the Preliminary Design and Permitting of the Alternative Water Supply Project Known as the Cypress Lake Wellfield and Related Matters. The Interlocal Agreement defined all parties' financial and implementation obligations for permitting, a water transmission study, and preliminary design of the Cypress Lake Wellfield project. Since approval of the Interlocal Agreement, Orange County has become a member of the Water Cooperative of Central Florida and five amendments have been approved.

On October 26, 2021, the Board approved the Cypress Lake Water Wheeling Infrastructure Master Cost-Sharing Agreement. The Cost-Sharing Agreement established a mechanism for sharing the cost of water wheeling infrastructure amongst the benefiting parties. The Agreement established the process and terms for reimbursement of costs for all wheeling infrastructure.

This Governance Agreement will set forth the terms as they relate to the construction, operation, maintenance, and funding of the Cypress Lake Alternative Water Supply Project (Project). This Governance Agreement also includes provisions as they relate to administration and ownership of the Project, Project funding and budgeting, rates and charges, and capacity management.

As stated in the Governance Agreement, the Project will be developed in phases with an expected build out capacity of 30 million gallons a day. Orange County's capacity share of the project will be 9 million gallons a day (30%).

The County Attorney's Office staff finds the agreement acceptable. Utilities Department staff recommends approval.

**Action Requested: Approval and execution of Interlocal Agreement Relating to the Governance of the Cypress Lake Alternative Water Supply Project by and among The Water Cooperative of Central Florida, Tohopekaliga Water Authority, Orange County, and Polk County, Florida.**

**All Districts.**

BCC Mtg. Date: March 7, 2023

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INTERLOCAL AGREEMENT RELATING TO THE GOVERNANCE OF THE  
CYPRESS LAKE ALTERNATIVE WATER SUPPLY PROJECT

BY AND AMONG

THE WATER COOPERATIVE OF CENTRAL FLORIDA,  
TOHOPEKALIGA WATER AUTHORITY,  
ORANGE COUNTY,  
AND POLK COUNTY, FLORIDA

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**ATTACHMENT**

**Exhibit 1**

THIS INTERLOCAL AGREEMENT (the "GOVERNANCE AGREEMENT") is made and entered into as of the Effective Date as defined herein below, by and among the Water Cooperative of Central Florida ("Cooperative"), the Tohopekaliga Water Authority ("Toho"), Orange County, Florida ("Orange County"), and Polk County, Florida ("Polk County").

In consideration of the recitals set forth below and mutual covenants herein contained and for other good and valuable consideration each to the other, receipt of which is hereby acknowledged by each Party, the Parties hereby agree, stipulate and covenant as follows:



## ARTICLE 1 RECITALS

### 1.0 RECITALS

**1.01 Materiality.** The recitations set forth in Article 1 are true and correct, and form a material part of the GOVERNANCE AGREEMENT.

#### **1.02 Historical Background.**

**1.02.1 Cypress Lake Agreement.** On August 30, 2011, the Parties, along with the City of St. Cloud, Florida ("St. Cloud") and the Reedy Creek Improvement District ("RCID"), entered into an interlocal agreement that came to be known as the Cypress Lake Alternative Water Supply Agreement (the "CLAWS" Agreement) for the purpose of setting forth their understandings and the terms and conditions relating to the funding, planning, preliminary design, comprehensive plan amendments, zoning and land use approvals, and water use permitting of the Cypress Lake Wellfield and other purposes. Subsequently, as the Cypress Lake Wellfield proceeded through various stages of design and permitting, the CLAWS Agreement was amended five times and is in effect today.

**1.02.2 Wheeling Agreement.** On January 14, 2022, the Cooperative, St. Cloud, Toho, Orange County, and Polk County entered into an agreement captioned "Water Wheeling Infrastructure Master Cost-Sharing Agreement" ("Wheeling Agreement") in order to optimize their existing groundwater supplies by establishing a mechanism for Water Wheeling and sharing costs of Wheeling Infrastructure (both terms as defined in the Wheeling Agreement). The Wheeling Agreement is in effect today.

**1.02.3 St. Cloud/Toho Interlocal Agreement.** On February 10, 2022, St. Cloud and Toho entered into an interlocal agreement (hereinafter the "St. Cloud/Toho Interlocal Agreement") whereby Toho agreed to undertake management, operation, maintenance and improvement of the City Utility System and City Utility Assets owned by St. Cloud in a coordinated and integrated manner, commencing on October 4, 2022. The St. Cloud/Toho Interlocal Agreement recognizes that "*St. Cloud and Toho are currently collaborating with other local government entities on the development of alternative water supply projects to meet future potable water demands of the participating local government participants.*" The St. Cloud/Toho Interlocal Agreement further provides that "*Toho shall administer St. Cloud's participation in alternative water supply projects and supply arrangements. Toho may assume St. Cloud's allocation of project capacity and water supply volumes during the term of this Agreement in accordance with the terms and conditions set forth in any related participation and supply agreements. In the event of termination of this Agreement, St. Cloud's allocation of any regional water supply projects (including specifically, but not limited to, Cypress Lake) shall be considered an asset of St. Cloud subject to reimbursement in accordance with Section 2.9.3 [of the St. Cloud/Toho Interlocal Agreement].*"

**1.02.4 Reedy Creek Improvement District Withdrawal From the CLAWS Agreement.** In the CLAWS Agreement, the parties thereto recognized that RCID could: a) remain a party in the CLAWS Agreement; b) withdraw as a party from the CLAWS Agreement; or c) withdraw from the CLAWS Agreement and enter into a bulk rate wholesale agreement with Toho. RCID has opted to withdraw as a party from the CLAWS Agreement. Pursuant to the terms of the CLAWS Agreement, Toho will assume the allocation and obligations of RCID as set forth in the CLAWS Agreement. The PARTIES also acknowledge that all or a portion of the RCID allocation assumed by Toho may be transferred to another PARTY subject to the provisions of RCID's withdrawal from the Project in accordance with the CLAWS and Wheeling Agreements.

**1.02.5 Effect On Prior Agreements.** Nothing in the GOVERNANCE AGREEMENT is intended to amend the CLAWS Agreement, the Wheeling Agreement, or the St. Cloud/Toho Interlocal Agreement.

**1.03 Purpose.** The purpose of the GOVERNANCE AGREEMENT is to implement the construction, operation, maintenance and funding of the Project, as defined herein below. When operational, the Project will produce and deliver Project Water, as defined herein below, to the Parties at individual Connection Points, as defined herein below, through a network of existing and proposed segments of Wheeling Infrastructure, as defined herein below. The Project is owned by the Cooperative and particular segments of the Wheeling Infrastructure are owned by the Parties individually, as further described in the Wheeling Agreement. The ultimate Project capacity is expected to be approximately 30 MGD and will be developed in phases.

#### **1.04 Project Overview.**

**1.04.1 Activities As Of The Effective Date.** As of the Effective Date, the following Project or Project-related activities/items have been completed, received, acquired, installed or are in progress:

- a) Preliminary design, and phasing for the Project;
- b) Water Use Permit from the South Florida Water Management District;
- c) Underground Injection Control (UIC) Construction Permit from the Florida Department of Environmental Protection;
- d) Two test production wells;
- e) Production well sites, deep injection well sites, water treatment plant site and associated easements;
- f) Environmental and survey work on the acquired sites and easements;
- g) Deep injection well;
- h) Production well design and pre-qualification of contractors for construction;
- i) Monitoring well(s), as required to support the UIC permit;
- j) Grant from the South Florida Water Management District for construction of a deep injection well, associated monitoring well, and three production wells; and
- k) Design of the water treatment plant.

**1.04.2 Activities Anticipated After The Effective Date.** Moving forward, the following additional steps are anticipated:

- a) A third-party operator will be selected and engaged for day-to-day operation and maintenance of the Project;
- b) A construction manager at risk will be selected and engaged for construction and start-up of the Project, which shall proceed according to a schedule approved by the Project Administrator designated in Article 6;
- c) Each construction phase or other work associated with the Project that is not covered under the CLAWS Agreement is expected to be funded through debt and/or cash contributions from the Parties, supplemented by any secured grants or alternate funding sources to be pursued by the Parties;
- d) The Project Administrator will select and engage a rate consultant for purposes of developing year-to-year rates and charges for the Parties;
- e) The remaining land acquisition will proceed to completion;
- f) Construction and start-up of the Project will proceed to completion, including construction of additional production wells and deep injection wells, raw water mains, and other appurtenances as necessary for a fully functional facility; and
- g) Day to day operations and maintenance of the Project will commence.

## ARTICLE 2 AUTHORITY

**2.0 AUTHORITY** The Parties each have the power, authority and legal right to enter into and perform the obligations set forth in the GOVERNANCE AGREEMENT, and the execution, delivery and performance hereof by the Parties: a) has been duly authorized by the governing authority of each of the Parties; b) does not require any consent or referendum of the voters; and c) does not constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon, the assets of the Parties under any agreement or instrument to which the Parties and their assets may be bound or affected, except as otherwise provided herein. The GOVERNANCE AGREEMENT is entered into by the Parties under the following authorities:

**2.01 The Cooperative.** The Cooperative is a public body and unit of local government created by interlocal agreement for the purpose of fostering innovative regional cooperation amongst its Member Governments, as defined herein below, and other special purpose and general purpose local governments and is empowered to enter into agreements under the authority of the Cooperative Charter, as defined herein below, and Section 163.01(7) and Chapter 189, Florida Statutes.

**2.02 Toho.** Toho is an independent special district created by special act of the Florida Legislature, empowered to enter into agreements under the authority of the Tohopekaliga Water Authority Act, Chapter 2003-368 (as amended by Chapters 2007-287, 2013-266 and 2018-186), Laws of Florida.

**2.03 Orange County.** Orange County is a charter county and a political subdivision of the State of Florida empowered to enter into agreements under the authority of its home rule powers, as well as Sections 125.01(1)(k)1, 125.01(1)(p), 125.01(3)(a), and 153.03(6), Florida Statutes, which authorize counties to enter into agreements with other public agencies and private corporations to accomplish goals for providing water to their customers.

**2.04 Polk County.** Polk County is a charter county and a political subdivision of the State of Florida empowered to enter into agreements under the authority of its home rule powers, as well as Sections 125.01(1)(k)1, 125.01(1)(p), 125.01(3)(a), and 153.03(6), Florida Statutes, which authorize counties to enter into agreements with other public agencies and private corporations to accomplish goals for providing water to their customers.

## ARTICLE 3 DEFINITIONS

### 3.0 DEFINITIONS

**3.01 "Annual Allocation"** means the amount of Project Water in Million Gallons Per Day ("MGD") that a Party will receive for the upcoming 12-month period as measured at the Connection Point, as defined herein below, and as computed in accordance with the procedure set out in Section 10.02.

**3.02 "Annual Allocation Percentage"** means the percentage of the Project Water that will be received by an individual Party that is represented by its Annual Allocation.

**3.03 "Annual Water Use"** means the amount of Project Water, as defined herein below, in MGD that is delivered to a Party for the prior 12-month period as measured at the Connection Point, as defined herein below.

**3.04 "Annual Water Use Percentage"** means the percentage of Project Water received by an individual Party as its Annual Water Use.

**3.05 "Assignor"** means a Party that transfers a portion of its Water Allotment to a new Party or an existing Party.

**3.06 "Board"** means the Board of Supervisors of the Cooperative.

**3.07 "Capital Recovery Charge"** means the Total Annual Capital Cost Recovery multiplied by the Parties' Annual Allocation Percentage.

**3.08 "Capital Recovery Charge Credit"** means the sum total of amortized amounts calculated on an annual basis for outstanding cash contributions to Designated Capital Projects, as defined herein below.

**3.09 "CLAWS Agreement"** means the Cypress Lake Alternative Water Supply Agreement, as it may be amended from time to time.

**3.10 "Connection Point"** means the location where the operation, maintenance and ownership rights are divided between a Conveying Party and a Receiving Party, both as defined herein below, and the point of measurement for Project Water, except as otherwise defined in the case of Toho.

**3.11 "Conveying Party"** means a Party conveying Project Water under the GOVERNANCE AGREEMENT and the Wheeling Agreement.

**3.12 "Cooperative Charter"** means the "Interlocal Agreement Relating to the Establishment of the Water Cooperative of Central Florida by and Among the City of St. Cloud,

Florida, Tohopekaliga Water Authority, Orange County, Florida and Polk County, Florida, as it may be amended from time to time.

**3.13 "Designated Capital Projects"** means the initial Project construction, additional phased plant capacity expansions, or projects as determined by the Board that will be conducted outside the Operating Capital Fund described in Article 8.

**3.14 "Effective Date"** means the last date the GOVERNANCE AGREEMENT is recorded in the public records of Polk, Orange and Osceola counties.

**3.15 "Financing Documents"** means the resolution or resolutions duly adopted by the Board, as well as any indenture of trust, trust agreement, interlocal agreement or other instrument relating to the issuance or security of any Obligations, as defined herein below.

**3.16 "Fiscal Year"** means the period commencing on October 1 of each year and ending on the succeeding September 30, or such other consecutive 12-month period as may be hereafter designated as the fiscal year of the Cooperative pursuant to general law.

**3.17 "Force Majeure Event"** means an event not the fault of, and beyond the reasonable control of, the Party claiming excuse when it is either impossible or extremely impracticable for such Party to perform the obligations imposed on it by the GOVERNANCE AGREEMENT, by virtue of its effect on physical facilities and their operation or employees essential to such performance. Force Majeure Events include: a) an "act of God" such as an earthquake, flood, earth movement, pandemic, or similar catastrophic event; b) an act of public enemy, terrorism, sabotage, civil disturbance or similar event; c) a strike, work stoppage, picketing or similar concerted labor action; d) delays in construction caused by unanticipated negligence or breach of contract by a third party or inability to obtain Project approvals or essential materials after diligent and timely efforts; or e) an order or regulation issued by a federal, state, regional or local regulatory agency after the Effective Date or a judgment or order entered by a federal or state court after the Effective Date.

**3.18 "GOVERNANCE AGREEMENT"** means this agreement, as it may be amended from time to time.

**3.19 "Master Flow Meter"** means the meter located at the Connection Point to generate flow data for Project Water delivered to the Receiving Party, for the purposes of determining Annual Water Use.

**3.20 "Master Flow Meter Assembly"** means a Receiving Party's Master Flow Meter and appurtenances including valves, backflow preventers, filters, pipe, and fittings at the flange face closest to the assembly at either end, with ownership and maintenance as described in the Wheeling Agreement.

**3.21 "Member Government"** means a member government of the Cooperative that is participating in the GOVERNANCE AGREEMENT, as evidenced by its ratification of same by signature hereto.

**3.22 "Minimum Project Operating Capacity"** means the minimum annual average daily flow of Project Water the Project can produce and maintain operations as determined by the Project design and operations and maintenance constraints, including such factors as minimum operating time for membrane skids, to be determined at each phase of expansion and approved by the Board.

**3.23 "Minimum Water Allotment"** means the minimum amount of Project Water that is allotted to each Party, calculated as the Minimum Project Operating Capacity multiplied by the Water Allotment Percentage, as defined herein below.

**3.24 "Obligations"** means bonds, obligations or other evidence of indebtedness, including, but not limited to, notes, commercial paper, capital leases or any other obligations of the Cooperative issued or incurred as permitted hereunder, and issued under any general law provisions, and pursuant to the Financing Documents.

**3.25 "Operating Capital Charge"** means the Operating Capital Rate multiplied by the Party's monthly water use.

**3.26 "Operating Capital Rate"** means the projected 5-year total capital outlay plus contributions required to comply with minimum reserve levels established by the Board or required by the Financing Documents, divided by the total of the Parties' projected 5-year total Annual Allocation.

**3.27 "Parties"** means the Cooperative, Toho, Orange County, and Polk County. However, any entity that participates in the Project through substitution or assignment, as provided in Article 4, shall also become a Party to the GOVERNANCE AGREEMENT upon acceptance by action of the Board. Individually, each shall be referred to herein as a "Party."

**3.28 "Project"** means the Cypress Lake Alternative Water Supply raw water wells, raw water conveyance piping, reverse osmosis water treatment plant, concentrate disposal wells, associated concentrate disposal and wetland monitoring wells, concentrate conveyance piping, Project Finished Water Meter, as defined herein below, and finished water piping, as depicted in Exhibit 1, together with associated real property. The Project is currently estimated to yield 30 MGD and is anticipated to be constructed in phases.

**3.29 "Project Finished Water Meter"** means the final flow meter on the finished water line leaving the reverse osmosis water treatment plant.

**3.30 "Project Operating Capacity"** means the annual average daily flow of Project Water that the Project can produce at any given time.

**3.31 "Project Sub-Agreement"** means an addendum to the Wheeling Agreement, setting forth the individual responsibilities of the Parties thereto involved in sharing of Costs, as defined in the Wheeling Agreement, for specifically identified segments of Wheeling Infrastructure, as further described in the Wheeling Agreement.

**3.32 "Project Water"** means the finished water produced by the Project, as measured at the Project Finished Water Meter prior to any Connection Point, less the volume of the Unaccounted-For-Water, as defined herein below, produced by the Project.

**3.33 "Project Water Service"** means delivery of Project Water to a Party per the terms of the GOVERNANCE AGREEMENT.

**3.34 "Receiving Party"** means a Party receiving Project Water under the GOVERNANCE AGREEMENT and the Wheeling Agreement.

**3.35 "Total Annual Capital Cost Recovery "** means the sum total of the annual amortized cost of all Designated Capital Projects.

**3.36 "Transferor"** means a Party that transfers its entire Water Allotment to a new Party or an existing Party.

**3.37 "Unaccounted-For-Water"** means a water allocation recognizing that a portion of the water produced from the Project will be lost or unaccounted.

**3.38 "Volumetric Rate"** means the total of: the Project operator's operation and maintenance costs, the Cooperative's annual costs associated with the Project, and other costs necessary to ensure the proper operation of the Project, generally all costs not part of funding Designated Capital Projects or operating capital, as determined by the Board, including maintaining minimum balances in Project funds, divided by the total of the approved Annual Allocation of the Parties.

**3.39 "Volumetric Rate Charge"** means the Volumetric Rate multiplied by the Party's monthly water use.

**3.40 "Water Allotment"** means the quantity of Project Water that each Party is entitled to receive from the Project, derived as the product of the current Project Operating Capacity and the Water Allotment Percentage, as defined herein below.

**3.41 "Water Allotment Percentage"** means the percentage of Project Water that each Party or other entity is entitled to receive from the Project, as set forth in the table below and measured at the Project Finished Water Meter. The Water Allotment Table acknowledges that Toho has management responsibility for St. Cloud's allocation (16.7%) and the former RCID allocation (3.3%), which will be managed as a combined allocation for the purposes of the GOVERNANCE AGREEMENT.



**Water Allotment Table:**

<b>Name of Entity</b>	<b>Water Allotment Percentage (%)</b>
St. Cloud	(Included in Toho Water Allotment Percentage)
Toho	60.0
Orange County	30.0
Polk County	10.0
RCID	(Included in Toho Water Allotment Percentage)

**3.42 "Wheeling Agreement"** means the Water Wheeling Infrastructure Master Cost-Sharing Agreement entered into by the Parties, as it may be amended from time to time.

**3.43 "Wheeling Infrastructure"** means that portion of a Conveying Party's Water System (as defined in the Wheeling Agreement) that is listed in the Water Wheeling Infrastructure Plan and is used for Water Wheeling between any Conveying Party and one or more Receiving Parties.

**ARTICLE 4 TERM AND AMENDMENTS, ADDITION OR SUBSTITUTION OF PARTIES, ASSIGNMENT, PROCEDURE, COST TO BECOME A NEW PARTY, AMENDMENT OF CAPITAL RECOVERY CHARGE**

**4.0 TERM AND AMENDMENTS ADDITION OR SUBSTITUTION OF PARTIES, ASSIGNMENT, PROCEDURE, COST TO BECOME A NEW PARTY, AMENDMENT OF CAPITAL RECOVERY CHARGE**

**4.01 Term.** The term of the GOVERNANCE AGREEMENT shall begin on the Effective Date and remain in effect so long as there is Project Water being delivered to the Parties, unless terminated by written agreement of all the Parties pursuant to Section 12.05.

**4.02 Amendments.**

(a) Except as otherwise provided herein, no amendment, supplement, modification or waiver of the GOVERNANCE AGREEMENT shall be binding unless executed in writing by all Parties and recorded in the official records of Polk, Orange and Osceola counties.

(b) To the extent any Party has outstanding Obligations, the GOVERNANCE AGREEMENT may not be amended or modified in any way that is materially adverse to the security of the holders of such Obligations without the consent in writing of the holders of a majority or more in principal amount of such Obligations then outstanding, or any insurer or credit enhancer duly authorized to provide such consent on behalf of the holders of such insured or credit enhanced Obligations.

(c) Notwithstanding the foregoing, this Agreement may be amended to add, substitute or assign to a Party in accordance with Section 4.03 hereof, making changes to the Annual Allocation in accordance with Section 10.03 and any other conforming changes hereto necessary in connection with the addition, substitution or assignment of a Party, including, without limitation, the Water Allotment.

**4.03 Addition Or Substitution Of Parties, Assignment.**

**4.03.1 Addition.** A new Party may be added by Substitution or Assignment of a Party's Water Allotment. A new Party shall also join in the Wheeling Agreement and the CLAWS Agreement.

**4.03.2 Substitution.** Substitution applies when the entire Water Allotment of a Party is transferred. A new Party or an existing Party may be substituted for an existing Party, subject to: a) satisfaction of the applicable requirements of the procedure set forth in Sections 4.03.4 and 12.04; and, b) agreement by the new Party or existing Party to fully perform and assume all the obligations of the Transferor.

**4.03.3 Assignment.** Assignment applies when a portion of the Water Allotment of a Party is transferred. a new Party or an existing Party may be assigned a portion of an existing Party's

Water Allotment, subject to: a) satisfaction of the applicable requirements of the procedure set forth in Section 4.03.4; and, b) agreement by the new Party or existing Party to fully perform and assume all the obligations of the Assignor as to the transferred portion of the Water Allotment.

**4.03.4 Procedure For Substitution Or Assignment.** Prior to substitution or assignment taking effect, the Transferor or Assignor, as applicable, must notify the other existing Parties in writing of the proposed substitution or assignment and the quantity of the Water Allotment proposed to be transferred. In recognition of the Parties' investment and commitment in developing the Project, it is encouraged, but not required, to offer the other Parties an opportunity to acquire the Water Allotment being assigned or substituted. Any substitution or assignment under this Section 4.03 must be reviewed and approved by the Board, taking into consideration technical feasibility, allocation of responsibilities under the Wheeling Agreement, financial strength, legal history and any other factors deemed pertinent to the approval of the new Party. Approval shall not be unreasonably withheld, conditioned, or delayed. Once a substitution of a Party takes place, the Transferor shall withdraw from the GOVERNANCE AGREEMENT in accordance with the terms of Article 12 and shall no longer be considered a Party. Additionally, in the case of either the substitution or the assignment, the Parties shall cooperate in any modifications to the Project permits necessary to effectuate the change. In the event of an assignment, the Assignor shall still be a Party to the GOVERNANCE AGREEMENT, but it shall forfeit or surrender the reassigned portion of its Water Allotment to the assigned Party.

**4.03.5 Cost To Become A New Party.** The Parties recognize that each Party has made significant investment to the Project and may desire to recover all or a portion of that investment. Any reimbursement or cost recovery of prior investments of the Transferor or Assignor shall be solely subject to the agreement of the Transferor or the Assignor and Transferee or Assignee, as applicable.

**4.03.6 Amendment Of Total Annual Capital Cost Recovery.** When a new Party is added pursuant to this Section 4.03, the existing Parties must amend the GOVERNANCE AGREEMENT to reflect the reassignment of Water Allotments among the existing Parties and the new Party. The new Party shall be assigned the Capital Recovery Charge associated with its allocable share of the reassigned Water Allotment and shall be responsible for payment of the Volumetric Rate Charge and Operating Capital Charge associated with the received Water Allotment per the terms of the GOVERNANCE AGREEMENT.

## ARTICLE 5 CONSTRUCTION OF GOVERNANCE AGREEMENT

### 5.0 CONSTRUCTION Of GOVERNANCE AGREEMENT

**5.01 Conventions.** Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms and corporations. The terms "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms, shall refer to the GOVERNANCE AGREEMENT; and the term "hereafter" shall mean after the Effective Date of the GOVERNANCE AGREEMENT.

**5.02 Headings.** Any headings preceding the texts of the sections and subsections of the GOVERNANCE AGREEMENT and marginal notes appended to copies hereof, if any, shall be solely for convenience of reference and shall neither constitute a part of the GOVERNANCE AGREEMENT nor affect its meaning, construction or effect.

**5.03 Materiality.** Each recital, covenant, agreement, representation, and warranty made by a Party herein shall be deemed to have been material and to have been relied on by the other Parties to the GOVERNANCE AGREEMENT.

## ARTICLE 6 ADMINISTRATION

### 6.0 ADMINISTRATION

**6.01 Project Administrator.** The Board shall have overall responsibility for implementing the terms of the GOVERNANCE AGREEMENT. Toho shall serve as the Project Administrator. All the powers, privileges and duties vested in or imposed on the Board with regard to implementation of the Project shall be exercised through the Board; provided, however, that the exercise of any and all executive, administrative and ministerial powers regarding the Project, as specified in the GOVERNANCE AGREEMENT or as may otherwise be delegated by the Board shall reside with the designated Project Administrator. Within 30 calendar days of the Effective Date, Toho shall designate an individual to act on its behalf in its role of Project Administrator.

**6.01.1 Responsibilities Of The Project Administrator.** The individual designated pursuant to Section 6.01 to act on behalf of Toho in its role as Project Administrator, personally or through designees or contractors, shall take all actions necessary to manage the Project and coordinate with the Board and Project Managers appointed pursuant to Section 6.02. Such actions shall include the following:

- a) Prepare the Board agenda, coordinate meetings, and lead communications with the Board.
- b) Oversee, direct and provide administrative services necessary to implement the requirements of the GOVERNANCE AGREEMENT and other policies as may be adopted by the Board.
- c) Develop, administer, and monitor the Project budget.
- d) Provide oversight for development of Project capital and operating plans.
- e) Coordinate intergovernmental relations for city, county, regulatory, peer utility, state, and federal entities and regulatory agencies.
- f) Develop and administer procurement processes to carry forward the administration of the Project pursuant to the GOVERNANCE AGREEMENT and the policies of the Board.
- g) Procure, prepare and execute contract(s) with contractors, consultant(s), and vendors selected pursuant to the GOVERNANCE AGREEMENT or action of the Board, in accordance with monetary limits set forth by Board Policy.
- h) Oversee the construction, operation and maintenance of the Project in accordance with the requirements of the GOVERNANCE AGREEMENT.
- i) Administer contracts issued in conjunction with the Project.
- j) Identify and pursue funding opportunities that may assist the Parties in reducing their overall Project costs.
- k) Oversee regulatory activities including: communicating with regulatory agencies and interested parties, demonstrating regulatory compliance, executing regulatory documents, and securing or renewing applicable permits.

**6.02 Appointment Of Project Managers.** In recognition of the long-standing partnership of the Parties and in order to assure efficient communications between a Party and the Project

Administrator, each Party shall appoint a staff member as its Project Manager, and an alternate to act in the absence of its Project Manager. However, in the case of the Cooperative, no additional Project Managers will be appointed. In the case of Toho, the individual acting on its behalf in the role of Project Administrator may serve as its Project Manager or another individual may be named as Project Manager. The Project Managers shall have the responsibilities set forth in Section 6.02.1. Each Party may designate other staff members to assist in the Project, as necessary, but there shall only be one Project Manager and one alternate per Party.

**6.02.1 Responsibilities Of Project Managers.** A Project Manager shall: actively participate in Project meetings; provide input to the Project Administrator, as needed; be responsible for accuracy of information relating to the appointing Party's portion of the Project; advise the Project Administrator of the existence of any emergency conditions; and supply all information required by the GOVERNANCE AGREEMENT on behalf of the appointing Party.

**6.03 Notice Of Appointment.** Within 30 days of the Effective Date, each Party (in the case of the Cooperative, no separate Project Manager is to be appointed) shall provide, in writing, the names, addresses, phone numbers, and email addresses of its Project Manager and alternate to the other Parties. The Project Manager and alternate of each Party may be changed at any time immediately upon providing notice to the other Parties.

**6.04 Duty Of Mutual Cooperation.** By entering into the GOVERNANCE AGREEMENT, the Parties affirm their ongoing duties of mutual cooperation with each other and agree to assist each other in furtherance of the purposes of the GOVERNANCE AGREEMENT. Without limitation on the abovesaid, the Parties agree to provide information needed for obtaining and complying with required Project permits.

**6.05 Meetings.** Meetings of the Project Managers and the Project Administrator shall be held routinely on a schedule set by the Project Administrator, at a time and place to be designated, so that the Project Managers may be appraised of Project status. Special meetings may be called at any time by the Project Administrator, with reasonable notice to all Project Managers of the matters to be considered at the meeting.

## ARTICLE 7 OWNERSHIP

### 7.0 OWNERSHIP

**7.01 Project Ownership.** The Cooperative shall own the Project. The valve on the finished water piping immediately outside of the reverse osmosis water treatment plant fence denotes the end of Project ownership. Ownership by the Cooperative does not include any Wheeling Infrastructure or other facilities owned by the Parties beyond the Project as of the time of the execution of the GOVERNANCE AGREEMENT. Ownership of each Water Allotment rests with the Party to which it is allocated by the GOVERNANCE AGREEMENT.

**7.02 Ownership Outside The Project.** The designation for the respective ownership, maintenance and operation responsibilities of the Wheeling Infrastructure beyond the Project shall be as provided in the Wheeling Agreement.

## ARTICLE 8 PROJECT FUNDING, PLANNING AND BUDGETING

### 8.0 PROJECT FUNDING, PLANNING AND BUDGETING

**8.01 Project Funding.** Pursuant to the authority and obligations set forth in the Cooperative Charter, the Cooperative will fund the Project and recover capital costs, rates and charges from the Parties. Project funding sources may include bonds, loans, grants and subsidized loan programs in addition to rates and charges. To the extent feasible, the Parties will pursue grant funding available to all the Parties and if those funds are secured they will be shared proportionately according to the Water Allotment. The Parties also agree to not impede acquisition of grants that would not be available to all Parties for the purposes of the GOVERNANCE AGREEMENT. In such case, the funds will remain with the Party or Parties who received them. In lieu of funding by the Cooperative pursuant to the Cooperative Charter and then recovering the funds from the Parties, any Party may at its option pay for its capital costs directly to the Cooperative. Costs of work already completed are addressed by other agreements.

**8.01.1 Debt Financing Of Designated Capital Projects.** The Cooperative intends to use debt financing (which may include bank loans, bonds, State Revolving Fund loans, WIFIA loans, or other instruments, as determined by the Board) to fund all or a portion of the initial Project capital costs and may consider debt funding for other Designated Capital Projects. Debt funding, if utilized, will generally be established in the following manner:

Project construction cost estimate including approved contingency  
(-) Grant funding  
(-) Cash commitments from Parties  
(=) Cooperative debt financing

**8.01.2 Designated Capital Project Fund.** For all Designated Capital Projects subject to this Section, the prorated portion of the first 12 months of estimated capital project construction activities to be paid by cash commitments from the Parties shall be paid to the Cooperative prior to issuance of the notice-to-proceed. All such funds received will be held by the Cooperative for the sole purpose of payment for any Designated Capital Projects. Annually, the Cooperative, as part of its budget process, must establish an anticipated schedule of work and budget allocating each Party's costs for the next Fiscal Year. Thereafter, every calendar quarter the Project Administrator shall provide an invoice to each Party of its cost-share for the continued construction of Designated Capital Projects based upon the Parties' Water Allotment Percentage. The invoice for each Party shall be based on each Party's share of anticipated costs for the upcoming quarter, adjusted by the Party's share of the actual cost to estimated cost variance from the prior quarter, and include any outstanding balance, as illustrated by the following:

Party's share of anticipated costs for the upcoming quarter  
(+) Party's share of actual costs incurred during the prior quarter  
(-) Party's share of estimated costs for the prior quarter  
(=) Quarterly invoice amount (Party's share)  
(+) Any unpaid prior invoice amount by Party



(=) Party's total outstanding balance due

A Party's share is inclusive of the Capital Recovery Charge Credit.

**8.01.3 Amortization For The Purposes Of Cost Recovery Through Project Capital Charges.** The total cost for any Designated Capital Project will be amortized over the same term and at the same interest rate incurred by the Cooperative for any Obligations issued to finance such project or over 20 years at an interest rate not less than the Bond Buyer 20 index (the "Reference Rate") published for the week preceding a rate determination in the event that no debt funding is used. The total cost may be re-amortized to reflect the issuance of Obligations to finance a Designated Capital Project if initially estimated based on the Reference Rate. The combined amortized amount for all outstanding Designated Capital Projects shall constitute the Total Annual Capital Cost Recovery. Cash contributions from any Party for Designated Capital Projects will be amortized over the same term and assuming the same interest rate incurred by the Cooperative for any debt funding or over 20 years at an interest rate not less than the Reference Rate published for the week preceding a rate determination in the event that no debt funding is used. The amortized amount of contribution to Designated Capital Projects from each Party will constitute a credit against its individual Capital Recovery Charge due during each year of the amortization period and be referred to as the "Individual Capital Recovery Charge Credit." An amortization period will be established for each Designated Capital Project, to be approved by the Board.

**8.01.4 Operating Capital Fund.** The Parties recognize the Project will require routine capital outlay for repair and replacement of Project equipment. An estimate of required capital outlay for the repair and replacement of Project equipment for the first six months of operations of the Project shall be paid by the Parties according to their Water Allotment percentage to establish the Operating Capital Fund. Thereafter, the Parties will pay the Operating Capital Charge, which shall be based upon a 5-year projection of needs, minimum reserve levels established by the Board or required by bond covenants, and adjusted annually.

**8.01.5 Project Operating Fund.** Each Party shall pay a prorated portion of the estimated operation and maintenance costs and other costs necessary to insure the proper operation of the Project (less the Operating Capital Charge provided above) per its Annual Allocation Percentage. For the first nine months of operations of the Project, funds shall be paid to the Cooperative, which shall establish a Project operating fund and reserve with such payments, to be known as the "Project Operating Fund" and subject to the Financing Documents. Thereafter, the Project Operating Fund will be sustained by the rates paid by each Party, with minimum reserve levels established by the Board or required by the Financing Documents.

**8.01.6 Interest On Fund Balances.** Interest accrued on fund balances shall remain with the Cooperative, within the fund where accrued, and be available for the continued operation of the Project to the benefit of the Parties and subject to the Financing Documents.

**8.02 Project Planning.** Project activities for each Fiscal Year will be implemented according to a plan, which shall be known as the "Annual Project Plan," approved by the Board. The Annual Project Plan shall include, but not be limited to: the Parties' 10-year projections of Annual Allocation, current and historic quantity of Project Water, 5-year capital outlay projection,

and other topics, as determined by the Project Administrator and the Project Managers. Preparation of the Annual Project Plan will proceed according to the following timeline:

- a) By March 1 – Each Party will provide to the Project Administrator a 10-year projection of Annual Allocation.
- b) By May 30 – The Project Administrator will develop the Annual Project Plan.
- c) By July 30 or as scheduled – The Project Administrator will present the draft Annual Project Plan to the Board for review and comment.
- d) By October 1 or as scheduled – The Project Administrator will present the final Annual Project Plan to the Board for approval.

Planning and design of a Project expansion up to the full phase I capacity will begin when the total of the Parties' projected/planned Annual Allocation would exceed the then Project Operating Capacity within the next 4 years. Planning and design of phase II of the Project will begin when the total of the Parties' projected/planned Annual Allocation exceeds the phase I Project Operating Capacity within the next 7 years.

**8.03 Project Budgeting.** Operations for the Project's Fiscal Year will be implemented according to a budget, which shall be known as the "Annual Budget," to be developed in accordance with generally accepted accounting principles and approved by the Board. Preparation of the Annual Budget will proceed according to the following timeline:

- a) By March 1 – Each Party will provide to the Project Administrator a requested Annual Allocation.
- b) By May 30 – The Project Administrator will develop the Annual Budget, including proposed rates and charges.
- c) By June 30 – The Project Administrator will provide to the Parties a preliminary draft of the proposed annual budget and rates and charges for the upcoming Fiscal Year.
- d) By July 30 or as scheduled – The Project Administrator will present the draft Annual Budget, which shall include proposed rates and charges, to the Board for review and comment.
- e) By October 1 or as scheduled – The Project Administrator will present the final Annual Budget to the Board for approval.

## ARTICLE 9 RATES AND CHARGES, PLEDGE OF REVENUE

### 9.0 RATES AND CHARGES, PLEDGE OF REVENUE

**9.01 Rates And Charges.** Rates and charges for the Project paid by each Party on a monthly basis shall consist of a Net Capital Recovery Charge, as defined in Section 9.02, a Volumetric Rate Charge, and an Operating Capital Charge. All charges shall be collected monthly with an annual true-up based upon Annual Water Use and Annual Water Use Percentage. Said payments shall be made without set-off, counterclaim, abatement, suspension or deduction. Payments of the Net Capital Recovery Charge and the Operating Capital Charge shall be payable irrespective of the operational status of the Project. Amounts collected by the Cooperative shall be applied pursuant to the Financing Documents. Amounts owed hereunder by a Party to the Cooperative will be treated as an operating expense of such Party's water system, to the extent the same may be treated as an operating cost under generally accepted accounting principles.

**9.02 Net Capital Recovery Charge.** The Net Capital Recovery Charge for each Party is the Capital Recovery Charge minus the Capital Recovery Charge Credit calculated on an annual basis and divided into twelve equal monthly installments.

**9.03 Monthly Invoicing And Payment.** The Parties will be invoiced on a monthly basis by the Project Administrator. Payment shall be due within 45 calendar days of receipt of an invoice. No Party may withhold payment based on a dispute relating to an invoice. Disputes relating to an invoice shall be subject to the provisions of Section 12.03.

**9.04 Development Of Rates And Charges.** Annually, on or before June 30, the Project Administrator shall provide the Parties with the proposed Capital Recovery Charge, Volumetric Rate, and Operating Capital Rate. A report detailing the manner in which the charges were developed will also be provided to the Parties.

**9.05 Annual True-Up.** The Parties acknowledge that the Project constitutes a base load facility and the Annual Allocation represents the expected consumption of each Party. An annual true-up shall be completed for a Fiscal Year in February of the following year. Any Party that has used less than its Annual Allocation shall be required to pay the shortfall in the Volumetric Rate Charge and Operating Capital Charge calculated as the sum of the Volumetric Rate and the Operating Capital Rate multiplied by the difference between the Party's Annual Allocation and Annual Water Use. This shortfall shall be reduced by an amount up to the sum total of any excess water use by other Parties as compared to their Annual Allocation. If multiple Parties have a shortfall in Annual Water Use, any excess water use by the remaining Parties will be allocated proportionally among the shortfall Parties based upon their respective Annual Allocation Percentage for that year. Annual true-up amounts shall be invoiced monthly pursuant to Section 9.03 over the course of the following Fiscal Year.

**9.06 Audits And Reconciliation For Actual Expenses And Usage.** The Project Administrator shall maintain the accounts and records of actual Project Water use by the Parties, all revenue received from all sources to meet the cash needs of the Project and the actual capital,

maintenance and other costs incurred to maintain Project operations. Annually, on or before January 31, the Project Administrator shall complete an audit of the records and accounts for the preceding Fiscal Year. The audit shall be conducted by an independent accounting firm. In the event the audit determines an underpayment of the Capital Recovery Charge was made by a Party, the underpayment shall be added to that Party's individual Capital Recovery Charge for the upcoming Fiscal Year. In the event the audit determines that an overpayment of the Capital Recovery Charge was made by a Party, the overpayment shall be deducted from that Party's individual Capital Recovery Charge for the upcoming Fiscal Year.

**9.07 Pledge Of Revenues.** The Cooperative is authorized to pledge all payments due, owing or received from the Parties, including any interests derived from monies received under the GOVERNANCE AGREEMENT for the purpose of securing the Obligations.

## ARTICLE 10 CAPACITY MANAGEMENT

### 10.0 CAPACITY MANAGEMENT

**10.01 Request For Annual Allocation.** By March 1 of each year, the Parties will submit a request for an Annual Allocation of Project Water for the upcoming Fiscal Year. The Annual Allocation request shall identify the total quantity of Project Water requested as an average annual daily flow rate. If a Party fails to request an Annual Allocation, the Party will be assumed to have requested its Water Allotment for the upcoming year.

**10.02 Calculation Of Annual Allocation.** The Annual Allocation for each year shall be calculated as provided in Sections 10.02.1 through 10.02.3, depending on the total combined Annual Allocation requested by all Parties compared to the Minimum Project Operating Capacity and Project Operating Capacity.

**10.02.1 If Total Allocation Request Is Greater Than Minimum Project Operating Capacity But Less Than Project Operating Capacity.** If the total Annual Allocation request is greater than the Minimum Project Operating Capacity but less than the Project Operating Capacity, all Parties will receive their requested Annual Allocation.

**10.02.2 If Total Allocation Request Does Not Exceed Minimum Project Operating Capacity.** If the Total Annual Allocation request does not exceed the Minimum Project Operating Capacity, the combined volume of water from Parties requesting an Annual Allocation in excess of their Minimum Water Allotment will be prorated as a reduction to the Minimum Water Allotment across those Parties requesting an Annual Allocation that is less than their Minimum Water Allotment. For those Parties requesting an Annual Allocation that is less than their Minimum Water Allotment, their Annual Allocation shall be their Minimum Water Allotment less their prorated portion of Project Water received per the procedure set forth above. In any case, the total Annual Allocation must equal or exceed the Minimum Project Operating Capacity.

**10.02.3 If Total Allocation Request Is Greater Than Project Operating Capacity.** If the total Annual Allocation request is greater than the Project Operating Capacity, the combined volume of water from Parties requesting an Annual Allocation less than their Water Allotment will be prorated as an increase to the Water Allotment across those Parties requesting an Annual Allocation that is greater than their Water Allotment. In any case the total Annual Allocation must not exceed the Project Operating Capacity. If all Parties request an Annual Allocation greater than their Water Allotment and the Total Annual Allocation is greater than the Project Operating Capacity, then all Parties will receive their Water Allotment.

**10.03 Mutually Agreeable Changes To Annual Allocation.** Changes to the Annual Allocation for each Party as described in Section 10.02 may be made subject to approval by the Board.

**10.04 Mixed Water Delivery.** The Parties understand that the water delivered to a Receiving Party at the Connection Point may consist of water produced from the Project, sources connected to the Wheeling Infrastructure, or a combination thereof. Regardless of the source or sources of water delivered at the Connection Point, for purposes of determining Annual Water Use, the Project Water shall be considered to include any such water.

## ARTICLE 11 FLOW CONTROL METERING SYSTEMS AND WATER QUALITY

### 11.0 FLOW CONTROL METERING SYSTEMS AND WATER QUALITY

#### 11.01 Flow Control And Metering

**11.01.1 Flow Control And Metering At Connection Points.** Flow control and metering at each of the Connection Points shall be the responsibility of the Receiving Party. Metering at the Connection Points shall be used for measuring Annual Water Use. It shall be the responsibility of each Receiving Party to manage the flow control systems in order to receive the Annual Allocation. Flow is intended to be controlled at the annual average rate at each Connection Point but the Conveying and Receiving Parties may agree to a peaking factor as part of the Project Sub-Agreements for each Connection Point.

**11.01.2 Unaccounted-For-Water.** The Parties accept that the volume of Unaccounted-For-Water shall be an amount equal to 5% of the finished water produced by the Project, as measured at the Project Finished Water Meter and prior to any Connection Point or customer. The cost of producing the Unaccounted-For-Water is incorporated into the Volumetric Rate Charge.

**11.01.3 Allocation Of Water Use To Toho.** Because the Project Water is conveyed through Toho's distribution system to all Parties and Toho's distribution system includes numerous inputs (Toho's other treatment facilities) and outputs (Toho's customers and Unaccounted-For-Water), measuring Toho's actual Annual Water Use is not feasible. The Parties agree that Toho's Annual Water Use shall be calculated as follows:

Volume of Water Produced by the Project as Measured at the Project Finished Water Meter  
(-) Unaccounted-For-Water  
(-) Annual Water Use of the Parties (other than Toho) combined  
(=) Toho's Annual Water Use

**11.01.4 Project Water Flow Control And Measurement.** The Project Administrator shall manage the Project in a manner targeting a volume of water produced at the Project Finished Water Meter that is equivalent to the sum of the Annual Allocations for all Parties plus the volume of Unaccounted-For-Water. Flow control and metering at the Project Finished Water Meter shall be the responsibility of the Cooperative and managed by the Project Administrator.

**11.01.5 Cooperation On Operations.** The Parties recognize the interdependency of multiple water distribution systems and agree to work cooperatively and collaboratively using commercially reasonable measures to resolve any impacts to Project delivery.

#### 11.02 Master Flow Meter Assembly

**11.02.1 Operational Responsibilities.** Each Party's Master Flow Meter Assembly at the Connection Point shall be operated, maintained, calibrated, repaired and replaced by that Party at its own expense. The Master Meter at each Connection Point shall be read by the Cooperative. The

Project Finished Water Meter shall be operated, maintained, calibrated, read, repaired and replaced by the Cooperative as part of the Project.

**11.02.2 Standards, Testing, And Costs.** The Master Flow Meter Assembly shall meet the latest published standards of the American Water Works Association ("AWWA") for accuracy at the time of testing. Each Party shall inspect and test its Master Flow Meter at least annually. The first accuracy test will be completed within 60 days of the issuance of a certificate of substantial completion of the Project, unless an accuracy test has been conducted within the last 12 months, in which case the annual test shall be scheduled within 12 months of the last accuracy test. The Parties shall make best efforts to coordinate scheduling of such tests and shall provide each other a copy of the results of such tests within 30 days of receipt of the written test results. Each Party shall pay all inspection and testing costs for its Master Flow Meter Assembly, except as otherwise provided in this Section. Upon written request by a Party for an accuracy test, the requested Party shall inspect and test its Master Flow Meter Assembly in the presence of a representative or representatives of the other Parties wishing to be present. If the Master Flow Meter Assembly conforms to the AWWA accuracy standards upon testing, the requesting Party shall pay all costs and expenses for the inspection and accuracy test. In the event a Master Flow Meter Assembly is determined to be outside the AWWA accuracy standards, the Party that owns it shall pay all inspection and testing costs and immediately take steps to restore the Master Flow Meter Assembly to an accurate condition or to install a new Master Flow Meter Assembly at its own cost. Costs for testing of the Cooperative's Master Flow Meter Assembly will be considered an operational expense recovered as part of the Volumetric Rate Charge pursuant to Section 9.01. There will be no credits or debits issued in case of metering errors.

**11.02.3 Maintenance Notice.** A Party that intends to conduct maintenance of its Master Flow Meter Assembly shall notify the Project Administrator. For emergency maintenance, notice shall be provided as soon as possible via telephone. For routine maintenance, the Parties shall use best efforts to coordinate with each other.

**11.03 Level Of Service.** The Parties covenant to provide potable water under this GOVERNANCE AGREEMENT in a manner consistent with the duty of reasonable care that they owe when providing such service to the public.

**11.04 Water Quality.** The Project will be operated and maintained according to industry standards and practices. Water will be delivered to each Receiving Party's Connection Point that meets all applicable federal and state drinking water regulations including, but not limited to the standards set forth in Chapter 62-550, Florida Administrative Code. Notwithstanding the above, any additional treatment of water to meet the requirements of a Receiving Party's water system shall be the responsibility of the Receiving Party. Nothing herein shall preclude other arrangements that are mutually beneficial to some or all of the Parties. Water quality sampling at the Connection Point will be the responsibility of the Receiving Party, except as provided in accordance with a Board-approved water sampling program.



**ARTICLE 12 FAILURE OF PERFORMANCE, DISPUTE RESOLUTION,  
SUSPENSION OF SERVICE, WITHDRAWAL PROCEDURE, TERMINATION,  
AND FORCE MAJEURE**

**12.0 FAILURE OF PERFORMANCE, DISPUTE RESOLUTION, SUSPENSION OF SERVICE, WITHDRAWAL PROCEDURE, TERMINATION, AND FORCE MAJEURE**

**12.01 Failure Of Performance.** If any Party fails to observe, comply with, perform or maintain in any material way any term, covenant, condition, duty, obligation, representation or warranty contained or arising under the GOVERNANCE AGREEMENT, such action shall constitute a default and the other Parties may seek remedies set forth herein. For all defaults, except the failure to pay rates and charges when due pursuant to Article 9, the defaulting Party shall have 60 days to cure the default, unless such default is not capable of being cured within 60 days, in which case the Party must cure the default as soon as practicable. Recognizing the Parties' paramount need for a safe and dependable water supply, the Parties agree that, with the exception of the suspension of service pursuant to Section 12.03, the exclusive remedy for default shall be for the non-defaulting Parties to individually or jointly seek specific performance or mandamus arising from such default. Each Party, on behalf of itself and its respective successors and assigns, hereby agrees that no Party shall be liable to any other Party for any direct, indirect, special, punitive or consequential damages, including, but not limited to, damages based on loss of services, revenues, profits or business opportunities, and all Parties hereby waive any and all claims and causes of action hereafter accruing for the recovery of such direct, indirect, special, punitive or consequential damages.

**12.02 Dispute Resolution.** If there is a dispute between two or more Parties arising out of or related to the GOVERNANCE AGREEMENT that cannot be resolved, then unless it shall be unreasonable to do so or an emergency situation or necessity dictates otherwise, before proceeding to the default and remedy provisions of the GOVERNANCE AGREEMENT, the affected Parties ("Mediating Parties") shall attempt to resolve the dispute by non-binding mediation. The mediation will be conducted by a mediator mutually agreeable to all Mediating Parties who has experience in mediating disputes of a similar nature. The Mediating Parties will use a procedure agreeable to those Parties and the mediator. The Mediating Parties will mediate in good faith, and will be bound by any resulting mediation agreement that is approved by the governing body for each Party, equally share the costs of mediation and timely pay same. Mediation will commence within 30 days after the date a Party requests mediation of a dispute, or if the agreed mediator is not available within that time period, then at the first opportunity the agreed mediator is available. A Party may not commence litigation of the dispute until: a) the mediator has declared the Mediating Parties are at an impasse; or b) one or all Mediating Parties have terminated the mediation. Among other matters the Parties intend this mediation process as an alternative to the conflict resolution procedure described in the Florida Governmental Conflict Resolution Act, Chapter 164, Florida Statutes.

**12.03 Suspension Of Service.** A Party that fails to pay its rates and charges, or any portion thereof by the due date, as set out in Article 9 ("Non-paying Party"), shall be subject to the provisions of this Section 12.03. Upon 30 days' notice, the Cooperative may suspend Project Water

Service to the Non-paying Party, unless: a) the Board, in its sole discretion, has authorized a mediation; or, b) upon petition of the Non-paying Party, a court of competent jurisdiction determines that the suspension of Project Water Service would compromise the health or safety of the end water users and affords alternative relief to the Cooperative such as payment of disputed amounts into an escrow account until the payment dispute is resolved or adjudicated. As used in this Section 12.03, "end water user" means a customer obtaining water from a Party. In the event that Toho fails to pay its rates and charges or any portion thereof, the Cooperative may not suspend Project Water Service to Toho, if suspension of Project Water Service adversely affects another Party. Nothing shall prohibit the Cooperative from continuing to charge interest on the unpaid amount based on a rate determined by the Board. Upon payment of all outstanding rates and charges, including any interest thereon and collection costs of the Cooperative, the Cooperative shall immediately resume Project Water Service to the Party. The Cooperative's decision to suspend Project Water Service to a Party under this Section shall not be addressed under the 60-day cure provision of Section 12.01 or the mediation provision of Section 12.02, unless the Cooperative, at its sole option, chooses to address any non-payment by any Party through the dispute resolution process set forth in Section 12.02. The Cooperative's failure to resume Project Water Service upon payment of all outstanding rates and charges, including any interest, may constitute a default under Section 12.01 and shall be subject to the dispute resolution process specified in Section 12.02.

**12.04 Withdrawal.** A Party may withdraw from the GOVERNANCE AGREEMENT only by Substitution as provided in Section 4.03.

**12.04.1 Withdrawal Procedure.** Subject to the provisions of Section 12.04, a Transferor may withdraw from the GOVERNANCE AGREEMENT upon one year's notice as provided herein. Upon issuance of notice, the Transferor may only participate in decisions pertaining to matters in existence prior to issuance of the notice. Upon the completion of the notice period, the Transferor shall have no further rights under the GOVERNANCE AGREEMENT, but shall be responsible for existing obligations as stated in Section 12.04.2. In the event a Transferor is listed as a permittee in any permit issued to the Project, no later than 30 days before completion of the notice period, the Transferor shall file a request with the permitting agency to transfer its participation in the permit to the substituted Party and diligently pursue the permit transfer.

**12.04.2 Existing Obligations.** Withdrawal shall not relieve any Party from its responsibilities stated in the CLAWS Agreement, Wheeling Agreement or GOVERNANCE AGREEMENT, except as stated in those agreements. In order to effectuate its withdrawal from the GOVERNANCE AGREEMENT, the Transferor shall file its adopted action and notice of withdrawal with the other Parties following the notice provisions of Section 13.01. Additionally, after a Transferor has delivered notice of its withdrawal in accordance with Section 12.04.1, the Transferor shall timely satisfy its remaining obligations as provided in the CLAWS Agreement, Wheeling Agreement and GOVERNANCE AGREEMENT. A schedule for completion of payments and other obligations shall be developed that is mutually agreeable to all Parties.

**12.05 Termination.** Termination of the GOVERNANCE AGREEMENT shall not take place without prior written agreement of the Parties in the form of an amendment to the GOVERNANCE AGREEMENT, subject to the provisions of this Section 12.05. No termination

shall take place until all Obligations issued by the Cooperative, as provided in the Cooperative Charter or as may be entered into pursuant to the GOVERNANCE AGREEMENT with respect to the Project, are no longer outstanding in accordance with the terms of the Financing Documents, all cooperative funding agreements or grants received by the Cooperative or any Party have been completed and any other funding mechanisms used by any Party to pay for construction, operation or maintenance of the Project have been successfully concluded.

**12.06 Force Majeure.** No Party shall be liable to any other Party for delay in performance of, or failure to perform, its obligations under the GOVERNANCE AGREEMENT, if such delay or failure is caused by a Force Majeure Event. However, a Force Majeure Event shall not excuse a Party from paying its invoices when due, pursuant to Article 9. Any suspension of performance by a Party pursuant to this Section shall be only to the extent, and for a period of no longer duration than, required by the nature of the Force Majeure Event, and the Party claiming excuse shall use its best efforts to remedy its inability to perform as quickly as possible.

**12.07 Step-Up Requirement Upon Default In Payment Of Rates and Charges.** The failure by one or more Parties (other than the Cooperative) to pay its rates and charges (as defined in Article 9 hereof) when due hereunder, shall be immediately cured. If not cured, the Cooperative shall use any available reserves to pay such delinquent rates and charges due by the defaulting Party(ies)' in the short term, in order to ensure the continued operation of the Project and the payment of applicable amounts owing under the Obligations until the defaulting Party(ies) cure(s) the default. Additionally, the remaining non-defaulting Parties shall be obligated to make up any shortfalls created by the defaulting Party(ies)' failure to pay such rates and charges when due in order to ensure the continued operation of the Project and the payment of applicable amounts owing under the Obligations until the defaulting Party(ies) cure(s) the default. The amount of any shortfalls to be paid by each non-defaulting Party shall be equal to the total of such shortfalls multiplied by a fraction, the numerator of which is the non-defaulting Party's Annual Allocation Percentage, and the denominator of which is the sum of the Annual Allocation Percentages of all the non-defaulting Parties, as determined by the Cooperative. Any failure by a Party to pay its portion of the payment required by this Section 12.07 shall be deemed a failure to pay the rates and charges when due, and shall be governed by this Section 12.07 as such, with the failing Party deemed a defaulting Party. In order to cure the default, the defaulting Party(ies) must repay to the Cooperative the delinquent rates and charges. Upon repayment of such delinquent rates and charges by the defaulting Party(ies) plus any interest at the rate determined by the Cooperative, the Cooperative shall replenish any applicable reserves and/or credit the other Parties for payments made in order to avoid a shortfall. Repayments to the Cooperative from a defaulting Party(ies) shall first be used to credit non-defaulting Parties for payments made in order to avoid a shortfall, and then be used to replenish applicable reserves. If the defaulting Party(ies) make(s) partial repayments to the Cooperative, the repayments shall be used to reimburse the non-defaulting Parties pro-rata based on the amounts paid by the non-defaulting Parties until all non-defaulting Parties are fully repaid. Notwithstanding the foregoing, the application of payments hereunder shall first be applied in accordance with the applicable Financing Documents and thereafter amounts shall be applied as provided herein.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### 13.0 MISCELLANEOUS PROVISIONS

**13.01 Notices.** All notices provided for in the GOVERNANCE AGREEMENT shall be in writing and shall be sufficient and deemed to be given when sent by certified mail or registered mail, return receipt requested, on the date received by the Party (and Member Government in the case of the Cooperative) upon which notice is given. All notices shall be delivered or sent to the Parties at their respective address shown below or to such other address(es) as a Party (and Member Government in the case of the Cooperative) may designate by prior notice given in accordance with this provision to the other Parties:

As to Toho: Executive Director  
Tohopekaliga Water Authority  
951 MLK Boulevard  
Kissimmee, FL 34741  
Phone: 407-944-5000

With copy to: General Counsel  
Tohopekaliga Water Authority  
951 MLK Boulevard  
Kissimmee, FL 34741  
Phone: 407-944-5000

As to Orange County: County Administrator  
Orange County Government  
P.O. Box 1393  
Orlando, FL 32802  
Phone: 407-836-7366

With copy to: Utilities Director  
Orange County Utilities  
9150 Curry Ford Road  
Orlando, FL 32825  
Phone: 407-254-9800

County Attorney  
Orange County Attorney's Office  
P.O. Box 1393  
Orlando, FL 32802  
Phone: 407-836-7320

As to Polk County: County Manager  
Polk County Government  
Drawer AT01/PO Box 9005  
Bartow, FL 33831  
Phone: 863-534-6444

With copy to: Utilities Director  
Polk County Utilities  
1011 Jim Keene Boulevard  
Winter Haven, FL 33880  
Phone: 863-298-4240

Polk County Attorney  
Polk County Attorney's Office  
Drawer AT01/PO Box 9005  
Bartow, FL 33831  
Phone: 863-534-6482

As to the Cooperative: Executive Director  
Tohopekaliga Water Authority  
As Agent for the Cooperative  
951 MLK Boulevard  
Kissimmee, FL 34741  
Phone: 407-944-5000

In the event of any change in title of the above positions, the top staff level position in each Party shall designate the replacement position or updated title for receipt of notices.

**13.02 Liability, Indemnification And Sovereign Immunity.** Neither this provision nor any other provision in the GOVERNANCE AGREEMENT shall be construed as a waiver of sovereign immunity by any of the Parties and no Party shall by virtue of entering into the GOVERNANCE AGREEMENT waive the sovereign immunity limits established by Florida law. To the extent allowed by Florida law including, Chapter 768, Florida Statutes, the Parties agree to indemnify and to hold the other harmless from the willful misconduct, or the negligent acts or omissions of itself, its officers, employees, or agents, arising out of the GOVERNANCE AGREEMENT. Nothing in this Section shall excuse any party from the financial obligations set out elsewhere in the GOVERNANCE AGREEMENT. All contracts and subcontracts for any work done for the Project shall include hold harmless and indemnification provisions to protect all of the Parties in a form acceptable to the Board. Consultant(s) and subconsultant(s) shall provide evidence of acceptable levels and qualities of insurance and of said hold harmless and indemnity prior to commencement of work and access to any of the Project or property of any of the Parties.

**13.03 Ownership Of Documents.** Ownership and copyright to all reports and all accompanying data (in all formats) produced pursuant to work done under the GOVERNANCE AGREEMENT shall be vested in the Parties who participate in the Project. Any source documents or any other documents or materials developed, secured or used in the performance of the

GOVERNANCE AGREEMENT shall be considered property of the Party from which such documents or materials originated.

**13.04 Entire Agreement.** The GOVERNANCE AGREEMENT, including exhibits, constitutes the entire agreement among the Parties pertaining to the subject matter hereof, and there are no warranties, representations or other agreements in connection with the subject matter hereof, except as specifically set forth herein. The GOVERNANCE AGREEMENT supersedes all previous discussions, understandings, and agreements between the Parties relating to the matters set forth herein. However, nothing herein is intended to amend or replace any existing agreement between any of the Parties, including, but not limited to, the CLAWS Agreement and the Wheeling Agreement.

**13.05 Severability.** If any provision of the GOVERNANCE AGREEMENT is found by a court of competent jurisdiction to be invalid, it shall be considered deleted herefrom, and shall not invalidate the remaining provisions. However, severability of the provisions of the GOVERNANCE AGREEMENT shall not apply to the voting mechanism, the funding mechanisms applicable to Parties, and the work being done on the Project.

**13.06 Assignment.** No assignment, delegation, transfer or novation of the GOVERNANCE AGREEMENT or any part hereof shall be made unless approved in writing by each of the Parties and subject to Section 4.03.

**13.07 Disclaimer Of Third Party Beneficiaries.** The GOVERNANCE AGREEMENT is solely for the benefit of the Parties and the Member Governments of the Cooperative and no right or cause of action shall accrue to or for the benefit of anyone that is not a Party hereto or Member Government of the Cooperative except the holders of Obligations. Nothing in the GOVERNANCE AGREEMENT, expressed or implied, is intended or shall be construed to confer upon or give any person or corporation other than the Parties any right, remedy, or claim under or by reason of the GOVERNANCE AGREEMENT or any provisions or conditions hereof and the holders of Obligations; and all of the provisions, representation, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the Parties. Nothing in this GOVERNANCE AGREEMENT is intended to inure to the benefits of any third party for purpose of allowing any claim that would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

**13.08 Applicable Laws, Venue, Waiver Of Right To Jury Trial.** The GOVERNANCE AGREEMENT and the rights and obligations of the Parties are to be governed by, construed and interpreted in accordance with the laws of the State of Florida. In the event of any legal proceedings arising from the GOVERNANCE AGREEMENT, venue for such proceedings, if in state court, shall be in the Ninth or Tenth Judicial Circuit of Florida, and if in federal court, shall be in the Middle District of Florida, Orlando Division. In any such legal proceedings, the Parties hereby consent to trial by court and waive the right to seek a jury trial as to any issues so triable.

**13.09 Compliance With Laws.** The Parties, their employees, subcontractors and assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of the GOVERNANCE AGREEMENT.

**13.10 Public Records.** The Parties hereby covenant and agree that all Parties are subject to the public records laws under Chapter 119, Florida Statutes, with regard to the information, documents, and materials related to the Project. Should any Party assert any exemption to the requirements of Chapter 119, Florida Statutes, and related statutes, the burden of establishing such an exemption, by way of injunctive or other relief as provided by law, shall be upon that Party. Nothing in the GOVERNANCE AGREEMENT shall be construed nor is intended to expand the scope of Chapter 119, Florida Statutes, or make into a public record a document that is not a public record under applicable law.

**13.11 Nondiscrimination.** The Parties hereby assure that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age, or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under the GOVERNANCE AGREEMENT. The PARTIES shall take all measures necessary to effectuate these assurances.

**13.12 No Presumption.** The Parties acknowledge that each Party and its legal counsel have participated in the negotiation of the GOVERNANCE AGREEMENT. The GOVERNANCE AGREEMENT shall be construed without regard to any presumption or other rule requiring construction against the Party causing the GOVERNANCE AGREEMENT to be drafted.

**13.13 Time Of The Essence.** Time is hereby declared to be of the essence to the lawful performance of the duties and obligations contained in the GOVERNANCE AGREEMENT, subject to reasonable extension for a Force Majeure Event.

**13.14 Recordation.** The GOVERNANCE AGREEMENT shall be recorded by the Project Administrator in the public records of each county where a Party is located.

**13.15 Pending Litigation.** There is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending against any Party, wherein an unfavorable decision, ruling or finding would materially and adversely affect the performance by any Party of their obligations hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of the GOVERNANCE AGREEMENT.

**13.16 Non-Waiver.** No failure by a Party to exercise any right, power or privilege under the GOVERNANCE AGREEMENT is a waiver of that or any other right, power or privilege under the GOVERNANCE AGREEMENT, except as otherwise expressly set forth in the GOVERNANCE AGREEMENT.

**13.17 Attorney's Fees And Costs.** Each Party shall bear its own costs, including attorney's fees, incurred in any litigation arising under the GOVERNANCE AGREEMENT. Notwithstanding the foregoing, any costs, including attorney's fees incurred by the Cooperative in any dispute resolution or litigation arising under the GOVERNANCE AGREEMENT may be included in computation of the rates and charges pursuant to Article 9, upon approval by the Board.

**13.18 Relationship Of The Parties.** Nothing herein shall make any Party a partner or joint venturer or create any fiduciary relationship among the Parties.

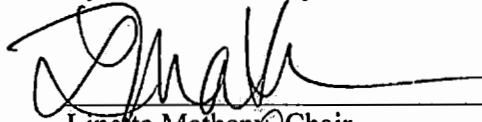
**13.19 Execution In Counterparts.** The GOVERNANCE AGREEMENT may be simultaneously executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.



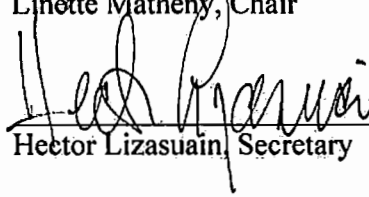
IN WITNESS WHEREOF, the undersigned has caused this GOVERNANCE AGREEMENT to be duly executed.

THE WATER COOPERATIVE OF CENTRAL  
FLORIDA

By: its Board of Supervisors



Linette Matheny, Chair



Hector Lizasuain, Secretary

Date: April 12, 2023

IN WITNESS WHEREOF, the undersigned has executed this GOVERNANCE AGREEMENT below in its capacity as a Member Government of THE WATER COOPERATIVE OF CENTRAL FLORIDA and, in its individual capacity, to ratify and accept on to itself the obligations of the TOHOPEKALIGA WATER AUTHORITY and the respective obligations of the individual Member Governments as they apply to the TOHOPEKALIGA WATER AUTHORITY, in accordance with the terms of the GOVERNANCE AGREEMENT.

TOHOPEKALIGA WATER AUTHORITY  
Board of Supervisors

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

Henry Thacker, Chair

Attest: \_\_\_\_\_

William "Bill" Land, Secretary

Date: \_\_\_\_\_

3/8/2023

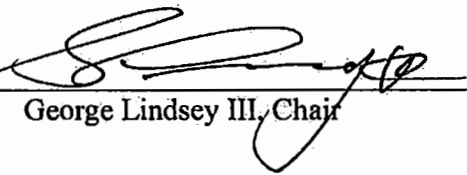
Approved by: \_\_\_\_\_

Attorney

IN WITNESS WHEREOF, the undersigned has executed this GOVERNANCE AGREEMENT below in its capacity as a Member Government of WATER THE COOPERATIVE OF CENTRAL FLORIDA and, in its individual capacity, to ratify and accept on to itself the obligations of POLK COUNTY and the respective obligations of the individual Member Governments as they apply to POLK COUNTY, in accordance with the terms of the GOVERNANCE AGREEMENT.

POLK COUNTY, FLORIDA  
Board of County Commissioners



By:   
George Lindsey III, Chair

Stacy M. Butterfield, Clerk  
Attest: Stacy M. Butterfield, Clerk  
Alison Holland, Deputy Clerk

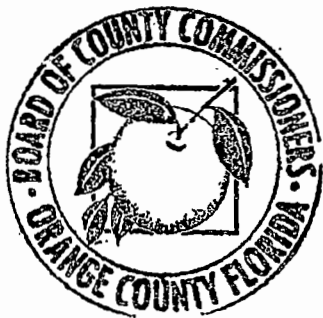
Date: 3/21/23

R30

Approved by:   
Deputy County Attorney

IN WITNESS WHEREOF, the undersigned has executed this GOVERNANCE AGREEMENT below in its capacity as a Member Government of THE WATER COOPERATIVE OF CENTRAL FLORIDA, and, in its individual capacity, to ratify and accept on to itself the obligations of ORANGE COUNTY and the respective obligations of the individual Member Governments as they apply to ORANGE COUNTY, in accordance with the terms of the GOVERNANCE AGREEMENT.

By: ORANGE COUNTY, FLORIDA  
Board of County Commissioners



*Jerry L. Demings*  
for Jerry L. Demings, Orange County Mayor

Attest: Phil Diamond, C.P.A., County Comptroller  
As Clerk to the Board of County Commissioners

By: *Jennifer Horn-Kinety*  
Deputy Clerk

Date: March 7, 2023

**Exhibit 1**  
**Project**

