

EXHIBIT XVII
CHANGE ORDER

PROJECT: Lake Wilson Road Widening
BID NO.: 22-115

CHANGE ORDER NUMBER: 5
CONTRACT NO.: 2022-016

CONTRACTOR: Watson Civil Construction, Inc.

POLK COUNTY

BARTOW, FLORIDA 33830

ARCHITECT/ENGINEER: Andrew Bailey, P.E., AE Engineering, Inc.

DESCRIPTION OF CHANGE ORDER: The Board approved Amendment #1 to the Interlocal Agreement (ILA) with the Tohopekaliga Water Authority (TOHO). TOHO elected to utilize the County's Road Contractor to complete the relocation work to their water system. TOHO's costs for the utility work are broken down as follows: \$2,118,400.00 in construction costs, \$211,840.00 in construction contingency funds (10%), and \$199,256.10 for construction engineering and inspection services. Amendment #1 authorized the addition of \$145,943.68 in contingency funds. Per the Agreement, TOHO will reimburse the County for any contingency amount used. This will increase the contract by \$145,943.68 for a new total contract amount of \$20,248,205.05, with no additional contract time.

Contract is changed as follows: original contract amount is increased by \$145,943.68 and 0 days.

ARCHITECT/ENGINEER: 
Date: 10/6/23 Signature

Not valid until signed by the County and Contractor.

| | |
|---|-----------------|
| Original Contract Sum | \$19,204,371.81 |
| Net change by previously authorized Change Orders | \$ 897,889.56 |
| Contract Sum prior to this Change Order | \$20,102,261.37 |
| Contract Sum will be increased by this Change Order in the amount of | \$ 145,943.68 |
| New Contract Sum including this Change Order will be | \$20,248,205.05 |

Contract Time will be increased by 0 days.

Date of Final Completion as of the date of this Change Order therefore is 5/5/2024*

*The original Contract end date was 03/24/2024 plus 14 days (CO 4) and 29 days for inclement weather.

The above changes are accepted by:

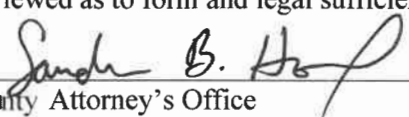
CONTRACTOR:  Date: 10/3/2023

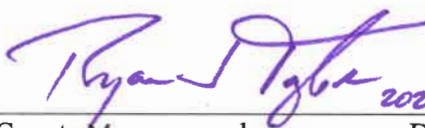
YOU ARE HEREBY AUTHORIZED TO MAKE THE CHANGES NOTED ABOVE:

COUNTY: POLK COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA


Division Director Date 10/6/23

(Change order increases require Board approval)

Reviewed as to form and legal sufficiency:

County Attorney's Office Date 10/10/23


County Manager or designee Date 2023/10/12

CHAIRPERSON Date

Prepared by or under the direction of and
Return to:
Anthony Cotter
Office of General Counsel
Tohopekaliga Water Authority
951 Martin Luther King Blvd.
Kissimmee, Florida 34741

*Interlocal Agreement for Lake
Wilson Rd Utility Project*

**INTERLOCAL AGREEMENT
BETWEEN POLK COUNTY, FLORIDA
AND TOHOPEKALIGA WATER AUTHORITY
RELATING TO LAKE WILSON ROAD
UTILITIES ADJUSTMENT PROJECT**

THIS INTERLOCAL AGREEMENT is entered into by and between Polk County, Florida, a political subdivision of the State of Florida, 330 West Church Street, Bartow, Florida 33830 (the “COUNTY”) and the Tohopekaliga Water Authority, an independent special district established and created pursuant to Chapter 189, Florida Statutes, by special act of the Florida Legislature, 951 Martin Luther King Blvd., Kissimmee, Florida 34741 (“TOHO”). The COUNTY and TOHO may be individually referred to as a “Party” and collectively as the “Parties.”

WHEREAS, Section 163.01, Florida Statute, known and cited herein as the “Florida Interlocal Cooperation Act of 1969” or the “Act,” authorizes local governmental units to make the most efficient use of their powers by enabling them to cooperate with each other; and

WHEREAS, under the Act, the COUNTY and TOHO may exercise, jointly with each other or another government, any power, privilege, or authority which such governments share in common and which each might exercise separately; and

WHEREAS, the objectives of this Interlocal Agreement achieve a public purpose, and each of the Parties represent to the other that it has the power, privilege, and authority to undertake and enter into this Interlocal Agreement; and

WHEREAS, the COUNTY plans to construct roadway widening improvements to Lake Wilson Road from CR 532 South into the COUNTY’s utility service area, which will include a portion of right-of-way located within Osceola County (collectively the “Project”); and

WHEREAS, the COUNTY and Osceola County have executed an interlocal agreement, in part for the purchasing of any additional properties needed to accomplish the Project (the “Osceola ILA”); and

WHEREAS, TOHO currently owns, operates, and maintains utility facilities (collectively the “Utilities”), which are located within the Osceola County right-of-way affected by a portion of the Project (the “Project Area”); and

WHEREAS, relocation of the Utilities requires the COUNTY to first construct a new 16” water main and then remove an existing certain 16” water main that is a part of Polk County Utilities’ water distribution system (the “PCU Sub-Project”); and

WHEREAS, should the PCU Sub-Project require the acquisition of additional property, all additional property shall be acquired prior to initiating construction of the Project; and

WHEREAS, to avoid conflict with the Project, TOHO has agreed to relocate the Utilities, which will include the removal and relocation of 1200 feet of a 36" reclaim water main and 1200 feet of a 30" water main (collectively the "Utility Improvements"), subject to the substantial completion of the PCU Sub-Project; and

WHEREAS, the Parties agree that the COUNTY will publicly advertise the bid documents for the Project together with the Utility Improvements, on behalf of TOHO, and will require bidders to submit bids on both; and

WHEREAS, TOHO has provided the COUNTY with the final Utility Improvements construction documents (including plans and specifications) for use in its bid advertisement; and

WHEREAS, TOHO agrees to cooperate with the COUNTY in the bidding and contract award project by making every effort to award the Utility Improvements contract to the same contractor as that of the COUNTY for the Project; and

WHEREAS, TOHO agrees to provide payment for all costs associated with the Utility Improvements up to the established amount, as set forth in this Interlocal Agreement; and

WHEREAS, the COUNTY and TOHO agree to cooperate and coordinate in completion of the Project and the Utility Improvements and to ensure that both are completed in an economic, timely, and efficient manner, in accordance with the conditions set forth herein.

NOW, THEREFORE, in consideration of the terms, conditions, promises, covenants, and payment hereinafter set forth, the Parties hereby agree as follows:

SECTION 1.

Each of the above stated recitals are declared to be true and correct and are incorporated into this Agreement as if fully set forth hereafter.

SECTION 2.

This Interlocal Agreement shall become effective upon the execution by both Parties and the recording with the clerks of the courts of both Osceola and Polk counties, in accordance with the Act (the "Effective Date"), and shall remain in full force and effect until such time as the following conditions are met: (a) the Utility Improvements have been completed; and (b) the warranty period is complete.

SECTION 3.

TOHO has provided the COUNTY with a suitable copy of the design and plans for the Utility Improvements, on standard size sheets (11" x 17"), together with a complete set of front end and technical specifications covering all construction requirements for the Utility Improvements for use by the COUNTY in its bid advertisement.

SECTION 4.

Based on the low bid of the Proposed Contractor, as defined in Section 5, the cost of construction of the Utility Improvements are estimated to be \$2,118,400.00. With the allowance of a 10% contingency (\$211,840.00) and a pro rata share of the CEI costs (\$199,256.10), TOHO shall be obligated to pay up to, but not exceeding, \$2,529,496.10, except as specifically provided

in Section 5. The COUNTY agrees to provide payment to the contractor for Utility Improvement work performed under this Interlocal Agreement.

TOHO agrees that it will, no more than 30 days following the Effective Date, furnish the COUNTY with an advance deposit in the amount of ONE MILLION DOLLARS (\$1,000,000.00). Within 30 days of TOHO's receipt of notice of the completion of the PCU Sub-Project from the COUNTY, TOHO agrees to furnish the COUNTY with a second deposit to include the remainder of the cost of construction in the amount of ONE MILLION, ONE HUNDRED EIGHTEEN THOUSAND, FOUR HUNDRED DOLLARS (\$1,118,400.00) plus the pro rata share of the CEI costs in the amount of ONE HUNDRED NINETY NINE THOUSAND, TWO HUNDRED FIFTY SIX DOLLARS AND TEN CENTS (\$199,256.10) for a total amount of ONE MILLION, THREE HUNDRED SEVENTEEN THOUSAND, SIX HUNDRED FIFTY SIX DOLLARS AND TEN CENTS (\$1,317,656.10). TOHO agrees to hold contingency funds in the amount of TWO HUNDRED ELEVEN THOUSAND, EIGHT HUNDRED FORTY DOLLARS (\$211,840.00), for use by the COUNTY upon authorization by TOHO's Executive Director in writing, which approval shall not be unreasonably withheld. Any changes to the Project that cause the cumulative cost of the Utility Improvements to exceed \$2,529,496.10 must be approved by written amendment to this Interlocal Agreement, except as specifically provided in Section 5.

Upon 45 days of completion of the Utility Improvements, the COUNTY must provide TOHO with a certificate providing proof of payment for all Utility Improvements work. No later than 30 days after TOHO's acceptance of the Utility Improvements, the COUNTY shall reimburse TOHO any portion of the TWO MILLION, ONE HUNDRED EIGHTEEN THOUSAND, FOUR HUNDRED DOLLARS (\$2,118,400.00) deposit and any contingency provided to the COUNTY that was not expended on the Utility Improvements.

SECTION 5.

The COUNTY shall, pursuant to its established purchasing policies and procedures, advertise for and receive bid for both the Project and the Utility Improvements. Any person or firm desiring to bid shall be required to bid on both the Project and the Utility Improvements. TOHO has reviewed the bids for the Utility Improvements and agrees with the COUNTY's recommendation of award to the lowest responsive bidder, Watson Civil Construction, Inc. (the "Proposed Contractor"). In the event the COUNTY is unable to enter a contract with the Proposed Contractor for any reason, the COUNTY reserves the right to contract with any of the other responsive bidders under Polk County Bid No. 22-115 (the "Bid"), or cancel the Bid and re-issue a new solicitation for the same or similar services; provided, however, that if the COUNTY selects any of the other responsive bidders under Polk County Bid No. 22-115, or cancels the Bid and re-solicits, TOHO retains the right, until the date on which a contract for construction of the Project and Utility Improvements is executed by the COUNTY, to award the construction contract for the Utility Improvements to a bidder other than that chosen by the COUNTY for the Project if deemed necessary or appropriate by TOHO, in its sole discretion. In such event, the Parties agree that this Agreement shall terminate upon TOHO's written notification to the COUNTY that TOHO is exercising its right to award the construction contract for the Utility Improvements. In the event the COUNTY contracts with any of the other responsive bidders under the Bid, and Toho is in agreement with that selection, the dollar amounts stated in Section 4 shall be adjusted accordingly without amending this Agreement.

All contracts between the COUNTY and any Project contractor or subcontractor responsible for any work related to the Utility Improvements shall name TOHO as a third-party beneficiary. All design, engineering, and construction reports, plans, specifications, and other Utility Improvement-related documents shall be certified for use and reliance by TOHO. The contract with the contractor responsible for the Utility Improvements shall require that the contractor obtain and deliver to TOHO: (a) both a payment bond and a performance bond reasonably acceptable to TOHO, pursuant to section 255.05, Florida Statutes. The payment and performance bonds must name TOHO as Dual-Obligee and be assigned to TOHO following its acceptance of the application construction under this Interlocal Agreement; and (b) maintenance guarantee in the form of an irrevocable letter of credit, cash escrow, or maintenance bond in favor of TOHO, in a form acceptable to TOHO, with a penal sum in the amount of ten-percent of the total cost of the Utility Improvements and having a term of two-years from the date that TOHO accepts ownership of the Utility Improvements. The purpose of the maintenance guarantee is to guarantee the materials, workmanship, structural integrity, functioning, and maintenance of the construction guarantees. If the maintenance guarantee is provided in the form of an irrevocable letter of credit, the instrument must be drawn on a financial institution having an office for the letter of credit presentation in either Orange or Osceola Counties and the financial institutional shall be on the State of Florida approved "qualified public depositories" list for local governments.

TOHO shall at all times have the right to inspect and approve or reject the work associated with the Utility Improvements and shall do so in a timely manner. Cost of change orders relating to the Utility Improvements due to the design or construction related to the Lake Wilson Road Project, including the PCU Sub-Project, shall be the responsibility of the COUNTY. Cost of change orders relating to the Utility Improvements due to the design or construction of Utility Improvements shall be the responsibility of TOHO.

SECTION 6.

In the event of conflicts arising between the Project and the Utility Improvements, the COUNTY shall provide reasonable notice of the Project meetings and TOHO shall attend the Project meetings held by the COUNTY to promptly facilitate resolution of the conflict.

SECTION 7.

Subject to the limitations set forth in Section 4 of this Interlocal Agreement, TOHO shall be responsible for all costs associated with the Utility Improvements, including construction costs, permitting, preparation of plans, construction, administration, engineering, certifications, any additional relocations and/or adjustments of TOHO utility facilities and the pro rata share of the CEI services. The details of the cost shall be as more specifically described in Exhibit A, attached and incorporated by this reference.

SECTION 8.

TOHO and the COUNTY agree to coordinate closely on the schedule for the Project. Should the COUNTY's work be delayed due to an intentional or unreasonable delay by TOHO, TOHO shall be responsible for any and all costs associated with the resulting time delays to the extent that said delays relate to the COUNTY's portion of the work being performed. TOHO's responsibility for any delay shall not occur until the PCU Sub-Project is substantially complete, which shall occur upon removal of the COUNTY's existing 16" water main. Any delays caused

by TOHO's rejection of non-conforming work shall not be construed as intentional or unreasonable delays.

Likewise, should TOHO's utility work be delayed due to an intentional or unreasonable delay by the COUNTY, the COUNTY shall be responsible for any and all costs associated with the resulting time delays to the extent that said delays relate to TOHO's portion of the work being performed. Any delays caused by the COUNTY's rejection of non-conforming work shall not be construed as intentional or unreasonable delays. Time delay claims under this Interlocal Agreement by either Party shall be limited to controlling items of work, as defined by the construction schedule in place at the time of delay.

Where there is an event of force majeure, the Party prevented from or delayed in performing its obligations under this Interlocal Agreement must immediately notify the other Party giving full particulars of the event of force majeure and the reasons for the event of force majeure prevent that Party from, or delaying that Party in, performing its obligations under this Interlocal Agreement and that Party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its or their performance of the contract and to fulfil its or their obligations under the contract.

Upon completion of the event of force majeure the Party affected must, as soon as reasonably practicable, recommence the performance of its obligations under this Interlocal Agreement. An event of force majeure includes, but is not limited to, acts of God, such as severe acts of nature or weather including floods, fire, earthquakes, hurricanes; war, acts of terrorism, and epidemics; and strikes and labor disputes. An event of force majeure does not relieve a Party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.

SECTION 9.

All clearing, grubbing and maintenance of traffic within the Utility Improvements and Project construction limits shall be performed by the COUNTY at no cost to TOHO.

SECTION 10.

The COUNTY will ensure that all necessary construction and dewatering permits for the Project also meet the needs of TOHO's proposed Utility Improvements; however, TOHO shall be responsible for obtaining all permits that are specific to the relocation of its existing utility lines.

SECTION 11.

Each Party agrees to be responsible for the negligent or wrongful acts of its employees and agents. Notwithstanding the foregoing, nothing herein shall constitute or in any way be construed to be, a waiver by either Party of its sovereign immunity or the protections and provisions of section 768.28, Florida Statutes.

SECTION 12.

The laws of the State of Florida shall govern all aspects of this Interlocal Agreement. The Parties hereby waive their right to trial by jury in any action, proceeding, or claim arising out of this Interlocal Agreement, which may be brought by either Party to this Interlocal Agreement.

Each Party shall be responsible for its own legal and attorneys' fees, costs and expenses incurred in connection with any dispute or any litigation arising out of, or relating to this Interlocal Agreement, including attorneys' fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.

SECTION 13.

All clauses contained herein shall act independently of each other. If a clause is found to be illegal or unenforceable, it shall have no effect on any other provision of this Interlocal Agreement. The Parties understand and mutually agree that if any part, term, or provision of this Interlocal Agreement is held by a court of competent jurisdiction to be illegal or otherwise in conflict with any law of the State of Florida or the United States, the validity of the remaining portions or provisions shall not be affected, and the remaining rights and obligations of the Parties shall be construed and enforced as if the Interlocal Agreement did not contain the particular part, term or provision held to be invalid.

SECTION 14.

Failure by the Parties to insist upon strict performance of any covenant, terms, provision, or condition of this Interlocal Agreement, or to exercise any right or option contained herein, shall not be construed as a waiver or a relinquishment for the future of any such covenant, term, provision, or condition, or right of election, but shall remain in full force and effect.

If either Party materially defaults in its obligations under this Interlocal Agreement and fails to cure the same within a commercially reasonable period of time after the date the non-defaulting Party provides written notice to the defaulting Party, then the non-defaulting Party shall have the right to (i) immediately terminate this Agreement by delivering written notice to the defaulting Party, and (ii) pursue any and all remedies available in law, equity or under this Interlocal Agreement.

SECTION 15.

The Parties agree and understand that written notice, mailed or delivered to the last known mailing address, or address provided by the other Party, shall constitute sufficient notice to the COUNTY and TOHO. All notices required and/or made pursuant to this Interlocal Agreement to be given to the COUNTY and/or TOHO shall be in writing and deemed to have been duly given as of the date and time the same are personally delivered or within three days after depositing with the United States Postal Services, first class mail, postage prepaid, or within one day after depositing with a recognized overnight delivery service, and addressed to the following addresses of record:

COUNTY: Polk County
Attn: County Manager
330 W. Church Street
Bartow, Florida 33830

Copy to: Polk County Attorney
330 W. Church Street
Bartow, Florida 33830

TOHO: Tohopekaliga Water Authority
Attn: Executive Director
951 Martin Luther King Blvd.
Kissimmee, Florida 34741

Copy to: Tohopekaliga Water Authority
Attn: Director of Engineering
951 Martin Luther King Blvd.
Kissimmee, Florida 34741

Tohopekaliga Water Authority
Attn: General Counsel
951 Martin Luther King Blvd.
Kissimmee, Florida 34741

SECTION 16.

The covenants, terms, and provisions of this Interlocal Agreement may be amended or modified by way of written instrument, mutually accepted by the Parties and executed with the same formality as this Interlocal Agreement. In the event of a conflict between the covenants, terms, and/or provisions of this Interlocal Agreement and any written amendments hereto, the provisions of the latest executed instrument shall take precedence.

SECTION 17.

The Parties mutually acknowledge their respective responsibility to comply with the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes and each Party agrees to cooperate with the other in such compliance.

SECTION 18.

This Interlocal Agreement shall be construed as resulting from joint negotiation and authorship. No part of this Interlocal Agreement shall be construed as the product of any one of the Parties.

SECTION 19.

This Interlocal Agreement shall become effective upon execution by both Parties and recording in the Official Records of Osceola and Polk counties. COUNTY shall record this Interlocal Agreement and any amendments hereto, as required by the Act, as soon as reasonably possible following the execution by both Parties, and provide a copy evidencing recordation to TOHO. This Interlocal Agreement shall remain in effect until both Parties agree that all provisions of the Interlocal Agreement have been met through the provisions set forth in Section 15.

SECTION 20.

The County Manager or his/her designee shall be responsible for the day-to-day administration of this Interlocal Agreement, on behalf of the COUNTY, and for the administration of construction contracts entered into pursuant to this Interlocal Agreement.

TOHO's Executive Director or his designee shall be responsible for the day-to-day administration of this Interlocal Agreement, on behalf of TOHO, and for the administration of construction contracts entered into pursuant to this Interlocal Agreement.

SECTION 21.

This Interlocal Agreement may not be assigned in whole or part without the written approval of all Parties. Any such assignment or attempted assignment shall be null and void.

SECTION 22.

The Parties do not intend, nor shall this Interlocal Agreement be construed, to in any way grant any rights, privileges, or interest to any person not a party to this Interlocal Agreement.

SECTION 23.

The terms of this Interlocal Agreement shall control over any conflicting terms in any referenced agreement or document.

SECTION 24.

This Interlocal Agreement, including referenced plans, exhibits, and attachments hereto, shall constitute the entire agreement between the Parties and shall supersede, replace, and nullify any and all prior agreements or understandings, either written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect whatsoever on this Interlocal Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have caused this Interlocal Agreement to be duly executed, by and through their authorized representatives, on the respective dates set forth below.

**BOARD OF COUNTY COMMISSIONERS
POLK COUNTY, FLORIDA**, a political subdivision of the State of Florida

(SEAL)



By: Martha Santiago
Dr. Martha Santiago, Chairperson

Date: 3/15/22
P. 6d

ATTEST: Stacy M. Butterfield, Clerk

Alison Holland
Clerk / Deputy Clerk of the Board

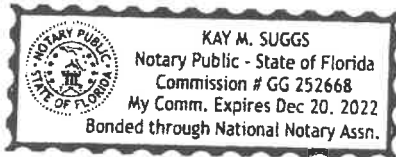
Reviewed as to form and legal sufficiency
Craig Green
County Clerk, Polk County, Florida

STATE OF FLORIDA
COUNTY OF POLK

The foregoing instrument was acknowledged before this by physical presence or online notarization this 15th day of March, 2022, by Martha Santiago, as Chair Vice Chairman of the Board of County Commissioners of Polk County, Florida, a political subdivision of the State of Florida, on behalf of the County. He/She is personally known to me or has produced _____ as identification.

Kay M. Suggs
Signatures of Notary Public

[NOTARY SEAL]



Kay M. Suggs, Notary Public
Notary Name Typed, Printed or Stamped
My Commission No.: GG 252668
My Commission Expires: Dec 20, 2022

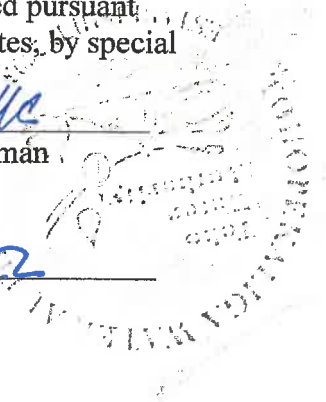
IN WITNESS WHEREOF, the Parties have caused this Interlocal Agreement to be duly executed, by and through their authorized representatives, on the respective dates set forth below.

TOHOPEKALIGA WATER AUTHORITY, an independent special district established and created pursuant to Chapter 189, Florida Statutes, by special act of the Florida Legislature

(SEAL)

By: Hector Lizasuain
Hector Lizasuain, Chairman
Board of Supervisors

Date: March 9, 2022



ATTEST:

William Land
William Land, Secretary
Board of Supervisors

STATE OF FLORIDA
COUNTY OF OSCEOLA

The foregoing instrument was acknowledged before this by physical presence or online notarization this 9 day of March, 2022 by Hector Lizasuain, as Chairman of the Tohopekaliga Water Authority Board of Supervisors, an independent special district established and created pursuant to Chapter 189, Florida Statutes, by special act of the Florida Legislature, on behalf of the district. He/She is personally known to me or has produced _____ as identification.

Elise Porter
Signatures of Notary Public

[NOTARY SEAL]

Notary Name Typed, Printed or Stamped
My Commission No.: _____
My Commission Expires: _____



EXHIBIT "A"

TOHO shall be responsible for all costs for the Utility Improvements project, which include:

1. Costs associated with the design and construction of the utility relocation work.
2. Construction Costs including:
 - a. Contract bid items
 - b. Authorized bid item overruns
 - c. Authorized change orders
3. Pro rata share of CEI costs.

Prepared by or under the direction of and
Return to:
Anthony Cotter
Office of General Counsel
Tohopekaliga Water Authority
951 Martin Luther King Blvd.
Kissimmee, Florida 34741

**FIRST AMENDMENT
TO
INTERLOCAL AGREEMENT
BETWEEN POLK COUNTY, FLORIDA
AND TOHOPEKALIGA WATER AUTHORITY
RELATING TO LAKE WILSON ROAD
UTILITIES ADJUSTMENT PROJECT**

THIS FIRST AMENDMENT (“First Amendment”) is entered into by and between Polk County, Florida a political subdivision of the State of Florida, 330 West Church Street, Bartow, Florida 33830 (the “COUNTY”) and the Tohopekaliga Water Authority, an independent special district established and created pursuant to Chapter 189, Florida Statutes by special act of the Florida Legislature, 951 Martin Luther King Blvd., Kissimmee, Florida 34741 (“TOHO”). The COUNTY and TOHO may be individually referred to as a “Party” and collectively as the “Parties.”

WHEREAS, the Parties entered into that certain interlocal agreement, a copy of which was recorded in the Official Records for Polk County, Florida at OR Book 12204 / Pages 2188 – 2207 and in the Official Records for Osceola County, Florida at OR Book 6195, Page 2090 (the “Interlocal Agreement”); and

WHEREAS, in accordance with the terms and conditions of the Interlocal Agreement, TOHO agreed to relocate those portions of the Utility Improvements, as more specifically described in the Interlocal Agreement; and

WHEREAS, due to unforeseen circumstances, the estimated costs for the Utility Improvements, as originally set forth in Section 4 of the Interlocal Agreement, have changed; and

WHEREAS, the Parties have mutually agreed to enter into this First Amendment to revise the costs for TOHO’s Utility Improvements to increase the contingency, as more specifically set forth herein, to address unforeseen conditions.

NOW, THEREFORE, in consideration of the terms, conditions, promises, covenants, and payment hereinafter set forth, the Parties hereby agree as follows:

SECTION 1.

Each of the above stated recitals are declared to be true and correct and are incorporated into this First Amendment as if fully set forth hereafter.

SECTION 2.

Section 4 of the Interlocal Agreement is hereby repealed in its entirety and replaced to read as follows:

“SECTION 4.

Based on the low bid of the Proposed Contractor, as defined in Section 5, the cost of construction of the Utility Improvements are estimated to be TWO MILLION, ONE HUNDRED EIGHTEEN THOUSAND, FOUR HUNDRED DOLLARS (\$2,118,400.00). With the allowance of a 16.89% contingency (\$357,783.68) and a pro rata share of the CEI costs (\$199,256.10), TOHO shall be obligated to pay up to, but not exceeding, TWO MILLION, SIX HUNDRED SEVENTY-FIVE THOUSAND, FOUR HUNDRED THIRTY-NINE DOLLARS AND 78/100 (\$2,675,439.78), except as specifically provided for in Section 5. The COUNTY agrees to provide payment to the contractor for Utility Improvement work performed under this Interlocal Agreement.

TOHO agrees that it will furnish the COUNTY with an advance deposit in the amount of ONE MILLION DOLLARS (\$1,000,000.00), no more than 30 days following the Effective Date. Within 30 days of TOHO’s receipt of notice of the completion of the PCU Sub-Project from the COUNTY, TOHO agrees to furnish the COUNTY with a second deposit to include the remainder of the cost of construction in the amount of ONE MILLION, ONE HUNDRED EIGHTEEN THOUSAND, FOUR HUNDRED DOLLARS (\$1,118,400.00), plus a the pro rata share of the CEI costs in the amount of ONE HUNDRED NINETY-NINE THOUSAND, TWO HUNDRED FIFTY-SIX DOLLARS AND 10/100 (\$199,256.10) for a total amount of ONE MILLION, THREE HUNDRED SEVENTEEN THOUSAND, SIX HUNDRED FIFTY-SIX DOLLARS AND 10/100 (\$1,317,656.10). TOHO agrees to hold contingency funds in the amount of THREE HUNDRED FIFTY-SEVEN THOUSAND, SEVEN HUNDRED EIGHTY-THREE DOLLARS AND 68/100 (\$357,783.68) for use by the COUNTY upon written authorization by TOHO’s Executive Director, which approval shall not be unreasonably withheld. Any changes to the Project that cause the cumulative cost of the Utility Improvements to exceed TWO MILLION, SIX HUNDRED SEVENTY-FIVE THOUSAND, FOUR HUNDRED THIRTY-NINE DOLLARS AND 78/100 (\$2,675,439.78) must be approved by written amendment to this Interlocal Agreement, except as specifically provided for in Section 5.

Upon 45 days of completion of the Utility Improvements, the COUNTY must provide TOHO with a certificate providing proof of payment for all Utility Improvements work. No later than 30 days after acceptance of the Utility Improvements, the COUNTY shall reimburse TOHO any portion of the TWO MILLION, ONE HUNDRED EIGHTEEN THOUSAND, FOUR HUNDRED DOLLARS (\$2,118,400.00) deposit and any contingency provided to the COUNTY that was not expended on the Utility Improvements.”

SECTION 3.

The changes set forth herein shall be effective upon this First Amendment being executed by both Parties.

SECTION 4.

All of the terms and conditions of the Interlocal Agreement, not otherwise revised or amended in this First Amendment, and any subsequent amendment(s) shall remain in full force and effect. To the extent of any conflict between this First Amendment and the Interlocal Agreement, the terms and conditions of this First Amendment shall prevail.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

[SIGNATURES ON PAGES FOLLOWING]

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be duly executed, by and through their authorized representatives, on the respective dates set forth below.


**BOARD OF COUNTY COMMISSIONERS
POLK COUNTY, FLORIDA**, a political
Subdivision of the State of Florida

(SEAL)

By: _____,
Chairperson

Date: _____

Approved as to form and legal sufficiency



County Attorney's Office

ATTEST:

Clerk / Deputy Clerk of Board

STATE OF FLORIDA
COUNTY OF POLK

The foregoing instrument was acknowledged before me by [] physical presence or [] online notarization this _____ day of _____, 2023 by _____, as Chair / Vice Chair of the Board of County Commissioners of Polk County, Florida, a political subdivision of the State of Florida on behalf of the County. He / She is [] personally known to me or [] has produced _____ as identification.

Signature of Notary Public

Printed Name: _____
My Commission No.: _____
My Commission Expires: _____

[NOTARY SEAL]

IN WITNESS WHEREOF, the Parties have caused this Interlocal Agreement to be duly executed, by and through their authorized representatives, on the respective dates set forth below.



TOHOPEKALIGA WATER AUTHORITY, an independent special District established and created pursuant To Chapter 189, Florida Statutes, by special Act of the Florida Legislature

By: Henry Thacker
Henry Thacker, Chairman
Board of Supervisors

Date: SEPTEMBER 20, 2023

ATTEST:

By: William Land
William Land, Secretary
Board of Supervisors

STATE OF FLORIDA
COUNTY OF OSCEOLA

The foregoing instrument was acknowledged before me by physical presence or online notarization this 20 day of SEPTEMBER, 2023, by Henry Thacker, Chairman of the Board of Supervisors for the Tohopekaliga Water Authority, an independent special district established and created pursuant to Chapter 189, Florida Statutes, by special act of the Florida Legislature, on behalf of the District. He / She is personally known to me or has produced — as identification.

Alison T Smith
Signature of Notary Public

Printed Name: ALISON T SMITH
My Commission No.: HH262002
My Commission Expires: 2/13/2027

[NOTARY SEAL]

