

A RESOLUTION OF CHARLOTTE COUNTY, FLORIDA AUTHORIZING THE EXECUTION AND DELIVERY OF AN INTERLOCAL AGREEMENT THAT ESTABLISHES THE FLORIDA UTILITY DEBT SECURITIZATION AUTHORITY; PROVIDING THAT THE COUNTY SHALL BE A MEMBER OF SUCH AUTHORITY; APPOINTING A REPRESENTATIVE OF THE COUNTY TO THE AUTHORITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CHARLOTTE COUNTY, FLORIDA AS FOLLOWS:

SECTION 1. AUTHORITY FOR THE RESOLUTION. This Resolution is adopted pursuant to the provisions of Sections 125.01 and 163.09 and Part I of Chapter 163, Florida Statutes.

SECTION 2. FINDINGS. Charlotte County, Florida (the "County"), does hereby find and determine that:

(A) On July 1, 2016, House Bill 347 was signed into law. This law establishes a new financing mechanism permitting the issuance of Utility Cost Containment Bonds ("UCCBs") by authorities established pursuant to the legislation. The Florida Utility Debt Securitization Authority ("FUDSA") will be created pursuant to this legislation for the express purpose of issuing UCCBs to provide securitized debt financing to local governments in Florida for water/wastewater projects, including new projects and refinancings of existing debt.

(B) Utilizing this legislation, participating local agencies will agree that a line item charge will be placed on each customer's bill, which charge, in the aggregate, will be an amount of money necessary to pay the debt service on the UCCBs. This line item is separate and apart to the usual charges contained in the customer's utility bill. The charge will be imposed by FUDSA in exchange for providing the proceeds of the UCCBs to the local utility to finance or refinance utility projects. The charge will be collected by the utility and remitted to FUDSA's trustee to pay the UCCBs. The UCCBs will be debt of FUDSA, not the local agency. By transferring that charge to a trustee on behalf of FUDSA, a better bond rating can be achieved for the debt, as well as a lower bond coverage requirement and the elimination of the need to fund a debt service reserve fund.

(C) Because the rights to the charge on the utility bill are owned by FUDSA and because the UCCBs have a better assurance of being paid from the revenues generated by the separate UCCBs charge on the utility bill, bond-rating agencies will give a better bond rating to that debt - typically "AAA." With that "AAA" rating, the utilities' interest cost on the debt is dramatically lower. The savings are passed on to the utility customers since the line item charge is less than the rate required to be paid per customer for traditional bonded debt.

(D) The County desires to become a member of the Authority in order to provide local utilities, including that of the County, access to UCCBs and a more cost effective method of financing utility projects.

(E) In order to properly document the admission of the County to membership in the Authority it is necessary and desirable for the County to authorize, execute and deliver the Interlocal Agreement attached hereto as Exhibit A (the "Agreement").

SECTION 3. APPROVAL OF AGREEMENT. The form, terms and provisions of the Agreement, submitted to this meeting and attached hereto as Exhibit A, be and the same hereby are approved. The Chairman of the Board of County Commissioners of the County (the "Board") and Clerk of the Board are hereby authorized and directed to execute and deliver said Agreement in the name and on behalf of the County, with such changes, amendments, modifications, omissions and additions as approved by the Chairman. Execution by said Chairman shall be deemed to be conclusive evidence of approval of such changes, amendments, modifications, omissions and additions.

SECTION 4. FILING OF AGREEMENT. The Clerk of the Board is hereby directed to file the Agreement as required by Section 163.01(11), Florida Statutes.

SECTION 5. REPRESENTATIVE. The Chief Deputy Board Services is hereby appointed as the County's Representative on the Authority. The County Administrator or his designee is hereby appointed as the alternative Representative in the event the Chief Deputy Board Services is unable to attend an Authority meeting.

SECTION 6. GENERAL AUTHORITY. The members of the County Commission and the officers, attorneys and other agents or employees of the County are hereby authorized to do all acts and things required of them by this Resolution and the Agreement, or desirable or consistent with the requirements hereof or thereof for the full, punctual and complete performance of all the terms, covenants and agreements contained herein or in the Agreement, and each member, employee, attorney and officer of the County and the Clerk is hereby authorized and directed to execute and deliver any and all papers and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated hereunder and under the Agreement.

SECTION 7. SEVERABILITY AND INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof or of the Agreement.

SECTION 8. EFFECTIVE DATE. This Resolution shall become effective immediately upon its adoption.

DULY ADOPTED, in Regular Session this 10th day of January, 2017.

**BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA**

(SEAL)

By: _____
William G. Truex, Chairman

ATTEST:

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

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Janette Knowlton
County Attorney

EXHIBIT A
AGREEMENT

EXHIBIT A

**INTERLOCAL AGREEMENT RELATING TO
ESTABLISHMENT OF THE
FLORIDA UTILITY DEBT SECURITIZATION AUTHORITY**

Among

**Florida Governmental Utility Authority,
Charlotte County, Florida
and
Lee County, Florida**

Dated as of _____ 1, 2017

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**INTERLOCAL AGREEMENT RELATING TO
ESTABLISHMENT OF THE
FLORIDA UTILITY DEBT SECURITIZATION AUTHORITY**

THIS INTERLOCAL AGREEMENT, dated as of _____ 1, 2017 (the "Interlocal Agreement"), is entered into among the local governmental units executing this Interlocal Agreement, each one constituting a legal entity created under Section 163.01(7)(g), Florida Statutes, or a "public agency" under Part I of Chapter 163, Florida Statutes, which shall on the date hereof be the Florida Governmental Utility Authority, Charlotte County, Florida and Lee County, Florida (collectively, the "Authority Members"), as evidenced by the signatures of their authorized representatives;

W I T N E S S E T H:

WHEREAS, Part I of Chapter 163, Florida Statutes (the "Interlocal Act"), permits Public Agencies (as such term is defined in the Interlocal Act) to enter into interlocal agreements with each other to jointly exercise any power, privilege or authority which such Public Agencies share in common and which each might exercise separately, permitting the Public Agencies to make the most efficient use of their powers by enabling them to cooperate on a basis of mutual benefit and thereby provide services and facilities in a manner and pursuant to forms of governmental organization that will best serve geographic, economic, population and other factors influencing the needs and development of such Public Agencies; and

WHEREAS, Section 163.09, Florida Statutes (the "Utility Cost Containment Bond Act"), authorizes a legal entity created under Section 163.01(7)(g), Florida Statutes, such as the Florida Governmental Utility Authority, and members of such legal entity or Public Agencies (as defined in the Interlocal Act) to create a single purpose entity by interlocal agreement under Section 163.01, Florida Statutes, and exercise the powers provided in Section 163.09, Florida Statutes; and

WHEREAS, the establishment of such legal entity, in the form of the hereinafter described Authority, will ensure that the customers of water and wastewater facilities in the State of Florida are provided access to an alternative cost effective manner of financing and refinancing water and wastewater facilities.

NOW, THEREFORE, in consideration of the foregoing and the covenants herein, it is mutually agreed and understood by and among the Authority Members, that now or may hereafter execute this Interlocal Agreement, that the "Florida Utility Debt Securitization Authority," a legal entity and public body and a unit of local government with all of the privileges, benefits, powers and terms of the hereinafter defined Act and this Interlocal Agreement, is hereby created for the purposes described herein, as follows:

ARTICLE I DEFINITIONS

SECTION 1.01. DEFINITIONS. The following definitions shall govern the interpretation of this Interlocal Agreement:

"Act" shall mean, collectively, the Interlocal Act, the Utility Cost Containment Bond Act, Section 125.01, Florida Statutes (in the case of counties), Section 166.021, Florida Statutes (in the case of municipal corporations), and other applicable provisions of law.

"Authority" shall mean the Florida Utility Debt Securitization Authority, a legal entity and public body created pursuant to the provisions of this Interlocal Agreement and the Act.

"Authority Member" or **"Authority Members"** shall mean the member or members of the Authority, from time to time, as shall be provided for by this Interlocal Agreement. The Authority Members shall on the date hereof be the FGUA, Charlotte County, Florida and Lee County, Florida.

"Board" shall mean the governing board of the Authority, consisting of the Directors appointed hereunder.

"Cost" as applied to a Utility Project or a portion of a Utility Project shall mean (1) any part of the expense of constructing, renovating, or acquiring lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a Utility Project; (2) the expense of demolishing or removing any buildings or structures on acquired land, including the expense of acquiring any lands to which the buildings or structures may be moved, and the cost of all machinery and equipment used for the demolition or removal; (3) finance charges; (4) interest, as determined by the Authority; (5) provisions for working capital and debt service reserves; (6) expenses for extensions, enlargements, additions, replacements, renovations, and improvements; (7) expenses for architectural, engineering, financial, accounting, and legal services, and plans, specifications, estimates, and administration; or (8) any other expenses necessary or incidental to determining the feasibility of acquiring and constructing a Utility Project or incidental to the construction, acquisition, or financing of a Utility Project or the issuance of Utility Cost Containment Bonds.

"Customer" shall mean a person or entity receiving any transmission, distribution, processing, delivery, or metering of water or wastewater service from a Publicly Owned Utility. "Customer" may also include a person or entity receiving stormwater services to the extent the Utility Cost Containment Bond Act permits the Authority to finance Utility Projects for stormwater purposes.

"Director" shall mean that individual appointed in accordance with the provisions hereof to serve as part of the Board. "Director" shall also include an alternate who is appointed to fill such role by an Authority Member.

"FGUA" shall mean the Florida Governmental Utility Authority.

"Finance" or **"Financing"** includes refinancing.

"Financing Cost" shall mean (1) interest and redemption premiums that are payable on Utility Cost Containment Bonds; (2) the cost of retiring the principal of Utility Cost Containment Bonds, whether at maturity, including acceleration of maturity upon an event of default, or upon redemption, including sinking fund redemption; (3) the cost related to issuing or servicing Utility Cost Containment Bonds, including any payment under an interest rate swap agreement and any type of fee; (4) a payment or expense associated with a bond insurance policy, financial guaranty, contract, agreement, or other credit or liquidity enhancement for bonds; or contract, agreement, or other financial agreement entered into in connection with Utility Cost Containment Bonds; (5) any coverage charges; (6) the funding of one or more reserve accounts relating to Utility Cost Containment Bonds; and (7) such other costs related to Utility Cost Containment Bonds provided for in the Financing Documents.

"Financing Documents" shall mean the Financing Resolution or Financing Resolutions duly adopted by the Authority or a SPE, as well as any indenture of trust, trust agreement or other instrument relating to the issuance or security of the Utility Cost Containment Bonds.

"Financing Resolution" means a resolution adopted by the Board of the Authority or a SPE that provides for the financing or refinancing of a Utility Project with Utility Cost Containment Bonds and that imposes a Utility Project Charge in connection with the Utility Cost Containment Bonds. A financing resolution may be separate from a resolution authorizing the issuance of the Utility Cost Containment Bonds.

"Fiscal Year" shall mean the period commencing on October 1 of each year and continuing through the next succeeding September 30, or such other period as may be determined by the Board.

"General Manager" shall mean the individual or entity selected and employed by the Board to serve the Authority in such capacity.

"Interlocal Act" shall mean Part I of Chapter 163, Florida Statutes.

"Interlocal Agreement" shall mean this Interlocal Agreement, including any amendments or supplements hereto, executed and delivered in accordance with the terms hereof.

"Local Agency" means a member of the Authority, or an agency or subdivision of that member, which is sponsoring or refinancing a Utility Project, or any municipality, county, authority, special district, public corporation, regional water authority, or other governmental entity of the State that is sponsoring or refinancing a Utility Project, including the FGUA.

"Pledged Funds" shall mean (1) Utility Project Property, (2) until applied in accordance with the terms of the Financing Documents, all moneys in the funds, accounts and subaccounts established thereby, including investments therein, and (3) such other property, assets and moneys of the Authority or a SPE, including Revenues, as shall be pledged pursuant to the Financing Documents; in each case to the extent provided by the Board pursuant to the Financing Documents. The Pledged Funds pledged to one series of Utility Cost Containment Bonds may be different than the Pledged Funds pledged to other series of Utility Cost Containment Bonds.

"Public Agencies" shall mean any "public agency", as defined in the Interlocal Act.

"Publicly Owned Utility" means a utility providing retail or wholesale water or wastewater services which is owned and operated by a Local Agency. The term includes any successor to the powers and functions of such a utility. Publicly Owned Utility shall also include a utility providing stormwater services to the extent the Utility Cost Containment Bond Act permits the Authority to finance Utility Projects for stormwater purposes.

"Revenues" shall have the meaning provided therefor in the Utility Cost Containment Bond Act.

"Single Purpose Entity" or **"SPE"** means a limited liability company, public benefit corporation or other special purpose entity created by the Authority. Such SPE shall have the powers provided herein for the Authority.

"State" shall mean the State of Florida.

"Utility Cost Containment Bond Act" shall mean Section 163.09, Florida Statutes.

"Utility Cost Containment Bonds" means bonds, notes, commercial paper, variable rate securities, and any other evidences of indebtedness issued by the Authority or any SPE the proceeds of which are used directly or indirectly to pay or reimburse a Local Agency of its Publicly Owned Utility for the costs of a Utility Project and which are secured by a pledge of, and are payable from, Utility Project Property.

"Utility Project" means the acquisition, construction, installation, retrofitting, rebuilding, or other addition to or improvement of any equipment, device, structure,

process, facility, technology, rights, or property located within the State which is used in connection with the operations of a Publicly Owned Utility.

"Utility Project Charge" means a nonbypassable charge levied on Customers of a Publicly Owned Utility to pay on a timely basis, as scheduled, the Financing Costs of Utility Cost Containment Bonds. The term includes any adjustments to the Utility Project Charge.

"Utility Project Property" means the irrevocable property right created pursuant to the Financing Documents and the Utility Cost Containment Bond Act. The term does not include any interest in a Customer's real or personal property but includes the right, title, and interest of the Authority in any of the following: (1) the Financing Resolution, the Utility Project Charge, any adjustment to the Utility Project Charge; (2) the Financing Costs of the Utility Cost Containment Bonds and all revenues, and all collections, claims, payments, moneys, or proceeds for, or arising from the Utility Project Charge; and (3) all rights to obtain adjustments to the Utility Project Charge.

Whenever any words are used in this Interlocal Agreement in the masculine gender, they shall be construed as though they were also used in the feminine or neuter gender in all situations where they would so apply, and whenever any words are used in this Interlocal Agreement in the singular form, they shall be construed as though they were also used in the plural form in all situations where they would so apply.

ARTICLE II THE AUTHORITY

SECTION 2.01. CREATION. The Authority Members hereby create and establish the "Florida Utility Debt Securitization Authority", a legal entity and public body and a unit of local government, with all of the privileges, benefits, powers and terms provided for herein and by the Act.

SECTION 2.02. PURPOSES. (A) The purpose of this Interlocal Agreement is to establish of the Authority in order to implement the provisions of the Act.

(B) The creation and organization of the Authority and the fulfillment of its objectives serves a public purpose, and is in all respects for the benefit of the people of this State, affected Local Agencies and their constituents. The Authority is performing an essential governmental function.

SECTION 2.03. AUTHORITY MEMBERS. The Authority Members shall consist of those Public Agencies as provided in Article III hereof.

SECTION 2.04. DURATION OF AUTHORITY. The Authority shall exist so long as (A) any portion of the Utility Project Property is owned or received by the Authority, (B) any Utility Cost Containment Bonds are outstanding or (C) any indebtedness issued by any financing authority established pursuant to Section 4.05 hereof is outstanding. At such time as the Authority no longer owns or receives any portion of the Utility Project Property, no Utility Cost Containment Bonds are outstanding and no indebtedness of any financing authority established pursuant to Section 4.05 hereof is outstanding, the Authority may dissolve by majority vote of the Board. In the event of such a dissolution, any remaining assets of the Authority shall be disposed in such manner as shall be determined by the Board.

**ARTICLE III
MEMBERSHIP AND REPRESENTATION**

SECTION 3.01. MEMBERSHIP. (A) Membership in the Authority shall consist of the FGUA and those Public Agencies selected pursuant to this Article III.

(B) The Authority Members shall on the date hereof consist of: the FGUA, Charlotte County, Florida and Lee County, Florida.

(C) To the extent permitted by the Act, the Authority may admit any Public Agency to membership upon application of such Public Agency and the affirmative vote of the majority of all Directors at a duly called meeting of the Authority. This Interlocal Agreement need not be amended in order to admit any Public Agency as an Authority Member. Approval of the governing bodies of the Authority Members shall not be required to admit a new Authority Member.

(D) As a precondition to membership in the Authority, each Authority Member shall constitute an authority created pursuant to Section 163.01(7)(g), Florida Statutes, or a Florida municipality, county or such other Public Agency which is permitted by the Act to be a member of the Authority. Such new Authority Member shall execute, deliver and record a duly authorized counterpart to this Interlocal Agreement or a duly authorized joinder agreement to this Interlocal Agreement. Authority Members may be admitted regardless of whether any Utility Cost Containment Bonds are issued for Utility Projects for such Authority Member.

SECTION 3.02. REPRESENTATION. (A) Each Authority Member shall appoint one Director to act on its behalf on the Board. Each Director shall be an individual who shall be appointed specifically by name or by position. In addition, each Authority Member may appoint an alternate Director to serve in the absence or unavailability of the Director.

(B) In the event the Director of an Authority Member shall resign or be removed, such Authority Member shall appoint a new Director within thirty (30) calendar days. In the event such Authority Member does not appoint a new Director within thirty (30) calendar days of resignation or removal and such Authority Member has appointed an alternate Director, such alternate Director shall serve in the capacity as Director. In the event such Authority Member does not appoint a new Director within thirty (30) calendar days of resignation or removal and such Authority Member has not appointed an alternate Director, the Board may appoint such Director who shall serve until such time as such affected Authority Member shall appoint a new Director; provided any new Director appointed by the Board shall be a resident of such Authority Member.

(C) Each Authority Member, in its sole discretion, may remove its Director at any time and may appoint a new Director to serve on the Board upon notice being given to the Authority as provided by Section 3.06(A) hereof for resignation of a Director.

(D) No Director may be an elected official of an Authority Member. Directors may be employees of an Authority Member.

(E) Any Director may be removed upon the affirmative vote of at least two-thirds (2/3) of all Directors at a duly called meeting of the Authority; provided written notice of such proposed action shall be delivered to the Authority Member of such Director prior to said vote.

SECTION 3.03. ACTION. (A) Subject to the restrictions described in Section 3.08 hereof, the affairs, actions and duties of the Authority shall be undertaken at a duly called meeting pursuant to Section 3.08 hereof.

(B) At any meeting of the Authority at which any official action is to be taken, a majority of all Directors shall constitute a quorum. A majority vote of a quorum of the Directors present at a duly called meeting shall constitute an act of the Authority, except as otherwise provided herein.

(C) A certificate, resolution or instrument signed by the Chairman, Vice-Chairman or such other person of the Authority as may be hereafter designated and authorized by the Board shall be evidence of the action of the Authority and any such certificate, resolution or other instrument so signed shall conclusively be presumed to be authentic. Likewise, all facts and matters stated therein shall conclusively be presumed to be accurate and true.

SECTION 3.04. ELECTION OF OFFICERS. Once a year, and at such other time as may be necessary to fill a vacancy, at a duly called meeting of the Board called for the purpose thereof, the Authority through its Directors shall elect a Chairman, a Vice-Chairman and Secretary-Treasurer to conduct the meetings of the Authority and to perform such other functions as herein provided. At the discretion of the Board, the General Manager (or representative thereof) may be appointed as the Secretary-Treasurer. Said Chairman, Vice-Chairman and Secretary-Treasurer shall serve one (1) year terms unless they resign from the Authority or such officer is replaced by the Board. Assistant officers may also be appointed or elected by the Directors.

SECTION 3.05. AUTHORITY OF OFFICERS. (A) The Chairman and the Vice-Chairman shall take such actions, have all such powers and sign all documents on behalf of the Authority and in furtherance of the purposes of this Interlocal Agreement as may be approved by resolution of the Board adopted at a duly called meeting.

(B) The Secretary-Treasurer, or his designee, shall keep minutes of all meetings, proceedings and acts of the Board, but such minutes need not be verbatim. Copies of all minutes of the meetings of the Authority shall be sent by the Secretary-Treasurer or his designee to all Directors to the Authority. The Secretary-Treasurer may also attest to the execution of documents. The Secretary-Treasurer shall have such other powers as may be approved by resolution of the Board adopted at a duly called meeting.

SECTION 3.06. RESIGNATION. (A) Any Director may resign from all duties or responsibilities hereunder by giving at least thirty (30) calendar days prior written notice sent by registered mail to the General Manager. Such notice shall state the date said resignation shall take effect and such resignation shall take effect on that date.

(B) Any resigning Director who is an officer of the Authority shall immediately turn over and deliver to the General Manager any and all records, books, documents or other property in his possession or under his control which belong to the Authority.

SECTION 3.07. POWERS AND DUTIES OF THE BOARD. The Board shall act as the governing board of the Authority and shall have, in addition to all other powers and duties described herein, the following powers and duties:

(A) To fix the time and place or places at which its regular meetings shall be held, and to call and hold special meetings.

(B) To make and pass rules, regulations, resolutions and orders not inconsistent with the provisions of the Act or this Interlocal Agreement, necessary for the governance and management of the affairs of the Authority, for the execution of the powers, obligations and responsibilities vested in the Authority, and for carrying into effect the provisions of this Interlocal Agreement.

(C) To fix the location of the principal place of business of the Authority and the location of all offices maintained thereunder.

(D) To create any and all necessary offices in addition to Chairman, Vice-Chairman and Secretary-Treasurer; to establish the powers, duties and compensation of all employees; and to require and fix the amount of all official bonds necessary for the protection of the funds and property of the Authority.

(E) To select and employ a General Manager, who shall administer the affairs and manage the staff of the Authority with Board approval, and perform all other administrative duties as directed by the Board.

(F) To employ or hire such attorneys or firm(s) of attorneys as it deems appropriate to provide legal advice and/or other legal services to the Authority.

(G) To amend the Authority's name, as permitted by law.

SECTION 3.08. MEETINGS. (A) The Board shall convene at a meeting duly called by either a majority of the Directors or the Chairman. The Directors may establish regular meeting times and places. Meetings shall be conducted at such locations as may be determined by the majority of the Directors or the Chairman. Notice of a special meeting, unless otherwise waived, shall be furnished to each Director by the General Manager not less than seven (7) calendar days prior to the date of such meeting; provided the Chairman or, in his or her absence or unavailability, the Vice-Chairman, may call a meeting upon twenty-four (24) hours written notice, if such officer determines an emergency exists. All meetings shall be noticed in accordance with applicable law.

(B) Within thirty (30) calendar days of the creation of the Authority, the duly appointed Directors shall hold an organizational meeting to elect officers and perform such other duties as are provided for under this Interlocal Agreement.

(C) To the extent permitted under Section 163.01(18), Florida Statutes, or any other applicable provision under Florida law relating to the use of communications media technology to hold public meetings, the Authority may convene a meeting using such technology provided the notice and other requirements of such provisions are satisfied.

SECTION 3.09. WITHDRAWAL OR DISMISSAL OF AUTHORITY MEMBERS. Any Authority Member may withdraw from the Authority at any time, if the following conditions are satisfied: (i) there shall be at least three (3) Authority Members remaining in the Authority subsequent to withdrawal, and (ii) a certified resolution from the Authority Member's governing body setting forth its intent to withdraw is presented to the Authority. Upon satisfaction of the foregoing conditions, such withdrawal shall be effective.

SECTION 3.10. EXPENSES. The Authority may establish, from time to time, procedures for reimbursement for reasonable expenses incurred by Authority Members, Directors and employees, if any, of the Authority.

SECTION 3.11. LIABILITY. No Director, agent, officer, official or employee of the Authority shall be liable for any action taken pursuant to this Interlocal Agreement in good faith or for any omission, except gross negligence, or for any act of omission or commission by any other Director, agent, officer, official or employee of the Authority.

ARTICLE IV POWERS AND DUTIES

SECTION 4.01. POWERS. (A) The Authority shall have all powers to carry out the purposes of this Interlocal Agreement, including the following powers which shall be in addition to and supplementing any other privileges, benefits and powers granted by the Act.

The Authority shall also have any additional powers conferred under the Act or under any other applicable law, insofar as such additional powers may be necessary to accomplish the purposes set forth herein, including, but not limited to, any or all of the following:

(i) enter into any agreement or contract, including, but not limited to, agreements, execute any instrument, and perform any act or thing necessary, convenient, or desirable to carry out any power authorized by this Interlocal Agreement.

(ii) employ agents and employees.

(iii) acquire, construct, manage, maintain or operate any building, works or improvements.

(iv) acquire by contract, hold or dispose of property.

(v) issue debt, including, but not limited to Utility Cost Containment Bonds, and incur debts, liabilities or obligations which do not constitute a debt, liability or obligation of the Authority Members or Local Agencies; provided, however, that the Authority's financing activities shall be limited to financing and refinancing Utility Projects. Prior to the issuance of any Utility Cost Containment Bonds, the Authority shall ensure that the applicable Local Agency has complied with all of its obligations under the Act. The Authority or a SPE may issue Utility Cost Containment Bonds pursuant to the Act and any other applicable laws of the State to finance and refinance any Utility Project or any part thereof. The Utility Cost Containment Bonds shall be issued and secured in accordance with the provisions of the Act and Section 4.03 hereof.

(vi) adopt bylaws for the regulation of its affairs and the conduct of its business.

(vii) sue and be sued in its own name.

(viii) engage the services of private consultants, including outside legal counsel, to render professional and technical assistance and advice in carrying out the purposes of this Interlocal Agreement.

(ix) as provided by applicable law, employ and compensate counsel, financial consultants, and other advisers determined necessary by the Authority in connection with the issuance and sale of the Utility Cost Containment Bonds.

(x) contract for engineering, architectural, accounting, or other services determined necessary by the Authority for the successful financing of a Utility Project.

(xi) retain and pay the reasonable costs of consulting engineers, architects, accountants, and other experts and consultants if the Authority determines those services are desirable for the successful financing of Utility Projects.

(xii) receive and accept from any source, loans, contributions, or grants, in either money, property, labor, or other things of value, for, or in aid of, the acquisition, construction, financing, or refinancing of a Utility Project, or any portion thereof or for the financing of working capital, or for the payment of the principal of and interest on Utility Cost Containment Bonds if the proceeds of those Utility Cost Containment Bonds are used for one or more of the purposes specified in the Act.

(xiii) provide a pledge, lien or security interest in all or any portion of its interest in Utility Project Property.

(xiv) issue, obtain, or aid in obtaining, from any department or agency of the United States or of the State, or any private company, any insurance or guarantee to, or for, the payment or repayment of interest or principal, or both, or any part thereof, on any loan, lease, or obligation or any instrument evidencing or securing the same, made or entered into pursuant to this Interlocal Agreement.

(xv) adopt resolutions, including, but not limited to, Financing Resolutions in connection with the issuance of Utility Cost Containment Bonds, or authorize a Single Purpose Entity to adopt a Financing Resolution.

(xvi) make such filings, applications and submissions to governmental entities and regulatory bodies as may be necessary to comply with law and this Interlocal Agreement.

(xvii) form a Single Purpose Entity as may be desirable for the purpose of financing one or more Utility Projects, including, but not limited to, the planning, development, acquisition, equipping, construction, reconstruction, reequipping, refurbishing, operation, maintenance, management and the financing thereof, and provide that any such Single Purpose Entity may exercise any powers of the Authority, specified in this Interlocal Agreement or conferred under the Act or

under any other applicable law, as such powers may be set forth in the formation documents of such Single Purpose Entity.

(xviii) enter into other interlocal agreements or join with any other special purpose or general purpose local governments, Public Agencies or authorities in the exercise of common powers or to assist the Authority in performing its powers hereunder or under the Act.

(xix) appoint advisory boards and committees to assist the Board in the exercise and performance of the powers and duties provided in this Interlocal Agreement.

(xx) acquire, by purchase, gift, devise or otherwise, and to dispose of, real or personal property, or any estate therein, to carry out the purposes authorized by this Interlocal Agreement.

(xxi) lease, as lessor or lessee, to or from any person, firm, corporation, association or body, public or private, facilities or property of any nature to carry out any of the purposes authorized by this Interlocal Agreement.

(xxii) to the extent allowed by law and to the extent required to effectuate the purposes hereof, exercise all privileges, immunities and exemptions accorded municipalities and counties of the State under the provisions of the constitution and laws of the State.

(xxiii) invest its moneys in such investments as directed by the Board in accordance with State law and which shall be consistent in all instances with the applicable provisions of the Financing Documents.

(xxiv) purchase such insurance as it deems appropriate.

(xxv) do all acts and to exercise all of the powers necessary, convenient, incidental, implied or proper in connection with any of the powers, duties or purposes authorized by this Interlocal Agreement or the Act.

(B) In exercising the powers conferred by this Interlocal Agreement the Board shall act by resolution or motion made and adopted at duly noticed and publicly held meetings in conformance with applicable law.

(C) The provisions of Chapter 120, Florida Statutes, shall not apply to the Authority.

SECTION 4.02. ANNUAL BUDGET. (A) Prior to the first date of each Fiscal Year, the Board will adopt an annual budget for the Authority. Such budget shall be prepared within the time periods required for the adoption of a tentative and final budget

for county governments under general law. The General Manager shall prepare the annual budget.

(B) The adopted budget shall be the operating and fiscal guide for the Authority for the ensuing Fiscal Year. The Board may from time to time amend the budget at any duly called regular or special meeting.

(C) The Authority shall provide financial reports in such form and in such manner as prescribed pursuant to this Interlocal Agreement and Chapter 218, Florida Statutes.

SECTION 4.03. UTILITY COST CONTAINMENT BONDS. (A) The Board shall have the power and it is hereby authorized to provide pursuant to the Financing Documents, at one time or from time to time in series, for the issuance of Utility Cost Containment Bonds of the Authority for one or more of the following purposes:

- (i) Paying all or part of the Cost of one or more Utility Projects,
- (ii) Refunding any bonds or other indebtedness of the Authority or Local Agency,
- (iii) Assuming or repaying the indebtedness relating to Utility Projects,
- (iv) Funding a debt service reserve account,
- (v) Capitalizing interest on the Utility Cost Containment Bonds,
- (vi) Paying costs of issuance relating to the Utility Cost Containment Bonds, including Financing Costs, and
- (vii) Any other purpose relating to this Interlocal Agreement or permitted by the Act.

The principal of and the interest on each series of Utility Cost Containment Bonds shall be payable from the Pledged Funds, all as determined pursuant to the Financing Documents. The Authority may grant a lien upon and pledge the Pledged Funds in favor of the holders of each series of Utility Cost Containment Bonds in the manner and to the extent provided in the Financing Documents. Such Pledged Funds shall immediately be subject to such lien without any physical delivery thereof and such lien shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority.

(B) The Utility Cost Containment Bonds of each series shall be dated, shall bear interest and such rate or rates, shall mature at such time or times not exceeding forty (40) years from their date or dates, may be made redeemable before maturity, at the option of

the Authority, at such price or prices and under such terms and conditions, all as shall be determined by the Board pursuant to the Financing Documents. The Board shall determine the form of the Utility Cost Containment Bonds, the manner of executing such Utility Cost Containment Bonds, and shall fix the denomination of such Utility Cost Containment Bonds and the place of payment of the principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any Utility Cost Containment Bonds shall cease to be such officer before the delivery of such Utility Cost Containment Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained in office until delivery. The Board may sell Utility Cost Containment Bonds in such manner and for such price as it may determine to be in the best interest of the Authority in accordance with the terms of the Financing Documents. In addition to the Pledged Funds, the Utility Cost Containment Bonds may be secured by such credit enhancement as the Board determines to be appropriate pursuant to the Financing Documents. The Utility Cost Containment Bonds may be issued as capital appreciation bonds, current interest bonds, term bonds, serial bonds, variable rate bonds, taxable or tax-exempt bonds or any combination thereof, all as shall be determined pursuant to the Financing Documents.

(C) Prior to the preparation of definitive Utility Cost Containment Bonds of any series, the Board may issue interim receipts, interim certificates or temporary Utility Cost Containment Bonds, exchangeable for definitive Utility Cost Containment Bonds when such Utility Cost Containment Bonds have been executed and are available for delivery. The Board may also provide for the replacement of any Obligation which shall become mutilated, or be destroyed or lost. Utility Cost Containment Bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this Interlocal Agreement, the Financing Documents or other applicable laws.

(D) The proceeds of any series of Utility Cost Containment Bonds shall be used for such purposes, and shall be disbursed in such manner and under such restrictions, if any, as the Board may provide pursuant to the Financing Documents.

(E) The Financing Documents may also contain such limitations upon the issuance of additional Utility Cost Containment Bonds as the Board may deem appropriate, and such additional Utility Cost Containment Bonds shall be issued under such restrictions and limitations as may be prescribed by such Financing Documents. The Financing Documents may contain such provisions and terms in relation to the Utility Cost Containment Bonds and the Pledged Funds as the Board deems appropriate and which shall not be inconsistent herewith.

(F) Utility Cost Containment Bonds shall not be deemed to constitute a general obligation debt of the Authority or the Authority Members or a pledge of the faith and credit of the Authority or any of the Authority Members, but such Utility Cost Containment

Bonds shall be payable solely from the Pledged Funds and any moneys received from the credit enhancers of the Utility Cost Containment Bonds, in accordance with the terms of the Financing Documents. The issuance of Utility Cost Containment Bonds shall not directly or indirectly or contingently obligate the Authority or any of the Authority Members to levy or to pledge any form of ad valorem taxation whatsoever therefor. No holder of any such Utility Cost Containment Bonds shall ever have the right to compel any exercise of the ad valorem taxing power on the part of any of the Authority Members to pay any such Utility Cost Containment Bonds or the interest thereon or the right to enforce payment of such Utility Cost Containment Bonds, or the interest thereon, against any property of the Authority or any of the Authority Members, nor shall such Utility Cost Containment Bonds constitute a charge, lien or encumbrance, legal or equitable, upon any property of the Authority or any of the Authority Members, except the Pledged Funds in accordance with the terms of the Financing Documents.

(G) All Pledged Funds shall be deemed to be trust funds, to be held and applied solely as provided in the Financing Documents. Such Pledged Funds may be invested by the Authority in such manner as provided in the Financing Documents.

(H) Any holder of Utility Cost Containment Bonds, except to the extent the rights herein given may be restricted by the Financing Documents, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under the Financing Documents, and may enforce and compel the performance of all agreements or covenants required by this Interlocal Agreement, or by such Financing Documents, to be performed by the Authority or by any officer thereof.

(I) The Utility Cost Containment Bonds may be validated, at the sole discretion of the Board, pursuant to Chapter 75, Florida Statutes. Utility Cost Containment Bonds may be issued pursuant to and secured by a resolution of the Board or a resolution of a Single Purpose Entity established by the Board for such purpose.

(J) In addition to the other provisions and requirements of this Interlocal Agreement, any Financing Documents may contain such provisions as the Board deems appropriate.

(K) All Utility Cost Containment Bonds issued hereunder shall not be invalid for any irregularity or defect in the proceedings for the issuance and sale thereof and shall be incontestable in the hands of bona fide purchasers for value. No proceedings in respect to the issuance of such Utility Cost Containment Bonds shall be necessary except such as are required by this Interlocal Agreement, the Financing Documents and general law. The provisions of the Financing Documents shall constitute an irrevocable contract between the Authority and the holders of the Utility Cost Containment Bonds issued pursuant to the provisions thereof.

(L) Holders of Utility Cost Containment Bonds shall be considered third party beneficiaries hereunder and may enforce the provisions hereof.

(M) The Board may enter into such swap, hedge or other similar arrangements relating to any Utility Cost Containment Bonds as it deems appropriate.

(N) The Authority may create Single Purpose Entities to perform all or a portion of its powers hereunder, including this Section 4.03. Reference herein, including in this Section 4.03, to the Authority shall also include any such Single Purpose Entity created by the Authority. Approval of the governing bodies of the Authority Members shall not be required to create such Single Purpose Entities

SECTION 4.04. AD VALOREM TAXATION NOT AUTHORIZED. The Authority shall not have the power to levy and assess an ad valorem tax on any property for any reason.

SECTION 4.05. ESTABLISHMENT OF FINANCING AUTHORITIES. The Authority Members may establish one or more financing authorities to finance or refinance Utility Projects for Authority Members and Local Agencies. Each such financing authority shall be established by the Authority Members and shall be governed by an interlocal agreement substantially identical in form to this Interlocal Agreement. Each financing authority shall have all powers provided by the interlocal agreement which establishes it. The Authority Members shall be the members of the financing authority. Each financing authority shall be a duly constituted legal entity and public body separate and apart from the Authority and all other financing authorities established in accordance with the terms hereof. No moneys, revenues or obligations of a financing authority shall constitute moneys, revenues or obligations of the Authority or any other financing authority. Each financing authority shall have its own budget and financial statements. The establishment of a financing authority does not require the approval of the governing bodies of the Authority Members. Approval of this Interlocal Agreement by the governing body of each Authority Member shall constitute authorization and approval of the creation of each such financing authority and the interlocal agreement pertaining thereto. Each interlocal agreement establishing a financing authority shall be filed in each county in which the members of the financing authority are located.

A financing authority shall not engage in any other activities other than those contemplated in the interlocal agreement pursuant to which it is established. Such interlocal agreement shall include restrictions on the ability of the financing authority to merge with another entity, own or occupy real property, establish or organize subsidiary entities, or hire employees. A financing authority shall be prohibited from guarantying or otherwise obligating itself with respect to the liabilities, indebtedness or obligations of any other entity or person. The Authority Members and the Directors serving as the board of the financing authority shall have no material economic interest in the activities of the

financing authority, or the parties participating in the issuance of the indebtedness for a particular Utility Project.

SECTION 4.06. ESTABLISHMENT OF SINGLE PURPOSE ENTITIES.

By execution and delivery of this Interlocal Agreement, the Authority Members grant to the Authority the power to establish and activate one or more Single Purpose Entities, for the limited purposes of serving as the issuer of Utility Cost Containment Bonds for the purpose of financing or refinancing Utility Projects, adopting the Financing Resolution for the issuance of a series of Utility Cost Containment Bonds, taking other actions as are necessary for the issuance of the Utility Cost Containment Bonds, including without limitation, the imposition of Utility Project Charges in connection with the Utility Cost Containment Bonds. The powers and duties of the Single Purpose Entity shall be limited to such duties as shall be provided in the resolution of the Authority establishing the Single Purpose Entity and the Financing Documents related to the Utility Cost Containment Bonds to be issued by such Single Purpose Entity. The Authority Members or Directors may be the members of the Single Purpose Entity the Board shall establish.

Single Purpose Entities established pursuant to this Interlocal Agreement shall not engage in any other activities other than those contemplated in the Financing Resolution and the Financing Documents. The Financing Documents for a series of Utility Cost Containment Bonds shall include restrictions on the ability of a Single Purpose Entity to merge with another entity, own or occupy real property, establish or organize subsidiary entities, and hire employees. A Single Purpose Entity shall be prohibited from guarantying or otherwise obligating itself with respect to the liabilities, indebtedness or obligations of any other entity or person. The Authority Members or Directors serving as the Board of the Single Purpose Entity shall have no material economic interest in the activities of the Single Purpose Entity, or the parties participating in the issuance of the Utility Cost Containment Bonds for a particular Utility Project.

SECTION 4.07. LIMITATION ON DEBT RELIEF. Notwithstanding any other law, the Authority (including any SPE created by the Authority pursuant to Sections 4.05(A)(xxi) and 4.06 hereof, any financing authority created by the Authority pursuant to Section 4.05 hereof, or any other entity created by the Authority for the purpose of financing Utility Projects pursuant to the Utility Cost Containment Bond Act) shall not, and a governmental officer or organization shall not authorize such entity to, become a debtor under the United States Bankruptcy Code or become the subject of any similar case or proceeding under any other state or federal law if any payment obligation remains with respect to the Utility Cost Containment Bonds or indebtedness issued by any financing authority established by the Authority. This provision shall not be modified by amendment of this Interlocal Agreement unless the purpose of such amendment is to further the purpose of this limitation on debt relief.

**ARTICLE V
MISCELLANEOUS**

SECTION 5.01. DELEGATION OF DUTY. Nothing contained herein shall be deemed to authorize the delegation of any of the constitutional or statutory duties of the State or the Authority Members or the Local Agencies or any officers thereof.

SECTION 5.02. FILING. A copy of this Interlocal Agreement shall be filed for record with the Clerk of the Circuit Court in each county wherein an Authority Member is located.

SECTION 5.03. IMMUNITY. (A) All of the privileges and immunities from liability and exemptions from laws, ordinances and rules which apply to the activity of officials, officers, agents or employees of the Authority Members shall apply to the officials, officers, agents or employees of the Authority when performing their respective functions and duties under the provisions of this Interlocal Agreement.

(B) The Authority Members intend to utilize Sections 768.28 and 163.01(9)(c), Florida Statutes, other Florida Statutes and the common law governing sovereign immunity to the fullest extent possible. Pursuant to Section 163.01(5)(o), Florida Statutes, Authority Members may not be held jointly liable for the torts of the officers or employees of the Authority, or any other tort attributable to the Authority, and that the Authority alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes. The Authority Members intend that the Authority shall have all of the privileges and immunities from liability and exemptions from laws, ordinances, rules and common law which apply to the municipalities and counties of the State. Nothing in this Interlocal Agreement is intended to inure to the benefit of any third-party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

SECTION 5.04. LIMITED LIABILITY. No Authority Member shall in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of the Authority, the Directors or any other agents, employees, officers or officials of the Authority, except to the extent otherwise mutually agreed upon, and neither the Authority, the Directors or any other agents, employees, officers or officials of the Authority have any authority or power to otherwise obligate any individual Authority Member in any manner.

SECTION 5.05. AMENDMENTS. This Interlocal Agreement may be amended in writing at any time by the concurrence of all of the Directors present at a duly called meeting of the Authority and subsequent ratification by the governing body of each Authority Member. However, this Interlocal Agreement may not be amended so as to (A) permit any profits of the Authority to inure to the benefit of any private person,

(B) permit the diversion or application of any of the moneys or other assets of the Authority for any purposes other than those specified herein, (C) adversely affect the tax-exempt status, if applicable, of interest on the Utility Cost Containment Bonds, or (D) materially, adversely affect the security for any Utility Cost Containment Bonds.

SECTION 5.06. SEVERABILITY. In the event that any provision of this Interlocal Agreement shall, for any reason, be determined invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the other provisions of this Interlocal Agreement shall remain in full force and effect.

SECTION 5.07. CONTROLLING LAW. This Interlocal Agreement shall be construed and governed by Florida law.

SECTION 5.08. EFFECTIVE DATE. This Interlocal Agreement shall become effective on the later of (A) the dated date hereof or (B) the date the last initial Authority Member executes this Interlocal Agreement and the filing requirements of Section 5.02 hereof are satisfied.

IN WITNESS WHEREOF, this Interlocal Agreement has been executed by and on behalf of the Authority Members by their authorized officers or officials on this ____ day of _____, 2017.

**FLORIDA GOVERNMENTAL UTILITY
AUTHORITY**

By: _____
Chairman

ATTEST:

Secretary - Treasurer

IN WITNESS WHEREOF, this Interlocal Agreement has been executed by and on behalf of the Authority Members by their authorized officers or officials on this ____ day of _____, 2017.

CHARLOTTE COUNTY, FLORIDA

By: _____
Chairman

ATTEST:

Clerk

IN WITNESS WHEREOF, this Interlocal Agreement has been executed by and on behalf of the Authority Members by their authorized officers or officials on this ____ day of _____, 2017.

LEE COUNTY, FLORIDA

By: _____
Chair

ATTEST:

Clerk