

**AGREEMENT FOR CAPACITY ALLOCATION  
IN PHASE 1 OF THE C-51 RESERVOIR  
CITY OF POMPANO BEACH**

THIS AGREEMENT FOR CAPACITY ALLOCATION IN PHASE 1 OF THE C-51 RESERVOIR (“Agreement”) is made and entered into by and between Palm Beach Aggregates, LLC, a Florida limited liability company (“Company”), with its principal offices at 20125 State Road 80, P.O. Box 700, Loxahatchee, Florida 33470, and the City of Pompano Beach, Florida, (“Participant”), a municipality organized and existing under the laws of the State of Florida, whose address is 100 West Atlantic, Blvd, Pompano Beach, FL 33060. Company and Participant shall collectively herein be called the “Parties” and each be individually identified herein from time to time as a “Party.”

**WITNESSETH:**

**WHEREAS**, since 2006, Broward County, Palm Beach County and other lower east coast area water providers (“LEC Utilities”) have been collaborating in the development of the C-51 Reservoir, to serve as a regional alternative water supply by storing excess wet-season storm water runoff for later distribution and use during the dry season; and

**WHEREAS**, after extensive study and public discussion, the C-51 Reservoir has been advanced as an innovative public-private partnership whereby interested LEC Utilities and Company would jointly develop the project with clearly defined roles for each party including the pro rata contribution of capital costs by each of the participating LEC Utilities, and following construction, the pro rata contribution of operating and maintenance costs based upon their respective storage allocation and consumptive use permit; and

**WHEREAS**, Company will be constructing a series of interconnected reservoirs (collectively, the “C-51 Reservoir”) capable of receiving and storing water from areas under the jurisdiction of the South Florida Water Management District (“SFWMD”) in South Florida (“Region”), and discharging that water back to the Region as an alternative water supply; and,

**WHEREAS**, it is intended that the C-51 Reservoir will be constructed in two phases. Phase 1 of the C-51 Reservoir will consist of a reservoir with 14,000 acre-feet of storage capacity and appurtenant facilities and works (the "Phase 1 Reservoir"). The Second Phase, if developed, will consist of an anticipated additional 46,000 acre-feet of reservoir storage capacity and appurtenant facilities and works (the "Phase 2 Reservoir"); and

**WHEREAS**, Participant is a governmental entity that owns and operates a public water utility and desires to contribute its pro rata share of the capital costs and operating and maintenance costs in exchange for a contractual allocation of the permitted storage capacity in the Phase 1 Reservoir as an alternative water supply; and

**WHEREAS**, Company intends to transfer ownership of the Phase 1 Reservoir, and assign this Agreement, to C-51 Reservoir, Inc., a Florida not-for-profit corporation ("C-51 NFP") on or about the thirtieth (30th) day after the date on which commercial operation of the Phase 1 Reservoir is achieved; and upon transfer to C-51 NFP, the term "Company" as used in this Agreement shall mean C-51 NFP; and

**WHEREAS**, because the operation of the Phase 1 Reservoir is dependent upon the SFWMD's regional system, SFWMD has agreed to operate, maintain, repair, replace, and rehabilitate the Phase 1 Reservoir and SFWMD facilities that benefit the Phase 1 Reservoir; and

**WHEREAS**, the 298 Districts, special districts governed by Florida Statutes, have or will agree to provide conveyance of water from the C-51 Reservoir to the South Florida regional water system, and from the South Florida regional water system to Participant's water supply withdrawal facilities,

**WHEREAS**, Participant's City Commission approved entering into a Capacity Allocation Agreement for 2.0 million gallons per day of storage capacity on November 12, 2019.

**NOW, THEREFORE**, for mutual consideration, the Parties agree as follows

- 1. DEFINITIONS** – As used in this Agreement, the following terms shall have the following meanings:

- 1.1 **298 District(s)** – shall mean a special district or districts governed by Chapter 298, Florida Statutes that provides for the conveyance of water from the C-51 Reservoir to the conveyance system that are needed for participants to obtain new water use permit allocations from the SFWMD.
- 1.2 **298 District O&M Cost Share** – shall mean the 298 Districts’ costs for the operation, maintenance, repair, replacement and rehabilitation of the system conveying water from the Phase 1 Reservoir pursuant to the Conveyance System Agreement(s).
- 1.3 **Administrative Cost Share** – shall mean the administrative expenses of C-51 NFP, including property and liability insurance premiums, the cost of clerical assistance for processing invoices and receipt of payments for participation in the C-51 Reservoir, the cost of processing invoices and payments to SFWMD and 298 Districts, legal fees, audit costs, costs of governing board meetings, postage, supplies, permit compliance costs, other ordinary and customary expenses of maintaining and administering the Phase 1 Reservoir and C-51 NFP, contingency and reasonable operating capital reserves.
- 1.4 **Affiliate** – shall mean, when used to indicate a relationship with a specific Person, another Person that directly or indirectly through one or more intermediaries or otherwise, controls, is controlled by, or is under common control with, such specific Person. A company shall be deemed to be an Affiliate of another company if one directly or indirectly controls the other or if each of them is directly or indirectly controlled by the same Person.
- 1.5 **Alternative Water Supply** – shall have the meaning set forth in Section 373.019, Florida Statutes and the Regional Water Availability Rule.
- 1.6 **Annual Operations Payment** – shall mean an annual payment to C-51 NFP, in advance, for C-51 NFP's, SFWMD's and 298 District's ongoing costs of operating and maintaining the Phase 1 Reservoir and conveyance system, and related facilities and work. The initial estimated Annual Operations Payment is Thirty-Six Thousand Five Hundred Fifty-One Dollars (\$36,551) per MGD of Participant’s Final Capacity Allocation (see current cost estimates in Appendix B, which will be updated by Company on or before the

Commercial Operation Date), and consists of the following charges: (i) SFWMD O&M Cost Share, (ii) 298 District O&M Cost Share, and (iii) Administrative O&M Cost Share. The Annual Operations Payment will include renewal and replacement costs as provided in both the SFWMD O&M Agreement and the Conveyance System Agreement(s).

- 1.7 **Applicant's Handbook** – shall mean Applicant's Handbook for Water Use Permit Applications within the South Florida Water Management District, effective September 7, 2015, as amended or re-designated from time to time, or any other applicable regulatory guidance for issuance of water use permits as may be promulgated by SFWMD from time to time.
- 1.8 **C-51 NFP** – shall mean the C-51 Reservoir, Inc., a Florida not-for-profit corporation, formed under the laws of Florida, governed by the C-51 NFP Bylaws, attached hereto and incorporated herein as Appendix C, and upon transfer of the Phase 1 Reservoir, controlled by the Participants, as more fully described in the C-51 NFP Bylaws.
- 1.9 **C-51 Reservoir** – shall have the meaning set forth in the Whereas clauses and as defined in the Reservoir ERP Permit and the Reservoir Water Use Permit.
- 1.10 **C-51 Allocation** – shall mean the allocation granted by SFWMD, pursuant to an application by a Participant, granting Participant a consumptive use permit allocation of water corresponding to the Participant's ISU Allocation of storage in the C-51 Reservoir, as an Alternative Water Supply, whether issued as a stand-alone water use permit in lieu or a modification of the Current WUP ("New WUP Allocation"), as determined by SFWMD and Participant.
- 1.11 **Capacity** – shall mean an amount of Water Storage Capacity in the C-51 Reservoir, or in Phase I or sub-Phase thereof, based upon 14,000 acre-feet of physical storage capacity and stated in MGDs that is capable of being delivered, from time to time, from the C-51 Reservoir to the Regional System pursuant to the Reservoir Water Use Permit.
- 1.12 **Capacity Allocation Agreement** – shall mean an agreement between the Company and Participant allocating a portion of the storage capacity in Phase 1.

- ~~1.13~~ **Capacity Cost Share** – shall mean Participant’s cost for Final Capacity Allocation in the Phase 1 Reservoir based on \$4.60 per gallon of the Final Capacity Allocation, ~~plus an amount equal to [TO BE DETERMINED] prorated by month from July 1, 2018 to the date of execution (the “Escalation Factor”). Based on the Initial Committed Capacity of [ ] million gallons per day, the initial Capacity Cost Share Payment will be \$ [ ], including the Escalation Factor.~~
- 1.14 **Commercial Operation** – shall mean the physical and operational condition, as determined by SFWMD, pursuant to the Reservoir Water Use Permit, whereby a particular Phase or sub-Phase of the construction of the C-51 Reservoir has been completed in all material respects and is capable of operating such that the Final Capacity Allocation is available for allocation to Participant.
- 1.15 **Commercial Operation Date** – shall mean the date upon which Commercial Operation has been achieved. SFWMD will conduct operational testing for two years after the Commercial Operation Date to identify any necessary or desirable Contractor Warranty and Manufacturers’ Warranties repairs, but such operational testing will not extend the Commercial Operation Date.
- 1.16 **Construction Financing** – shall mean financing agreement(s) obtained by Company from Financing Party to fund the costs of construction of the Phase 1 Reservoir.
- 1.17 **Contractor Warranty** – shall mean the construction warranty from the general contractor for the Phase 1 Reservoir to the Company, in which the general contractor warrants to the Company that the Phase 1 Reservoir construction conforms to the requirements of the Phase 1 Reservoir construction plans and specifications and the Reservoir Water Use Permit and Reservoir ERP Permit and will be free from defects and fit for the purpose for which it was intended. The Contractor Warranty shall be assigned to C-51 NFP at the time of transfer of this Agreement to C-51 NFP.
- 1.18 **Conveyance System** – shall mean the pumping, inflow and outflow structures, and network of canals, waterways, and other water bodies that are capable of transporting

water from the C-51 Reservoir to such parts of the Regional System as are necessary for Participant to obtain its New WUP Allocation.

- 1.19 **Conveyance System Agreement** – shall mean an agreement between the Company and a 298 District, wherein the 298 District agrees to provide for the conveyance of water from the C-51 Reservoir to such parts of the Conveyance System as are necessary for Participant to obtain its New WUP Allocation.
- 1.20 **Current WUP** – shall mean the water use permit issued to Participant from SFWMD in effect at the time of execution of this Agreement.
- 1.21 **FDEP** – shall mean the Florida Department of Environmental Protection.
- 1.22 **Final Capacity Allocation** – shall mean either the C-51 Allocation, or Participant’s Initial Committed Capacity if Participant waives the condition precedent of receiving a New WUP Allocation pursuant to § 12.1.1(b) of this Agreement.
- 1.23 **Financing Documents** – shall mean all of those documents, instruments and agreements between Company or its Affiliates and any of the Financing Parties or otherwise related to the financing provided by the Financing Parties from time to time, including, but not limited to, promissory notes, bonds, commercial paper, mortgages, UCC filings, liens, security agreements, pledges, guarantees, sureties, letters of credit, and collateral assignments.
- 1.24 **Financing Party**– shall mean a lender, security holder, credit agency, multilateral institution, equity provider, bond holder, underwriter or other entity or any combination thereof, providing financing or refinancing to or on behalf of any of the financing parties or the company's successors and assigns, or any trustee or agent acting on behalf of any of the financing parties or the trustees or agents' successors and assigns.
- 1.25 **Force Majeure** – shall mean a hurricane, earthquake, or other casualty caused by nature, or labor strike, war, or law, order, proclamation, regulation, or ordinance of any governmental agency that prevents the performance of this Agreement, or any obligation hereunder.

- 1.26 **Initial Committed Capacity** – shall mean 2.0 million gallons per day.
- 1.27 **ISU** – shall mean an Independent Secondary User, as defined in Section 2.0, Subsection 2.3.2, Subsection C of the Applicant’s Handbook, or its equivalent under the Reservoir Water Use Permit as determined by SFWMD.
- 1.28 **Local Government Prompt Payment Act** – shall mean Section 218.70, et al., Florida Statutes.
- 1.29 **Manufacturers’ Warranties** – shall mean the manufacturers’ warranties for materials and equipment incorporated into the Phase 1 Reservoir construction, e.g., pumps, motors, gates, etc.
- 1.30 **MGD** – shall mean million gallons per day.
- 1.31 **Month or Monthly** – shall mean a period extending from 9:00 a.m. Eastern Time on the first Day of a calendar month and ending at 8:59 a.m. Eastern Time on the first Day of the succeeding calendar month, unless otherwise agreed to by the Parties.
- 1.32 **Operations Agreement** – shall mean the Operation and Maintenance Agreement between SFWMD and Company for the Phase 1 Reservoir.
- 1.33 **Phase or sub-Phase** – shall mean a particular phase of development and construction of a portion of the C-51 Reservoir, the Reservoir ERP Permit, and the Reservoir Water Use Permit.
- 1.34 **Phase 1 Reservoir** – shall mean the first Phase to be constructed on the Phase 1 Site, with an anticipated Capacity of approximately thirty-five (35) MGD, with actual capacity to be determined in the Reservoir Water Use Permit.
- 1.35 **Phase 1 Site** – shall mean an area owned by Company in Palm Beach County, Florida, that is located generally west of SFWMD L-8 Reservoir and north of State Road 80, all as described in Appendix A, upon which the Phase 1 Reservoir will be constructed.

- 1.36 **Phase 2 Reservoir** – shall mean the second Phase of the C-51 Reservoir to be constructed on adjacent Company property, the proposed capacity of which remains to be determined.
- 1.37 **Project Sanction Date** – shall mean the date that Company delivers Notice to Participant that it has sufficient permits, commitments, and financing to move forward with the construction of the Phase 1 Reservoir in accordance with this Agreement.
- 1.38 **Regional Water Availability Rule** – shall mean Section 3.2, Subsection 3.2.1, Restricted Allocation Areas, Subsection E, of the Applicant’s Handbook, as amended from time to time.
- 1.39 **Regional System** – shall mean the SFWMD regional water system, as described in the Applicant’s Handbook.
- 1.40 **Reservoir ERP Permit** – shall mean the Environmental Resource Permit No. EC 50-0301070-002 issued by FDEP to Company for the C-51 Reservoir, as such Reservoir ERP Permit may be amended and renewed from time to time.
- 1.41 **Reservoir Water Use Permit** – shall mean the Consumptive Use Permit No. EI 50-301070-003 issued by FDEP to Company for water use for the Phase 1 Reservoir, as such Reservoir Water Use Permit may be amended and renewed from time to time.
- 1.42 **SFWMD O&M Cost Share** – shall mean the cost for the operation, maintenance, repair, replacement and rehabilitation of Phase 1 by SFWMD pursuant to the Operations Agreement, as provided in Section 6.3 below.
- 1.43 **Shared Infrastructure Costs** – shall mean the capital costs incurred by Company during construction of the Phase 1 Reservoir that provide shared benefit with Phase 2 of the C-51 Reservoir if Phase 2 is constructed in the future, including the costs related to the construction of the connection between the L-8 Reservoir and the Phase 1 Reservoir.
- 1.44 **Total Allocated Capacity** – shall mean the Capacity in the Phase 1 Reservoir allocated from time to time by Company to all ISU’s, including Participant.



- 1.45 **Water Availability Rule** – shall mean Section 3.2.1 E in the Applicant’s Handbook.
- 1.46 **Water Storage Capacity** – shall mean the capacity of water from the Regional System that may be impounded in the Phase 1 Reservoir pursuant to the Reservoir Water Use Permit.

## **2. C-51 RESERVOIR**

- 2.1 Company shall own and construct the Phase 1 Reservoir on the Phase 1 Site, pursuant to the Reservoir ERP Permit, and the Reservoir Water Use Permit with a Total Allocated Capacity sufficient to provide Participant the Final Capacity Allocation.
- 2.2 Company shall comply with the requirements of the Reservoir ERP Permit, and the Reservoir Water Use Permit.

## **3. TERM OF AGREEMENT; TERMINATION**

- 3.1 **Term of Agreement.** The Term of this Agreement shall commence on date the last party executes the Agreement and shall extend for the earlier of (i) the useful life of the Phase 1 Reservoir, as may be extended through renewal and replacement, (ii) the term of the Reservoir Water Use Permit, as renewed from time to time, or (iii) the term of the C-51 Allocation, as renewed from time to time.
- 3.2 **Termination.** Upon delivery of written notice to Company, as defined by Article 15 below, Participant may terminate this Agreement:
- 3.2.1 If Company fails to notify Participant, on or before November 30, 2019, that it has sufficient financing to commence the construction of the Phase 1 Reservoir; or
- 3.2.2 Pursuant to the provisions of Section 12.2; or
- 3.2.3 If Company fails to meet its projections in the Phase 1 Project Completion Schedule set forth on Appendix D, with the understanding that if Company anticipates a delay in achieving any of the project milestones listed in

Appendix D, Company shall promptly notify Participant in writing of such anticipated delay to determine if the milestone schedule should be modified; or

- 3.2.4 If Company fails to achieve Commercial Operation within thirty (30) months after the Project Sanction Date, provided, however, that the deadline to achieve Commercial Operation shall be extended automatically for a period of six (6) additional months in the event a surety under any completion or performance surety agreement exercises its surety rights to complete the Phase 1 Reservoir (the “Long-Stop Date”).
- 3.3 If Participant has not terminated the Agreement pursuant to Section 3.2.1 or Section 3.2.2, then Participant may not terminate the Agreement prior to the Long-Stop Date or prior to payment of the Capacity Cost Share, except pursuant to Section 3.2.3 or in the event of Force Majeure (other than a change in law) that may delay payment.

#### **4. ALLOCATION OF CAPACITY BY COMPANY**

- 4.1 Participant shall apply to SFWMD for, and undertake reasonable efforts to obtain, a C-51 Allocation equal to or greater than the Initial Committed Capacity.
- 4.2 Commencing on the Commercial Operation Date, Company shall provide to Participant Participant’s Final Capacity Allocation in the Phase 1 Reservoir.
- 4.3 The Parties acknowledge that SFWMD shall be responsible for the operation, maintenance, repair, replacement, and rehabilitation of the Regional System necessary for conveyance of the water from the C-51 Reservoir to the Regional System and from the Regional System to Participant’s water supply withdrawal facilities. Notwithstanding Company’s commitment to provide the Final Capacity Allocation to Participant, Company shall not be responsible for, and undertakes no obligation to Participant for, physical delivery or conveyance of water from the Phase 1 Reservoir to Participant. Company’s sole obligation to Participant shall be Company’s continued compliance with this Agreement, the Reservoir ERP Permit, the Reservoir Water Use Permit.

## **5. CONVEYANCE SYSTEM AGREEMENTS**

5.1 On or before the Commercial Operation Date, Company will enter into or cause to be entered into one or more Conveyance System Agreements to meet the requirements of the C-51 Allocation.

## **6. PAYMENT FOR CAPACITY ALLOCATION**

6.1 Prior to the Commercial Operation Date, Participant shall not be required to make any payments to Company under this Agreement.

6.2 Company shall provide Participant Notice within ten (10) days after reaching the Commercial Operation Date.

6.2.1 Within thirty (30) days after receipt of the Notice of the Commercial Operation Date (the “Payment Date”), Participant shall pay Company for the Capacity Cost Share.

6.2.2 In the event Company or SFWMD receives any grants of public funds to offset or supplement the costs of development and construction of the Phase 1 Reservoir from any governmental entity (not including payments under a capacity allocation agreement, reservation for future users or other agreement for storage capacity to be used by SFWMD), then Company shall refund to Participant a proportionate share of the grants based on Participant’s Final Capacity Allocation. Grants do not include in-kind benefits or services provided by the State of Florida, SFWMD, or other governmental entity.

6.2.3 In the event Company undertakes the development and construction of the Phase 2 Reservoir, in its sole discretion, then upon completion and placement into service of the Phase 2 Reservoir, Company will collect sufficient funds from the Phase 2 participants to refund to Participant a proportionate share of the Shared Infrastructure Costs determined as follows: Multiply the Shared Infrastructure Costs by a fraction, the numerator of which is the Water Storage Capacity and the denominator of which is the sum of the Water

Storage Capacity and the water storage capacity of the Phase 2 Reservoir (resulting in the “Shared Infrastructure Cost Allocation”), and then multiply the Shared Infrastructure Cost Allocation by a fraction, the numerator of which is Participant’s Final Capacity Allocation and the denominator of which is the Water Storage Capacity (resulting in the “Shared Infrastructure Reimbursement Amount”). The Shared Infrastructure Reimbursement Amount shall be reimbursed to Participant within ninety (90) days after Company delivers the Phase 2 Reservoir for use by the participants in the Phase 2 Reservoir.

6.2.4 In the event Company receives any grants to offset the costs of development and construction of the Phase 2 Reservoir, then Company shall request that the grants be allocated proportionately between the Phase 2 Reservoir and the Phase 1 Reservoir so that Phase 1 participants may receive the benefit of a proportionate share of the grants.

6.2.5 Company shall not charge or assess Participant for any costs related to or arising out of another person’s reservation of capacity in the Phase 1 Reservoir.

6.3 In addition to the Capacity Cost Share Payment set forth in Section 6.2 above, on or before October 1 of each year beginning at least six (6) months after the Commercial Operation Date and continuing for the remainder of this Agreement, Participant shall make an Annual Operations Payment to C-51 NFP, in advance. On or before the Commercial Operation Date, Company will pre-fund with C-51 NFP the initial advance Annual Operations Payment.

6.4 The Annual Operations Payment will be automatically adjusted for the following year based on actual costs incurred by C-51 NFP, which costs will be passed through to the participants. In the event actual annual costs exceed or are reasonably anticipated to exceed the annual cost estimates, C-51 NFP shall submit to Participant an invoice detailing the amount by which the actual costs exceeded or are anticipated to exceed the annual cost estimates. In the event C-51 NFP’s actual annual costs are lower than annual

cost estimates (as determined after receipt of C-51 NFP's annual audit), C-51 NFP shall submit to Participant a notice detailing the amount by which the actual annual costs were lower than annual cost estimates, which amount will be credited against Participant's next Annual Operations Payment.

6.5 Company intends to enter into one or more financing transactions (and refinancing transactions from time to time) to fund the construction and completion of the C-51 Reservoir, in which financing(s) Company intends to pledge Company's receipt of the Capacity Cost Share Payment and Annual Operations Payment by Participant under this Agreement as security to the Financing Party. Participant acknowledges that Company may make such pledge or pledges, provided that Participant's rights and obligations under this Agreement shall not be changed or affected in any manner by such pledge or pledges. Subject to the proviso stated in Section 16.9 hereof, if required by the Financing Party, Participant agrees to execute a confirmation of its obligations under this Agreement. As part of financing transactions, Participant acknowledges that Company may grant the Financing Party a mortgage or other security lien on the Phase 1 Site. Participant agrees to reasonably cooperate with Company, at Company's expense, in customary due diligence, disclosure and rating processes in relation to financing transaction(s) for the Phase I Reservoir. In the event Company utilizes an underwritten bond issuance for Construction Financing, Company agrees to (i) retain an established bond trustee to receive bond proceeds and pay construction costs, and (ii) share any savings realized from any refinancing/refunding of such bonds equally with Participants (pro rata among the Participants based on percentage of Capacity reserved). Under no circumstances shall Participant be required to pledge or actually pledge the full faith and credit or any revenues (whether ad valorem or non-ad valorem) of Participant to the Financing Party or otherwise guarantee or pledge Participant's assets or credit to secure any Company financing.

6.6 Participant acknowledges that entering into this Agreement and payment of Capacity Cost Share and Annual Operations Payment do not convey any ownership, equity, or property rights in the C-51 Reservoir, other than the Final Capacity Allocation as provided in Section 4.

## **7. BILLING AND PAYMENT**

7.1 On an annual basis in advance, no later than August 1 of each year, Company shall provide Participant with an annual billing report (the “Annual Billing Report”) of Participant’s Annual Operations Payment, calculated in accordance with Section 6. The Annual Billing Report, to be provided to Participant by Company in both written and electronic form, shall contain at least the following information:

7.1.1 The total Annual Operations Payment;

7.1.2 The number of MGDs of Participant’s Final Capacity Allocation;

7.1.3 The then-current SFWMD O&M Cost Share;

7.1.4 The then-current 298 District O&M Cost Share;

7.1.5 The then-current Administrative Cost Share; and

7.1.6 Such other information, data, or calculations as Participant or Company deems reasonably necessary to adequately calculate payment or credit amounts.

7.2 The Annual Operations Payment as set forth in the Annual Billing Report is due in advance on or before October 1<sup>st</sup> of each year. All payments due from Participant and not made within the time specified by the Local Government Prompt Payment Act shall bear interest at the rate and in accordance with the terms established from time to time in the Local Government Prompt Payment Act. In the event the Local Government Prompt Payment Act is repealed and no successor legislative act enacted, then payment shall be made by Participant in accordance with the immediately preceding version of the Local Government Prompt Payment Act.

7.3 Within thirty (30) days after receipt of an Annual Billing Report, Participant shall review its contents and advise Company in writing of any known errors or misstatements contained therein. Failure of Participant to notify Company of any known errors or misstatements by 60 days after discovery shall extinguish Participant’s right to any billing

adjustment(s). Company shall provide Notice to Participant of any errors or misstatements contained in an Annual Billing Report discovered by Company within five (5) years of delivery of the Annual Billing Report to Participant.

7.4 Subject to Section 7.3 above, if any errors or misstatements should arise in connection with any portion of any Annual Billing Report and be discovered by either Participant or Company, the Parties agree to proceed in good faith to expeditiously seek to settle any such items. Adjustments to the Annual Operations Payment shall be added to, or credited against, the next Capacity Allocation Payment then due, or paid in full by the applicable Party in the event adjustments have not been fully recovered before this Agreement expires or is terminated.

7.5 Currently, Company is not aware of any tax, assessment, or other impositions for which Participant may be liable in accordance with applicable law as a result of its purchase of Final Capacity Allocation in the Phase 1 Reservoir from Company, (*e.g.*, State of Florida sales tax). In the event of any material change in tax law(s), the Parties will enter into negotiations in an attempt to formulate an appropriate amendment to this Agreement. Participant shall not be responsible for payment of any of Company's local, state, or federal taxes.

7.6 Participant acknowledges that the Annual Operations Payment is an operating expense of Participant's utility system. Participant shall pay in each fiscal year the Annual Operations Payment in the amount and at the time required by this Agreement.

## **8. OPERATION AND MAINTENANCE OF THE C-51 RESERVOIR**

8.1 The Parties acknowledge that SFWMD will be responsible for operating and maintaining the Phase I Reservoir pursuant to the Operations Agreement. Notwithstanding Company's allocation of the Final Capacity Allocation to Participant, Participant acknowledges that Company shall not be responsible for and undertakes no obligation to operate and maintain the C-51 Reservoir. It shall not be a default of Company's obligations to Participant or a Force Majeure event if SFWMD issues water use restrictions or takes other actions pursuant to its regulatory authority that may impact the C-51 Allocation or

the Current WUP, all of which are expected to be addressed in Participant's New WUP. But, if SFWMD provides ninety (90) days' written notice of its decision to elect not to maintain or operate the C-51 Reservoir under the Operations Agreement, Company shall seek to enter into an agreement with another entity to operate and maintain the C-51 Reservoir on substantially the same terms as the Operations Agreement within the ninety (90) days' notice period from the SFWMD.

- 8.2 Participant may, from time to time during regular business hours and with reasonable prior written notice to Company, have access to inspect the operation and maintenance of the C-51 Reservoir, provided that Participant's inspections shall not unreasonably interfere with SFWMD's operation or maintenance of the C-51 Reservoir.
- 8.3 Company shall use reasonable efforts to obtain and maintain any and all governmental permits, certifications or other authorizations which are required by applicable law as prerequisites for Company's engaging in the activities envisioned by this Agreement.
- 8.4 The Manufacturers' Warranties shall be assigned to C-51 NFP at the closing of the Reservoir transfer agreement between Company and C-51 NFP and transfer of this Agreement to C-51 NFP.

## **9. INSURANCE**

- 9.1 Company shall provide and maintain, at a minimum, the following insurance coverage and limits at all times during this Agreement. Any policy or policies providing coverage on a claims-made basis shall remain in force for at least five (5) years after expiration of this Agreement. Proof of coverage and certificates of insurance shall be provided to Participant within five (5) days after a written request.

- 9.1.1 Commercial General Liability insurance with minimum limits of \$10,000,000.00 per occurrence combined single limit for bodily injury or property damage and \$10,000,000.00 per aggregate (which may be partially addressed with an umbrella/excess liability policy). Policy shall include coverage for: premises and construction operations; independent contractors; products and completed operations; explosion, collapse and underground



hazards; broad form contractual liability; personal injury; non-owned watercraft as applicable; broad form property damage; broad form named insured endorsement, and non-owned aircraft as applicable. Policy shall be endorsed to include Participant as an additional insured.

9.1.2 Pollution Liability Insurance with minimum limits of \$5,000,000.00 per claim. Policy shall include coverage for sudden and accidental events. Policy shall be endorsed to include Participant as an additional insured.

9.1.3 Worker's Compensation insurance.

9.2 Each policy shall be endorsed to include Participant and its governing board as an additional insured. Any policy or policies providing coverage on a claims-made basis.

## **10. LIMITATIONS OF LIABILITY**

TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER PARTY, NOR ITS RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS SHALL BE LIABLE TO THE OTHER PARTY OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS, SUBSIDIARIES OR AFFILIATES, SUCCESSORS OR ASSIGNS, FOR CLAIMS, SUITS, ACTIONS OR CAUSES OF ACTION FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, UNDER ANY INDEMNITY PROVISION OR ANY OTHER THEORY OF RECOVERY. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY, AND SUCH DIRECT

DAMAGES SHALL BE THE SOLE AND EXCLUSIVE MEASURE OF DAMAGES AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. THE PROVISIONS OF THIS SECTION SHALL APPLY REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS AGREEMENT. NOTHING CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WAIVER OF A PARTY'S RIGHT TO SEEK INJUNCTIVE RELIEF. THIS AGREEMENT IS NOT INTENDED NOR SHALL BE CONSTRUED TO CONSTITUTE A WAIVER OF SOVEREIGN IMMUNITY IF SUCH PARTY IS ENTITLED TO SUCH PROTECTION.

## **11. COMPANY CONDITIONS PRECEDENT TO AGREEMENT**

11.1 All of Company's obligations under this Agreement are expressly made subject to all of the following conditions, which Company agrees to use its reasonable efforts to promptly pursue and satisfy, time being of the essence:

11.1.1 Execution of Capacity Allocation Agreements by Company for the Phase 1 Reservoir for a minimum of ninety percent (90%) of the Capacity of the Phase 1 Reservoir, which Capacity Allocation Agreements have become effective on or before November 30, 2018 (the "Minimum Reserved Capacity Date"). Company shall provide Participant with written notice of the Minimum Reserved Capacity Date within ten (10) days after its occurrence.

11.1.2 Company's securing full Construction Financing for the Phase 1 Reservoir on or before November 30, 2019, with a closing date within ninety (90) days thereafter (the "Phase 1 Construction Finance Date"). On or before the tenth (10th) day after the Phase 1 Construction Finance Date, and at least sixty (60) days before the closing date for Construction Financing, Company shall notify Participant in writing of the Phase 1 Construction Finance Date, as well as the anticipated closing date for Construction Financing.

- 11.1.3 Company's entering into a construction contract to construct the Phase 1 Reservoir, satisfactory to Financing Party for Construction Financing.
  - 11.1.4 Company receiving all permits and government approvals to construct Phase 1 as required by Financing Party for Construction Financing.
  - 11.1.5 Company's securing a completion and performance bond or other equivalent surety to assure completion of the Phase 1 Reservoir construction ("Completion Surety"), provided that Participant may terminate the Agreement if Company has not secured the Completion Surety before the time of closing on Construction Financing. Participant acknowledges that the Completion Surety shall run in favor of the Financing Party for Construction Financing, but not the Participant, and shall permit the Financing Party full discretion to exercise its rights under the Completion Surety, including, but not limited to, the right to replace the contractor of the Phase 1 Reservoir construction without the approval or consent of the Participant.
  - 11.1.6 Company's entering into an Operations Agreement with SFWMD to operate the Phase 1 Reservoir.
  - 11.1.7 Company's securing acceptable Conveyance Systems Agreements from 298 Districts, as applicable for the Phase 1 Reservoir.
  - 11.1.8 298 District(s)'s securing modifications to current SFWMD permits, and securing additional permits or operational protocol letters, if determined necessary by SFWMD, for conveying water for the Phase 1 Reservoir.
  - 11.1.9 Prior to the date of closing on Construction Financing, Participant adopt all required resolutions and other approvals necessary to pay the Capacity Cost Share.
- 11.2 If the conditions precedent set forth above have not been fully satisfied or waived on or before the applicable date specified, then Company may terminate this Agreement

without liability or further liabilities or performance obligations to the other Party, by providing written notice of termination to the other Party before the closing on Construction Financing.

## **12. PARTICIPANT CONDITIONS PRECEDENT TO AGREEMENT**

12.1 Participant's obligations under this Agreement are expressly made subject to all of the following conditions, which Participant agrees to use its reasonable efforts to promptly pursue and satisfy, time being of the essence:

12.1.1 Within thirty (30) days before the closing date for Construction Financing, as set forth in Company's notice provided in accordance with Section 11.1.2, Participant shall provide written notice to the Company that:

(a) Participant has received its C-51 Allocation; or

(b) Participant has waived this Condition Precedent to receive the C-51 Allocation; or

(c) Participant has not received its C-51 Allocation and terminates this Agreement.

12.1.2 The conditions precedent set forth in Section 11.1.3 through 11.1.9 have been met on or before the date that Company provides Notice to Participant of the closing on Construction Financing in accordance with Section 11.1.2.

12.2 If the conditions precedent set forth above have not been fully satisfied or waived on or before the applicable date specified, then the Participant may terminate this Agreement without liability or further liabilities or performance obligations to the other Party, by providing written notice of termination to the other Party before the closing on Construction Financing.

### **13. DEFAULT**

13.1 Notwithstanding anything else to the contrary contained in this Agreement, the following shall each constitute an “Event of Default” regardless of any claim of Force Majeure as described in Section 13 herein or otherwise:

13.1.1 Company or Participant (i) files a voluntary petition in bankruptcy, (ii) is adjudicated bankrupt or insolvent, (iii) files any petition or answers seeking or acquiescing in any reorganization, composition, readjustment, liquidation, dissolution or similar relief for itself under any law relating to bankruptcy, insolvency or other relief of debtors, (iv) seeks or consents to or acquiesces in the appointment of any trustee, receiver, master, or liquidator of itself or of all or any substantial portion of its assets, (v) makes any admission in writing of its inability to pay its debts generally as they become due, or (vi) files or suffers involuntarily the filing of a petition in bankruptcy or otherwise seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similarly under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency, or other relief of debtors, which remains unvacated or unstayed for an aggregate of thirty (30) days, whether or not consecutive.

13.1.2 Any trustee, receiver, or liquidator of all or any substantial portion of their respective assets is appointed, which appointment shall remain un-vacated and un-stayed for an aggregate of thirty (30) days, whether or not consecutive.

13.1.3 Company or Participant defaults in the due and punctual performance of any other material covenants, conditions, agreements and provisions contained in this Agreement, and such default has not been cured as soon as possible with reasonable efforts, but in any case not more than thirty (30) days after notice from the other Party specifying such default; provided, however, if it is not feasible to correct such default within thirty (30) days after notice of such

default has been delivered to the defaulting Party by the other, but it is and remains feasible to correct such default after such notice, it shall not constitute an Event of Default hereunder until the earliest feasible date when a cure could be effected so long as (i) corrective action by the defaulting Party is instituted within thirty (30) days of the date of such notice, (ii) such corrective action is diligently pursued with reasonable efforts, and (iii) the defaulting Party provides to the other Party written reports each month as to the nature and progress of such corrective action.

- 13.2 If a Participant Event of Default should occur, all sums payable by the Participant under this Agreement shall at Company's election, become immediately due and payable (failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default), and Company may proceed, at Company's election, with any or all of the following remedies for such default: (i) retain any and all payments made by Participant to Company hereunder, and terminate this Agreement, (ii) seek payment of all sums due from Participant, (iii) seek specific performance from the Participant of Participant's obligations under this Agreement, (iv) notify SFWMD of such default and seek an administrative enforcement action by SFWMD suspending Participant's use of the C-51 Allocation during the pendency of the default; and (v) seek other equitable and legal remedies that may be available to Company to compel performance by Participant of its obligations under this Agreement. Notwithstanding any termination of this Agreement, any and all representations and indemnities of Participant set forth in this Agreement shall remain in full force and effect.
- 13.3 If a Company Event of Default should occur, then Participant may, as its sole remedy for such Event of Default against Company or its surety, seek either (i) specific performance of Company's obligations under this Agreement or (ii) in the alternative, seek direct damages against Company. Participant acknowledges and agrees that Participant's right to seek specific performance or, in the alternative, to seek direct damages shall, except as set forth in this Section below, be the sole remedy for any default by Company under this Agreement. In no event shall Participant place or record a lien, including, but not limited to, a judgment lien, against the C-51 Reservoir, any contracts or agreements referenced in

this Agreement, or any revenues pledged as security for the payment of any financing for the C-51 Reservoir; provided, however, that Participant may avail itself of any other method of collection against the Company in the event it obtains a monetary judgment against the Company. Notwithstanding any termination of this Agreement, any and all representations and indemnities of Company set forth in this Agreement shall remain in full force and effect.

- 13.4 Termination of this Agreement shall not affect the limitations of liability contained in Article 10 or the application and survival on termination of Section 13.2 and 13.3, of either Party for obligations arising prior to such termination or for damages, if any, resulting from default under the Agreement.
- 13.5 It shall not be a default by Company in the event SFWMD, after issuance of the C-51 Allocation, revokes, terminates, modifies, amends, or fails to renew the C-51 Allocation, or otherwise limits or curtails, temporarily or permanently, Participant's ability to withdraw or use water pursuant to the C-51 Allocation, including, but not limited to, issuance of water use restrictions or emergency orders restricting withdrawals from the surficial aquifer ("SFWMD Subsequent Action"). But, if SFWMD, after issuance of the C-51 Allocation, unilaterally revokes, terminates, modifies, amends, or fails to renew the C-51 Allocation, or otherwise limits or curtails, permanently, Participant's ability to withdraw or use water pursuant to the C-51 Allocation, Participant may, in its sole discretion, terminate this Agreement upon thirty (30) days' notice.

#### **14. FORCE MAJEURE**

In the event of Force Majeure, the Party so affected, upon giving prompt notice to the other Party, shall be excused from such performance to the extent of such prevention, provided that the Party so affected shall first have taken reasonable steps to avoid and remove such cause of non-performance and shall continue to take reasonable steps to avoid and remove such cause, and shall promptly notify the other Party in writing and resume performance hereunder whenever such causes are removed; provided, however, that if such non-performance exceeds 60 days, the Party that is not prevented from performance by the force majeure event shall have the right to terminate this Agreement

upon written notice to the party so affected. This section shall not supersede or prevent the exercise of any other right the parties may otherwise have to terminate this Agreement. Force Majeure shall not excuse Participant from payment of the Annual Operations Payment accrued prior to termination of the Agreement.

## **15. NOTICES**

15.1 Any notices required in this Agreement must be in writing and be delivered in person, sent by certified mail, return receipt requested, sent by overnight delivery services, return receipt requested, or sent by electronic delivery system with receipt acknowledgment, as specified below:

To Company: 20125 State Road 80  
P.O. Box 700  
Loxahatchee, Florida 33470  
Attn: Enrique Tomeu, President  
etomeu@siboneycc.com  
(561) 832-3110

With copy to: Greenberg Traurig, P.A.  
777 So. Flagler Drive, Suite 300 East  
Attn: Phillip C. Gildan  
West Palm Beach, FL 33401

**To Participant:**

**With copy to:**

Notices shall be effective upon receipt.

15.2 Either Party, at any time, by notice to the other Party may designate any different person(s) or different addresses for receipt of notices and correspondence.

## **16. GENERAL APPLICATION**

16.1 Until payment of the Capacity Cost Share, Participant may not assign any of its rights or obligations under this Agreement, except with the consent of Company and any Financing Party in its sole discretion. After payment of the Capacity Cost Share,



Participant may assign any of its rights and obligations under this Agreement, including, but not limited to, transferring all or a portion of the Final Capacity Allocation to a third party, without the prior written consent of Company (subject to any applicable Financing Party's requirements). If Financing Documents are outstanding, Participant must provide Company an opinion of a nationally or regionally recognized bond counsel that there will be no adverse tax consequences to any Financing Party as a result of the assignment. An assignment shall be evidenced by a written assignment. Company may transfer all or any part of its ownership rights in the C-51 Reservoir and assign its obligations under this Agreement without the consent of Participant, provided any assignee of Company agrees to assume all of Company's obligations under this Agreement. This Agreement shall remain in full force and effect notwithstanding any assignment by Company, change in control or ownership of Company, or exercise of any rights by a Financing Party, including, but not limited to, foreclosure of any mortgage or security interest and transfer of the foreclosed property to a third party. This Agreement shall be binding upon, and inure to the benefit of, the Parties, and the Parties' respective assigns, successors-in-interest and legal representatives. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings relating to this subject matter. No modification or waiver of any term of this Agreement, or any amendment of this Agreement, shall be effective unless it is in writing and signed by the Parties.

- 16.2 Should Company enter into any Capacity Allocation Agreement for the Phase 1 Reservoir with any other party which provides for any material term more favorable than contained in this Agreement, then this Agreement shall be deemed to be modified to provide Participant with that more favorable material term.
- 16.3 Any waiver by either Party of its rights with respect to a default (including Events of Default) under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default (including Events of Default).

- 16.4 The failure of either Party to enforce strict performance by the other Party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions or rights in that or any other instance.
- 16.5 Nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture between the Parties.
- 16.6 Section headings, titles and indexes appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.
- 16.7 Time is of the essence in the performance of this Agreement.
- 16.8 This Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any other third party as a third-party beneficiary to this Agreement or for the services to be provided hereunder. Nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability, or standard of care to any Person that is not a Party, and any Person that is not a Party shall have no rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, except that each Person identified as a Financing Party is an express third party beneficiary to this Agreement, with the right to enforce the Financing Party's rights and remedies against Participant on its own behalf.
- 16.9 Subject in all respects to the provision at the end of this Section 16.9, this Agreement shall be subordinate to any Construction Financing without the need to execute a subordination agreement and in the event of a foreclosure under any Financing Documents, Participant shall attorn to the Financing Party or purchaser at a foreclosure sale all interests that accedes to the interest of Company under this Agreement, and this Agreement shall continue in full force and effect; provided, however, that (i) the Construction Financing and the related Financing Documents shall not in any manner impair or adversely affect Participant's rights under this Agreement or change the nature of Participant's obligations hereunder and (ii) the Financing Party or purchaser at a

foreclosure sale, as applicable, shall perform all of Company's obligations under this Agreement, so that at all times Participant receives the benefit of its bargain hereunder.

- 16.10 In the event that the Reservoir or any part thereof is taken by the exercise of the power of eminent domain (or transferred to the holder of such power pursuant to a threatened taking) before the Commercial Operation Date, *i.e.* while title to the Reservoir is still owned by the Company, Participant shall have no right in or to the proceeds of any award made in such condemnation (or agreed consideration in the event of a transfer pursuant to a threatened taking). In the event that the Reservoir or any part thereof is taken by the exercise of the power of eminent domain (or transferred to the holder of such power pursuant to a threatened taking) after the Commercial Operation Date, *i.e.*, when title to the Reservoir is owned by C-51 NFP, Participant shall have a right to claim an interest in the proceeds of any award made in such condemnation (or agreed consideration in the event of a transfer pursuant to a threatened taking).
- 16.11 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida (regardless of Florida's or any other jurisdiction's choice of law rules).
- 16.12 All provisions of the Agreement that are expressly or by implication to come into or continue in force and effect after the expiration or termination of this Agreement shall remain in effect and be enforceable following such expiration or termination.
- 16.13 This Agreement may be executed in any number of counterparts and each counterpart shall represent a fully executed original as if executed by both Parties, with all such counterparts together constituting but one and the same instrument. Delivery hereof may be performed by facsimile of, or the electronic transmission of scanned, signature pages.
- 16.14 Each Party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement. Each Party agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party (at the cost and expense of the other Party) in order to give full effect to this Agreement and to carry out the intent of this Agreement.

- 16.15 Pursuant to the Applicant's Handbook, Participant agrees (i) it will comply with water shortage restrictions imposed by SFWMD rule or order issued pursuant to Chapter 40E-21, F.A.C., (ii) it will comply with all applicable water conservation standards required in the Reservoir Water Use Permit, (iii) it will notify the Company of any changes in water use demands or sources; (iv) it will continue to evaluate the feasibility of using reclaimed water in accordance with the requirements contained within the Reservoir Water Use Permit, (v) it will mitigate harm to the resources or existing legal uses caused by Participant, (vi) if required by SFWMD, it will submit a map identifying Participant's system's location, irrigated acreage, and land use type and (vii) it will comply with the above stated conditions and applicable conditions within the Reservoir Water Use Permit or be subject to potential SFWMD enforcement action pursuant to Chapter 373, Florida Statutes.
- 16.16 The Parties undertake to act fairly and in good faith in relation to the performance and implementation of this Agreement and to take such other reasonable measures as may be necessary for the realization of its purposes and objectives.
- 16.17 Participant acknowledges that Company or its Affiliates may borrow certain funds from the Financing Party and provide security interests to such Financing Party, including, but not limited to, mortgage security interests in the C-51 Reservoir and pledges of amounts payable by Participant under this Agreement, and that, as a condition to making loans to Company or its Affiliates, the Financing Party may require that Participant acknowledge the existence of this Agreement and its obligations hereunder.. In connection therewith, Participant agrees to furnish to the Financing Party, upon the Financing Party's reasonable request, an acknowledgment of this Agreement and Participant's obligations hereunder. Upon the written request of the Financing Party, Participant shall state in writing whether or not it is satisfied with Company's performance under this Agreement to that date. Subject to the proviso stated in Section 16.9 hereof, in the event of a foreclosure under any Financing Documents, the Participant will attorn to the Financing Party or purchaser at a foreclosure sale all interests that accedes to the interest of Company under this Agreement, and this Agreement will continue in full force and effect. Company shall cause the Financing Party to provide to Participant, a non-disturbance

agreement with respect to Participant's rights under this Agreement in the event of a foreclosure or transfer in lieu of foreclosure under the Financing Documents.

- 16.18 At the time of transfer of the completed reservoir to C-51 NFP, the current directors shall resign from C-51 NFP. At the time this Agreement is assigned to C-51 NFP, or at any time thereafter, Participant will have the right, but not the obligation, during this Agreement, to appoint one (1) person to the Board of Directors of C-51 NFP by providing written Notice to C-51 NFP. As explained further in the C-51 NFP's Bylaws (Appendix C), once the Phase 1 Reservoir is acquired by, and this Agreement is assigned to, the C-51 NFP, the number of directors on the C-51 NFP's Board of Directors shall be increased to equal the number of participants to the Board of Directors, together with any representative to the Board of Directors that may be appointed by a Phase 1 Reservoir 298 District; provided, however, that only participants with capacity reservation agreements that are governmental entities may appoint directors to the Board of Directors.
- 16.19 Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement have the meanings specified in the Whereas clauses and Section 1; (b) the gender of all words used herein shall include the masculine, feminine and neuter and the singular shall include the plural; (c) unless otherwise specified, references to "Articles," "Sections," "Schedules," "Annexes," "Appendices" or "Exhibits" (if any) shall be to Articles, Sections, Schedules, Annexes, Appendices or Exhibits (if any) of this Agreement, as the same may be amended, modified, supplemented or replaced from time to time hereunder; (d) all references to a Person shall include a reference to such Person's successors and permitted assigns; (e) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular Section or Subsection of this Agreement; (f) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (g) references to this Agreement shall include a reference to all Articles, Sections, Schedules, Annexes, Appendices, and Exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (h) references to any agreement, document or instrument

shall mean a reference to such agreement, document, or instrument as the same may be amended, modified, supplemented, or replaced from time to time; (i) the use of the word “including” in this Agreement to refer to specific examples shall be construed to mean “including, without limitation” or “including but not limited to” and shall not be construed to mean that the examples given are an exclusive list of the topics covered; (j) references to an applicable law shall mean a reference to such applicable law as the same may be amended, modified, supplemented or restated and be in effect from time to time; and (k) the headings contained herein are used solely for convenience and do not constitute a part of this Agreement nor should they be used to aid in any manner to construe or interpret this Agreement. The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

16.20 The Company shall comply with all applicable requirements contained in the Florida Public Records Law (Chapter 119, Florida Statutes), including but not limited to any applicable provisions in Section 119.0701, Florida Statutes. To the extent that the Company and this Agreement are subject to the requirements in Section 119.0701, Florida Statutes, the Company shall:

- 16.20.1 Keep and maintain public records required by the Participant to perform the services provided hereunder.
- 16.20.2 Upon request from the Participant’s custodian of public records, provide the Participant with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- 16.20.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law for the duration of the term of this Agreement and following completion of this Agreement if the Company does not transfer the records to the Participant.

- 16.20.4 Upon completion of the Agreement, transfer, at no cost, to the Participant all public records in the possession of the Company or keep and maintain public records required by the Participant to perform the service. If the Company transfers all public records to the Participant upon completion of the Agreement, the Company shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Company keeps and maintains public records upon completion of the Agreement, the Company shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Participant, upon request from the Participant's custodian of public records, in a format that is compatible with the information technology systems of the Participant.
- 16.20.5 If the Company fails to comply with the requirements in this Section 16.20, the Participant may enforce these provisions in accordance with the terms of this Agreement. If the Company fails to provide the public records to the Participant within a reasonable time, it may be subject to penalties under Section 119.10, Florida Statutes.

**IF THE COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE COMPANY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE COMPANY SHOULD CONTACT THE PARTICIPANT'S CUSTODIAN OF PUBLIC RECORDS: THE CITY CLERK, JENORGEN GUILLEN, BY TELEPHONE (954-457-1340), E-MAIL (JGUILLEN@COHB.ORG), OR MAIL (400 SOUTH FEDERAL HIGHWAY, HALLANDALE BEACH, FLORIDA 33009).**

**17. AUDIT RIGHTS, AND RETENTION OF RECORDS.**

- 17.1 Participant shall have the right to audit the books, records, and accounts of Company and its contractors that are related to the Annual Operations Payment. Company and its Contractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Annual Operations Payments and performance thereunder. All books, records, and accounts of Company and its

contractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so. Company or its Contractors, as applicable, shall make same available at no cost to Participant in written form.

- 17.2 Company and its contractors shall preserve and make available, at reasonable times at Company's place of business for examination and audit by Participant, all financial records, supporting documents, statistical records, and any other documents pertinent to the Annual Operations Payments for a minimum period of five (5) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Participant audits and inspections pursuant to this Section may be performed by any Participant representative (including any outside representative engaged by Participant). Participant reserves the right to conduct such audit or review at Company's place of business, if deemed appropriate by Participant, with seventy-two (72) hours' advance notice.
- 17.3 Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for Participant's disallowance and recovery of any payment upon such entry. If an audit or inspection in accordance with this Section discloses overpricing or overcharges to Participant of any nature by the Company in excess of five percent (5%) of the total contract billings reviewed by Participant, the reasonable actual cost of the Participant's audit shall be reimbursed to Participant by Company in addition to making adjustments for the overcharges. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of Participant's findings to Company.
- 17.4 Company shall ensure that the requirements of this Section are included in all agreements with its Contractor(s).

**18. LAW, WAIVER OF JURY TRIAL.**

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. **BY ENTERING INTO THIS AGREEMENT, COMPANY AND PARTICIPANT HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT**



**OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

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[SIGNATURES APPEAR ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the date and year set forth above.

COMPANY:

PALM BEACH AGGREGATES, LLC,  
a Florida limited liability company

WITNESSES:

\_\_\_\_\_

Print Name

\_\_\_\_\_

\_\_\_\_\_

Print Name

\_\_\_\_\_

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

Name: Enrique Tomeu

Its: President

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

PARTICIPANT

CITY OF POMPANO BEACH, FLORIDA

By \_\_\_\_\_  
Mayor Rex Hardin

\_\_\_\_ day of \_\_\_\_\_, 2019

AUTHENTICATION:

\_\_\_\_\_  
City Clerk

(SEAL)

Approved as to form:

By: \_\_\_\_\_  
City Attorney



**Appendix B**

**ESTIMATED ANNUAL OPERATIONS AND MAINTENANCE COSTS**

**ANNUAL BUDGET REPORT OF PROJECTED COSTS - FY15  
C-51 Reservoir Phase 1 O&M Agreement**

	<b>Annual Cost</b>
Yearly C-51 Reservoir maintenance activities	\$100,682.11
Pump Station from L-8 FEB to C-51 Reservoir	\$99,525.83
Utilize S5A pump station to fill C-51 Reservoir for 39,204 acre ft (S5A to L8FEB)	\$215,622.00
L8 FEB yearly operation	\$252,246.98
Conveyance	\$40,380.79
Water management (Control Room)	\$55,981.35
Project management, quarterly reports, and Annual Financial Report (PM & reports)	\$108,611.32
Replacement and Rehabilitation	<u>\$129,804.68</u>
	\$1,002,855.05
per month	\$83,571.25
<b>Total plus 13th month</b>	<b>\$1,086,426.31</b>

**Notes**

**Conveyance**

12.6 miles from L-8 FEB pump station to E-1 canal

19.5 miles from south of E-1 to west on Hillsboro then south on L-36 canal to S-125.

Total of 32.1 miles

Through structures L-8 Divide (G-541), S5AE, S155A, S38A, S38B, S38C and S125

**Assume C-51 Reservoir flow of 35 mgs for 365 days = 39,204 acre-ft**

## Annual Operations & Maintenance Summary

Operations and Maintenance Costs Based on SFWMD and LWDD Detailed Costs	Totals	Components of Totals		
		Reservoir	Admin	SFWMD
Annual Operating Costs	\$1,222,458	\$60,000	\$1,086,426	\$76,032
Additional Insurance Coverage Limits		\$55,000		
Plus Annual Pumping Fees				\$1,842
<b>Total</b>	<b>\$1,279,300</b>	<b>\$115,000</b>	<b>\$1,086,426</b>	<b>\$77,874</b>
Annual O&M Costs per mgd of capacity	\$36,551	\$3,286	\$31,041	\$2,225
Annual O&M Costs per acre foot of capacity	\$91.38	\$8.21	\$77.60	\$5.56
Days in Year	365	365	365	365
Gallons per Day	35,000,000	35,000,000	35,000,000	35,000,000
Total Gallons per Year	12,775,000,000	12,775,000,000	12,775,000,000	12,775,000,000
Cost per 1,000 Gallons	\$0.100	\$0.009	\$0.085	\$0.006

Capital and Annual O&M Calculations for Different Storage Allocation Levels		
Measured in Million Gallons per Day	One Time	Annual
Capital Cost is \$4.60/mgd	Capital Total	O&M Total
1 mgd	\$4,600,000	\$36,551
2 mgd	\$9,200,000	\$73,103
3 mgd	\$13,800,000	\$109,654
4 mgd	\$18,400,000	\$146,206
5 mgd	\$23,000,000	\$182,757
6 mgd	\$27,600,000	\$219,309
7 mgd	\$32,200,000	\$255,860
8 mgd	\$36,800,000	\$292,411
9 mgd	\$41,400,000	\$328,963
10 mgd	\$46,000,000	\$365,514

## Appendix C

### **BYLAWS OF C-51 RESERVOIR, INC.**

#### ARTICLE I - OFFICES

1.01 Registered Office. The registered office of C-51 Reservoir Inc. (the "Corporation") in the State of Florida shall be located at One North Clematis Street, Suite 200, West Palm Beach, FL 33401, or such other location as may be determined from time to time by the Board of Directors.

1.02 Other Offices. The Corporation may also have other offices, both within and without the State of Florida, as the Board of Directors may from time to time determine or the business of the Corporation may require.

#### ARTICLE II - MEMBERSHIP

The Corporation initially shall have no members. The Board of Directors may admit members and amend the Corporation's Bylaws to regulate the classifications, qualifications, characteristics, rights, privileges, limitations and obligations of membership and the manner of admission.

#### ARTICLE III - DIRECTORS

3.01 Management. Corporate powers shall be exercised by or under the authority of, and the affairs of the Corporation shall be managed under the direction of, the Corporation's Board of Directors.

3.02 Number of Directors/Quorum/Voting. The initial number of directors of the Corporation shall be three (3) or such greater or lesser number as determined by the Board of Directors, from time to time; provided, however, that the Board of Directors shall consist of not less than three (3) directors and no decrease in the number of directors shall have the effect of shortening the term of an incumbent director.

3.02.1 After acquisition of Phase 1 of the C-51 Reservoir, the number of directors shall be increased to equal the number of participants with Capacity Reservation Agreements in Phase 1 that elect to appoint a participant to the Board of Directors, together with any representative to the Board of Directors that may be appointed by a Phase 1 298 District, or may be appointed by the South Florida Water Management District. In the event of the acquisition of subsequent Phases of the C-51 Reservoir, the number of directors shall be increased to equal the number of participants with Capacity Reservation Agreements in such subsequent Phases that do not already have an appointed director and that elect to appoint a participant to the Board of Directors, together with any representatives to the Board of Directors that may be appointed by a

subsequent Phase 298 District that does not already have an appointed director. In the event a participant with a Capacity Reservation Agreement, a 298 District or the South Florida Water Management District appoint a member to the Board of Directors, such party may remove the director so appointed without cause and may appoint a new director. If a vacancy occurs in a director seat, the party that originally appointed the director may appoint a new director to fill the vacant director seat. In the event a party that appointed a director elects to remove that director and further provides notice to the Corporation that it no longer elects to appoint a director, then the number of directors shall be decreased accordingly. Provided, however, only participants with Capacity Reservation Agreements that are governmental entities may appoint representatives to the Board of Directors. Participants with Capacity Reservation Agreements that are not governmental entities may appoint representatives with the right to notice of and to attend meetings of the Board of Directors, but such representatives shall have no voting rights and shall not be counted for quorum purposes. Any party with the right to appoint a member of the Board of Directors that elects not to appoint a director, may alternatively appoint a representative with the right to notice of and to attend meetings of the Board of Directors, but such representatives shall have no voting rights and shall not be counted for quorum purposes.

3.02.3 Voting of the members of the Board of Directors shall be by one (1) vote per director for administrative and parliamentary matters (an “Administrative Matter”) including, but not limited to, operating budget approval (the “Equal Voting Percentages”). A majority of the quorum present at a meeting of the Board of Directors shall be required to approve an Administrative Matter.

3.02.4 Voting on matters involving the expenditure of capital, including, but not limited to, consultant selection and removal, award of construction contracts, change orders, and resolution of contractor and other third-party capital project related disputes (a “Capital Matter”), shall be weighted as follows (the “Weighted Voting Percentages”): the Weighted Voting Percentages of directors appointed (i) by a participant with a Capacity Reservation Agreement shall be calculated according to the relative weight of each party that appointed the director’s respective capacity allocation in the C-51 Reservoir; and (ii) by a 298 District or the South Florida Water Management District shall each equal one percent (1%). A majority vote of greater than fifty percent (50%) of the Weighted Voting Percentage of all members of the Board of Directors shall be required to approve a Capital Matter. In addition, for a Capital Matter to pass, a minimum of three (3) members of the Board of Directors must vote in the majority.

3.02.5 A quorum for a meeting of the Board of Directors shall be members of the Board of Directors holding at least ten percent (10%) of the Weighted Voting Percentage, provided a minimum of three (3) members of the Board of Directors must be present for a quorum.

3.02.6 The Board members serve at the pleasure of the party by whom the Board member was appointed, and may be removed at any time by such party, without cause or requirement of hearing.

3.02.7 The Board members shall elect a Chair of the Board to serve on an annual basis until its successor is elected. The elected Chair shall set the agenda for meeting in accordance with the requests of the Board members. The Board members shall elect a Vice-Chair to serve in the Chair’s absence.



3.02.8 The provisions of this Section 3.02 of the Bylaws may not be amended without the unanimous consent of the Board of Directors.

3.03 Term. Each person named in the Articles of Incorporation as a member of the initial Board of Directors shall hold office until such director's successor shall have been appointed or until such director's earlier resignation, removal from office or death. Each director shall hold office until his or her successor is appointed or until such director's earlier resignation, removal from office or death.

3.04 Qualification. Directors must be natural persons who are eighteen (18) years of age or older, but need not be residents of the State of Florida.

3.05 Compensation. No member of the Board of Directors shall receive any compensation from the Corporation; provided, however, that the directors may be reimbursed for any reasonable out-of-pocket expenses incurred in furtherance of their duties as directors, as determined by the Board of Directors.

3.06 Powers. The Board shall, subject to the limitations and reservations set forth in the Articles, have the powers reasonably necessary to manage, operate, maintain and discharge the duties of Corporation, including, but not limited to, the power to cause the Corporation to do the following:

3.06.1 General. Exercise all powers, duties and authority vested in or delegated to the Corporation by law and in these By-Laws and the Articles, including, without limitation, adopt budgets, and enter into contracts.

3.06.2 Declare Vacancies. Declare the office of a member of the Board to be vacant in the event such Board Member shall be absent from three (3) consecutive regular Board meetings.

3.06.3 Hire Employees/Contractors. Employ, on behalf of the Corporation, managers, independent contractors, or such other employees as it deems necessary, to prescribe their duties and delegate to such manager, contractor, or other person or entity, any or all of the duties and functions of the Corporation and/or its officers, including contracting with any party with a Capacity Reservation Agreement to perform any duties or functions of the Corporation as determined by the Board.

3.06.4 Property. Acquire, sell, operate, lease, manage and otherwise trade and deal with property, real and personal, and with any other matters involving the Corporation or the discharge of its duties, as may be necessary or convenient for the operation and management of the Corporation and in accomplishing the purposes set forth in the Articles.

3.06.05 C-51 Reservoir. Acquire and accept transfer of ownership of any phase of the C-51 Reservoir from Palm Beach Aggregates, LLC, or its successors and assigns, and assume obligations for contractual obligations attendant to such phases.

3.06.06 Granting of Interest. Grant licenses, easements, permits, leases, or privileges to any individual or entity, which affect Corporate properties and to alter, add to, relocate or

improve properties.

3.06.07 Financial Reports. Prepare all financial reports required by the Florida Statutes, and file any tax returns required by Federal or State law.

3.06.08 501(c)(3) Status. Do all things necessary to maintain the IRC 501(c)(3) status of the Corporation.

3.06.09 Borrow Funds. Borrow funds, issue bonds, mortgage assets of the Corporation, provide security for financings, and take all other actions related to providing funds for the Corporation.

3.07 Meetings. An annual meeting of the Board of Directors shall be held at the time and place designated, from time to time, by the Board of Directors. At the meeting, the Board of Directors shall elect officers and transact such business as may properly be brought before the meeting. Special meetings of the Board of Directors shall be held when called by the President or Vice President or the Board of Directors at such times as designated by the Board of Directors. At such special meetings, the Board of Directors shall transact all business as may be properly brought before the meeting. Directors may participate in regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

3.08 Place of Meetings. Meetings of the Board of Directors, annual or special, may be held either within the State of Florida at such place or places as the Board of Directors may from time to time by resolution designate.

3.09 Presumption of Assent. A director of the Corporation who is present at a meeting of the Board of Directors or a committee of the Board of Directors where corporate action is taken is deemed to have assented to the action taken at such meeting unless such director objects at the beginning of the meeting (or promptly upon such director's arrival) to holding such meeting or transacting specified business at such meeting or such director votes against or abstains from the action taken.

3.10 Notice of Meetings. Regular meetings of the Board of Directors may be held without notice of the date, time, place or purpose of the meeting. Written notice of the date, time and place of special meetings of the Board of Directors shall be given to each director at least two (2) days before the meeting. Written notice may be given by electronic mail or by facsimile.

Notice of a meeting of the Board of Directors need not be given to any director who signs a waiver of notice either before or after the meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting and a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which the meeting has been called or convened, except when a director states, at the beginning of the meeting or promptly upon arrival at the meeting, any objection to the transaction of business because the meeting is not lawfully called or convened.

The purpose of any regular or special meeting of the Board of Directors need not be specified in the notice or waiver of notice of such meeting.

Meetings of the Board of Directors may be called by the President or Vice President of the Corporation or by any director.

3.11 Action without a Meeting. Any action required or permitted by the Articles of Incorporation, these Bylaws or applicable law to be taken at a Board of Directors meeting or a committee meeting, may be taken without a meeting if the action is taken by all members of the Board of Directors or of such committee. Such action must be evidenced by one or more written consents describing the action taken and signed by each director or committee member.

Action taken under this Section shall be effective when the last director signs the consent, unless the consent specifies a different effective date.

A consent signed under this Section has the same effect as a meeting vote and may be described as such in any document.

3.12 Removal of Directors. At a meeting of the Board of Directors called expressly for the purpose of removing one or more directors, any may be removed, without cause or requirement of hearing, by a unanimous vote of the Board of Directors, except for the director being removed. Upon removal of a director, the party by whom the removed director was appointed shall appoint a replacement director or elect not to appoint a replacement director

3.13 Vacancies. Any vacancy occurring on the Board of Directors, including a vacancy created by reason of an increase in the number of directors, may be filled by the affirmative vote of a majority of the Board of Directors. A director elected to fill a vacancy shall hold office only until the party by whom the vacant director was appointed appoints a new director or determines not to appoint a new director.

3.14 Duties of Directors. A director shall discharge such director's duties as a director, including such director's duties as a member of any committee of the Board of Directors on which such director may serve, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner such director reasonably believes to be in the best interests of the Corporation.

In performing such director's duties, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by:

- (a) one or more officers or employees of the Corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- (b) legal counsel, public accountants or other persons as to matters the director reasonably believes are in such person's professional or expert competence; or
- (c) a committee of the Board of Directors of which such director is not a

member if the director reasonably believes such committee merits confidence.

A director shall not be deemed to be acting in good faith if such director has knowledge concerning the matter in question that makes reliance on the information, opinions, reports or statements, including financial statements and other financial data, of others, as described in this Section, unwarranted.

A director shall not be liable for any action taken as a director, or any failure to take any action, if such director has performed the duties of such director's office in compliance with the provisions of this Section.

3.15 Liability of Directors. The directors of this Corporation shall not be personally liable for money damages to any person for any statement, vote, decision, or failure to take an action, regarding organizational management or policy by an officer or director, or for the debts, liabilities, or other obligations of this Corporation unless:

(a) The director breached or failed to perform such director's duties as a director; and

(b) The director's breach of, or failure to perform, such director's duties constitutes:

(1) A violation of the criminal law, unless the director had reasonable cause to believe such director's conduct was lawful or had no reasonable cause to believe such director's conduct was unlawful;

(2) A transaction from which the director derived an improper personal benefit, either directly or indirectly; or

(3) Recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property.

3.16 Director Conflicts of Interest. The purpose of the conflicts of interest policy is to protect the interest of the Corporation and each of its affiliates when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a trustee, director or officer of the Corporation. This policy is intended to supplement but not replace any applicable state laws governing conflicts of interest applicable to nonprofit and charitable corporations.

(a) Definitions.

(1) Interested Person. Any trustee, director, officer, or member of a committee with board delegated powers who has a direct or indirect financial interest, as defined below, is an interested person. If a person is an interested person with respect to any affiliate of the Corporation, he or she is an interested person with respect to the Corporation and all of its affiliates.

(2) Financial Interest. A person has a financial interest if the person has, directly or indirectly, through business, investment or family –

i. an ownership or investment interest in any entity with which the Corporation or any affiliate has a transaction or arrangement, or

ii. a compensation arrangement with the Corporation or an affiliate or with any entity or individual with which the Corporation or an affiliate has a transaction or arrangement, or

iii. a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation or an affiliate is negotiating a transaction or arrangement.

(3) Compensation. Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature. A financial interest is not necessarily a conflict of interest. A person who has a financial interest may have a conflict of interest only if the appropriate board or committee decides that a conflict of interest exists.

(b) Procedures.

(1) Duty to Disclose. In connection with any actual or possible conflicts of interest, an interested person must disclose the existence of his or her financial interest and must be given the opportunity to disclose all material facts to the trustees, directors or members of committees with board delegated powers considering the proposed transaction or arrangement.

(2) Determining Whether a Conflict of Interest Exists. After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the meeting while the determination of a conflict of interest is discussed and voted upon. The remaining trustees or board or committee members shall decide if a conflict of interest exists.

(3) Procedures for Addressing the Conflict of Interest.

i. An interested person may make a presentation at the trustee, board or committee meeting, but after such presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest.

ii. The trustees or the chair of the board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

iii. After exercising due diligence, the trustee, board or committee shall determine whether the Corporation or affiliate can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.

iv. If a more advantageous transaction or arrangement is not reasonably attainable

under circumstances that would not give rise to a conflict of interest, the trustees, board or committee shall determine by a majority vote of the disinterested members whether the transaction or arrangement is in the Corporation's best interest and for its own benefit and whether the transaction is fair and reasonable to the Corporation and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

(4) Violations of the Conflicts of Interest Policy.

i. If the trustees, board or committee has reasonable cause to believe that a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

ii. If, after hearing the response of the member and making such further investigation as may be warranted in the circumstances, the trustees, board or committee determines that the member has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

(c) Records of Proceedings.

The minutes of the trustees, board and all committee with board- delegated powers shall contain --

(1) Identification of Interested Parties. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the decision as to whether a conflict of interest in fact existed.

(2) Parties Present for Actions. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

(d) Compensation.

(1) Director. A director who receives compensation, directly or indirectly, from the Corporation or affiliate for services is precluded from voting on matters pertaining to his or her compensation.

(2) Committee Member. A member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation or affiliate for services is precluded from voting on matters pertaining to that member's compensation.

(e) Annual Statements.

Each trustee, director, principal officer and member of a committee with board delegated

powers shall annually sign a statement which affirms that such person --

- i. has received a copy of the conflicts of interest policy,
- ii. as read and understands the policy,
- iii. has agreed to comply with the policy, and
- iv. understands that the Corporation is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

3.17 Executive and Other Committees. The Board of Directors, by resolution adopted by a majority of the full Board of Directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution, shall have and may exercise all the authority of the Board of Directors, except that no such committee shall have the authority to:

- (a) fill vacancies on any committee thereof; or
- (b) adopt, amend or repeal the Bylaws.

The provisions of these Bylaws governing meetings, notice, waiver of notice and quorum and voting requirements for the Board of Directors shall also apply to executive and other committees and their members.

Each committee established pursuant to this Section must have two (2) or more committee members who shall serve at the pleasure of the Board of Directors. The Board of Directors by resolution adopted by a majority of the full Board of Directors, may designate one (1) or more directors as alternate committee members of any such committee who may act in the place and stead of any absent committee member or members at any meeting of such committee.

Neither the designation of any executive or other committee pursuant to this Section, the delegation thereto of authority, nor action by such committee pursuant to such authority, shall alone constitute compliance by any member of the Board of Directors who is not a member of such committee with such director's responsibility to act in good faith, in a manner such director reasonably believes is to be in the best interests of the Corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

3.18 Post-Acquisition of Phase 1 of the C-51 Reservoir. Notwithstanding anything in Article III to the contrary, after acquisition of Phase 1 of the C-51 Reservoir, the Board of Directors, upon determination by counsel for the Board as to legal applicability to the Corporation, shall comply with any applicable requirements of Chapter 119, Florida Statutes, and Chapter 286, Florida Statutes.

## ARTICLE IV - OFFICERS

4.01 Officers. The officers of the Corporation shall consist of a President and a Secretary, and may also consist of one or more Vice-Presidents, a Treasurer, one or more Assistant Secretaries or Treasurers and such other officers as the Board of Directors may from time to time consider necessary for the proper conduct of the business of the Corporation. The same person may simultaneously hold more than one office.

4.02 Election; Term of Office and Qualification. Each officer shall be elected by the Board of Directors. Each such officer (whether elected at an annual meeting of the Board of Directors or to fill a vacancy or otherwise) shall hold such office until the next annual meeting of the Board of Directors and until such officer's successor shall have been elected and qualified, or until such officer's death, resignation or removal.

4.03 Resignation. An officer may resign at any time by delivering notice to the Corporation. A resignation shall be effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the Corporation accepts the future effective date, the Board of Directors of the Corporation may fill the pending vacancy before the effective date if the Board of Directors provides the successor does not take office until such effective date.

4.04 Removal. The Board of Directors may remove any officer at any time with or without cause.

4.05 Vacancies. Any vacancy in any office occurring by reason of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular election or appointment to such office.

4.06 Contract Rights. The appointment of an officer does not itself create contract rights. An officer's removal does not affect the officer's contract rights, if any, with the Corporation, nor does an officer's resignation affect the Corporation's contract rights, if any, with such officer..

### 4.07 Duties of Officers.

(a) President. The President shall be the chief executive officer of the Corporation, shall have authority over the general and active management of the business and affairs of the Corporation subject to the direction of the Board of Directors, and shall preside at all meetings of the Board of Directors, and executive or other committees as established by the Board of Directors under the provisions of these Bylaws. The President may sign, with the Secretary or other officer duly authorized by the Board of Directors, any deeds, mortgages, bonds, contracts or other instruments the execution of which has been authorized by the Board of Directors, except in cases where the signing and execution thereof shall have been expressly delegated by the Board of Directors, by these Bylaws, or by law to some other officer or agent of the Corporation.

(b) Vice President. The Vice President, if one is elected, shall serve as



assistant to the President and shall perform such other duties and have such other authority and power as may be prescribed from time to time by the Bylaws, the Board of Directors or the President. In the absence or disability of the President, the Vice President shall perform the duties and have the authority and the power of the President.

(c) Secretary. The Secretary shall be responsible for the custody and maintenance of all corporate records except the financial records, shall record the minutes of all meetings of the Board of Directors, and executive and other committees, if any, shall send out all notices of meetings where required under these Bylaws or otherwise required by law, and shall perform such other duties and have such other authority and power as may be prescribed from time to time by the Board of Directors or the President.

(d) Assistant Secretary. The Assistant Secretary, if any, shall, in the absence or disability of the Secretary, perform the duties and have the authority and exercise the powers of the Secretary. The Assistant Secretary shall perform such other duties and have such other authority and power as may be prescribed from time to time by the Board of Directors or the President.

(e) Treasurer. The Treasurer, if any, shall have custody of all corporate funds and financial records, shall keep full and accurate records of receipts and disbursements and render accounts thereof whenever required by the Board of Directors or by the President, and shall perform such other duties and have such other authority and power as may be prescribed from time to time by the Board of Directors or the President. If so required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of such Treasurer's duties in such sum and with such surety or sureties as the Board of Directors may deem appropriate. If no Treasurer is elected by the Board of Directors, then the Secretary shall perform the duties of the Treasurer described in this Subparagraph 4.07(e).

(f) Assistant Treasurer. The Assistant Treasurer, if any, shall, in the absence or disability of the Treasurer, perform the duties and have the authority and exercise the powers of the Treasurer. The Assistant Treasurer shall perform such other duties and have such other authority and power as may be prescribed from time to time by the Board of Directors or the President.

4.08 Compensation. The Board of Directors may authorize payment of reasonable compensation to the officers of the Corporation for services rendered.

## ARTICLE V - FUNDS' DEPOSITS AND CHECKS

5.01 Gifts and Contributions. The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest, or devise of any property whatsoever, for the general and special charitable purposes of the Corporation.

5.02 Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

5.03 Checks, Drafts, Orders for Payment. All checks, drafts, or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as the Board of Directors shall from time to time by resolution determine. In the absence of such determination, such instruments shall be signed by the President or a Vice President of the Corporation.

#### ARTICLE VI - BOOKS AND RECORDS

6.01 Corporate Records. The Corporation shall keep as permanent records, correct and complete books and records of account and shall keep minutes of the proceedings of its members, Board of Directors, and committees having any of the authority of the Board of Directors. The Corporation shall keep at its registered office in this state a copy of its Articles of Incorporation and its Bylaws and any amendments thereto. All books and records shall be kept in written form or in another form capable of conversion into written form within a reasonable time.

#### ARTICLE VII - INDEMNIFICATION

The Corporation shall indemnify any officer or director, or any former officer or director, to the full extent permitted under Section 617.0831 of the Florida Statutes.

#### ARTICLE VIII - MISCELLANEOUS

8.01 Corporate Seal. A corporate seal shall not be required to be attached to any instrument executed by or on behalf of the Corporation unless required by law, but if so required shall be of such shape and have such words thereon as may be described by law or by the Board of Directors. The seal may be used by impressing it or reproducing a facsimile thereof, or otherwise.

8.02 Amendment of Articles and Bylaws. The Board of Directors may amend or repeal the Corporation's Articles of Incorporation and Bylaws by majority vote of the Board of Directors, except where these Bylaws provide otherwise.

8.03 Relation to Articles of Incorporation. These Bylaws shall be subject to, and governed by, the Corporation's Articles of Incorporation.

## **Appendix D**

### **C-51 Reservoir – Phase 1 Project Completion Schedule – Outside Dates**

<b>Description</b>	<b>Milestone Dates</b>
Construction Financing Commitment	November 30, 2019
Notice of Construction Financing Commitment	December 10, 2019
Closing on Construction Financing	February 28, 2020
Commencement of Construction	March 2020
Construction Substantial Completion	January 2022
Operational Testing	February 2022
Final Cleanup and Demobilization	February 2022
2021 Closing and Turnover to C-51 Reservoir, Inc.	March 2022
Commencement of Operations	March 2022