

1st Quarter | 2018

Toledo Area Water Authority Memorandum of Understanding

Table of Contents

1)	Background	4
2)	Definitions	4
3)	Toledo Area Water Authority Service Area	6
4)	Necessity and Purpose	6
5)	Water Supply Redundancy – Reliability	7
6)	Represented Membership (Parties)	7
7)	Represented Member Addition or Withdrawal During the Transition Period	8
8)	Governance Structure	9
9)	TAWA Powers (per ORC 6119)	11
10)	Financial Terms and Practices	11
	a. Financial Limitations	11
	b. Rate Setting Principles	12
	c. Rate Transitioning	12
	d. Cost of Service Analysis	12
	e. Leased, Purchased, and Owned Regional System Assets	12
	(1) Leased Assets	13
	(2) Purchased Assets	14
	(3) Owned Assets	14
	f. TAWA Water Assistance Program (TWAP)	15
	g. TAWA Lead Risk Mitigation Program (TLRMP)	15
	h. Tax Exempt Status of TAWA Bonds	16
	i. Rate Calculation and Financial Reporting	16
	(1) Rate Calculations	16
	(2) Utility Operations and Maintenance	16
	(3) Capital Financing	16
	j. Financial Policies	17
	k. Project Labor Agreement	17
11)	TAWA Transition Costs	17
12)	Plan for TAWA Operation	17
13)	Human Resources	18
14)	Capital Improvements	19
15)	Strategic Planning / Service Integration Assessment	19
16)	Systems Management for Benefit of All Customers	20
17)	Originating Represented Member Water Supply Contracts	20
18)	Stakeholder Engagement / Public Information	21
19)	Interim Policies	21
20)	Transition Group	21
21)	Dispute Resolution	22
22)	Conditions Precedent to the Authority	22
23)	Legal Effect	23

MEMORANDUM OF UNDERSTANDING REGARDING THE FORMATION OF THE TOLEDO AREA WATER AUTHORITY

This Memorandum of Understanding (MOU) provides a framework for the development of a Plan of Operation for a Regional Water Resource Utility authority to be called the Toledo Area Water Authority (“TAWA” or “Authority”). The Authority will be established pursuant to Ohio Revised Code (ORC), Chapter 6119 following the filing of Petitions with the Court of Common Pleas in Lucas, Wood and Fulton counties in the State of Ohio. Petitioners and Originating Represented Members of the Toledo Area Water Authority, and signatories to the MOU, may include the cities of Maumee, Perrysburg, Sylvania, and Toledo; Village of Whitehouse, Fulton and Lucas counties; the Northwestern Water and Sewer District of Ohio and Monroe County, MI.¹

The TAWA will be established to operate, control, and improve components of the Regional Water Resource Utility systems providing wholesale, and in selected cases retail services, to the service areas of the Represented Members and prospective Contracting Community systems. TAWA delivery of retail services not assumed by individual Originating Represented Member’s election on TAWA’s Operational Effectiveness Date may be provided upon the mutual agreement of TAWA and the Represented Member or Contracting Community.

This framework includes terms intended to be incorporated into a Plan of Operation for the Authority to be petitioned for under ORC 6119. Said petition is to be filed initially at the Court of Common Pleas of Lucas County, Ohio as soon as practicable following approvals by the Original Represented Members’ legislative bodies. This MOU serves to document the intent of the Original Represented Members², may be revised as to form to enable execution following legislative bodies’ approvals on or about March 15, 2018, and is anticipated to be presented in conjunction with legislation to approve the filing of petitions to establish the Authority. For the purposes of this MOU, reference to Regional Water Resource Utility systems or TAWA is made to connote a regional district as contemplated by ORC 6119. Its initial organization is to establish a Regional Drinking Water System responsible for potable water utility services; Represented Members and contract communities may have TAWA

¹ The Northwestern Water and Sewer District, Wood County, OH, and Monroe County, MI, are historical contract customers of the City of Toledo, and as such are designated for purposes of this MOU as Originating Represented Members though it is anticipated that separate legal arrangements between these entities and Petitioners to the Court of Common Pleas to create the TAWA will be required to establish this status.

² Per footnote 1, governing board actions for Northwestern Water and Sewer District, Wood County, OH, and Monroe County, MI would contemplate approvals to join the TAWA by contract.

assume responsibility for other water resource utility systems, including retail operations, by mutual agreement. Other Regional Water Utility services potentially including wastewater disposal, stormwater management and/or water reuse may be added after the TAWA Board is established and by supermajority vote of the Board of Trustees. (See Section VIII. Governance)

1) Background

The City of Toledo has served as a regional provider of selected water resource utility services for the City and an array of contract customers in a region extending to portions of Fulton, Lucas and Wood counties in Ohio and Monroe County, Michigan. Toledo's water systems have been developed over more than 75 years through the City's re-investments of service revenues, grants, and contributions. Master metered potable water supply services have been delivered under long-term contracts that have featured various terms and conditions including different rate-setting provisions. Several of the water supply contracts are scheduled to expire within the next ten years, making prudent alternative water resource facility planning. In addition, major potable water supply (and other water resource utility) capital investments are underway and planned to improve and expand regional water utility service delivery capabilities. Given these dynamics, Represented Member interests have voiced a desire to establish a regional water authority and governance structure that may best serve the interests of the Toledo region at large. This MOU outlines the structure, scope, principles and procedures of a Regional Water Resource Utility authority to be established under ORC 6119. Execution of this MOU following applicable Original Represented Members' legislative bodies' approvals, establishes those members' commitment to file requisite petitions to appropriate Courts of Common Pleas, or join the TAWA, and financially contribute to payment of Transition Costs required to enable the TAWA to initiate water resource utility service deliveries on a designated Operational Effectiveness Date. Represented Members will make appointments to the TAWA Board of Trustees (as determined by their respective appointment processes) who will have direct authority over the planning, financing, operations and maintenance, and development of the TAWA water resource utility systems.

2) Definitions

- a. **Asset Management** – An integrated optimization process of managing infrastructure assets to minimize the total cost of owning and operating them, while continuously delivering the service levels customers desire, at an acceptable level of risk.
- b. **Board of Trustees** – TAWA's authority is vested in and exercised by an appointed Board that provides policy direction and authorizes conduct of TAWA's affairs. The Board of Trustees holds responsibility for acting, through public votes, on policies, procedures, and transactions submitted for Board approval.
- c. **Chief Executive Officer** – Holds responsibility for the conduct of day-to-day utility operations and submits matters for Board of Trustee action.

- d. **Contracting Communities** – TAWA customers whose services are governed by contract terms and conditions approved by the TAWA Board of Trustees. Contracting Communities do not appoint members to the TAWA Board of Trustees.
- e. **Memorandum of Understanding (MOU)** - This document providing a framework for the development of a Plan of Operation for a Regional Water Resource Utility authority to be called the Toledo Area Water Authority (“TAWA” or “Authority”), pursuant to Ohio Revised Code (ORC), Chapter 6119.
- f. **Operational Effectiveness Date** – The date on which TAWA assumes operational responsibility for the water resource utility facilities to be used to deliver services to Represented Members and Contracting Communities.
- g. **Originating Represented Member** – A Represented Member joining TAWA with the filing of Petition(s) to the Court(s) of Common Pleas establishing TAWA, or that assists in creating TAWA and is an Originating Member by contract, and with designated representation on the TAWA Board of Trustees.
- h. **Regional Water Resource Utility** – The collection of assets (delineated in the Plan of Operation discussed below) used and necessary to deliver water resource utility services to Represented Members and Contracting Communities.
- i. **Regional Drinking Water System** – The collection of assets (delineated in the Plan of Operation discussed below) used and necessary to deliver drinking water utility services to Represented Members and Contracting Communities including but not limited to raw water intake facilities, treatment plants, transmission mains, and pumping stations. Points of demarcation between regional and individual retail system assets will be as delineated in water supply contracts between TAWA and those systems.
- j. **Represented Member** – A 6119 District constituent or constituent by contract to whom TAWA Regional Water Resource Utility services are provided and whose elected or appointed officials have the authority and responsibility to appoint members to serve on the TAWA Board of Trustees.
- k. **Retail Rates** – The rates charged for retail services (e.g., local water distribution, local customer service, and billing) provided within the service areas of the Represented Members or contract community systems beyond the wholesale water rates charged by TAWA.
- l. **Transition Costs** - Transition costs are those costs incurred to establish TAWA between the completion of this Memorandum of Understanding and TAWA’s Operational Effectiveness Date. Transition costs may include, but are not limited to, costs to prepare and enable filings of Petition(s) at the Court(s) of Common Pleas, to establish a Plan for Operation of the Authority (as described further below)³, and to complete Conditions Precedent to the Operational Effectiveness Date of the Authority. Transition Costs shall not include operational costs of funding for, or

³ For purposes of cost accrual, transition costs may include costs incurred between the completion of the MOU for consideration by the Parties’ governing boards and its execution by prospective Represented Members.

delivery of, water resource utility service from and after the Operational Effectiveness Date, whenever incurred. Should operational costs accruing to TAWA occur during the Transition Period, any Originating Represented Member withdrawing from TAWA pursuant to Section VII during the Transition Period shall only be responsible for its proportionate share of Transition Costs and not operational costs to TAWA.

- m. **Transition Period** – The time period between when the recommended MOU is executed and filings of petitions for creation of TAWA are authorized by Original Represented Members’ legislative bodies, and the Operational Effectiveness Date.
- n. **Water Resource Utility** - The general term “water resource utility” is used for purposes of this MOU to reference an array of water-related utility services, both wholesale and retail, delivered through the water cycle and may include potable water supply, wastewater disposal, stormwater and water reuse utilities.
- o. **Wholesale Water Rates** – Rates charged for raw water intake, treatment, pumping, transmission and other services required to deliver safe, potable water to the retail service areas of the Represented Members and Contract Community systems.

3) Toledo Area Water Authority Service Area

The TAWA Regional Drinking Water System service area may include all or portions of the cities of Maumee, Perrysburg, Sylvania, and Toledo; Village of Whitehouse, Fulton and Lucas counties; the Northwestern Water and Sewer District of Ohio and Monroe County, MI. In general, the TAWA service area will be composed of its component Regional Water Resource Utility service areas as may be established through TAWA Board action, and the retail service areas of TAWA Represented Members and Contracting Communities that elect to have TAWA deliver retail water resource utility services. Retail service areas of Represented Members and Contracting Communities who elect to retain responsibility for retail service delivery are deemed separate and distinct from the TAWA service area over which TAWA has authority and powers as delineated under ORC 6119 and listed in the Section titled: “TAWA Powers (per ORC 6119).”

For purposes of filing requisite 6119 petition(s), the designated location of TAWA will be within Lucas County, or such other location as the Board of Trustees may from time to time determine.

4) Necessity and Purpose

TAWA is necessary to provide efficient, effective water resource utility services to users within and without the Authority including, but not limited to, potable water supply. The Authority will constitute an independent, single-purpose entity with authority to manage, operate, maintain, control, plan, finance, and set utility service rates. TAWA will operate, maintain and replace utility assets (which may initially include water supply, treatment, pumping, storage, transmission, distribution and metering assets). It will adopt, establish and enforce rules and regulations providing uniform construction, inspection and control of water resource utility facilities expressly under the jurisdiction of the Authority, and all other powers established under O.R.C. 6119, or otherwise granted in law or equity. As such, the

establishment of the Authority will be conducive to public health, safety, convenience and welfare.

The purpose of the TAWA is to plan, finance, construct, manage, operate, maintain, renew and replace water resource utility facilities consisting of at least a water supply and treatment facility or facilities, pumping stations and transmission lines within Authority territory. TAWA is to be structured to facilitate the integration and consolidation of retail water resource system operations, maintenance, renewal and replacement functions at the election of Represented Members' and Contracting Communities governing boards and the TAWA Board of Trustees.

The Authority may, as determined by the TAWA Board, also represent and advocate for Toledo regional water resource utility interests in the context of regional, state, and national initiatives potentially affecting the TAWA service area.

5) Water Supply Redundancy – Reliability

TAWA is to be established to evaluate, plan and develop Regional Drinking Water System assets to provide adequate system redundancy and reliability to protect public health and welfare. Regional water supply redundancy contemplates development of facilities to enable continuous drinking water service delivery in the event that primary water supply sources become unavailable; regional water system reliability contemplates the development of Regional Drinking Water System assets such that service interruptions due to outage of individual system assets are minimized. TAWA's Capital Improvement Program (discussed in Section XIV) will be developed based on a regional water system optimization evaluation to be conducted within 2 years of the TAWA Operational Effectiveness Date and updated not less frequently than tri-annually. The optimization evaluations will specifically address water source commingling and how water supply redundancy and reliability may be advanced in the context of emerging environmental and climatic conditions.

TAWA will provide for the planning, permitting, design, construction, operation and financing of a redundant water supply source and requisite water treatment and transmission assets – options for which will be outlined by the regional optimization study. TAWA will own water supply assets developed to achieve redundancy and, at its sole discretion, may elect to establish these facilities as its primary water supply source. TAWA Represented Members' equity interests in TAWA owned facilities are derived solely through their TAWA membership and do not accrue to their individual jurisdictions.

6) Represented Membership (Parties)

TAWA is to be governed by a Board of Trustees appointed to represent the interests of the Toledo area region in general and provide perspectives of the communities within the jurisdictions from which they are appointed. Originating Represented Members include:

- ◆ Fulton County, Ohio
- ◆ Lucas County, Ohio

- ◆ Maumee, Ohio
- ◆ Perrysburg, Ohio
- ◆ Sylvania, Ohio
- ◆ Toledo, Ohio
- ◆ Whitehouse, Ohio
- ◆ Originating Members by Contract with TAWA
 - Northwestern Water and Sewer District
 - Monroe County, Michigan

7) Represented Member Addition or Withdrawal During the Transition Period

Following the TAWA Operational Effectiveness Date, Represented Member addition or withdrawal will be determined by the TAWA Board as prescribed under O.R.C. 6119. TAWA's Represented Membership may be modified by either withdrawal or addition of a member during the Transition Period as described below.

Addition During the Transition Period

The TAWA Board of Trustees may approve the addition of a Represented Member only through a supermajority vote of the Board of Trustees. Any Represented Member addition action approved by the Board of Trustees must delineate modifications to the TAWA governance structure outlined below. New Represented Members will be required to pay a fee based on incurred TAWA Transition Costs and determined based on their projected maximum-day water usage relative to existing Represented Members. This admittance fee is payable on TAWA Board approval of the Represented Member addition. An Originating Represented Member that initially retains responsibility for its retail operations will not be required to pay an admittance fee in the event that it elects to have TAWA provide retail services. Non-originating Represented Members may join TAWA for delivery of wholesale or retail services. If such incoming Represented Members retain responsibility for retail services, they will be assessed an additional admittance fee in the event that they subsequently elect to have TAWA assume responsibility for retail service delivery.

If the TAWA Board denies a request to join, the interested Governmental entity may petition the Court of Common Pleas to seek Court approval of their joinder. The Court has the authority to force order the addition so long as the petitioning entity can show it is in the best interest of the group to grant such joinder.

Withdrawal During Transition Period

In the event that a Represented Member elects to withdraw from TAWA between the execution of this Memorandum of Understanding and the date of the court granting a final order on the petition for establishment of the proposed regional water and sewer district (the "Final Order"), the withdrawing Represented Member will remain responsible for payment of its proportionate share of the Transition Costs.

8) Governance Structure

The Board of Trustees of the Authority shall be comprised of seven (7) voting members:

- a. Two members appointed by the Mayor of the City of Toledo
- b. One member appointed by the Lucas County Commissioners
- c. One member jointly appointed by the Mayors of Sylvania, Maumee and the Village of Whitehouse
- d. One member appointed by the Mayor of Perrysburg
- e. One member jointly appointed by the Fulton County Commissioners and the Board of Trustees of the Northwestern Water and Sewer District
- f. One member appointed by the Monroe County, Michigan Drain Commissioner.

In the event that representatives of two or more jurisdictions that are designated a single member appointment fail to agree on their appointment within 60 days of a Board of Trustee vacancy or term expiration, the appointment will be alternated between the jurisdictions with the first appointment made by the jurisdiction with the greater potable water usage over the prior 3- calendar year period.

In the event that one or more of the Original Represented Members identified herein elects to withdraw from TAWA prior to the appointment of the TAWA Board, representatives of the remaining TAWA Original Represented Members will agree upon reconstitution of TAWA Board membership. In the event that one or more of the Original Represented Members identified herein elects to withdraw from TAWA following appointment of the TAWA Board, the remaining TAWA members will determine by simple majority vote the applicable reconstitution of TAWA Board membership.

One City of Toledo Board member will have a four-year term, and all other Board members shall have three-year terms. Initial terms will enable establishment of staggered terms,⁴ with no more than three members' terms expiring in same year. Each Board member shall serve at the will of and may be removed by the appointing Represented Member. Board members may not be elected officials or employees of TAWA Represented Members.

The Board of Trustees shall by its rules and resolutions provide the procedure for its actions, the manner of selection of its officers, their titles, compensation, duties, and any other lawful subject necessary to the operation of the Authority and the exercise of the powers granted as enumerated below and by reference to ORC 6119.

The TAWA Board of Trustees shall have at least two standing committees. An Audit and Finance Committee will have responsibility for oversight and policy direction related to TAWA

⁴ For example: Initial terms of 2 members from 2018 -2019, for 2 members from 2018-20, for 2 members from 2018-2021, the longer-term Toledo member from 2018-20

financial management including financial reporting in compliance with applicable law, bond disclosure requirements, and as prescribed herein. A Retail Services Committee will be composed of Board Members appointed by Represented Members who are served retail services by TAWA and at least one master-metered community representative. The Retail Services Committee will oversee aspects of TAWA operations and system development related specifically to delivery of retail services. The Retail Services Committee will evaluate TAWA retail rate alternatives, including rate design options to address economic development and water affordability objectives, and make recommendations to the TAWA Board in advance of its rate setting actions.

The Board shall act by simple majority vote, except that a supermajority (5/7) shall be required for:

- ◆ Appointment of the Authority's General Manager/Executive Director
- ◆ Approval of rates, fees and charges and rate-setting protocols
 - Economic development rates featuring intra-regional non-compete provisions
- ◆ Issuance of debt, which shall be revenue-backed debt
- ◆ Approval of an annual operating budget
- ◆ Biannual approval of a rolling 10-Year Capital Improvement Plan
- ◆ Adoption of a procurement policy
- ◆ Approval of acquisition or leases of water resource utility facilities (from any Represented Member, Contracting Community, or non-aligned entity)
- ◆ Approval of the addition of a Represented Member and associated revision to the Board of Trustee governance structure
- ◆ Recommending to the appointing Member the removal of its Board member

Not less than five (5) Board members shall possess a 4-year college degree or equivalent and at least seven (7) years of experience in a regulated industry, utility or industrial operation, or providing professional engineering, finance, accounting or legal services.

Compensation of Board members will initially be set at \$25,000 per annum to reflect the limited, part-time, policy guidance nature of Board members' responsibilities. The U.S. Consumer Price Index will be used to adjust regular annual compensation thereafter. In the first two years following the establishment of TAWA, Board members will receive \$15,000 per annum in special additional compensation in recognition of the exceptional level of effort anticipated to carry out Board member duties in this period. This compensation is in recognition of the responsibilities involved in oversight of TAWA including review of informational materials, attendance at regular TAWA Board meetings, and conduct of Board committee work. Reductions to Board member compensation may be determined by a supermajority vote of the TAWA Board.

The TAWA Board will hold public meetings not less frequently than quarterly to conduct TAWA business and provide opportunities for interested members of the public to address

the Board. The TAWA Board may elect to establish a Citizen's Advisory Committee to provide an ongoing mechanism for stakeholder engagement.

9) TAWA Powers (per ORC 6119)

TAWA's powers will include, as enabled by ORC 6119:

- (1) Sue and be sued in its own name;
- (2) Assume any liability or obligation of any person or political subdivision;
- (3) Make loans and grants to political subdivisions for the acquisition or construction of water resource projects by such political subdivision;
- (4) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent to or from, or contract for operation by or for, a political subdivision or person, water resource projects within or without the Authority;
- (5) Make available the use or service of any water resource project to one or more persons, one or more political subdivisions, or any combination thereof;
- (6) Levy and collect taxes and special assessments (with the exception of ad valorem taxes);
- (7) Issue bonds and notes and refunding bonds and notes;
- (8) Acquire by purchase or otherwise or by the exercise of the right of condemnation such public or private lands, including rights-of-way, property, rights, easements, and interests as it considers necessary for carrying out its purposes, but excluding the acquisition by the exercise of the right of condemnation of any waste water facility or water management facility owned by any person or political subdivision;
- (9) Exercise the power of eminent domain;
- (10) Merge or combine with any other regional water and sewer district into a single district;
- (11) Require the owner of any premises located within the district to connect the owner's premises to a water resource project determined to be accessible to such premises and found to require such connection so as to prevent or abate pollution or protect the health and property of persons in the district.

10) Financial Terms and Practices

TAWA will provide water resource utility services at rates that are fair and equitable to all customers served by Authority on a regional basis without regard to the political boundaries of Represented Members or Contracting Communities.

a. Financial Limitations

- ◆ A financial obligation of the Authority shall be the financial obligation of the Authority only and not a financial obligation of a Represented Member or a constituent municipality (e.g. village within a Represented Member county) except to the extent a municipality that is a TAWA customer may have liability in that capacity.
- ◆ Represented Members shall retain complete responsibility for all separate obligations associated with systems that are not transferred to TAWA as well as

those systems' financial responsibilities to TAWA (e.g. wholesale rate payment obligations).

b. Rate Setting Principles

TAWA shall establish rates and charges for the provision of water resource utility services to Represented Members and Contracting Communities using methodologies outlined by authoritative water resource utility professional societies and technical associations. For drinking water utility services, rate setting practices will be consistent with guidance delineated by the American Water Works Association (AWWA) in its (M1) Manual of Practice: Principles of Water Rates, Fees and Related Charges. This guidance outlines rate setting practices to address specific needs of individual communities and systems, including as enumerated below, while providing a framework for equitable distributions of cost responsibilities among system users. In general, service rate design options developed in conjunction with cost-of-service analyses will include options to address economic development and low-income affordability in the TAWA service area.

c. Rate Transitioning

Rate transitioning will be based on the 8-year rate equalization plan developed through the TMACOG Regional Water Technical Committee, adjusted to provide for Represented Members' payment of allocated Transition Costs over a 2-year period following the Operational Effectiveness Date.⁵

d. Cost of Service Analysis

The TAWA Board will have a cost of service study completed no later than 2 years following the Operational Effectiveness Date and updated no less than triannually. TAWA cost-of-service studies will employ industry accepted cost allocation methods (guidance for which is provided by the American Water Works Association) that distribute costs to utility system functions, service characteristics, and customer classes (e.g., wholesale vs. retail), provide for common-to-all lease or asset purchase payment allocations, and include development of rate transitioning alternatives. To the extent that cost-of-service analyses indicate that service rates require significant adjustment to reflect allocated costs for any one Represented Member, multi-year rate adjustments will be implemented to ensure smooth transitioning of service rates under the above-described rate setting principles.

e. Leased, Purchased, and Owned Regional System Assets

During the transition period, the TAWA Board and regional system asset owners will negotiate agreement(s) for TAWA's purchase of regional system assets (the Purchase Arrangement), execution of which is a condition precedent to the Authority. This asset

⁵ See, for example, TMACOG Regional Water Planning (RWP) Technical Sub-Committee presentation dated January 24, 2017.

purchase may be effected through a lease-to-own arrangement as outlined in Section 10.d. (1) or through a third-party financing arrangement as outlined in Section 10.d. (2).

(1) Leased Assets

The City of Toledo (and other Represented Members) may lease Regional Drinking Water System assets to the Authority for a term of 30 years (the “Lease”). In the event, lease payments for Regional Drinking Water System assets will extend over the 30-year lease period and will be calculated as outlined below. Upon completion of the 30-year lease term, the TAWA Board and asset lessors will transfer ownership of the leased assets and the real property on which it is situated to the Authority.

Lease payments will be a “common-to-all” TAWA expense included in annual TAWA revenue requirements determined through the TAWA rate study process – and will commence with transitioning to TAWA cost-of-service based rates and no later than 2 years following the Operational Effectiveness Date.

Lease payments over the 30-year lease term will be based on the Net Present Value (NPV) of 30 annual payments calculated by applying a rate of return to designated asset values excluding real property, plus payment for purchase of the real property where the leased assets are situated. This NPV amount may be expressed in terms of equal annual payments discounted using a 3 percent discount rate. In no event will the 30-year NPV of the calculated lease payments (excluding the consideration for real property acquisition) exceed the equivalent of \$12 million per year nor be less than the NPV equivalent of \$6 million per year (discounted at 3 percent).

The specific lease payments reflecting the schedule for payment declining to zero dollars over the 30-year lease period will be incorporated into the asset lease. Options for the designation of asset values, applicable rates of return, consideration for real property acquisition, and the lease payment schedule will be developed by a sub-committee of TAWA Represented Member designees for consideration by the parties engaged in development of lease terms and conditions.

The return amount, consistent with water industry standard practice, provides recognition of historical City of Toledo ownership of water system assets. Water resource utility system ownership returns may be used to finance City of Toledo retail system improvements or mitigate rate adjustments but may not comprise a transfer to the City of Toledo General Fund.

Lease payments are based on assets conveyed on the TAWA Operational Effectiveness Date and not on asset values derived from improvements or upgrades financed and developed under TAWA auspices. TAWA financed leasehold improvements will not be considered as contributing to the value of leased assets for purposes of lease payment calculation. Other exclusions include Represented Members’ retail system asset values, and assets contributed or granted to the lessor.

In the event that Regional Drinking Water System assets are defined to include assets owned by other Originating Represented Members, those Represented Members will be entitled to lease payments determined using a similar calculation procedure and applying the same rate of return as used for Toledo drinking water system assets.

(2) Purchased Assets

The City of Toledo (and other Represented Members) may sell its Regional Drinking Water System assets to the Authority through a third-party financing arrangement. In the event, asset owners will transfer ownership of their assets (including the real property on which it is situated) to the Authority as soon as practicable following execution of the Purchase Agreement contemplating third-party financing. The third-party financing provider will be entitled to a pledge of TAWA revenues to affect the financing including all applicable transaction and issuance costs.

The term of TAWA payments of third party financing obligations may not exceed 30-years. These payments will be subordinate to assigned or prospective TAWA revenue bond obligations. The specific third-party financing payments will be based on factors including, but not limited to, designations of asset values, associated outstanding indebtedness, and prospective third-party financing terms and conditions inclusive of applicable transaction and issuance costs. The Purchase Agreement payment schedule will be developed through negotiations with third-party financing providers by a sub-committee of TAWA Represented Member designees, and subject to TAWA Board approval as a condition precedent to the Authority. Payments to third-party financing parties will be a “common-to-all” TAWA expense included in annual TAWA revenue requirements determined through the TAWA rate setting process.

Water resource utility system ownership transfer payments may be used for purposes allowed under State of Ohio law.

In the event that Regional Drinking Water System assets are defined to include assets owned by other Originating Represented Members, those Represented Members will be entitled to enter into Purchase Agreements using a similar procedure as used for Toledo drinking water system assets.

(3) Owned Assets

TAWA will own, operate and maintain assets financed and developed through TAWA sources of funds including, but not limited to, operating revenues, grants and contributions following the Operational Effectiveness Date. TAWA will own or retain a financial interest in leasehold improvements made to those facilities, including improvements at the Collins Park Water Treatment Plant, leased to deliver regional water resource services.

TAWA's entry into lease agreements for Regional Water Resource Utility assets will incorporate provisions such that TAWA will hold a financial interest in TAWA financed leasehold improvements. In the event of lease termination, the lessor will be required to pay TAWA for the current value of the leasehold improvements. Leasehold improvement values will be determined through an independent assessment, benchmark values for which will be calculated based on the methods described above for lease of City of Toledo assets.

TAWA will prepare financial statements reporting on, among other items, its owned and leased assets as an independent political jurisdiction as provided under ORC 6119. TAWA will also provide financial reporting to Represented Members on its leased and owned assets, sources and used of funds, and service rate calculations as outlined in the Rate Calculation and Financial Reporting section below.

f. TAWA Water Assistance Program (TWAP)

TAWA will include in annual revenue requirements an amount initially equal to 1.0% of projected Regional Water Resource Utility revenues for deposit to an independently administered Toledo Area Water Assistance Program (TWAP) account. These funds will be dedicated to providing assistance to indigent local customers throughout the Regional Water Resource Utility service areas who agree to take appropriate actions to manage payment delinquencies and use water efficiently. TWAP eligibility criteria will be established by the TAWA Board and will apply to all retail residential customers of Represented Members. TWAP funding will be allocated to Regional Water Resource Utility ratepayers as a "common-to-all" expense shared in proportion to system usage. Following 2 years of TWAP operation, the TAWAP will be independently evaluated and funding level recommendations developed for TAWA Board of Trustee consideration.

g. TAWA Lead Risk Mitigation Program (TLRMP)

TAWA will include in annual revenue requirements an amount equal to not less than 2.5% of the estimated costs to effect full lead service line replacements (or implementation of protective lead risk mitigation technologies recommended by the USEPA and American Water Works Association) in the TAWA Represented Members service areas. Cost estimates will be provided through an independent study to be completed in no more than 1 year following the TAWA Operational Effectiveness Date. That independent study will also provide recommendations on prospective funding levels for TAWA Board of Trustee consideration. The revenue requirement allocation will be placed in a separately administered account to mitigate lead risks through a Toledo Lead Risk Mitigation Program (TLRMP). TLRMP funding will be allocated to Regional Drinking Water Utility ratepayers as a "common-to-all" expense shared in proportion to retail residential customer account populations. Performance information on the TLRMP program, including the number of full lead service line replacements performed, remaining inventory, status of lead in drinking water mitigation measures, and geographic distribution of program activity will be reported not less than annually.

h. Tax Exempt Status of TAWA Bonds

The transfer of the Regional Drinking Water Utility assets through the above-described Purchase Agreement is not intended to cause impairment of tax treatment of outstanding bonds. New debt and refunding bonds are to be issued on a tax-exempt basis to the extent allowable by applicable law.

i. Rate Calculation and Financial Reporting

TAWA shall commit to and adopt financial reporting practices that provide for transparency in system rate setting, utility operations maintenance repair and replacement, and capital financing.

(1) Rate Calculations

TAWA shall conduct an independent cost-of-service analysis referencing industry standard guidance within 2 years of the Operational Effectiveness Date and not less frequently than once every 5 years. These analyses, as well as annual updates of the rate calculations, will be disclosed in detail to all Represented Members under an annual rate setting schedule that provides Represented Members not less than 1 month of advance notice of proposed rates prior to Board of Trustee consideration and adoption. Rate calculation information to be provided to Represented Members will include, but not be limited to:

- Projections of system billing determinants (e.g., accounts and usage by Represented Member, Contracting Community, or customer class)
- Projected Operations and Maintenance (O&M) expenses by major account classification (e.g., personnel, commodities, contractual expenses, major maintenance)
- Projections of capital financing costs including planned amounts of cash-funded capital expenditures and debt service expenses
- Projected reserve amounts and fund balances
- Rate increases required to sustain compliance with financial performance targets

(2) Utility Operations and Maintenance

TAWA shall provide reports to Represented Members, not less frequently than once per year, on the performance of water resource utility operations and maintenance. This reporting will include, at a minimum, information on budget vs. actual expenditures, monthly system performance (e.g., water production, maximum-day usage, estimated non-revenue water), and customer service metrics. TAWA shall review and implement best management practices using methodologies outlined by authoritative water resource utility professional societies and technical associations.

(3) Capital Financing

TAWA shall provide reports to Represented Members, not less frequently than once per year, information on the implementation of the TAWA capital program. This information will include, but not be limited to, projected vs. actual capital project expenses (by project),

projected vs. actual project completion dates, projected debt service expenses including existing and planned indebtedness, and TAWA's capital structure.

j. Financial Policies

The TAWA Board of Trustees shall adopt financial policies to ensure the long-term financial integrity of the TAWA system (in consult with its designated financial advisors and bond counsel). These financial policies may address procurement practices, investment practices, fund structure, capital improvement planning and finance (including use of debt, targeted debt service coverage, reserve types and amounts). The TAWA Board, on its inception, will include a minority participation goal of no less than 10% of projected expenses on capital projects.

k. Project Labor Agreement

The TAWA Board will negotiate an agreement with the Northwest Ohio Building Trades to provide for a project labor agreement on all water resource project expenditures in excess of \$100,000.

11) TAWA Transition Costs

Transition Costs will initially be funded from Originating Represented Members, reimbursement of which may be provided by inclusion of these costs in TAWA revenue requirements following the Operational Effectiveness Date. Transition Costs will be allocated to Originating Represented Members in proportion to their maximum-day water system usage during the prior 3 - calendar year period. A Transition Cost budget estimate is to be compiled and presented to prospective Originating Represented Members not less than 1 month prior to the planned date of MOU execution.

12) Plan for TAWA Operation

After the Petition(s) are filed, the Courts of Common Pleas will be asked to approve a preliminary order pursuant to ORC 6119.04 and order, among other things, that the TAWA Board of Trustees is to prepare a Plan of Operation for the district and file such Plan of Operation with the Courts within 6 months from the date of the preliminary order or within further time or times that the courts from time to time may order. The Plan for TAWA Operations will be completed and approved by the TAWA Board of Trustees. Represented Members on the Toledo Metropolitan Area Council of Governments (TMACOG) Regional Water Planning (RWP) Technical Sub-committee will oversee preparation of the Plan for TAWA Operations. Costs for preparation of the Plan shall be included as Transition Costs and thereby ultimately paid in proportion to maximum-day usage by Represented Members. The Plan for TAWA Operations will address requirements to ensure safe, redundant, and effective drinking water utility services to all Represented Members and Contracting Communities, including but not limited to compliance with all relevant federal and state regulations over drinking water utility services.

- To the extent practicable, the Plan for TAWA Operation will identify opportunities to achieve overall cost efficiencies through regional collaboration.
- The Plan of Operation will provide an initial delineation of Regional Drinking Water System assets and prospective master metering requirements for Represented Members and contract communities. To the extent practicable, TAWA Represented Members and contract communities shall have operational master meters at each entry point into their distribution systems. TAWA will conduct a master metering evaluation within 1 year of the TAWA Operational Effectiveness Date to develop a plan for service metering of all then current Represented Members and Contract Communities. Future Represented Members or Contract Communities will be expected to be master-metered upon connection to the TAWA system.
- The Plan for Operation will estimate the costs of shared services (e.g., legal, human resources, engineering, finance) provided by individual Represented Members' general government operations and delineate how these services will be delivered to TAWA under a shared services contract. In the event that TAWA elects to self-perform or separately contract for services provided by a Represented Member, it will provide no less than a 90 day notice to that Represented Member of the termination of those shared services and requirements for associated modifications to the shared services contract.
- The Plan for Operations will develop a preliminary TAWA Organization Chart outlining the basic personnel structure of the Authority, reporting relationships, and position numbers, descriptions, responsibilities and minimum qualification requirements.
- Existing Represented Member vendor contracts required for operation of the Regional Drinking Water Utility System will be assigned to TAWA, which shall assume same.

The TAWA Board of Trustees may extend the period for completion through a simple majority vote of the Board but under no circumstances may the completion period exceed 18 months from the filing of petition(s) for the creation of the Authority or beyond the Operational Effectiveness Date of the Authority.

13) Human Resources

TAWA will be a successor employer to Represented Member staff transferring to the Authority including (but not necessarily limited to) City of Toledo Public Utilities Department – Water Division staff currently employed to operate, maintain and develop the Regional Drinking Water Utility system assets. TAWA will assume and honor all collective bargaining agreements governing transferred staff's employment, seniority, pensions and benefits.

TAWA will establish immediate employment terms that are at least equivalent to those currently in place for current drinking water utility staff. Within 1 year of TAWA's Operational Effectiveness Date, TAWA will have conducted a drinking water utility compensation survey and assess compensation levels relative to similarly situated utilities in the drinking water

utility marketplace. TAWA will engage with representatives of organized labor whose bargaining units represent current drinking water utility staff members to address employment compensation and work rules with the intent of ensuring TAWA competitiveness and commitment to service quality. TAWA will negotiate to establish union collective bargaining agreements for contract periods determined by mutual agreement, and will renegotiate those agreements over the duration of TAWA operations.

The TAWA Board will also establish policies and programs to address, at a minimum, workplace safety, employee training and development, knowledge retention and transfer, and succession planning. TAWA will work collaboratively with organized labor representatives to design these programs and will provide reporting of key (agreed upon) performance metric not less than annually to the TAWA Board of Trustees.

14) Capital Improvements

TAWA will develop and approve a 10-year Capital Improvement Program (CIP) within 1 year of its Operational Effectiveness Date, and develop rolling 10-year program updates not less than biannually. The CIP will establish a projected schedule and cost estimates for capital projects to be financed and constructed by TAWA. The CIP will be developed to ensure continued compliance with all applicable regulatory requirements. TAWA's CIP will be developed to, among other objectives, optimize regional water supply and treatment capacity and ensure safe, redundant, reliable water resources services in compliance with all applicable federal and state regulatory requirements.

In conjunction with its capital program financing and implementation, the TAWA Board will evaluate entry into a Community Benefits Agreement with community representatives from each Represented Member. Community representatives may be appointed using the same protocol as that established for appointment of the TAWA Board of Trustees. Community Benefits expenditures aligned to CIP spending may not exceed 1% of capital project expenditures.

15) Strategic Planning / Service Integration Assessment

TAWA will conduct a strategic planning effort and issue a Strategic Plan not less than once every 5 years. The strategic plan will address, among other subjects, TAWA's organizational structure, prospective TAWA goals and objectives, regional optimization opportunities, TAWA's role in regional water resource management initiatives, and the regulatory landscape.

A requirement of the TAWA Strategic Planning process will be the evaluation of the potential benefits and costs of TAWA's assumption of responsibility for additional water resource utility operations. These consolidation assessments may include, but are not limited to:

- Evaluation of the integration of Represented Member retail water resource utilities within the TAWA scope of services.
- Evaluations of TAWA delivery of wastewater disposal, stormwater management and/or water reuse services, either on a wholesale or retail basis, for Represented Members or Contracting Communities.

System consolidations may be implemented upon the mutual agreement of the TAWA Board and the governing boards of Represented Members or contract communities following public hearings.

16) Systems Management for Benefit of All Customers

It is the Represented Members' expectation that the Authority will use its best efforts to manage the Regional Water Resource Utility for the benefit of all Authority customers. Upon commencement of operations, TAWA will review and revise as necessary prior City of Toledo and/or regional drinking water supply or master planning studies. In reviewing those plans, TAWA will use its best efforts to optimize the capacity of water supply systems within a broadly defined geographic area to fully leverage potential access to economic sources of high-quality water supplies and realize available economies of scale. The TAWA Board will take into account the needs of the region in planning and operating its Water Resource Utility Systems and will strive to become the provider of choice in the Toledo region.

17) Originating Represented Member Water Supply Contracts

Existing customer communities of the City of Toledo, as well as the City of Toledo itself, may only become originating TAWA Represented Members through execution of new, individual, 30-year water supply contracts with TAWA under terms and conditions consistent with this MOU. Provisions of individual water supply contracts, particularly that with the City of Toledo, may reflect differences in the physical attributes of the Represented Members' water utility systems to, for example, accommodate differences in regional system connection and metering configurations.

TAWA will establish a uniform water supply contract with provisions that accommodate Section X: Financial Terms and Practices.

In the event that TAWA leases or purchases through 3rd party financing the City of Toledo Regional Drinking Water System Assets, existing City of Toledo water supply contracts will be terminated and TAWA Represented Members will be placed under the TAWA uniform contract. Upon termination of the existing City of Toledo water supply contracts, any revenue sharing, JEDZ or similar contracts or relationships associated with, related to or based upon the terminated water supply contracts also shall be terminated and not assigned to TAWA. Contract communities that do not elect to join TAWA will be subject to renegotiation of contract terms with TAWA.

18) Stakeholder Engagement / Public Information

Prior to the filing of the Petition and pursuant to the Ohio Revised Code Section 6119.02 (B), petitioners shall hold a public meeting for the purpose of receiving comments. In addition, TAWA representatives will provide not less than one public briefing before the governing boards of each Represented Member, and not less than two “at large” public hearings to address questions of the general public regarding the creation of TAWA.

To the extent practicable, TAWA will engage Represented Members’ staff members and associates in the TAWA implementation planning process to be conducted between the petition filings and Operational Effectiveness Date.

The TAWA Board of Trustees will hold its Board meetings and establish a protocol for hearing public comment on proposed Board actions. In addition, TAWA will establish a stakeholder engagement / public information protocol that:

- In collaboration with the Toledo Water Improvement Program and area environmental interest organizations, provides accurate and timely information regarding source water quality and conditions of regional lakes and rivers.
- Provides accurate, timely information on water resource utility performance including system production, regulatory compliance, lead risk management activities, and customer service metrics

TAWA shall make every effort to have employees that reside, and vendors that conduct business, within the Represented Members’ service areas engaged in the conduct of its operations and capital construction program.

19) Interim Policies

The TAWA Board of Trustees will develop and adopt policies and procedures to guide TAWA Board deliberations (e.g., basis for executive sessions, public hearings), operations, capital financing (including grant applications), procurement and other aspects of regional water resource utility management as appropriate. The TAWA Board will reference policies and practices employed by other regional water resource systems, and by other major metropolitan utilities in the State of Ohio. In advance of TAWA Board adoption of specific policies related to, at a minimum, procurement practices, ethics, and financial reporting, TAWA will conform to the policy requirements defined in Ohio Revised Code on these matters.

20) Transition Group

For purposes of ensuring continuity and facilitating the TAWA Board’s understanding of the policy intent of the Originating Represented Members, non-elected participants in the meetings used to draft this MOU may be appointed to a Transition Group. The TAWA Board will meet with the Transition Group within 60 days of the appointment of the TAWA Board. The Transition Group may be called upon, at the TAWA Board’s discretion, to review and

advise the TAWA Board. The Transition Group will jointly develop a report on the stand-up of the Authority and its consistency with provisions of the MOU within 9 months following the Operational Effectiveness Date. This report will be submitted to the governing boards of the Originating Represented Members.

21) Dispute Resolution

Disagreements between TAWA, as represented by its Board of Trustees, and an individual Represented Member, Contracting Community, vendor, employee or member of the public that may not be resolved amicably through discussion and negotiation between parties will be subject to Alternative Dispute Resolution prior to commencement of litigation.

22) Conditions Precedent to the Authority

The Operational Effectiveness Date is subject to the negotiation and execution of definitive documentation and the receipt of all required consents and approvals required for the transactions contemplated herein (together the “Conditions Precedent”) including, but not limited to, the following:

- The Represented Members shall have established the Authority and the Board will have adopted an ordinance or resolution addressing all matters for which an ordinance is required to permit the contemplated transactions and operation of the Regional Drinking Water System by the Authority.
- The Authority shall have secured all necessary permits and other approvals to operate the Drinking Water Utility System.
- The Authority and the City of Toledo shall have negotiated the Purchase Agreement, an agreement regarding the operation and management of the Toledo retail system effective on the Operational Effectiveness Date, and an agreement relating to the provision of services on a transitional basis by the City of Toledo to the Authority.
- The Authority will have developed terms and conditions by which services currently provided by Represented Members’ general government operations will be provided or supplanted. TAWA will provide not less than 90 days to notice its election to discontinue services and payments thereon from Represented Members. The resultant shared service agreement will be structured to transition reductions in payments to existing providers over not less than a 1-year period following the Operational Effectiveness Date.
- The Authority shall have been established as a public employer under Ohio law – and provided for TAWA to serve as a successor employer of current employees engaged in the operations, maintenance and capital improvement of the Regional Drinking Water System. Successor employee pension amounts retained in the Ohio Public Employee Retirement System and benefit balances will be preserved
- The City of Toledo shall have assigned to TAWA, to the extent practicable, retail water supply contracts (including raw water supply contracts), appropriate vendor contracts required to maintain uninterrupted, consistent operations and maintenance of the Regional Drinking Water System.

- The Represented Members shall have entered into 30-year water supply contracts⁶ with the Authority, the revenues from which may be pledged by TAWA to secure bonded indebtedness.
- The TAWA Board will have secured the terms for consent to the purchase (through lease or third-party financing) of the Regional Drinking Water System to the Authority from a majority of holders of City of Toledo water system bonds and any applicable credit enhancers or Toledo water system bonds will be defeased by the issuance of debt by TAWA of an amount sufficient to defease outstanding obligations of the City of Toledo water system bonds and completion of any necessary defeasance proceedings at TAWA expense.

It is the intent to complete as many conditions precedent as practicable prior to the Final Order.

23) Legal Effect

The individual signatories below confirm the substantive discussions between the parties identified herein regarding creation of the TAWA and the mutual understandings and preliminary agreements regarding the general terms and conditions of the Plan of Operation. Recommendation of this MOU does not create a binding contract among the parties or a binding agreement to agree. This MOU is a summary of terms, and while the parties appear to agree in principle to the contents hereof and propose to proceed promptly and in good faith to work out arrangements with regard to creation of the TAWA, the execution of this MOU on behalf of the legislative authorities of the participating parties and filing of petitions to create a chapter 6119 entity on behalf of the legislative authorities of the respective parties is subject to each such party's legislative or other required authorizations, and the expiration of all applicable referendum periods with respect to such legislative authorization. The parties do not intend to be legally bound or otherwise incur any obligations with respect to the creation of the TAWA until such time as the MOU is duly authorized, executed and delivered by such party and petitions to the Courts of Common Pleas filed.

Recommended by Represented Members' Officials

Ziad Musallam, Director/Sanitary Engineer, Fulton County, Ohio

⁶ The form of the water supply contracts may differ to reflect TAWA's provision of wholesale and / or retail services and to recognize differences in metering configurations.

Commissioner Pete Gerken, Lucas County, Ohio

Mayor Rich Carr, City of Maumee, Ohio

David P. Thompson, Monroe County (Michigan) Drain Commissioner

Jerry Greiner, President, Northwestern Water and Sewer District, Ohio

Mayor Thomas Mackin, City of Perrysburg, Ohio

Mayor Craig Stough, City of Sylvania, Ohio

Mayor Wade Kapszukiewicz, City of Toledo, Ohio

Mayor Don Atkinson, Village of Whitehouse, Ohio