

TERMINATION OF RESTATED BULK WASTEWATER TREATMENT AGREEMENT

THIS TERMINATION OF A RESTATED BULK WASTEWATER TREATMENT AGREEMENT (this "Termination") is made as of the effective date stated below by POLK COUNTY (the "County"), a political subdivision of the State of Florida, and TOHOPEKALIGA WATER AUTHORITY ("TOHO"), an independent special district established and created pursuant to Chapter 189, Florida Statutes, by special act of the Florida Legislature.

WITNESSETH:

WHEREAS, on or about October 20, 2006, County and the Florida Governmental Utility Authority ("FGUA") entered into a Restated Bulk Wastewater Treatment Agreement (the agreement, together with all subsequent amendments, is the "Agreement") which addressed FGUA providing bulk wastewater treatment to certain areas within the County's East Regional Utility Service Area near Lake Pierce through FGUA's Poinciana Wastewater System; and

WHEREAS, TOHO is the successor in interest to FGUA's Poinciana utility system assets to include the assets that provide bulk wastewater treatment pursuant to the Agreement; and

WHEREAS, County and TOHO are entering into an Interlocal Bulk Wastewater Service Agreement (the "Replacement Agreement") which will replace the Agreement in its entirety, and desire to concurrently terminate the Agreement.

NOW, THEREFORE, County and TOHO hereby terminate the Agreement, effective as of the Replacement Agreement Effective Date.

IN WITNESS WHEREOF, County and TOHO have caused this Termination to be duly executed as of the dates indicated below their signatures.

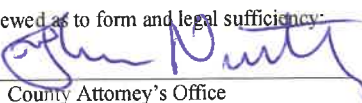
ATTEST:
STACY M. BUTTERFIELD, Clerk

By: _____
Deputy Clerk

POLK COUNTY, a political
subdivision of the State of Florida

By: _____
Martha Santiago, Ed. D., Chair
Board of County Commissioners

Date: _____

Reviewed as to form and legal sufficiency:
By: 
County Attorney's Office

ATTEST:

Tom White, Secretary
Board of Supervisors

TOHOPEKALIGA WATER AUTHORITY

By: _____
Henry Thacker, Chair
Board of Supervisors

Date: _____

Reviewed as to form and legal sufficiency

By: _____

**INTERLOCAL BULK WASTEWATER SERVICE AGREEMENT
BETWEEN
POLK COUNTY, FLORIDA,
AND TOHOPEKALIGA WATER AUTHORITY**

This Interlocal Bulk Wastewater Service Agreement (“Agreement”) is made and entered into as of the Effective Date, defined in Section 3.14 below, by and between POLK COUNTY (the “County”), a political subdivision of the State of Florida, and TOHOPEKALIGA WATER AUTHORITY (“TOHO”), an independent special district established and created pursuant to Chapter 189, Florida Statutes, by special act of the Florida Legislature.

W I T N E S S E T H:

WHEREAS, Section 163.01, Florida Statutes, Florida Interlocal Cooperation Act of 1969, as amended, authorizes local governmental units to enter into Interlocal Agreements for the mutual benefit of the governmental units; and

WHEREAS, Section 125.01, Florida Statutes, Powers and Duties, authorizes the County to provide water and wastewater services; and

WHEREAS, TOHO was created as an independent special district in 2003 by a special act of the Florida Legislature as codified in Chapter 2003-368, Laws of Florida; and

WHEREAS, TOHO owns and operates potable and non-potable water and wastewater treatment facilities within designated services areas located in Polk County, Florida; and

WHEREAS, on July 25, 2001, County entered into a Bulk Wastewater Treatment Agreement with the Florida Governmental Utility Authority (“FGUA”) to connect County’s North Lake Pierce Wastewater System to FGUA’s Poinciana Wastewater System; and

WHEREAS pursuant to an October 20, 2006, Restated Bulk Wastewater Treatment Agreement between County and FGUA, County agreed to pay FGUA a monthly capacity charge of \$2,433.00 which is a prorated connection fee, the payment of which was in addition to normal customer and usage charges for the bulk wastewater treatment services FGUA was providing the County; and

WHEREAS, TOHO subsequently acquired FGUA’s interests in and to the Poinciana Wastewater System and has continued to provide bulk wastewater service to the North Lake Pierce Wastewater System in accordance with the Restated Bulk Wastewater Treatment Agreement; and

WHEREAS, County now wishes to secure Interim Bulk Wastewater Service from TOHO to serve that portion of the County’s wastewater service area commonly referred to as the East Regional Utility Service Area (“ERUSA”), the boundaries of which are depicted on the

attached **Exhibit “A”** and which is inclusive of County’s North Lake Pierce Wastewater System; and

WHEREAS, TOHO has the capacity to provide Bulk Wastewater Service for the wastewater generated from County’s ERUSA; and

WHEREAS, County and TOHO (individually, a “Party” and collectively “the Parties” to this Agreement) agree that TOHO providing Bulk Wastewater Service to County will benefit both Parties;

WHEREAS, as it is intended that this Agreement will replace the Restated Bulk Wastewater Agreement between County and FGUA in its entirety, the parties are concurrently executing a separate termination of that agreement.

NOW THEREFORE, in consideration of the premises hereof, mutual covenants contained herein, and other good and valuable consideration, the Parties hereby covenant and agree as follows:

ARTICLE I RECITALS AND DEFINITIONS

- 1.1 **Recitals.** The Recitals stated above are true and correct, and are incorporated into this Agreement.
- 1.2 **Purpose of the Agreement.** This Agreement describes the terms and conditions by which TOHO will provide Bulk Wastewater Service to the County’s ERUSA.
- 1.3 **Definitions.** In interpreting this Agreement, the following words, phrases, and terms shall have the following meanings unless the context clearly indicates otherwise.
 - 1.3.1 Agreement: this Agreement as it may from time to time be modified.
 - 1.3.2 Interim Bulk Wastewater Service: the collection, transmission, treatment, and disposal of wastewater on a temporary basis in accordance with all applicable governmental requirements and regulations.
 - 1.3.3 Connection Point: a physical location where the County Wastewater System joins with TOHO’s Wastewater System. For the purpose of this Agreement, the Connection Point shall be the flow meter at the location shown in **Exhibit “B”**.
 - 1.3.4 Consumption Charge: the unit rate per thousand gallons per month charged by TOHO for a master-metered wastewater connection to the TOHO Wastewater System.
 - 1.3.5 County Wastewater System: those ERUSA facilities that are employed for the acquisition, collection, transmission, treatment, and disposal of wastewater that are owned, operated, maintained, and replaced by County.

- 1.3.6 Gallons per Day (“GPD”): the annual average daily flow expressed in U.S. gallons.
- 1.3.7 Monthly Base Charge: the monthly base rate charged by TOHO for a master-metered wastewater connection to the TOHO Wastewater System. For the purpose of this Agreement, the Monthly Base Charge will be based on an 8” meter in accordance with wastewater rates approved by the TOHO Board of Supervisors.
- 1.3.8 TOHO Wastewater System: those facilities employed for the acquisition, collection, transmission, treatment, and disposal of wastewater that are owned, operated, maintained, and replaced by TOHO.

Any capitalized terms defined elsewhere in this Agreement shall when used herein have the ascribed meaning and definition.

ARTICLE II TERMS AND CONDITIONS

2.1 Interim Bulk Wastewater Service

- 2.1.1 Wastewater Service. Commencing on the Effective Date , TOHO shall provide continuous Interim Bulk Wastewater Service for County’s ERUSA which shall not exceed 250,000 GPD annual average daily flow. County shall pay TOHO charges for the service in accordance with Section 2.4, below.
- 2.1.2 Connection Point. The Connection Point of the County Wastewater System to the TOHO Wastewater System shall be at the location shown in **Exhibit “B”**. The Connection Point consists of an existing flow metering station where the County’s Wastewater System currently discharges to the TOHO Wastewater System through an existing 8” force main as shown in **Exhibit “B”**.
- 2.1.3 The County will operate and maintain the County Wastewater System in compliance with Chapter 62-604, F.A.C., including requirements to take corrective actions if excessive inflow and infiltration cause a sanitary sewer overflow. In the event that the annual average daily flow shall exceed 250,000 GPD, TOHO may elect to prohibit additional connections to the County Wastewater System.

- 2.2 Utility Service Areas. A Party shall not directly serve or offer to serve any wastewater customer within the other Party’s utility service area, on a temporary or permanent basis, unless the Parties have entered a separate written agreement to do so. The Parties agree that the line of demarcation between their respective Wastewater Systems in the vicinity of the ERUSA is the boundary depicted in the attached **Exhibit “A”**. Accordingly, any customers that have or will individually and directly connect to the TOHO Wastewater System shall be customers of TOHO and shall pay the applicable TOHO rates, fees, charges, and deposits for wastewater service; and any customers that have or will

individually and directly connect to the County Wastewater System shall be customers of County and shall pay the applicable County rates, fees, charges, and deposits for wastewater service.

2.3 Metering.

2.3.1 County's existing flow meter at the Connection Point shown in **Exhibit "B"** shall measure the wastewater flow from County's Wastewater System to the TOHO Wastewater System. County, at its expense, shall perform annual calibration testing of the meter and shall forward the results of each test to TOHO. The metering equipment shall remain the property of County, and County shall be responsible for the operation, maintenance, and replacement of the meter. TOHO shall have the right to review and approve the type of meter, which approval shall not be unreasonably withheld. TOHO shall have reasonable access to the flow meter, shall perform the meter reading, and shall prepare and submit the bill to County based thereon.

2.3.2 The metering equipment will be an 8" magnetic flow meter manufactured by McCrometer, installed at a readily accessible location and shall record the flow with an error not to exceed plus or minus two percent ($\pm 2\%$) of true accuracy for full-scale reading, suitable for billing purposes. If the meter is found to be in error exceeding two percent (2%) of true accuracy, it will be recalibrated by County to the satisfaction of TOHO. If such an error occurs, billing for the time period since the last meter check will be adjusted based on the assumption that the meter error occurred for one-half of the entire time interval between accuracy checks by either Party. The billing adjustment will be made at the same rate valid for the respective time period and the wastewater volume will be adjusted as described herein. In the event the meter is found to be in error as described above on two or more occasions, the Parties agree to mutually agree on a solution including without limitation repair and/or replacement of the metering equipment at County's cost.

2.3.3 TOHO reserves the right to connect the flow meter described in Section 2.3.1 above to TOHO's Supervisory Control and Data Acquisition / Advanced Metering Infrastructure "(SCADA/AMI)" system in order to obtain readings for monthly billing in addition to obtaining flow data at different time intervals. TOHO will share all flow data obtained by the SCADA/AMI system with County at County's request. County agrees to allow TOHO to utilize an existing 110-volt power source for the SCADA/AMI equipment at no cost to TOHO.

2.4 **Bulk Wastewater Service Charges.** County shall pay a Consumption Charge to TOHO for Interim Bulk Wastewater Service in an amount equal to ninety percent (90%) of Toho's Wastewater Monthly Base Charge for an 8" meter and ninety percent (90%) of its Commercial Class – All Use Wastewater Usage Rate. County shall pay a Monthly Base Charge to TOHO for Bulk Wastewater Service in accordance with TOHO's rate schedule in effect at the time of service. The Monthly Base Charge shall be calculated based on an 8-inch meter size. TOHO shall provide County with a monthly invoice and itemized billing

statement identifying each charge and the total due. County shall pay each invoice within thirty (30) days of receipt. TOHO shall not bill any other party for the Interim Bulk Wastewater Service it provides pursuant to this Agreement. The Consumption Charge shall be adjusted periodically, as needed, to reflect an amount equal to ninety percent (90%) of Toho's then current commercial sewer service rate.

- 2.5 **Regulatory Compliance and Disclosure.** Each Party shall comply with all local, state, and federal regulations regarding wastewater collection and transmission systems. TOHO shall comply with all state, regional, and federal requirements and rules applicable to the provision of bulk wastewater service to the public. Neither Party guarantees any special service, quality, capacity, availability, or other facility other than what is required to fulfill that Party's duty of reasonable care to the customers to whom it provides wastewater service.

ARTICLE III MISCELLANEOUS PROVISIONS

- 3.1 **Disclaimer of Third-Party Beneficiaries.** This Agreement is solely for the benefit of the Parties herein, and no right or cause of action will accrue upon or by reason hereto or for the benefit of any third party.
- 3.2 **Service Term.** This Agreement will commence upon the Effective Date and continue until its termination as described in Section 3.3.
- 3.3 **Termination.** The Parties may at any time mutually consent to terminate the Agreement. Termination of the Agreement shall be contingent on County's ability to obtain the necessary funding and permits to secure reasonable alternative wastewater service to the ERUSA. The termination shall be effective on the date both the following have occurred: (i) County ceases discharge to the TOHO Wastewater System and directs such discharge to the County Wastewater System or an alternative service provider, and (ii) County remits final payment to TOHO for its Bulk Wastewater Services in accordance with Section 2.4 above. The foregoing notwithstanding, if this Agreement remains in place as of January 1, 2030, the Parties agree to meet in good faith to negotiate any amendments either Party believes may be necessary and upon mutual agreement, to timely prepare and execute the same.
- 3.4 **Notices.** Any notices regarding this Agreement will be sent in writing to the following addresses, or at such other address as each Party may indicate by notice given to the other Party:

Utilities Director
Polk County Utilities Division
1011 Jim Keene Boulevard
Winter Haven, Florida 33880

CEO/Executive Director
Tohopekaliga Water Authority
951 Martin Luther King Blvd Kissimmee, Florida 34741

With Copies to:

County Attorney
County Attorney's Office
330 W. Church Street
Bartow, Florida 33830

Office of the General Counsel
Tohopekaliga Water Authority
951 Martin Luther King Blvd.
Kissimmee, Florida 34741

Notice must be written and delivered: (i) in person, (ii) via registered or certified United States mail, postage prepaid with return receipt requested, or (iii) via nationally recognized overnight delivery service and addressed to the Party for whom it is intended at the place last specified by the Party. Notice shall be effective upon receipt or refusal to accept receipt. The place for giving notice shall remain such until it is changed by written notice delivered in compliance with the provisions of this Section 3.4.

- 3.5 **Severability**. If any part of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability will not affect the other parts of this Agreement if the rights and obligations of the Parties contained herein are not materially prejudiced and if the intentions of the Parties can continue to be effected. To that end, this Agreement is declared severable.

3.6 **Breach; Remedy**.

- 3.6.1 In the event of breach of this Agreement by a Party ("Breaching Party"), the Party suffering the breach ("Serving Party") shall serve upon the Breaching Party a written notice of breach ("Notice of Breach") detailing the Breaching Party's non-compliance with the obligations set forth in this Agreement. A Breaching Party shall have a cure period ("Cure Period") of thirty (30) calendar days after receipt of the Notice of Breach within which to cure or otherwise comply with those obligations violated and set forth in the Notice of Breach. If the Breaching Party fails to timely cure or otherwise comply with such violated obligations, then, unless the Breaching Party's failure to cure or otherwise timely comply with those obligations violated is due to an event of Force Majeure, the Serving Party may, subject to the mediation requirements of Section 3.15 below, pursue any and all remedies available in law, equity, and under this Agreement.

- 3.6.2 So long as County timely pays undisputed service bills, Toho shall not use any non-payment by County of disputed service bills as reason to suspend or terminate service.
- 3.7 **Assignment.** No Party may assign this Agreement to a third party unless the other Party consents in a mutually agreeable written joinder agreement by and among the Parties and the third-party assignee. All provisions contained in this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the respective successors and permitted assigns of the Parties to the same extent as if each successor and assign were named as a party hereto.
- 3.8 **Liability and Hold Harmless.** Each Party shall to the extent allowed under Section 768.28, Florida Statutes, indemnify and hold the other Party harmless from and against all claims, loss, damage and expense, including without limitation attorneys' fees, costs and expenses (both trial and appellate), arising from the negligent acts or omissions of the indemnifying Party's officers, and employees, related to its performance under this Agreement; provided, however, the indemnifying Party's responsibilities with respect to such liability shall not exceed the limits (the "Liability Limits") of liability stated in section 768.28(5), Florida Statutes (or any successor statutory provision), regardless of whether a claim for damages or other relief is based in tort, contract, statute, strict liability, negligence, product liability or any other legal theory. This section is not intended and does not establish a contractual obligation whereby any Party undertakes responsibility to any other (third) party for any liability. This provision does not constitute a waiver of the Parties' sovereign immunity under Section 768.28, Florida Statutes or extend the Parties' liability beyond the limits established in Section 768.28, Florida Statutes.
- 3.9 **Limitations of Liability.** IN NO EVENT SHALL A PARTY BE LIABLE TO ANOTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT BY A PARTY WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY, OR OTHERWISE.
- 3.10 **Time of the Essence.** Time is hereby declared to be of the essence to the lawful performance of the duties and obligations contained in this Agreement.
- 3.11 **Applicable Law.** This Agreement is an Interlocal Agreement as provided for in Florida Statutes, Section 163.01, as the same may be amended from time to time , and said statute is hereby incorporated herein by reference. Any Agreement terms in conflict therewith will be governed by the statute. This Agreement and the provisions contained herein will be construed, controlled, and interpreted according to the laws of the State of Florida, including all rules relating to permitting, construction, enforcement, and conflicts of laws.

- 3.12 **Entire Agreement; Effect on Prior Agreements.** This Agreement constitutes the entire agreement between the Parties and supersedes all previous discussions, understandings, and agreements between the Parties relating to the subject matter of this Agreement. Amendments to and waivers of the provisions herein shall be made by the Parties in writing by formal amendment.
- 3.13 **Venue, Jury Trial; Attorneys' Fees, Costs and Expenses.** Venue for all actions will lie either in Polk County, if initiated by Toho, or in Osceola County, if initiated by County, in the State of Florida. Each Party waives the right to a jury trial. Each Party shall be responsible for its own legal and attorneys' fees, costs, and expenses incurred in connection with any dispute or any litigation arising out of, or relating to, or resulting from this Agreement, which will include without limitation applicable court costs at every stage, including appellate proceedings.
- 3.14 **Effective Date.** This Agreement will become effective on the date (the "Effective Date") a fully executed counterpart of the Agreement is filed with the Clerk of the Circuit Court of Polk County, and with the Clerk of the Circuit Court for Osceola County, each in accordance with Section 163.01, Florida Statutes. County is responsible for filing a fully executed Agreement counterpart with the Clerk of Polk County; TOHO is responsible for filing a fully executed Agreement counterpart with the Clerk of Osceola County. After doing so, each Party will provide the other Party a certified copy of the filed Agreement.
- 3.15 **Mediation.** If there is a dispute between the Parties arising out of or related to this Agreement which cannot be resolved by the County Manager and the TOHO Executive Director, then unless it shall be unreasonable to do so or an emergency situation or necessity dictates otherwise (to include without limitation a failure of Bulk Wastewater Service to the ERUSA), prior to commencing any legal action or proceeding, the Parties will refer their dispute to non-binding mediation. The mediation will be conducted by a mediator mutually agreeable to all Parties who has experience in mediating disputes of a similar nature. The Parties will use a mediation procedure agreeable to the Parties and the mediator. The Parties will mediate the dispute in good faith, be bound by any resulting mediation agreement, equally share the costs of mediation, and timely pay the same. Mediation will commence within thirty (30) days after the date a Party requests mediation of a dispute, or if the agreed mediator is not available within that time period, then at the first opportunity the agreed mediator is available. A Party may not commence litigation of the dispute until (i) the mediator has declared the Parties are at an impasse, or (ii) one or all Parties have terminated the mediation. Among other matters the Parties intend this mediation process as an alternative to the conflict resolution procedure described in the Florida Governmental Conflict Resolution Act, Florida Statutes, Chapter 164.
- 3.16 **Uncontrollable Forces (Force Majeure)**
- 3.16.1 Notwithstanding anything contained in this Agreement to the contrary, neither Party shall be in default of this Agreement if the Party's failure to perform its Agreement

obligations is due to Uncontrollable Forces. The term "Uncontrollable Forces" shall mean any extraordinary event beyond the reasonable control of the nonperforming Party that prevents or delays the Party from performing its Agreement obligations and which the Party could not avoid by the exercise of reasonable diligence and due care. It includes, but is not limited to fire, flood, earthquakes, storms, epidemic, pandemic, war, riot, and civil disturbance.

3.16.2 Within twenty-four hours after an Uncontrollable Force prevents or delays a Party from performing its Agreement obligations, the nonperforming Party shall give written notice to the other Party describing the circumstances and the Uncontrollable Force temporarily preventing it from performing its Agreement obligations.

3.16.3 The nonperforming Party's Agreement obligations, so far as those obligations are affected by an Uncontrollable Force, shall be temporarily suspended during but no longer than the continuance of the Uncontrollable Force event and for a reasonable time thereafter as may be required for the nonperforming Party to return to normal business operations. If excused from performing any obligations under this Agreement due to the occurrence of an Uncontrollable Force, the nonperforming Party shall promptly, diligently, and in good faith take all reasonable action required for it to be able to commence or resume performance of its Agreement obligations. During any such period the nonperforming Party shall keep the other Party duly notified of all such actions required for it to be able to commence or resume performance of its Agreement obligations.

3.16.4 Neither Party shall be excused from performance if its nonperformance is due to forces which are preventable, removable, or remediable and which the nonperforming Party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK;
THE AGREEMENT CONTINUES ON THE FOLLOWING PAGE
WITH THE PARTIES' SIGNATURES.**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

ATTEST:
STACY M. BUTTERFIELD, Clerk

POLK COUNTY, a political
subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____
Martha Santiago, Ed. D., Chair
Board of County Commissioners

Reviewed as to form and legal sufficiency:

Date: _____, 202__

By:  _____
County Attorney's Office

ATTEST:

TOHOPEKALIGA WATER AUTHORITY

William Land, Secretary
Board of Supervisors

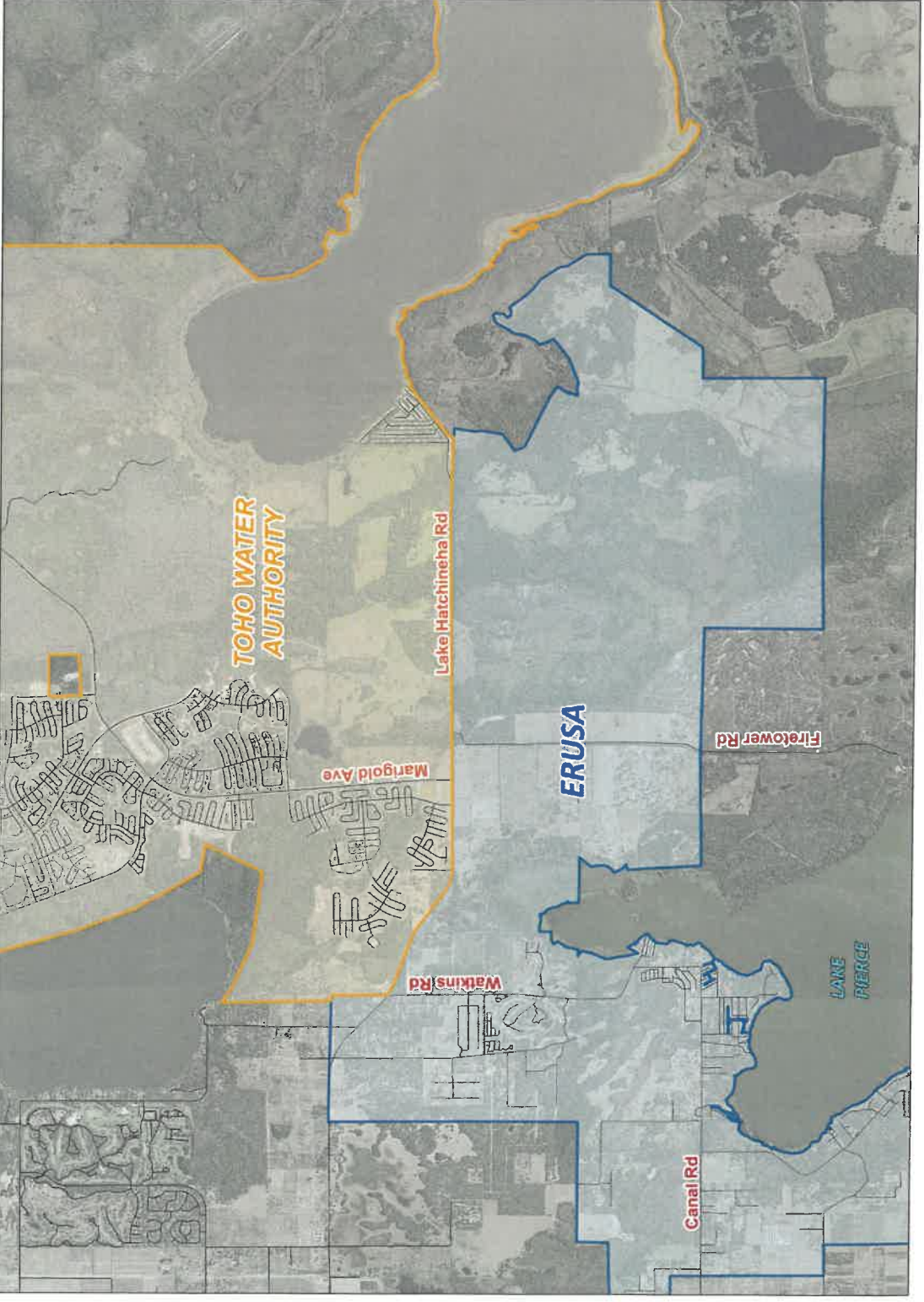
By: _____
Henry Thacker, Chair
Board of Supervisors

Date: _____, 202__

Reviewed as to form and legal sufficiency

By: _____

EXHIBIT "A" EAST REGIONAL UTILITY SERVICE AREA BOUNDARY



LEGEND

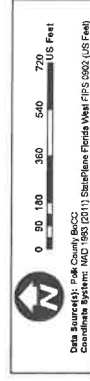
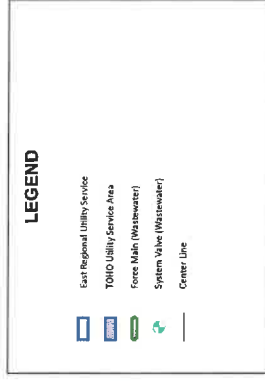
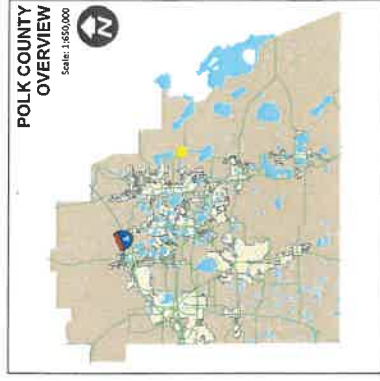
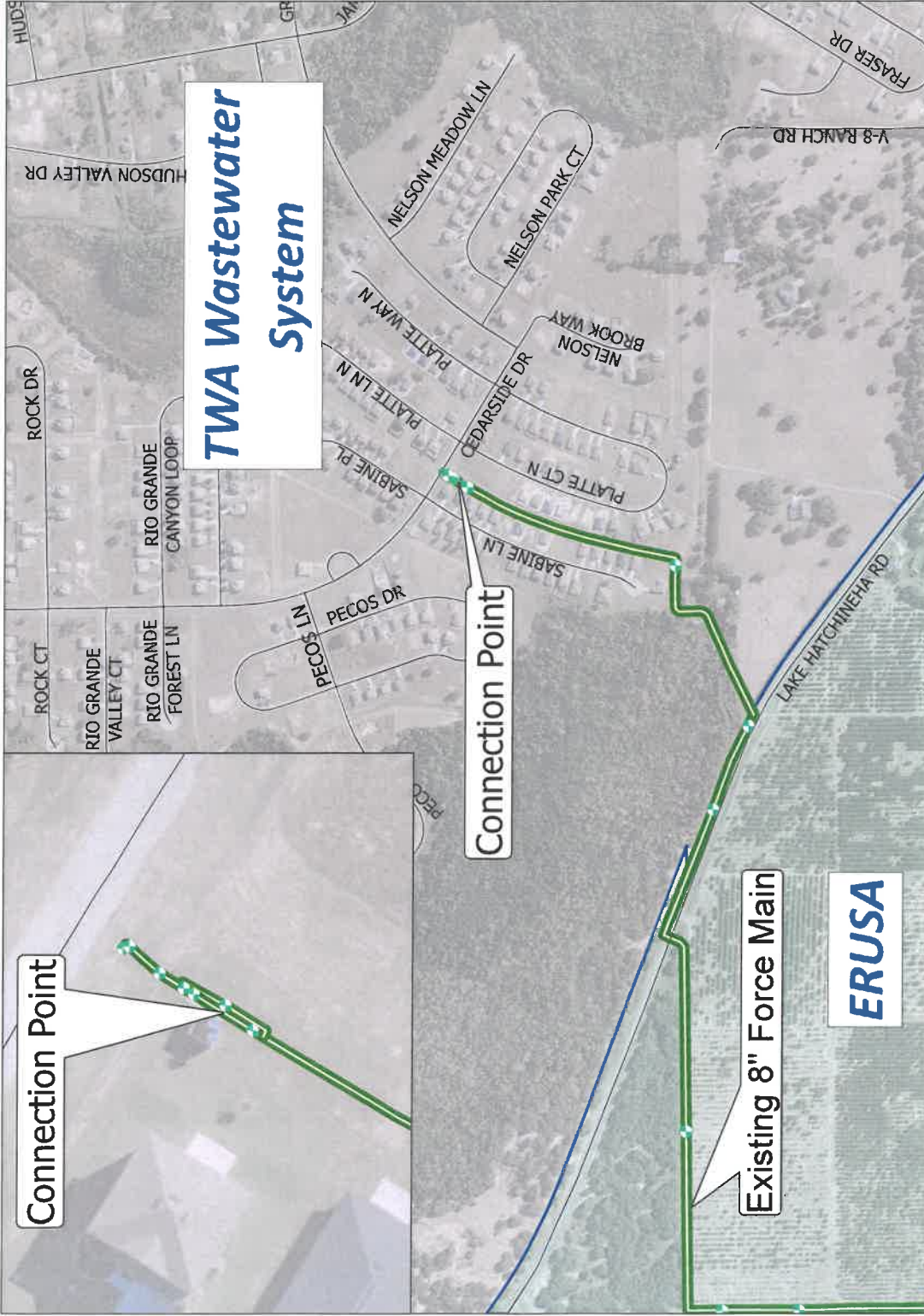
East Regional Utility Service Area

Toho Water Authority Service Area



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EXHIBIT 'B' CONNECTION POINT



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