

TOHOPEKALIGA WATER AUTHORITY

RESOLUTION NO. 2022-012

**RESTATEMENT OF PROCEDURES
FOR IMPOSITION AND COLLECTION OF
WATER AND WASTEWATER
SYSTEM DEVELOPMENT CHARGES**

Adopted: _____

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RESOLUTION NO. 2022-_____

A RESOLUTION OF THE TOHOPEKALIGA WATER AUTHORITY RELATED TO THE IMPOSITION AND COLLECTION OF WATER AND WASTEWATER SYSTEM DEVELOPMENT CHARGES; AMENDING, RESTATING AND CONSOLIDATING POLICIES AND PROCEDURES GOVERNING THE IMPOSITION AND COLLECTION OF SYSTEM DEVELOPMENT CHARGES; PROVIDING DEFINITIONS, RULES OF CONSTRUCTION AND FINDINGS; CONFIRMING THE SYSTEM DEVELOPMENT CHARGES STUDY; PROVIDING FOR THE IMPOSITION OF WATER AND WASTEWATER SYSTEM DEVELOPMENT CHARGES ON ALL DEVELOPMENT WITHIN THE SERVICE AREA OF THE TOHOPEKALIGA WATER AUTHORITY; RATIFYING AND ADOPTING A RESTATED SCHEDULE OF WATER AND WASTEWATER SYSTEM DEVELOPMENT CHARGES; PROVIDING FOR THE USE OF SYSTEM DEVELOPMENT CHARGE MONIES COLLECTED; PROVIDING FOR EXEMPTIONS IN CONNECTION WITH SYSTEM DEVELOPMENT CHARGES; PROVIDING FOR CHANGES OF SIZE AND USE; PROVIDING FOR THE PAYMENT OF SYSTEM DEVELOPMENT CHARGES IN INSTALLMENTS; PROVIDING FOR REVIEW HEARINGS; REQUIRING REVIEW OF THE SYSTEM DEVELOPMENT CHARGES STUDY; PROVIDING FOR NOTICE OF SYSTEM DEVELOPMENT CHARGE RATES; PROVIDING FOR APPLICABILITY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE TOHOPEKALIGA WATER AUTHORITY:

ARTICLE I
GENERAL

SECTION 1.01. AUTHORITY. This Resolution is adopted pursuant to the Tohopekaliga Water Authority Act, Chapter 189, Florida Statutes, and other applicable law.

SECTION 1.02. DEFINITIONS. When used in this Resolution, the following terms shall have the following meanings, unless the context otherwise clearly requires:

"Accessory Use or Structure" means any use or structure, clearly incidental, subordinate and related to the principal use or structure that typically does not create an impact or continuing demand on the Utility System, and is located on the same parcel or lot with such principal use or structure. The term shall include but not be limited to satellite dish antennas, windmills, solar energy equipment, detached garages and carports, above-grade swimming pools, and utility sheds.

"Applicable Flow Rates" means those daily flow rates expressed in gallons per day assignment by Tohopekaliga Water Authority to categories of property use and Development based on the State of Florida Department of Health Chapter 64E-6, Florida Administrative Code.

"Applicant" means the person who is issued a Building Permit or plat approval for new subdivisions, or as the context requires, the person seeking allocation of water or wastewater capacity on behalf of an Owner.

"Board" means the Board of Supervisors of Toho.

"Building" means any structure, improvement or tangible thing, with or without walls, constructed on the site, installed on the site, or placed on the site, to support, shelter or enclose persons and/or support, shelter or enclose tangible property, and the use of the "building" is deemed to create demand upon, or increase demand upon, the Utility

System. "Building" includes parking lots and other foundations, permanent and semi-permanent tents, sheds, trailers, mobile homes, and vehicles that shall in any way function as a building. "Building" excludes tents erected for less than approximately 60 days for the temporary selling of seasonal items such as Christmas trees or Fourth of July fireworks. "Building" includes additions to a building, such as adding a new room, or enlargement of a then existing room.

"Building Permit" means an official document or certificate issued by the appropriate local governmental entity, under the authority of ordinance or law, authorizing the construction or siting of any Building. "Building Permit" shall also include site plan approvals, or other development orders for those activities, structures, or Buildings that do not require a Building Permit in order to be undertaken (e.g. golf course, parks, change of use).

"Certificate of Occupancy" means the official document or certificate issued by the appropriate local governmental entity under the authority of ordinance or law, authorizing the occupancy of any Building, or parts thereof. "Certificate of Occupancy" shall also include tie-down permits or other final inspection sign-off for those structures or Buildings, such as a mobile home dwelling, that may not require a Certificate of Occupancy.

"Development" means any installation, siting or construction of a Building, or use of land, or other activity or improvement, or any additional square footage (area) of a

then existing Building or use, or any net increase in the size or use of a then existing Building or land, in a manner that is deemed to increase the demand for, or impact upon, the Utility System.

"Encumbered" means a commitment by contract or purchase order in a manner that obligates Toho to expend the Encumbered amount upon delivery of goods, the rendering of services or the conveyance of real property by a vendor, supplier, contractor or Owner or approval of the expenditure of funds in an approved budget.

"Executive Director" means the Executive Director of Toho or his or her designee.

"Owner" means any person, group of persons, firm, corporation or other legal entity having legal title to any specific lands in question, including authorized representatives thereof.

"Study" means the System Development Charge Study identified in Appendix C attached hereto, as such study may be amended and supplemented, updated and/or restated in its entirety from time to time pursuant to Section 3.02.

"System Development Charge Coordinator" means the person or persons designated by the Executive Director to be responsible for administration of System Development Charges.

"System Development Charges" means collectively the Water System Development Charges and the Wastewater System Development Charges.

"Toho" means the Tohopekaliga Water Authority, an independent special district, established and created pursuant to Chapter 189, Florida Statutes, by special act of the Florida Legislature.

"Toho Act" or "Tohopekaliga Water Authority Act" means Chapter 2003-368, Laws of Florida, as amended or its successor in function.

"Uniform Assessment Collection Act" means sections 197.3632 and 197.3635, Florida Statutes, or any successor statutes authorizing the collection of non-ad valorem assessments on the same bill as ad valorem taxes, and any applicable regulations promulgated thereunder.

"Utility System" means collectively the Water System and the Wastewater System.

"Wastewater System Development Charge" means the Wastewater System Development Charge contemplated hereunder.

"Wastewater System" means the entirety of the wastewater utility system owned and operated by Toho including those components of the wastewater system required to treat wastewater to public access reclaimed water standards or otherwise dedicated to disposal or wet weather management, rather than beneficial reuse of reclaimed water.

"Water Meter" means the potable water meter servicing any property, building or development.

"Water System Development Charge" means the Water System Development Charge contemplated hereunder.

"Water System" means the entirety of the water utility system owned and/or operated by Toho inclusive of potable, non-potable, reclaimed water, and irrigation water infrastructure and systems.

SECTION 1.03. FINDINGS. It is hereby ascertained, determined and declared:

(A) Pursuant to the Toho Act, Toho is authorized to impose System Development Charges, and/or impact fees, upon Development.

(B) Development necessitates extension and expansion of the Utility System and such Development may be required to contribute its fair share toward the costs of funding improvements and additions related to such extension and expansion.

(C) The imposition of System Development Charges provides a source of revenue to fund the extension and expansion of the Utility System necessitated by new growth and Development.

(D) The Board specifically finds that the Utility System benefits all residents and businesses within the Toho service area and therefore System Development Charges shall be imposed on all new Development.

(E) It is fair and reasonable to require future growth, as represented by Development, to contribute its fair share to the cost of improvements and additions to the Utility System that are required to accommodate the impact generated by such growth.

(F) Capital planning is an evolving process and the level of service standards for the Utility System constitutes a projection of anticipated need for water and wastewater facilities, based upon present knowledge and judgment. Therefore, in recognition of changing growth patterns and the dynamic nature of population growth, it is the intent of the Board that the level of service standards for the public facilities and the System Development Charge imposed should be reviewed and adjusted periodically, pursuant to Section 4.02 hereof, in an effort to ensure that the System Development Charges are imposed equitably and lawfully and are based upon actual and anticipated growth at the time of their imposition.

(G) This Resolution is not intended to, and shall not be construed to, permit the collection of System Development Charges from Development in excess of the amount reasonably anticipated to offset the reasonably allocated demand on the Utility System generated by the respective Development.

(H) All improvements and additions to the Utility System needed to eliminate any deficiency between the existing level of service of the Utility System and the adopted level of service standards shall be funded by revenues other than System Development Charges. Therefore, the revenue derived from System Development Charges shall be utilized only for capital improvements and additions to the Utility System which are reasonably determined to be caused by the impacts of Development.

(I) The Board expressly finds that the improvements and additions to Water System and Wastewater System to be funded by the System Development Charges as a result of implementation of this Resolution provide a benefit to all Development that is in excess of the actual System Development Charges imposed against such Development.

(J) Prior to the adoption of this Resolution, the policies and procedures governing the imposition and collection of System Development Charges by Toho were found in multiple resolutions (including, but not limited to, resolutions under which the Board adopted System Development Charges or impact fee provisions set forth in the City of Kissimmee Code of Ordinances or other tariffs of systems transitioned to or acquired by Toho). It is the express intent of the Board in adopting this Resolution to consolidate Toho policies and procedures governing the imposition and collection of System Development Charges into one resolution, thereby promoting better understanding among citizens, rate payers, and professionals who interface with Toho, and increased efficiency in the operation and administration of the Tohopekaliga Water Authority.

SECTION 1.04. RULES OF CONSTRUCTION. For the purposes of administration and enforcement of this Resolution, unless otherwise stated in this section, the following rules of construction shall apply:

(A) In case of any difference of meaning or implication between the text of this Resolution and any caption, illustration, summary table, or illustrative table, the text shall control.

(B) The word "shall" is always mandatory and not discretionary; the word "may" is permissive.

(C) Words used in the present tense shall include the future and words in the singular shall include the plural and the plural the singular, unless the context clearly indicates the contrary.

(D) The phrase "used for" includes "arranged for," "designed for," "maintained for," or "occupied for."

(E) Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions, or events connected by the conjunction "and," "or" or "either . . . or" the conjunction shall be interpreted as follows:

(1) *And* indicates that all the connected terms, conditions, provisions or events shall apply.

(2) *Or* indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

(3) *Either/or* indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

(F) The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.

(G) All time periods contained within this Resolution shall be calculated on a calendar day basis, including Sundays and legal holidays, but excluding the date of the Board's decision in the event of an appeal. In the event the due date falls on a Sunday or a legal holiday, the due date shall be extended to the next business day.

SECTION 1.05. SYSTEM DEVELOPMENT CHARGE STUDY.

(A) The Board hereby ratifies and confirms its approval of the Study and incorporates the Study referenced in Appendix C hereof by reference, including the assumptions, conclusions and findings therein as to the allocation of anticipated costs of capital improvements and additions to the Water System and Wastewater System among the various property uses and those assumptions, conclusions and findings therein as to the determination of anticipated costs of additions required to accommodate growth. Copies of the Study shall be available in the main offices of Toho located at 951 Martin Luther King Blvd., Kissimmee, Florida 34741, or in such other manner convenient to the public as reasonably determined by the Executive Director.

(B) The data set forth in the Study which was employed in the calculation of the System Development Charge rates uses, and must use in the future, recent and

localized data available for the Water System and the Wastewater System at the time such rates are duly approved by law and then adopted.

SECTION 1.06. PURPOSE. It is the purpose of this Resolution: (1) to amend and restate all relevant Toho Resolutions and to consolidate Toho policies and procedures governing the imposition and collection of System Development Charges into one resolution; (2) to facilitate planning for the necessary capacity expansion of the Utility System; (3) to provide for the health, safety, welfare and economic well-being of the communities and customers served by the Utility System; (4) to require all Development that places additional demand on the Utility System to contribute a proportionate share in the form of System Development Charges to accommodate impacts having a rational nexus to the proposed Development and for which the need is reasonably attributable to the proposed Development; and (5) to ensure that no System Development Charges are collected from Development in excess of the actual amount reasonably determined necessary to offset the demand on the Utility System generated by such Development. This Resolution is intended to be consistent with the principles applied to allocate a fair share of the cost of public facilities to new users and Development as established by statutory law or applicable judicial decisions, or both.

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ARTICLE II
SYSTEM DEVELOPMENT CHARGES

SECTION 2.01. IMPOSITION.

(A) All Development occurring within the Toho service areas shall pay all System Development Charges provided for hereunder unless such charges have been exempted pursuant to this Resolution.

(B) The System Development Charge Rate Schedule and Applicable Flow Rates set forth in Appendix A hereto shall be used in determining applicable System Development Charges by Toho.

SECTION 2.02. PAYMENT.

(A) The Owner or Applicant of any proposed Development shall pay System Development Charges upon the first occurrence of any of the following:

(1) Whenever an Owner connects a Building or Development to the Utility System;

(B) Whenever an Owner or Applicant is issued a Building Permit to construct, install, or alter any Building where, even though the subject property may receive interim utility service from a source other than Toho, such extension, connection, construction, installation, or alteration will result in 1) placement of a new water meter for a previously unserved property, 2) an increase in the size of an existing water meter, or 3) an increase

in the estimated potential demand on the Utility System for needed meter sizes of larger than 2-inches, System Development Charges shall be paid directly to Toho.

(C) The obligation for payment of the System Development Charges shall additionally run with the land.

SECTION 2.03. INDIVIDUAL CALCULATION OF SYSTEM DEVELOPMENT CHARGES.

(A) The System Development Charge Coordinator shall determine the impact to be generated by the proposed Development and shall calculate the appropriate System Development Charges utilizing the schedule set forth in Appendix A and the methodology contained in the Study.

(B) In circumstances where unique or unusual Development is involved or proposed, the System Development Coordinator in determining the System Development Charges may develop a flow rate determination using sound engineering judgment which is reasonably applicable to such unique or unusual Development.

SECTION 2.04. CHANGES OF SIZE AND USE. A Water System Development Charge and Wastewater System Development Charge shall be imposed and calculated for the alteration, expansion or replacement of a Building or any Development which results in capacity needed from the Water System or Wastewater System that requires: 1) a larger water meter size than the present meter size servicing the Building or Development, or 2) an increase in capacity for a Building and

Development served by an existing water meter larger than 2 inches. The System Development Charge imposed in such a circumstance shall be calculated as follows: The System Development Charge imposed shall be the amount due under the applicable System Development Charge rate schedule set forth in Appendix A resulting from the alteration, expansion, or replacement of any Development, less the System Development Charge that would have been imposed for the previous meter size or usage under the applicable System Development Charge rate schedule prior to such alteration, expansion, or replacement. Alteration, expansion, or replacement that results in a water meter size greater than 2 inches will be calculated based on the rates per gallon identified in Appendix A and the applicable flow rates found in the State of Florida Department of Health Chapter 64E-6, Florida Administrative Code, or a site-specific engineering analysis conducted by a professional engineer licensed in the state of Florida.

Actual System Development Charge payments that have been received will be credited against any imposed System Development Charge when requested by the Owner or applicant, and when there is appropriate evidence.

(A) **SECTION 2.05. EXEMPTIONS.** Reuse or irrigation services associated with the common areas of a residential development are not subject to

payment of an additional System Development Charge beyond that paid for and applied to the individual residential properties in the residential development.

(B) The System Development Charge imposed for a wastewater-only service shall be the amount due under the per gallon System Development Charge rate schedule in Appendix A with applicable flow rates calculated based on the State of Florida Department of Health Chapter 64E-6, Florida Administrative Code, or a site-specific engineering analysis conducted by a professional engineer licensed in the state of Florida.

(C) Development or buildings with estimated use in excess of 100,000 gallons per day of reclaimed water or other non-potable water supply may be subject to a site-specific capital recovery charge established by Toho service agreement.

(D) Development on lands owned by governmental or other entities which are by law otherwise exempted or immune from the imposition of System Development Charges shall be exempted from payment of System Development Charges.

(E) The payment of the System Development Charges may otherwise be waived by the Board on a case-by-case basis where its demonstrated that in fact the new Development does not generate an impact upon the Water System or Wastewater System. Provided, however, that in all respects applicable System Development Charges shall be in addition to all other rates, fees, or charges due in conjunction with services provided by Toho.

SECTION 2.06. SUBMISSION OF ENGINEERING PLANS; SIZING REQUIREMENTS.

(A) As applicable and required by Toho, each Owner shall pay Toho to review engineering plans and specifications of the type and form as prescribed by Toho, showing the on-site and off-site Water System and Wastewater System facilities proposed to provide service to the Development. Toho will advise Owner's engineer, when applicable, of any sizing or connection requirements as mandated by sound engineering practice, or Toho's system extension policy and utilities standards for the preparation of plans and specifications associated with the proposed Development. After approval by Toho, the Owner shall cause to be constructed, at the Owner's expense, the Water System and Wastewater System facilities as shown on all plans and specifications. When sizing requirements for on-site and off-site Water System and Wastewater System facilities are required in excess of that determined by Toho to serve the Development, Toho will reimburse the Owner for the marginal additional cost of such excess sizing requirements.

(B) Toho may, at its sole discretion, grant System Development Charge credits based upon the marginal additional cost of excess sizing requirement as described above.

SECTION 2.07. PAYMENT DEFAULT; LIEN OF UNPAID SYSTEM DEVELOPMENT CHARGES. Whenever Toho determines that a System Development Charge was not timely paid as required under Section 2.01 hereof, Toho shall proceed to collect the System Development Charge as follows:

(A) Toho shall serve, by registered or certified mail, return receipt requested, or by any other then reasonable means of confirmed delivery, a "notice of System Development Charge statement" upon the Owner at the address set forth in the application for Building Permit, or the Owner at the address appearing on the most recent records maintained by the applicable tax collector, or such other current address as reasonably determined by Toho. Toho may also attach a copy of the notice of System Development Charge statement to the Building Permit posted at the affected Development site if the Building or other improvement is under construction. Service shall be deemed effective on the date the return receipt indicates the notice was received, the date said notice was attached to the Building Permit, whichever occurs first, or by any other evidence of the date that the notice was otherwise received by the Owner. The notice of System Development Charge statement shall contain a description of the property and shall advise the Owner as follows:

(1) The amounts due as calculated hereunder and the general purpose for which the System Development Charge was imposed;

(2) The date that the System Development Charge became delinquent, and that as of that date the unpaid System Development Charge became subject to a delinquency fee, and that interest began to accrue on that date, and that such interest will continue to accrue thereafter until all amounts due are paid in full;

(3) That in the event the System Development Charge is paid in full within thirty (30) days after receipt or posting of the notice, the delinquency fee and all interest that would have otherwise accrued will be waived;

(4) That in the event the System Development Charge is not paid in full within thirty (30) days after receipt or posting of the notice, a notice of lien against the property for which the Building Permit was secured may be recorded in the Official Records of the applicable county for all amounts then due.

(B) Upon becoming delinquent, a delinquency fee equal to ten percent (10%) of the total System Development Charge imposed shall be assessed. Once delinquent, the total System Development Charge, plus delinquency fee, shall bear interest at the then applicable statutory rate for final judgments calculated on a calendar day basis, until paid in full or waived or reduced by the Executive Director or Board as a result of a timely appeal by the Owner.

(C) In the event the recipient of a notice of System Development Charge statement disputes any material aspect thereof, the Applicant or Owner may file a written appeal petition with the System Development Charge Coordinator not later than thirty (30) days after receipt or posting of such notice, and the System Development Charge Coordinator and Executive Director shall proceed to schedule a hearing upon and consider such petition. Such petition shall conform to and be handled in the manner provided in Section 2.11 hereof. In reviewing the decision, the Executive Director and/or

Board shall use the standards established herein. The appeal petition must, among other things, advise Toho of all disputed issues regarding the amount due and shall explain the precise basis upon which the Applicant or Owner asserts that the notice is incorrect.

(D) Unpaid rates, fees and charges, including System Development Charges, and any interest due thereon, due Toho constitute a lien on any parcel or property affected thereby, such liens are superior and paramount to the interest on such parcel or property of any Owner, lessee, tenant, mortgagee, or other person except the lien of state, county, municipal and district taxes and other non-ad valorem assessments and are on parity with the lien of all such ad valorem property taxes and non-ad valorem assessments. The lien for unpaid Development Service Charges may be collected or enforced by any legal means available to Toho. The collection and enforcement procedures set forth herein shall be cumulative with, supplemental to and in addition to, all other applicable procedures provided in any other resolutions of Toho or any other applicable law. Failure of Toho to follow the procedure set forth herein shall not constitute a waiver of its rights to proceed under any other resolutions of Toho or any other applicable law.

SECTION 2.08. INSTALLMENT PAYMENTS.

(A) Subject to availability of funds, Toho may enter into agreements to extend payment (by accepting installment payments with interest) of System Development Charges over a period of years with Eligible Parties as provided by policy of Board as set

forth in Appendix B. Such agreements shall provide for collection of the System Development Charges through installments with interest. Such agreements may be prepared to evidence same as special assessments or non-ad valorem assessments pursuant to the Uniform Assessment Collection Act and, in such event, shall document the Owner's consent to the imposition of such assessments. System Development Charges collected in installments shall be adjusted as necessary to account for any significant installment collection and administration costs, including but not limited to any fees imposed by the appropriate property appraiser and tax collector and statutory discounts for the early annual payment of ad valorem taxes and non-ad valorem assessments.

(B) Any agreement to extend payments of System Development Charges may be in the form of a customer surcharge on the monthly bill from Toho, and/or executed with the formality of a deed and be recorded in the Official Records of the county where the Development is located. Such agreement shall clearly state that pursuant to the Toho Act the lien resulting therefrom shall be superior and paramount to the interest or the subject land of the Owner or any lessee, tenant, mortgagee, or other person except for the lien of state, county, and municipal taxes and other non-ad valorem assessments and shall be on parity with the lien of all such ad valorem property taxes and non-ad valorem special assessments. Upon advice of counsel, Toho may also require appropriate subordinations before extending payment by installments.

(C) System Development Charges and impact fees are a lawful alternative policy means to address the impacts of new growth and Development on the Utility System. By law the Board has the discretion to uniformly reduce such charges and fees system-wide to recover an amount less than the actual amount reasonably determined necessary to offset the demand on the Utility System generated by such Development. Accordingly, any agreement to extend payment of System Development Charges shall contain an acknowledgement and covenant that the System Development Charges are due and payable as of the date of execution notwithstanding any increase or decrease in System Development Charges in the future, or a determination in the future by the Board to dispense with imposing System Development Charges or impact fees, and the full amount due under any such agreement shall in every event continue to be paid in full, without refund, adjustment, or modification.

(D) The Board may approve one or more forms of such agreements to extend payments of System Development Charges; and, delegate to the Executive Director or any other person the authority to execute same and bind Toho in substantially such form within reasonably defined parameters.

(E) A schedule providing for policy guidelines associated with agreements to extend payments is set forth in Appendix B, and may be revised and amended by resolution of the Board from time to time.

(F) A report shall be prepared annually by the System Development Charge Coordinator reflecting the nature and type of agreements to extend System Development Charges during the previous year, the number and nature of agreements outstanding (referenced by name, account, recording and/or similar information), and the aggregate total amount of monies then due and owing Toho under all such outstanding agreements.

(G) The Executive Director may direct and authorize the exposure to the public, for convenience only, of a searchable or other data base or other means to determine the existence of outstanding agreements to extend payment to Toho of System Development Charges over a period of years for the purposes of assisting buyers, mortgagees, title researchers, customers and other persons, and to advance payment to Toho. Provided, however, that no error or omission therein or on the part of Toho, its officials, employees, or agents shall excuse full payment of any amount due Toho.

SECTION 2.09. USE OF WATER SYSTEM DEVELOPMENT CHARGE PROCEEDS.

(A) The Board hereby reaffirms the establishment of a separate trust account for the Water System Development Charges, designated and restated as the "Water System Development Charges Account," which shall be established and maintained separate and apart from all other accounts of Toho. All Water System Development Charges shall be deposited into such trust account immediately upon receipt.

(B) The monies deposited into the Water System Development Charges Account shall be used solely for the purpose of acquiring, constructing, or improving capital facilities to benefit new users of the Water System , including, but not limited to:

- (1) Land acquisition, including any cost of acquisition;
- (2) Fees for professional services, including but not limited to architecture, engineering, surveying, landscaping, soils and material testing, legal, appraisals, and construction management;
- (3) Design and construction;
- (4) Site development and on-site and off-site improvements incidental to construction thereto;
- (5) Any permitting or application fees necessary for the construction;
- (6) Design and construction of new drainage facilities required by the construction of improvements and additions to the Water System;
- (7) Relocating facilities required by the construction of improvements and additions to the Water System;
- (8) Landscaping;
- (9) Acquisition of apparatus or capital equipment utilized by the Water System;

(10) Repayment of monies borrowed from any budgetary fund of Toho which were used to fund growth necessitated capital improvements to the Water System as provided herein;

(11) Actual costs of administrative charges for the collection of Water System Development Charges; and

(12) Payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by Toho to provide funds to construct or acquire growth necessitated capital improvements or additions to the Water System as provided herein; and

(13) Any other expenditure of the Water System Development Charges as then allowed by law.

(C) The monies deposited into the Water System Development Charges Account shall be used solely for acquiring, constructing, or improving capital facilities to benefit new users of the Water System. Funds on deposit in the Water System Development Charges Account shall not be used for any expenditure that would be classified as a maintenance or repair expense. A report shall be prepared annually by the System Development Charge Coordinator reflecting the collection and expenditures of Water System Development Charges by Toho during the previous year.

(D) Any Water System Development Charge funds on deposit which are not immediately necessary for expenditure may be held in an interest bearing account or

invested by Toho. All income derived from such interest on investments shall be deposited in the Water System Development Charges Account and used as provided herein.

SECTION 2.10 USE OF WASTEWATER SYSTEM DEVELOPMENT CHARGE PROCEEDS.

(A) The Board hereby reaffirms the establishment of a separate trust account for the Wastewater System Development Charges, designated and restated as the "Wastewater System Development Charges Account," which shall be established and maintained separate and apart from all other accounts of Toho. All Wastewater System Development Charges shall be deposited into such trust account immediately upon receipt.

(B) The monies deposited into the Wastewater System Development Charges Account, as established in paragraph (A) above, shall be used solely for acquiring, constructing, or improving capital facilities to benefit new users of the Wastewater System, but not limited to:

- (1) Land acquisition, including any cost of acquisition;
- (2) Fees for professional services, including but not limited to architecture, engineering, surveying, landscaping, soils and material testing, legal, appraisals, and construction management;
- (3) Design and construction;

- (4) Site development and on-site and off-site improvements incidental to construction thereto;
- (5) Any permitting or application fees necessary for the construction;
- (6) Design and construction of new drainage facilities required by the construction of improvements and additions to the Water System;
- (7) Relocating facilities required by the construction of improvements and additions to the Water System;
- (8) Landscaping;
- (9) Acquisition of apparatus or capital equipment utilized by the Water System;
- (10) Repayment of monies borrowed from any budgetary fund of Toho which were used to fund growth necessitated capital improvements to the Wastewater System as provided herein;
- (11) Actual costs of administrative charges for the collection of Wastewater System Development Charges;
- (12) Payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by Toho to provide funds to construct or acquire growth necessitated capital improvements or additions to the Wastewater System as provided herein; and

(13) Any other expenditure of the Wastewater System Development Charges as then allowed by law.

(C) The monies deposited into the Wastewater System Development Charges Account shall be used solely for acquiring, constructing, or improving capital facilities to benefit the Wastewater System required to serve new growth. Funds on deposit in the Wastewater System Development Charges Account shall not be used for any expenditure that would be classified as a maintenance or repair expense. A report shall be prepared annually by the System Development Charge Coordinator reflecting the collection and expenditures of Wastewater System Development Charges by Toho during the previous year.

(D) Any Wastewater System Development Charge funds on deposit which are not immediately necessary for expenditure may be held in an interest bearing account or invested by Toho. All income derived from such interest on investments shall be deposited in the Wastewater System Development Charges Account and used as provided herein.

SECTION 2.11. REFUNDS; FAILURE TO CONSTRUCT DEVELOPMENT.

(A) System Development Charges collected by Toho shall be returned to the then current Owner of the property on behalf of which such charges or fees were paid, if such charges or fees have not been expended or encumbered prior to the end of the fiscal year immediately following the tenth (10th) anniversary of the date upon which such

charges or fees were paid and the subject property has not connected to the applicable Water System or Wastewater System. Refunds shall be made only in accordance with the procedures provided in the Toho Act, as follows:

(1) The Owner holding legal title to the subject property at the end of the ten-year period shall be eligible for a refund of the System Development Charge without interest.

(2) Toho shall notify the Owner at the address reflected on the most recent tax roll of eligibility for a refund by mailing notice to the Owner. Such notice shall fairly explain the procedure for applying for a refund and shall be sent by registered or certified mail with return receipt requested.

(3) Any property owner eligible for a refund shall file written application with the Board for a refund within ninety (90) days after the date of mailing of the notice by Toho, or such Owner shall be deemed to have waived any right to a refund and Toho shall be entitled to retain and apply the System Development Charge for capital improvements.

(4) Failure to construct the Development for which a System Development Charge has been paid shall not constitute grounds for a refund, nor shall delay or failure to receive the mailed notice of eligibility for a refund toll the 90-day time limit within which an application for refund must be filed.

(B) For the purposes of this section, all System Development Charges collected shall be deemed to be spent or encumbered on the basis of the first System Development Charges in or received by Toho shall be the first System Development Charges out.

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ARTICLE III
WATER AND WASTEWATER CAPACITY ALLOCATION

SECTION 3.01. MANAGING CAPACITY

The Board may establish and promulgate policies and regulations which manage and determine the allocation of water and/or wastewater as a limited and/or regulated resource. In no event shall any allocation be deemed a guarantee of or a property right to any capacity reserved.

(A) Any allocation or reservation is contingent upon current and future permitted capacity, and, in fact, the existence and availability of such capacity. Water and/or wastewater capacity may be limited from time to time, and/or subject to limiting agreements, regulations, conditions or other limiting circumstances, factors, regulations or events, even though capacity may be available at the time Development is commenced.

(B) As a matter of law, no right or interest whatsoever shall ever vest in the Owner, until the Development is completed and all the System Development Charges

therefore have been paid in full or are the subject of a written agreement with Toho to extend payment over a period of years.

SECTION 3.02. ALLOCATION OF CAPACITY. Allocation of capacity shall be governed by policy adopted by the Board, which may be revised and amended by resolution of the Board from time to time.

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ARTICLE IV
GENERAL PROVISIONS

SECTION 4.01. REVIEW HEARINGS.

(A) An Applicant or Owner who is required to pay System Development Charges pursuant to this Resolution shall have the right to request a review hearing before the Executive Director.

(B) Such hearing shall be limited to the review of the following:

(1) The application or calculation of the appropriate System Development Charges pursuant to this Resolution.

(2) Any dispute concerning changes in size and use pursuant to Section 2.05.

(3) Denial of an exemption pursuant to Section 2.06.

(4) Any dispute concerning sizing or connection requirements associated with proposed Development, or any reimbursement to an Owner for marginal additional cost of excess sizing requirements pursuant to Section 2.07.

(5) Matters associated with Water System and/or Wastewater System allocation addressed in Article III hereof.

(C) Except as otherwise provided in this Resolution, such hearing shall be requested by the Applicant or Owner within twenty (20) days of the written or other reasonable notice of the determination by the System Development Charge Coordinator.

(F) Failing an informal resolution, a review hearing shall be scheduled before the Board at a regularly scheduled meeting or a special meeting called for the purpose of conducting the hearing and shall provide the Applicant and Owner written notice of the time and place of the hearing. Such hearing shall be held within sixty (60) days of the date the request for hearing was filed, unless the Owner and the Executive Director agree otherwise.

(G) Such hearing shall be conducted in a manner designed to obtain all information and evidence relevant to the requested hearing. Formal rules of civil procedure and evidence shall not be applicable; however, the hearing shall be conducted in a fair and impartial manner with each party having an opportunity to be heard and to present information and evidence. A determination may be in writing, but shall be issued within thirty (30) days of the hearing to the Applicant and Owner, unless the Owner and the Board agree otherwise.

(H) In the alternative and as provided for in the Toho Act, the Board may appoint the Executive Director, a member of the Board, a committee of members of the Board, or a special master to conduct the public hearing or hearings on its behalf relating to rates, fees, and charges or such other matter or issue as the Board determines. The Executive Director, member of the Board, committee of members of the Board, or designated special master may be designated to act as a hearing officer or hearing officers and report to the Board its findings relating to such hearing. However, only the Board

may set or revise the recommended System Development Charges or adopt with finality other recommended determinations.

(I) The Board's determination shall be the final adjudication of the issues presented in any review hearing (including, but not limited to, the amount of the System Development Charges, exemptions or waivers, changes in size and use, required sizing or connection requirements, marginal cost reimbursement or matters associated with capacity allocation), unless proper steps are initiated in a court of competent jurisdiction to secure relief within twenty (20) days from the date of the Board's determination.

(J) Any Applicant or Owner who requests a hearing pursuant to this Section and desires the immediate issuance of a Building Permit, plat approval, or similar authority to proceed with Development, or if a Building Permit, plat approval, or similar authority to proceed with Development has been issued without the payment of the System Development Charge, shall pay prior to or at the time the request for hearing is filed, the applicable System Development Charge pursuant to Section 2.01. Said payment shall be deemed paid "under protest" and shall not be construed as a waiver of any review rights.

(K) An Applicant or Owner may request a hearing under this Section without paying the applicable System Development Charge, but no Building Permit, plat approval, or similar approval or authority to proceed with Development shall be issued

until all System Development Charges are paid in the amount initially calculated or the amount approved upon completion of the review provided in this Section.

SECTION 4.02. STUDY REVIEW REQUIREMENT.

(A) The System Development Charges adopted hereunder shall be reasonably reviewed using the most recent and localized data by the Board henceforth at least once every four (4) years. Each subsequent review shall consider among other things, but not be limited to, the components of the Study ratified and confirmed in Section 1.05 herein and a review of Appendix A hereof. The purpose of this review is to ensure that Water System Development Charges and Wastewater System Development Charges do not exceed the reasonably anticipated costs associated with the improvements and additions necessary to offset the demand generated by Development on the respective systems. In the event the review required by this Section alters or changes the assumptions, conclusions and findings of the Study or alters or changes the amount or classification of the Water System Development Charge or Wastewater System Development Charge, the Study shall be amended, supplemented, updated, and/or restated in its entirety to reflect the assumptions, conclusions and findings of such reviews upon approval and adoption by the Board; and Section 1.05 hereof shall be amended to adopt by reference such updated studies.

(B) Any such review and update of the Study or change in the System Development Charges shall comply with applicable law, including the Toho Act and Section 163.31801, Florida Statutes, or their successors in function.

SECTION 4.03. NOTICE OF SYSTEM DEVELOPMENT CHARGE RATES.

Adoption of this Resolution intends to update, restate and consolidate Toho policies and procedures governing the calculation, imposition, and collection of System Development Charges and is not intended to provide for new or increased System Development Charge rates, such that notice of the adoption hereof is not required under Section 163.31801, Florida Statutes. However, upon adoption of any amendment hereto imposing revised System Development Charge rates, the Executive Director shall publish a notice once in a newspaper of general circulation within TOHO service area which notice shall include:

(A) a brief and general description of the applicable System Development Charges; and

(B) the date of implementation of the System Development Charge rates set forth in the notice, which date shall not be earlier than ninety (90) days after the date of publication of the notice.

SECTION 4.04 FUTURE MODIFICATION OF RESOLUTION. This Resolution has been prepared with an eye toward necessary and required future modification from time to time; and, anticipates that such substantive modifications can be in the form of updated and/or revised Appendices.

SECTION 4.05. ADMINISTRATIVE PROCEDURES ACT NOT APPLICABLE. Nothing contained in this Resolution shall be construed or interpreted to include Toho in the definition of “agency” as contained in section 120.52, Florida Statutes, or to otherwise subject Toho to the application of the Administrative Procedure Act, Chapter 120, Florida Statutes. This declaration of intent and exclusion is authorized by law and shall apply to all proceedings taken as a result of or pursuant to this Resolution.

SECTION 4.06. SEVERABILITY. If any clause, section or provision of this Resolution shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of said Resolution shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein.

SECTION 4.07. CONFLICTS. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

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SECTION 4.08. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

PASSED by the Board of Supervisors of the Tohopekaliga Water Authority on this 12th day of October, 2022.

(SEAL)

TOHOPEKALIGA WATER AUTHORITY

By: _____

Hector Lizasuan, Board Chairman

Henry Thacker

ATTEST:


William Land, Board Secretary

APPENDIX A
SYSTEM DEVELOPMENT CHARGE RATE SCHEDULE
AND APPLICABLE FLOW RATES

RATE SCHEDULE		
All TOHO Systems	(TOHO I, II, III, IV)	
Per Gallon	Water	Wastewater
Water (Per Gallon)	\$8.23	\$15.04
Meter Size	Water Fee	Wastewater Fee
¾" Meter	\$3,293	\$4,151
1" Meter	\$5,488	\$6,918
1.5" Meter	\$10,977	\$13,837
2" Meter	\$17,563	\$22,139

*All meter connections above 2" are subject to an individual analysis of capacity needs.

APPENDIX B
MODIFIED AND RESTATED POLICY
FOR INSTALLMENT PAYMENT OF SYSTEM DEVELOPMENT CHARGES

SECTION 1. OBJECTIVE OR GOAL. The Board has determined that a policy should be established, standardized and modified from time to time associated with the extension of payments on an installment basis for System Development Charges.

SECTION 2. CAVEAT. The capacity and ability of TOHO to extend System Development Charges over a period of years is limited. Determinations to authorize installment agreements are made at the sole discretion of the Board. The Board may discontinue or suspend allowing extended payment or installment payment agreements at any time.

SECTION 3. SYSTEM DEVELOPMENT CHARGES ARE DUE AT THE TIME OF EXECUTION OF ANY AGREEMENT TO ACCEPT INSTALLMENT PAYMENT; NO OFFSET. The amount due at the time TOHO agrees to any extended payment or installment payment agreement shall be a fixed obligation without offset of any kind; and, shall not be affected by future decisions of the Board to increase, decrease or dispense all together with the future imposition of System Development Charges.

SECTION 4. INTEREST. Interest shall be charged on the outstanding balance, including any unpaid charges due TOHO under any agreement to extend payment of System Development Charges over a period of years. The rate shall be set by the Board and may be modified from time to time.

SECTION 5. ELIGIBLE PARTIES.

(A) The following parties or circumstances are eligible for extension of payments on an installment basis for System Development Charges.

(1) An existing residential property consisting of 4 units or less connecting to Toho's utility services for the first time.

(2) An Owner for which water and/or wastewater service was not available at the time of the initial certificate of occupancy. The installment payment of System Development Charges shall only apply to fees calculated for water and wastewater capacity necessary to serve the subject property at the time service becomes available. If the Owner expands, constructs improvements and/or changes the use such that additional water and wastewater capacity is required to serve the subject property, the portion of System Development Charges calculated on the additional capacity shall

not be eligible for installment payment of System Development Charges.

(3) Charitable and/or non-profit organizations. To qualify the charitable and/or non-profit organization must conclusively demonstrate that it is classified as such under all applicable state or federal laws.

(4) Industrial and warehouse uses which create a minimum of five new jobs. This eligibility would be extended to existing customers with industrial and warehouse classifications for expansions as well as new development of industrial and warehouse users. Owners who construct buildings and/or facilities for marketing and attraction of potential industrial and/or warehouse use customers shall not be required to pay water and wastewater impact fees until a certificate of occupancy is issued for the Development. Commercial uses do not qualify under this subsection.

(5) Housing projects which meet the classification by the applicable general purpose local government as "affordable housing projects." The project must receive the affordable housing designation from the respective governing body and supply or confirm same with written evidence to Toho. Each governmental entity established criteria for affordable housing eligibility and is responsible for reviewing each project requesting an affordable housing designation. To be eligible for the installment payment of water and wastewater System Development Charges, the Applicant or Owner of the housing project must submit documentation from the certifying governmental entity of the affordable housing designation.

(6) Owners of commercial properties developing, improving and/or expanding properties located within the City of Kissimmee Community Redevelopment Area or located within the City of Kissimmee municipal limits within four hundred fifty (450) feet of Main Street. Eligibility for the installment payment of System Development Charges is being extended to commercial customers in the above defined geographic area because of the City of Kissimmee's established policy of providing incentives for commercial development in these areas and the fact that Toho has made a conscious decision to invest in these areas by locating its administrative facilities there.

(7) Owners of commercial properties, existing or new Development, who can demonstrate that the property will not be subdivided or subjected to condominium ownership, or agree to a covenant not to do so.

(8) Economic development projects receiving financial support or incentives from any of Toho's member governments.

SECTION 6. SYSTEM DEVELOPMENT CHARGES INSTALLMENT PAYMENT PLANS.

(A) Water and wastewater System Development Charges shall be calculated in accordance with the then applicable System Development Charge resolution. Fees or charges calculated for line extensions or hydraulic shares may be totaled with the System Development Charges amount and included in the installment payment plan.

(B) The Applicant or Owner determined eligible for extension of payments on an installment basis shall be subject to the terms of the optional installment payment plans for extended payment of their water and wastewater System Development Charges as provided below:

(a) Eligible Parties may be approved for installment payment plans up to terms of 20-years. Payment plans require separate Board approval if exceeding the following terms, which may be approved by the Executive Director:

1. 20-years: All residential properties including affordable housing projects
2. 5-years: All other projects

(b) The Applicant or Owner shall pay Toho as a down payment the connection fees for hooking up to water and/or wastewater. Those fees shall include the water/sewer permit and the current tap fee for water/sewer at the time of execution of any agreements providing for installment payment of System Development Charges

(c) The Owner shall enter into an agreement with Toho to pay the remaining balance and an annual assessment on the property tax bill in equal annual payments over the period of the installment payment plan. In addition to the agreement the Owner may be required to execute and/or enter into a promissory note and security agreement or any other agreement required by Toho for the amounts to be paid on an installment basis. Any alternative payment arrangements shall be subject to approval by the Board.

(d) The Owner shall pay in addition to the remaining balance to be paid in installments, interest on the unpaid balance.

(e) If the Owner becomes delinquent in any payments Toho may terminate service and/or initiate collection procedures including filing a

notice of lien on the subject property for the balance due.

(C) (f)The outstanding balance of the System Development Charges, together with all fees, charges and interest due, may be pre-paid at any time without penalty. Any prepayment of part but not all of the balance due shall be first applied to all interest due, then any associated rates, fees and charges due Toho under the applicable installment agreement relative to the subject property, before reducing the balance due. A charitable and/or non-profit organization may request a waiver of interest on the unpaid balance.

(D) The Applicant or Owner shall provide satisfactory proof of record ownership for the subject property to Toho prior to execution of any agreement to extend payment of System Development Charges. The Owner shall execute any such agreement and may be required to provide other information, as the case may be to demonstrate the authority to execute same and bind the subject property to repayment.

SECTION 7. WAIVERS FOR HEALTH, SAFETY AND EXTREME HARDSHIP.

(A) The legal ability of Toho to waive System Development Charges is severely constrained by law. Any waiver must be funded by legally available funds, other than monies held by Toho in the applicable System Development Charge accounts. Toho may, on a case-by-case basis, demonstrated to the satisfaction of the System Development Charge Coordinator or Executive Director, waive certain System Development Charges.

(B) Waivers may be granted where connection to the water and/or wastewater system is necessary to resolve a public health problem, for example:

(1) Septic tank failures - documented from the applicable county health department or the general purpose local government code enforcement operations or staff.

(2) Well failure - documented by the applicable county health department or a representative of Toho.

(C) Waivers may be granted when the Owner can demonstrate an extreme financial hardship, for example:

(1) Unemployed with documentation provided.

(2) Medical disability preventing work or employment with documentation provided.

(3) The Owner is below the federal poverty level with documentation provided by tax returns, certification from federal or state welfare/poverty agencies.

(4) Retired Owner with Social Security as the only substantial source of income with documentation provided through tax returns or other means.

(5) Other financial hardship with demonstration through tax returns, bank statements, certifications, affidavits, or similar.

(D) Such waivers may be approved by the Executive Director in single amounts for any subject property which do not exceed the System Development Charges and associated fees for the equivalent of three (3) equivalent residential units (typical tri-plex or less).

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APPENDIX C
SYSTEM DEVELOPMENT CHARGE STUDY

The System Development Charge Study prepared by Stantec Consulting Services Inc, dated October 4, 2022 ("Study") is incorporated herein by reference. The data set forth in the Study employed in the calculation of the System Development Charge rates ratified, confirmed and imposed by this Resolution was the most recent and localized data available for the Water System and Wastewater System at the time such rates were duly approved by law and then adopted. A copy of the System Development Charge Study is available for inspection at the Office of the Executive Director.