

**INTERLOCAL AGREEMENT
FOR RECLAIMED WATER SERVICE**

THIS INTERLOCAL AGREEMENT, hereinafter "Agreement" made and entered into this 25TH day of October 2011, by and between the City of Stuart, a municipal corporation of the State of Florida, hereinafter referred to as the "City" and the Martin County Board of County Commissioners, a political subdivision, of the State of Florida, hereinafter referred to as the "County"

WITNESSETH:

WHEREAS, Section 163.01, Florida Statutes, the Florida Interlocal Cooperation Act of 1969 as amended provides that local government units may cooperate with each other on a basis of mutual advantage to provide services and facilities as set forth in the 1969 Act and to enter into an Interlocal Agreement on the terms and conditions set forth in the 1969 Act; and

WHEREAS, the City owns and operates a wastewater treatment facility capable of producing reclaimed water as that term is defined by the Florida Department of Environmental Protection (FDEP) of irrigation quality water (hereinafter referred to as reclaimed water) for use on grasses, woodlands, golf courses, residential and common landscaped areas, and other types of approved vegetation: and,

WHEREAS, the County has a reclaimed water transmission and distribution system that is capable of providing additional reclaimed water to new and existing users: and,

WHEREAS, the County has identified a need to secure additional reclaimed water to meet the irrigation capacity needs of its utility service area for the benefit of the region;

WHEREAS, the Parties agree it is in their mutual best interests and the best

interests of the public and consumers for the Parties for the County to purchase available reclaimed water from the City to further promote the use of alternative water resources for the benefit of the Parties;

WHEREAS, the City and the County desire to enter into this Agreement setting forth the terms and provisions of their agreement for the sale and purchase of reclaimed water to accomplish the purposes set forth above.

NOW, THEREFORE, in consideration of the promises and the payment by each to the other of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the County agree as follows:

ARTICLE I

RECITALS, SHORT TITLE AND DEFINITIONS

SECTION 1.1 RECITALS. The above recitals are true and correct and are hereby incorporated into this Agreement by reference.

SECTION 1.2 SHORT TITLE. This Agreement to provide for the sale of reclaimed water between the Parties and shall be referred to as the "Agreement".

SECTION 1.3 DEFINITIONS. The terms in this Section, for all purposes of this Agreement and any amendments or other changes thereto, shall have the following meanings unless the context hereof requires otherwise:

"Abnormal Occurrence" shall mean any event that reduces the quantity or quality of the services anticipated to be provided or purchased under this Agreement or which has the potential to result in such service reductions which is of no fault of the provider (e.g., line break, fire demand, etc.).

"Agreement" shall mean this Interlocal Agreement for the sale of reclaimed water by the City to the County.

"Average Daily Flow" or "ADF" shall mean the amount calculated determined by dividing the reclaimed water flow measured by metering at the Point of Delivery, respectively for any period of time divided by the number of days for that period of time corresponding to such quantity of reclaimed water delivered.

"Billing Period" shall mean that period for which the reclaimed water service is delivered by the City to the County, which period will generally average thirty (30) days.

"Bulk Service" shall mean reclaimed water capacity and the corresponding supplemental metered sales of such capacity which is sold by the City to the County.

"Contracted Reclaimed Water Capacity" shall mean the minimum amount of the City's reclaimed water capacity reserved for the County as identified in Exhibit "B".

"Customers" shall mean the respective retail reclaimed water customers of the City and the County.

"Days" shall mean calendar days unless otherwise specified.

"Fiscal Year" shall mean the twelve month period beginning October 1st and ending September 30th.

"Force Majeure" shall include, but not be limited to, acts of God, strikes, lockouts, or other industrial disturbances, acts of any public enemy, wars, blockades, riots, acts of armed forces, epidemics, delays by carriers, inability to obtain materials or rights-of-way on reasonable terms, acts or failures to act by public authorities not under the control of either party to this Agreement, or acts or failures to act by regulatory authorities.

"GPD" shall mean gallons per day.

"Meter" shall mean, unless the context clearly indicates otherwise, the meter installed at the Point of Delivery which is designed to measure the amount of reclaimed water delivered by the City to the County which shall meet the standards prescribed for the accuracy of such devices by the American Water Works Association.

"MGD" shall mean million gallons per day.

"Plant Capacity" shall mean, as to the services contemplated herein, i) as for the Reclaimed Water Production Facilities and the wastewater treatment plant capacity as permitted by the regulatory agencies having jurisdiction which shall be expressed on a million gallon per day basis.

"Point of Delivery" shall mean, as to the reclaimed water service contemplated herein, that point at the outlet side of the reclaimed water meter where the County's Reclaimed Water Transmission System shall be physically connected to the City's Reclaimed Water Transmission System.

"Price Index" shall mean a percentage index adjustment factor used to adjust service rates on an annual basis, which change in rates are not predicated on a cost analysis or rate study, based on the Gross Domestic Price Deflator Index as published annually by the Florida Public Service Commission determined in the prior fiscal year which will be applied uniformly to all service rates for the respective services provided by the Parties.

"Price Index Adjustment" shall mean the specific Price Index factor applied to the Reclaimed Water Service Rates on an annual basis to account for the estimated impact of inflation on the cost of providing Reclaimed Water Services. The adjustment will be applied to the Reclaimed Water Service Rates in effect immediately prior to the application of the Price Index and will be made effective on or about October 1st of each

Fiscal Year.

"Reclaimed Water" shall mean non-potable irrigation quality (IQ) water that meets or exceeds federal, state, and local regulatory requirements for treatment and high level disinfection and to be acceptable for the intended uses when delivered to the County.

"Reclaimed Water Service Rates" shall mean the respective rates charged monthly for Reclaimed Water Service as identified in Exhibit "E".

"Reclaimed Water Transmission System" shall mean those utility facilities, including but not limited to, mains, pipes, pumping stations, meters and appurtenant facilities that are necessary to convey reclaimed water by the City to the Point of Delivery on behalf of the County.

"Supplemental Capacity" shall mean unused and unreserved Plant Capacity in City's reclaimed water system that is available for sale to the County. .

"Supplemental Service Rate" shall mean the respective rate charged monthly for Supplemental Reclaimed Water Service as identified in Exhibit "E".

"Supplemental Reclaimed Water Service" shall mean any reclaimed water delivered by the City to the County in excess of the contracted amount as identified in Exhibit "B" as metered at the Point of Delivery which constitutes the use of Supplemental Capacity identified by the City in its respective Reclaimed Water Facilities.

ARTICLE II

CONDITIONS PRECEDENT

SECTION 2.1 CONDITIONS PRECEDENT. The approval by the respective governing bodies of the jurisdictions of this Reclaimed Water Agreement is a condition precedent

to the effectiveness of this Agreement. Additionally, approval by the South Florida Water Management District ("SFWMD"), Florida Department of Environmental Protection ("FDEP") and any other regulatory authority that may have jurisdiction over the terms and conditions presented herein shall be a condition precedent to the effectiveness of this Agreement.

ARTICLE III UTILITY SERVICE AREA

Section 3.1 RECLAIMED WATER AND SERVICE AREA. In order to provide the ability to adequately plan for reclaimed water capacity needs and the overall provision of reclaimed water, the Parties hereby agree to establish the respective utility service areas whereby each Party has the sole responsibility to provide reclaimed water service to its Customers. The reclaimed water service area for the City and the County as shown on Exhibit "A".

ARTICLE IV CONTRACTED RECLAIMED WATER CAPACITY AND SALES

SECTION 4.1 CONTRACTED RECLAIMED WATER CAPACITY ALLOCATION. The City agrees to provide Contracted Reclaimed Water Capacity from its Reclaimed Water Treatment Facilities to the County in the amounts set forth Exhibit "B". The reservation by the City of such Contracted Reclaimed Water Capacity shall remain permanent and available for the sole use by the County during the term of this Agreement. In no event will the City use the Contracted Reclaimed Water Capacity of the County to meet the City reclaimed water retail and other bulk service area requirements, which would compromise the operational or service area needs of the County. Recognizing this reservation provision, the City may use reserved but unused capacity allocated to the County to meet its short-term reclaimed water service needs; however such use will not be considered as being a dependable source of reclaimed water since the Plant Capacity has been allocated by the City to the County pursuant to

this Agreement for their exclusive use. The County shall have an exclusive right to the use of the Contracted Reclaimed Water Capacity that will be available at all times during the term of Agreement. The City will own and operate all facilities associated with the Plant Capacity and such facilities will continue to be an asset of the City System. The County will have an entitlement to the Contracted Reclaimed Water Capacity but will not be responsible for the operations, maintenance or replacement of such utility plant in service that is owned by the City and necessary to meet the Contracted Reclaimed Water Capacity commitments to the County.

4.1.2 In order to confirm adequate reclaimed water capacity and to aid in future utility planning, the County shall provide to the City an updated estimate of the amount of Contracted Reclaimed Water Capacity desired and the anticipated use of such capacity (expressed in thousands of gallons) annually for the next five years of the capacity commitment during the term of this Agreement. The County shall update these projections each year and the City shall confirm the availability of the requested reclaimed water. The City shall not be obligated to increase the Contracted Reclaimed Water Capacity above that amount as set forth in Exhibit "B". Notwithstanding the above, the County may request to advance the capacity utilization as shown on Exhibit "B" as long as the advance of such capacity does not exceed the maximum Contracted Reclaimed Water Capacity as shown on the exhibit. Nothing in this Agreement will preclude the City from entering into a Bulk Service Agreement with another party, including the County, for the use of available capacity above the amounts used by the City plus the amount reserved by the County pursuant to Exhibit "B".

4.1.3 Notwithstanding any of the provisions contained herein, the City shall not be liable for any damages, direct or consequential, as a result of the inability or failure to provide Reclaimed Water Service pursuant to this Agreement on a temporary, emergency or permanent basis due to Force Majeure or other circumstances not within the control of the City.

4.1.4 The City is named as the permit holder of the reclaimed water facilities required to provide the Contracted Reclaimed Water Capacity as it relates to the operation of such facilities by the SFWMD, FDEP and any other regulatory agency which may have jurisdiction with respect to such facilities. The City, at all times, will operate the facilities in accordance with generally accepted utility operating procedures such that it will not be in violation of State and Federal regulations governing the operation of the facilities with such permit(s) and will at all times renew such permits on a timely basis in accordance with applicable regulations to maintain such permit(s) in an approved active status mode. In the event that the City is not in compliance with the operating permits for all facilities required to provide the Contracted Reclaimed Water Capacity to the County and the City is fined or required to implement capital or operational improvements to such facilities as required by any regulatory agency, the County will not be responsible for such costs, including penalties, and the City will never attempt to recover such costs from the County at any future date as it relates to the Contracted Reclaimed Water Capacity.

4.1.5 As a condition of receiving Reclaimed Water Service, the County shall continuously operate its retail reclaimed water distribution system located in the County's reclaimed water service area in compliance with all FDEP rules and regulations and the rules and regulations of any and all state or federal agencies which regulatory authority over the design, construction and operation of reclaimed water distribution and transmission facilities. The City shall not be liable for any loss of Reclaimed Water Service or for any other damages, either direct or consequential, due to defects in the construction, maintenance, and repair or operation of the County's reclaimed water distribution system.

4.1.6 In the event of any failure, break down, disruption, Abnormal Occurrence, or significant interruption of any of the service, facilities or systems contemplated by and discussed within this Agreement, the Parties shall abide by and provide proper response and notification to each other as soon as practicable under the circumstances

and, as appropriate, to applicable governmental regulatory agencies and Customers.

4.1.7 In the event that the South Florida Water Management District (SFWMD) or other governmental unit (except the City Commission or its equivalent) with just cause and legal authority declares a water shortage, then the City shall have the right to restrict reclaimed service to the County by the same percentage, level and/or manner as the City restricts service to all of its other customers located within the City reclaimed water service area.

SECTION 4.2 RECLAIMED WATER POINT OF DELIVERY. In partial consideration of this Interlocal Agreement, the City will design, construct, own, and operate the Point of Delivery improvements necessary to provide and meter the Supplemental Reclaimed Water Service for the benefit of the County which shall include, but not limited to, meter vault, isolation valves, by-pass, reclaimed water meter, telemetry and other necessary appurtenances for the purposes of determining the amount of Supplemental Reclaimed Water Service being provided to the County by the City pursuant to this Agreement. The location of the Point of Delivery is shown on Exhibit "C". The City will also design, permit, and construct the reclaimed water transmission main from the Point of Delivery to the existing County reclaimed water transmission main as shown on Exhibit "D".

The design and specifications contemplated by this section for the reclaimed water Point of Delivery are subject to the approval of both Parties, which will not be unreasonably delayed or withheld, and both Parties reserve the right to inspect the construction of the facilities contemplated by this section as such construction progresses. The City shall be responsible for the cost of the construction of the reclaimed water transmission main as shown on Exhibit "D"; and shall transfer the ownership of such facilities to the County by Bill of Sale Absolute; and upon acceptance by the County, the City will no longer be liable for any costs associated with the construction of such facilities.

SECTION 4.3 METERING OF RECLAIMED WATER SERVICE.

4.3.1 All Reclaimed Water Service delivered to the County under this Agreement shall be measured by meter equipment of standard manufacture located at the Point of Delivery. The City will be responsible for the metering of service and the reading of such meter will be at the City's expense.

4.3.2 The quantity of Reclaimed Water Service delivered to the County shall be in accordance with the quantity identified in Exhibit "B" and the County agrees to pay for this quantity. All supplemental Reclaimed Water Service above the quantity identified in Exhibit "B" shall be determined predicated on meter readings calculated based on the monthly total for the Contracted Reclaimed Water Capacity and any difference in quantity registered from the previous meter reading and the quantity registered from the said meter reading above the Contracted Reclaimed Water Capacity being made by the City. The County shall have access to the meter at all times for the purpose of reading the meter.

4.3.3 The City will attempt to read the meter on or about the last day of each calendar month in order to have a Billing Period of approximately thirty (30) days, recognizing holidays, weekends, and Force Majeure incidents that may affect the timing of such meter readings. The City meter will serve as the basis for the determination of Supplemental Reclaimed Water Service delivered at the Point of Delivery for the evaluation of Plant Capacity utilization and commodity service billing purposes.

4.3.4 The City agrees that all reclaimed water metering facilities contemplated by this Agreement will be tested, certified, and calibrated at least once annually by a state certified testing expert which will be a cost of the City borne by all Customers of the City. It shall be the responsibility of the City to pay all costs associated with the repair and maintenance, testing and calibration, and replacement of the meter as contemplated herein. At the request of the County, the City shall provide the County with a certified copy of the annual meter calibration report of the Reclaimed Water

Service meter located at the Point of Delivery within fourteen (14) days of receiving said request.

Should the annual calibration result find the meter inaccurate, the City will, within 48 hours repair or replace the meter so that accurate flow measurement can be continued. For purposes of billing any charges based on the metered flow, the amount billed during the period that the meter was determined to be inaccurate will be based on the average billed monthly reclaimed water sales to the County for the immediately preceding twelve months during which the meter was determined by the Parties to be accurate. If significant conditions exist which would cause this calculation to be unreasonable (emergency reclaimed water use due to a major reclaimed water line break or other Force Majeure incident), the Parties will mutually agree to otherwise adjust the amount of Supplemental Reclaimed Water Service usage for Plant Capacity utilization and billing purposes.

SECTION 4.4 SUPPLEMENTAL RECLAIMED WATER SERVICE.

4.4.1 The City agrees to provide Supplemental Capacity from its Reclaimed Water Treatment Facilities to the County in excess of the amounts set forth Exhibit "B" should it be available. Nothing in this Agreement shall restrict the City from providing Reclaimed Water Service to Third Parties so long as the Contracted Reclaimed Water Service is reserved by the City for Martin County.

SECTION 4.5 RECLAIMED WATER QUALITY AND PRESSURE.

4.5.1 The City will deliver reclaimed water to the Point of Delivery which meets all reclaimed water standards set forth by the rules and regulations of the Florida Department of Environmental Protection and the United States Environmental Protection Agency applicable to the reclaimed water, as may be amended from time to time.

4.5.2 The City shall maintain and deliver the Reclaimed Water Service at a minimum pressure of not less than 77 pounds per square inch up to the Point of Delivery.

4.5.3 The City shall have no responsibility for the reclaimed water quality or pressure of the Reclaimed Water Service once such reclaimed water passes through the Point of Delivery into the County system and becomes the ownership and responsibility of the County, unless the quality or pressure problem existed at the City's side of the Point of Delivery prior to the change in ownership of such Supplemental Reclaimed Water.

SECTION 4.6 EASEMENTS. Each Party shall provide such easements as are reasonably necessary for the construction, operation and maintenance of the transmission mains, Points of Delivery, meters, distribution systems and any other facilities and other necessary appurtenances required for the delivery of Supplemental Reclaimed Water Service from the City to the County.

ARTICLE V

SUPPLEMENTAL RECLAIMED WATER SERVICE RATES

SECTION 5.1 SUPPLEMENTAL RECLAIMED WATER SERVICE RATES.

5.1.1 The County will be responsible for the payment of all charges associated with the monthly use of the City's Contracted Reclaimed Water Capacity and the associated Supplemental Reclaimed Water Service received by the County. As discussed in this Agreement, all Supplemental Reclaimed Water Service will be metered at the Point of Delivery. The rates for service as billed by the City will be fair and reasonable and reflect the direct cost of providing Supplemental Reclaimed Water Service as determined in accordance with the formula shown on Exhibit "E". As agreed by the Parties, the rates to be billed for Supplemental Reclaimed Water Service shall reflect a commodity-only rate structure and the City shall not bill any capacity reservation charge associated with the amount of Contracted Reclaimed Water Capacity reserved by the

County nor shall a base or fixed rate service charge be included as a rate structure component and applied to any Supplemental Reclaimed Water Service that may be provided by the City to the County.

5.1.2 The initial reclaimed water Supplemental Service Rate, expressed as a rate per 1,000 gallons of billed Supplemental Reclaimed Water Service, is shown on Exhibit "E" and was based on a formula agreed to by the Parties and was prepared by the City. Such rate shall remain in effect through the end of the Fiscal Year 2012. Beginning on October 1st of each Fiscal Year subsequent to the Fiscal Year 2012 and absent a formal review of the reclaimed water Supplemental Service Rate as provided in this Agreement, the City will be allowed to adjust the reclaimed water Supplemental Service Rate by the application of the Price Index Adjustment as defined in this Agreement. The City must notify the County not less than sixty (60) days in advance of the change in the reclaimed water Supplemental Service Rate as a result of the application of the Price Index Adjustment. In no event shall the Price Index Adjustment percentage be different between the Parties for service delineated in this Agreement as it relates to the adjustment of rates pursuant to the application of such index. The Supplemental Reclaimed Water Service Rate will be expressed on a "per thousand gallons of metered reclaimed water as delivered to the Point of Delivery" basis and will always be rounded to the nearest cent for billing and rate calculation purposes. In no event shall the City change the fee structure or rate application methodology during the term of this Agreement unless mutually agreed by the City.

ARTICLE VI

TERM AND MISCELLANEOUS PROVISIONS

SECTION 6.1 EFFECTIVE DATE AND TERM. This Agreement shall become effective upon execution by both parties and filing with the Clerk of the Circuit Court for Martin County and shall uninterrupted continue for a term of 20 years unless renewed by

mutual agreement of the Parties, or terminated as provided hereunder. Either Party may terminate this Agreement for either 1) non-payment of services provided, or 2) failure to provide service for reasons other than Force Majeure or other circumstances not within the control of the Party providing such service. Termination under these circumstances will only be effective if the failure to pay or provide service continues for one hundred twenty days and the terminating party has delivered written notice of termination. Any termination shall be without prejudice to any other right or remedy. Additionally, either Party may terminate this agreement without cause upon 5 years written notice to the other Party. If this Agreement is terminated, each party will be responsible for the decommissioning of their respective share (ownership component) of the Point of Delivery and Point of Connection.

SECTION 6.2 EXCUSE FROM PERFORMANCE.

6.2.1 If either Party is delayed from or prevented from performing any act required to be performed hereunder, and such prevention or delay is caused by force majeure not within the control of such Party raising this defense to performance, the performance of such act shall be excused for a period equal to the period of prevention or delay.

6.2.2 If for any reason during the term of this Agreement, other than the fault of the Party raising this defense, any federal, state or local authorities or agencies fail to issue necessary permits, grant necessary approval or require any change in the operation of the plant, transmission mains, meters, and distribution systems, then, to the extent such governmental acts shall affect the ability of a party to perform any of the terms of this Agreement, in whole or in part, then the affected Party shall be excused from performance thereof and shall have the right to terminate this Agreement unless a new agreement shall be negotiated, to the mutual satisfaction of the Parties hereto in conformity with such permits, approval or requirements.

SECTION 6.3. NOTICE. All notices, demands, requests, or other communications by either Party under this Agreement shall be in writing and shall be sent by (a) first class,

U.S. certified mail, return receipt requested, with postage prepaid, or (b) by overnight delivery service or courier, or (c) by facsimile, with receipt confirmed as follows:

City of Stuart:

City Manager
City of Stuart
121 SW Flagler Ave.
Stuart, Florida 34994

Required Copy to:

City Attorney
City of Stuart
121 SW Flagler Ave.
Stuart, Florida 34994

Required Copy to:

Public Works Director
City of Stuart
121 SW Flagler Ave.
Stuart, Florida 34994

Martin County:

County Administrator
Martin County
2401 SE Monterey Road
Stuart, Florida 34996

Required Copy to:

County Attorney
Martin County
2401 SE Monterey Road
Stuart, Florida 34994

Required Copy to:

Utilities and Solid Waste Director
Martin County
PO Box 9000
Stuart, Florida 34994

The use of electronic means of notification (e-mail) will not be considered as a method of providing notice for the purposes of this Agreement. Any Party may, by notice in writing given to the other, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand or three days after the date mailed. Each Party to this Agreement shall have a continuing duty to promptly notify the other party of any change to any of this information.

Each of the Parties to this Agreement agree that at anytime after the execution hereof, they will, on request of the other Party, execute and deliver other documents and further

assurances as may reasonably be required by such other Party in order to carry out the intent of this Agreement to the persons as designated above.

SECTION 6.4. INDEMNIFICATION. Each party shall be liable for its own actions and negligence. To the extent permitted by law, the City shall indemnify, and hold harmless the County against any actions, claims, or damages arising out of the City's negligence in connection with this Interlocal Agreement, and the County shall indemnify, defend and hold harmless the City against any actions, claims, or damages arising out of the County's negligence in connection with this Interlocal Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, nor shall it be construed to constitute an agreement by either Party to indemnify the other Party for such other Party's negligent, willful, or intentional acts or omissions.

SECTION 6.5 NO PARTNERSHIP. It is not the purpose or the intention of this Agreement to create, and this Agreement shall not be construed as creating a joint venture, partnership, or other relationship whereby either Party hereto would be liable for the omissions, commissions, or performance of the other Party hereto.

SECTION 6.6 WAIVER. The failure of any Party to this Agreement to insist on the performance of any of the terms and conditions of this Agreement, or waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall continue and remain in full force and effect as if no such forbearance or waiver had occurred. No failure or delay of either Party in the exercise of any right or remedy given to such party hereunder, or the waiver by a party of any condition hereunder for its benefit (unless the time specified herein for exercise of such right or remedy has expired) shall constitute a waiver of any other right or remedy, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or of any other right or remedy. No

waiver by either party of any breach hereunder or failure or refusal by the other Party to comply with its obligations shall be deemed a waiver of any other or subsequent breach, failure or refusal to so comply.

SECTION 6.7 DISPUTE RESOLUTION.

6.7.1 The Parties agree to resolve any dispute related to the interpretation or performance of this Agreement in the manner described in this Section 6.7 prior to filing suit against the other Party. Any Party may initiate the dispute resolution process by providing written notice to the other Party. This Section 6.7 is intended to provide a dispute resolution process in lieu of the process provided in Chapter 164, Florida Statutes.

6.7.2 Disputes under this Agreement may be resolved by the COUNTY's Authorized Representatives and the CITY's Authorized Representatives. If such Authorized Representatives are unable to reach a resolution and the parties agree that the issue is of sufficient merit, the parties may select a mediator mutually acceptable to both parties to conduct a mediation of the issues involved and make a recommendation to both parties. The parties agree to be responsible for their respective costs and fees incurred during the mediation and that the mediator's fees and costs shall be paid in equal amounts by each party.

6.7.3 In any dispute, each Party shall pay the fees, charges, and expenses of its own counsel, experts and witnesses.

6.7.4 The terms of this Section shall survive termination or expiration of this Agreement.

SECTION 6.8 DEFAULT In the event either of the parties default under any of the terms or provisions of this Agreement and such default is not otherwise excused herein, the parties may pursue the dispute resolution process set forth in section 6.7, and, after

said process is complete, avail themselves of any rights or remedies available under applicable law. Notwithstanding the commission of an act of default by either party under any of the terms or provisions of this Agreement, the other party shall not be relieved from their obligations under the terms of this Agreement to provide, receive or pay for timely and sufficient reclaimed water service in accordance with the provisions of this Agreement, unless said default leads to termination as described in Section 6.1. The parties shall not be assumed to have waived any default by the continuation of payment or the provision of said service. The parties acknowledge that this Agreement may not be terminated except as provided in Section 6.1.

SECTION 6.9 ENTIRE AGREEMENT; AMENDMENT. This Agreement shall not be altered, amended, changed, waived, terminated or otherwise modified in any respect or particular, and no consent or approval required pursuant to this Agreement shall be effective, unless the same shall be in writing and signed by and on behalf of the party to be charged. All prior statements, understandings, commitments, representations and agreements between the parties, oral or written, are superseded by and merged in this Agreement, which alone, fully and completely, expresses the agreement between the parties in connection with this transaction, and which is entered into after full investigation, neither party relying upon any statement, understanding, representation or agreement made by the other not embodied in this Agreement. This Agreement shall be given fair and reasonable construction in accordance with the intentions of the parties hereto, and without regard to the aid of canons requiring construction against the party drafting this Agreement.

SECTION 6.10 GOVERNING LAW. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Florida without reference to the principles of conflict of law. Proper venue for any action or proceeding to construe or enforce the provisions of this Agreement shall be in the Circuit Court in and for Martin County, Florida.

SECTION 6.11 SEVERABILITY. If any provision of this Agreement shall be deemed unenforceable or invalid by a court of competent jurisdiction, the same shall not affect the remaining provisions of this Agreement, to the end that the provisions of this Agreement are intended to be and shall be separable. Notwithstanding the foregoing sentence, if (i) any provision of this Agreement is finally determined by a court of competent jurisdiction to be unenforceable or invalid in whole or in part, (ii) such unenforceability or invalidity alters the substance of this Agreement, taken as a whole, so as to deny either Party, in a material way, the realization of the intended benefit of its bargain, such Party may terminate this Agreement within thirty (30) days after the final determination by notice to the other. If such party so elects to terminate this Agreement, this Agreement shall terminate, and neither Party shall have any further rights, obligations or liabilities hereunder.

SECTION 6.12 FURTHER ASSURANCE. The Parties hereto shall execute and deliver such further instruments and do further acts and things as may be required to carry out the intent and purposes of this Agreement as may be reasonably requested by any Party hereto.

SECTION 6.13 HEADINGS. Captioned headings of this Agreement are for convenience only and are not intended to be a part of this Agreement and shall not be construed to modify, explain or alter any of the terms, covenants or conditions herein contained.

SECTION 6.14 COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which so executed and delivered shall be deemed an original, but all of which taken together shall constitute but one and the same agreement. It shall not be necessary for the same counterpart of this Agreement to be executed by all the parties hereto.

SECTION 6.15 ASSIGNMENT. This Agreement is solely for the benefit of and shall be binding upon the formal Parties hereto and their respective authorized successors and assigns, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a party to this Agreement for an authorized successor or assignee thereof. Neither the County nor the City shall assign or otherwise transfer this Agreement or any duty or obligation within this Agreement without the express, written permission of the other Party, which permission shall not be unreasonably withheld. Any unauthorized attempt shall be void ab initio.

SECTION 6.16 FORCE MAJEURE. Neither Party shall be liable or responsible to the other by reason of the failure or inability to take any action required herein or for any injury which is caused directly or indirectly by force majeure as hereinafter set forth. The term "force majeure" as employed in this Agreement shall mean Acts of God, strikes, lock-outs, or other industrial disturbance, acts of public enemies, war national emergency, blockades, riots, acts of armed forces, racial or civil rights disorder or demonstration, militia or public authority epidemics, breakdown of or damage to machinery, pumps or pipe lines; any interruption of service by any public utility company; landslides, earthquakes, fires, storms, lightning, floods, tidal waves, fire explosions, other explosions, bomb detonation, nuclear explosion or fallout, windstorm, hurricane, sinkholes, washouts or other catastrophe, casualty or disaster; arrests, title disputes, or other litigation; unforeseeable failure or breakdown of treatment, pumping, transmission, distribution or any other utility facility; governmental restraints of any nature whether federal, state, county, municipal or otherwise, civil or military; civil disturbances; explosions; failure or inability to obtain necessary materials, supplies, labor or permits or governmental approvals whether resulting from or pursuant to embargo, allocation, future rules, regulations, orders, laws or proclamations whether federal, state, county, municipal or otherwise, civil or military; or by any other causes, whether or not of the same kind as enumerated herein, not within the sole control of the Party and which by exercise of due diligence the Party is unable to overcome.

SECTION 6.17 OTHER MISCELLANEOUS PROVISIONS.

6.17.1 The design, permitting and construction of the reclaimed water facilities as contemplated by this Agreement must result in a system of service delivery and operation which is uninterrupted by separation of normally contiguous structures, division of property rights, or any other conditions which may render the system physically, legally, or financially inoperable by normally accepted utility industry standards, or applicable rules or regulations.

6.17.2 The Parties hereby acknowledge and agree to cooperate and to work together to resolve any dispute between them including, but not limited to, mandatory mediation to resolve such disagreement prior to either party initiating litigation. If, after sixty (60) days' notice of a disagreement or dispute, such disagreement or dispute remains unresolved, then the Party may request resolution by court of competent jurisdiction. In the event of such litigation, the non-prevailing Party shall pay the costs of the prevailing Party, including its reasonable attorneys' fees and paralegal fees incurred in connection therewith, through and including all other expenses and the cost of any appeals in appellate courts related thereto. The first two sentences of this subsection shall not apply if a party prevails in obtaining injunctive relief against the other Party

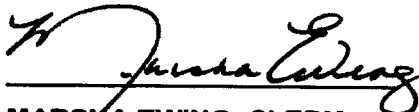
6.17.3 This Agreement shall not be deemed to confer the favor of any third parties or any rights whatsoever as third-party beneficiaries. The Parties hereto intend by the provisions hereof to confer no such benefits or status.

6.17.4 This Agreement and the performance of the Parties hereunder are, in addition to the other provisions herein, subject to and conditioned upon the approval of this Agreement by any agency having regulatory, construction or operational jurisdiction over the subject matter hereof. To the reasonable extent of their responsibilities under this Agreement, the Parties shall cooperate to obtain such approvals and/or permissions.

6.17.5 Provided the Parties are in compliance with the provisions of this Agreement and not in default hereunder, this Agreement shall be binding upon and shall inure to the benefit of the City and the County and their respective legal representatives, successors and assigns.

IN WITNESS WHEREOF Martin County and the City of Stuart and have caused this Agreement to be duly executed and entered on the date first written above.

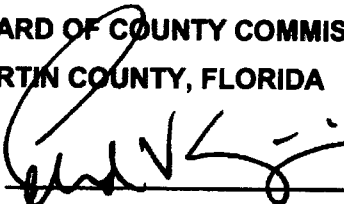
ATTEST:


MARSHA EWING, CLERK

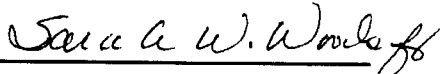
COUNTY:

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

BY:



EDWARD V. CIAMPI, Chairman

APPROVED AS TO FORM AND
CORRECTNESS:

By: 
STEPHEN FRY, County Attorney

CITY COMMISSION OF THE
CITY OF STUART, FLORIDA

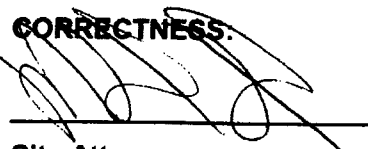
BY:

ATTEST:

City Clerk


MAYOR

Date: 1-5-12

APPROVED AS TO FORM AND
CORRECTNESS:


City Attorney

22



EXHIBIT "A"

WATER, WASTEWATER, AND RECLAIMED SERVICE AREA BOUNDARY MAP

Exhibit A

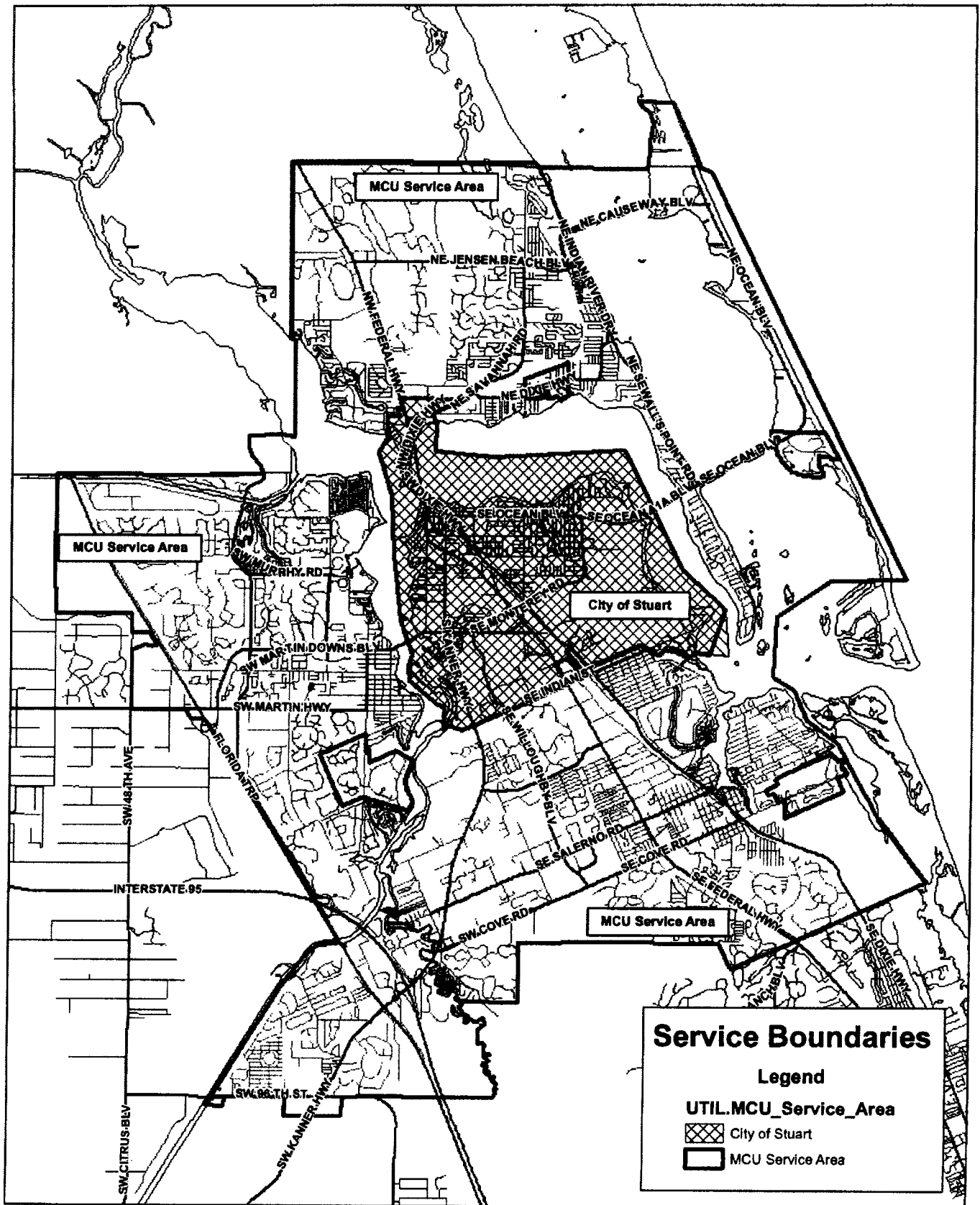


EXHIBIT "B"

SUPPLEMENTAL RECLAIMED WATER CAPACITY RESERVATIONS

EXHIBIT B

RECLAIMED WATER CAPACITY RESERVATIONS

City of Stuart Reclaimed Water Capacity Reservation

Year	Average Daily Flow	Maximum Monthly Flow
2011	375,000	11,625,000
2012	375,000	11,625,000
2013	375,000	11,625,000
2014	375,000	11,625,000
2015	375,000	11,625,000
2016	375,000	11,625,000
2016	375,000	11,625,000
2017	375,000	11,625,000
2018	375,000	11,625,000
2019	375,000	11,625,000
2020	375,000	11,625,000
2021	375,000	11,625,000
2022	375,000	11,625,000
2023	375,000	11,625,000
2024	375,000	11,625,000
2025	375,000	11,625,000
2026	375,000	11,625,000
2027	375,000	11,625,000
2028	375,000	11,625,000
2029	375,000	11,625,000
2030	375,000	11,625,000
2031	375,000	11,625,000

EXHIBIT "C"
POINT OF DELIVERY MAP

EXHIBIT "C"
POINT OF DELIVERY MAP

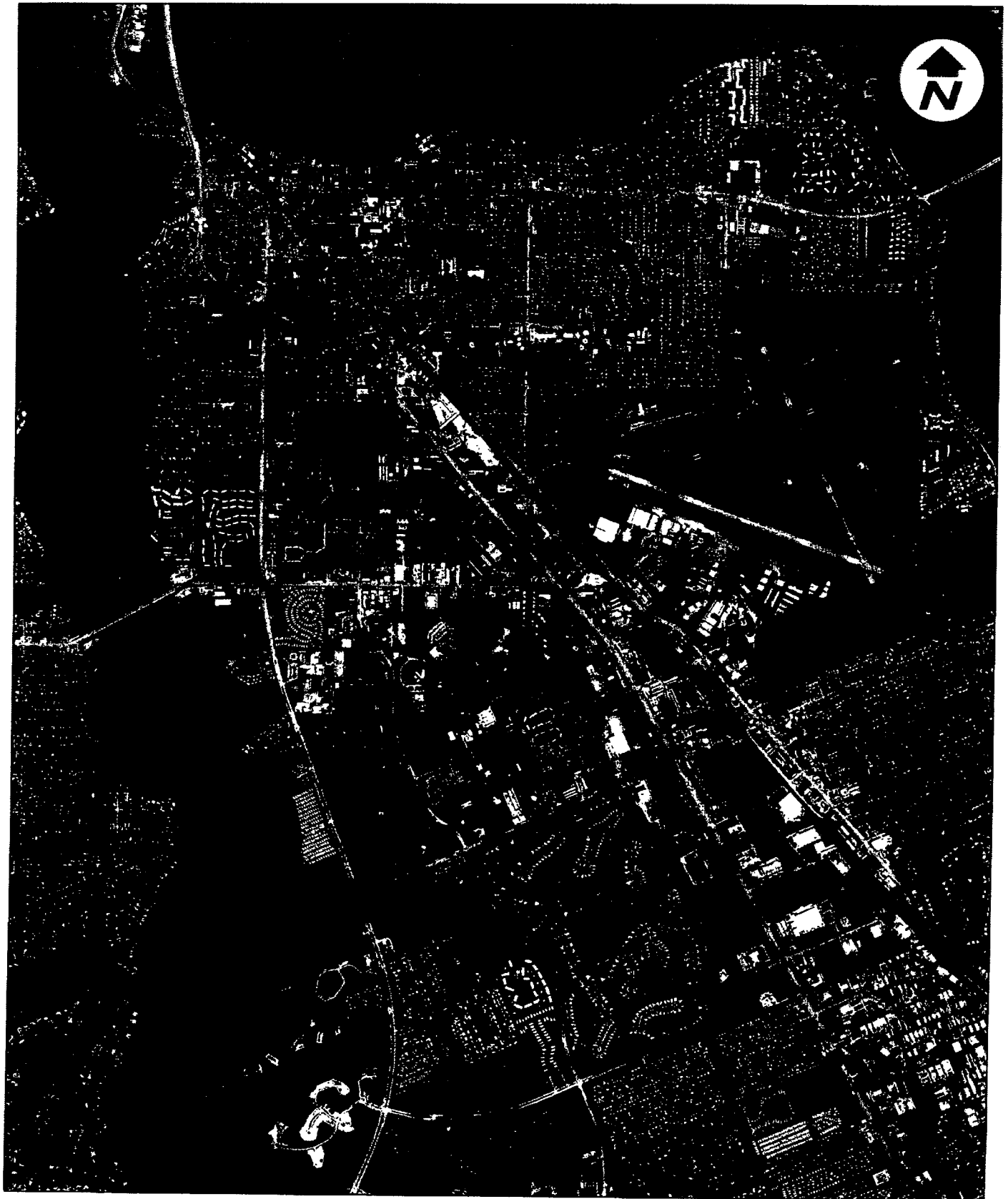


EXHIBIT "D"

TRANSMISSION MAIN DEDICATED TO MARTIN COUNTY

EXHIBIT "D"
TRANSMISSION MAIN DEDICATED TO MARTIN COUNTY

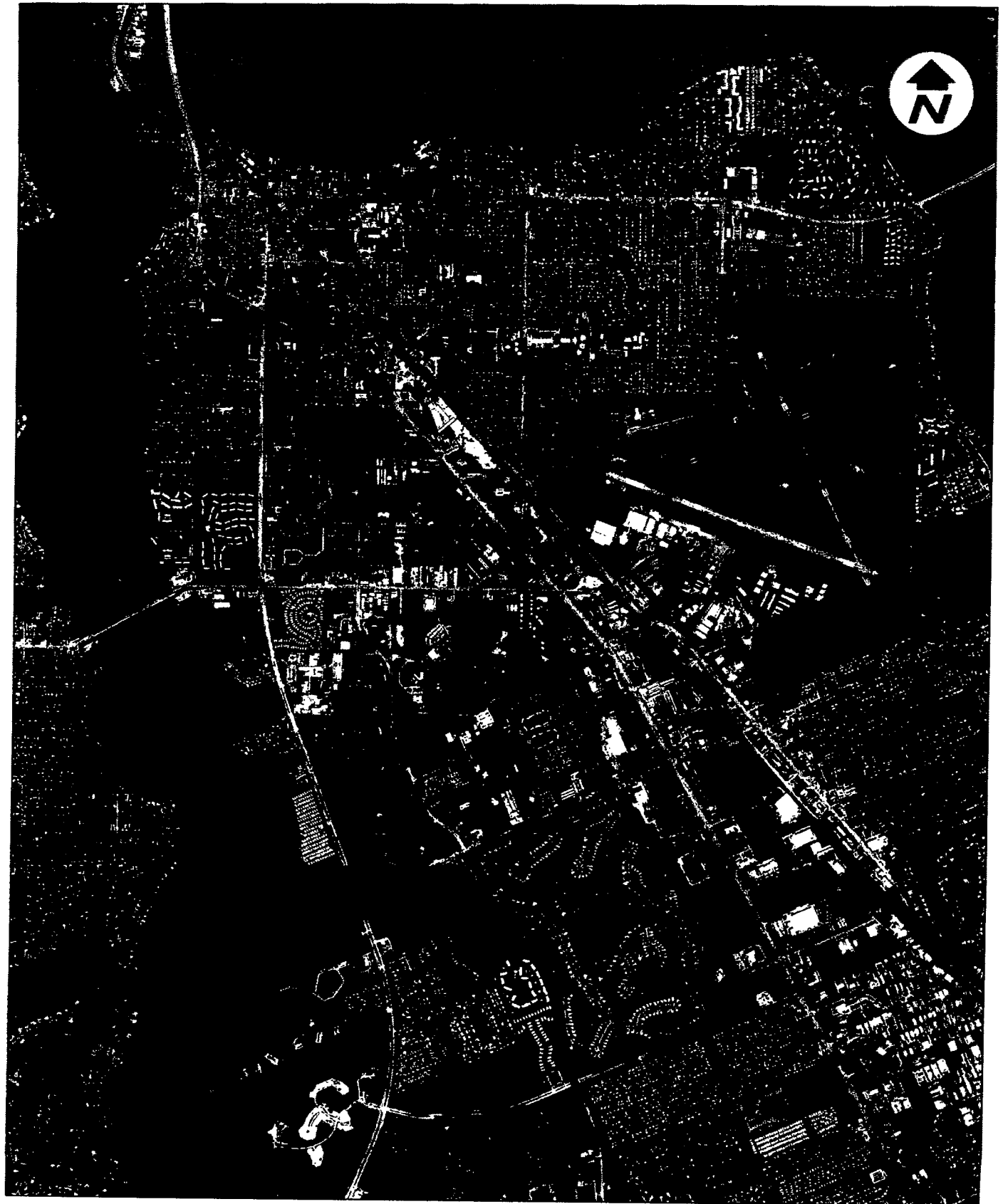


EXHIBIT "E"

**RATE FORMULA AND INITIAL RATE FOR
SUPPLEMENTAL RECLAIMED WATER SERVICE**

EXHIBIT "E"

RATE FORMULA AND INITIAL RATE FOR RECLAIMED WATER SERVICE

Section 1. The rate for Reclaimed Water Service charged by the City to the County shall be based on the following formula:

$$R = FC + RC + VC$$

R (Rate) = The monthly rate for Reclaimed Water Service expressed on a per 1,000 gallon basis. The rate shall be rounded to the nearest cent.

FC (Facility Costs) = \$0.29

Amount based on the actual costs incurred by the City to construct the reclaimed water facilities. Such costs include annual principal and interest payments on loan proceeds and principal reimbursements to the utility fund.

RC (Replacement Costs) = \$0.06

Amount based on the initial capital investment in reclaimed water facilities which are estimated to be maintained and/or replaced over an average of thirty-two (32) years.

VC (Variable Costs) = VE/S

VE = The variable expenses associated with producing and distributing reclaimed water, including, but not limited to, electricity costs for pumping and chemical costs.

S = The annual reclaimed water of the total system available for sale.

This amount will vary over time. As of the date of this agreement VC = \$0.05.

Section 2. The initial rate for Reclaimed Water Service shall be \$0.40 per 1,000 gallons as metered at the Point of Delivery and shall become effective October 1, 2011. The total monthly charges are equal to the greater of:

- a. "Contracted Reclaimed Water Capacity" times the Rate (R); or
- b. "Metered Reclaimed Water" at the Point of Delivery times the Rate (R).

Section 3. Notwithstanding the above, the Rate (R) for Reclaimed Water Service shall be indexed annually by the Price Index Adjustment as provided in this Agreement.

The "Price Index Adjustment" shall mean the specific Price Index factor applied to the Rate on an annual basis to account for the estimated impact of inflation on the cost of providing Reclaimed Water Services. The adjustment will be applied to the Rate in effect immediately prior to the application of the Price Index and will be made effective on or about October 1st of each Fiscal Year. The "Price Index" shall mean a percentage index adjustment factor used to adjust service rates on an annual basis based on the Gross Domestic Price Deflator Index as published annually by the Florida Public Service Commission determined in the prior fiscal year which will be applied uniformly to all service rates for the respective services provided by the Parties.

The Parties shall review the Rate for Reclaimed Water Service in accordance with the above referenced formula every five (5) years from the anniversary date of this Agreement; in the interim nothing herein will prohibit the Parties from reviewing the Rate in accordance with the formula above as mutually agreed by the Parties. Any rate adjustment to be implemented by the Parties shall become effective October 1st of each Fiscal Year.