

This instrument was prepared by or under the supervision
of (and after recording should be returned to):

(Space reserved for Clerk of Court)

**INTERLOCAL AGREEMENT RELATING TO THE CONSTRUCTION
OF "GOMEZ CORRIDOR" PROJECT**

By and Between

Martin County, Florida

and

Town of Jupiter Island, Florida

Dated as of _____, 2020

THIS INTERLOCAL AGREEMENT is made and entered into as of ____, 2020, by and between Martin County, Florida (the "**COUNTY**") and the Town of Jupiter Island, Florida (the "**TOWN**" and together with the County the "**Parties**").

W I T N E S S E T H:

WHEREAS, § 163.01, Fla. Stat., known as the “Florida Interlocal Cooperation Act of 1969” (the “**Act**”), provides a method for governmental entities to cooperate with each other on a basis of mutual advantage to provide services and facilities in a manner that will accord best with the factors influencing the needs and development of local communities; and

WHEREAS, the COUNTY is planning and executing a construction project to provide roadway resurfacing, storm water improvements, and sidewalk improvements in the Gomez Corridor in Hobe Sound (the “**COUNTY GOMEZ NEIGHBORHOOD RESTORATION PROJECT AREA (CGNRPA)**”) and

WHEREAS, the COUNTY is currently also implementing the “Connect to Protect” Program, which is a septic to sewer conversion program for Martin County Utility Customers in areas identified as high priority pursuant to the COUNTY’s Septic System Elimination Report prepared by Captec Engineering, Inc.; and

WHEREAS, the TOWN undertook a similar Septic System Elimination Report for its service area, also utilizing Captec Engineering, Inc. and similar evaluation criteria as the COUNTY's Report. The TOWN's report identified several high priority areas along the eastside of Gomez Road (the **"GOMEZ SEWER CONVERSION AREA (GSCA)"**). The GSCA is within the CGNRPA.

WHEREAS, the CGNRPA lies within the wastewater utility service area of the TOWN, and the COUNTY is unable to provide sewer service to properties within the CGNRPA area since such property is outside of the COUNTY's utility service area and within the TOWN's utility service area; and

WHEREAS, providing infrastructure improvements in the CGNRPA will help the Parties protect the health, safety and welfare of the County residents in those areas; and provide improved environmental health to the Indian River Lagoon; and

WHEREAS, the TOWN and the COUNTY desire to plan and execute a construction project to install new wastewater utility infrastructure within the GSCA (the **"GOMEZ SEWER CONVERSION PROJECT (GSCP)"**).

WHEREAS, the TOWN is planning and executing a construction project (the **"TOWN INFRASTRUCTURE PROJECT (TIP)"**) to upgrade water mains, add fire

protection, add new water mains, and upgrade an existing wastewater force main and lift station within the CGNRPA; and

WHEREAS, the Parties recognize that it would be most efficient for the TOWN and the COUNTY to coordinate the CGNRPA to occur after the TIP; and to jointly undertake the GSCP and combine it with the TIP in a single construction project to be procured by the TOWN (the “**JOINT COMBINED WATER & SEWER PROJECT (JCW&SP)**”); and

WHEREAS, in accordance with all applicable Federal, State and COUNTY requirements, the TOWN will obtain bids, utilizing a unit price and quantity bid Contract, for the goods and services required for the construction of the **JCW&SP**, and will also select and contract for design, construction management engineering and inspection for the JCW&SP; and

NOW THEREFORE, in consideration of the mutual promises, covenants, obligations, duties and benefits herein set forth, and other valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, the parties hereto agree as follows:

SECTION 1. AUTHORITY FOR INTERLOCAL AGREEMENT. This Interlocal Agreement is adopted pursuant to the provisions of the Act and other applicable provisions of law.

SECTION 2. DEFINITIONS. The following definitions shall govern the interpretation of this Interlocal Agreement:

"ACT" means Part I of Chapter 163, Florida Statutes, as amended.

"CAPITAL COST" means all or any portion of the expenses that are properly attributable to the acquisition, design, engineering, construction, and installation (including demolition, environmental mitigation and relocation) of the components of the JCW&SP, including but not limited to, inspection fees and other similar fees and charges, if any, under generally accepted accounting principles; and including reimbursement to the TOWN for any funds advanced for Capital Cost of the COUNTY COMPONENTS, and interest on any interfund or intrafund loan for such purposes.

"COUNTY" means Martin County, a political subdivision of the State of Florida.

"COUNTY COMPONENTS" means the new wastewater infrastructure for the Gomez Sewer Conversion Project, as identified on **Exhibit A** attached hereto.

"GOMEZ NEIGHBORHOOD RESTORATION PROJECT AREA"(GNRPA) means the area depicted in **Exhibit E** attached hereto.

"GOMEZ SEWER CONVERSION AREA" (GSCA) means the area in which the Gomez Sewer Conversion Project will take place, as depicted in **Exhibit F** attached hereto.

"FISCAL YEAR" means the period commencing on October 1 of each year and continuing through the next succeeding September 30, or such other period as may be determined by mutual agreement of the TOWN and the COUNTY.

"INTERLOCAL AGREEMENT" means this Interlocal Agreement, including any amendments or supplements hereto, executed and delivered in accordance with the terms hereof.

"JOINT COMBINED WATER & SEWER PROJECT" (JCW&SP) means the Town Infrastructure Project and the Gomez Sewer Conversion Project combined into a single construction project to be procured by the TOWN, the area for which is depicted in **Exhibit G** attached hereto.

"SHARED COST COMPONENTS" means the existing TOWN wastewater infrastructure that will be modified at the shared expense of the TOWN and the COUNTY as part of the JCW&SP to increase capacity, as identified on **Exhibit C** attached hereto.

"TOWN" means the Town of Jupiter Island, a municipal corporation of the State of Florida.

"TOWN COMPONENTS" means the water infrastructure for the Town Infrastructure Project, as identified on **Exhibit B** attached to hereto.

"TOWN INFRASTRUCTURE PROJECT AREA" (TIPA) means the area in which the Town Infrastructure Project will take place, as depicted in **Exhibit D** attached hereto.

"UTILITY SYSTEM" means the water and wastewater system facilities owned and/or operated by the TOWN under the name "South Martin Regional Utility" or "SMRU" currently and in the future, used to provide water and wastewater service to the SMRU utility service area.

SECTION 3. INTERPRETATION. Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms and corporations. The terms "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms, shall refer to this Agreement; the term "heretofore" shall mean before the effective date of this Agreement; and the term "hereafter" shall mean after the effective date of this Agreement. This Agreement shall not be construed more strongly against any party regardless that such party, or its counsel, drafted this Agreement.

SECTION 4. CAPITAL COST. The estimated Capital Cost for the COUNTY COMPONENTS is \$315,000.00, and the estimated Capital Cost for the TOWN COMPONENTS is \$560,000.00, and the estimated Capital Cost for the SHARED COST COMPONENTS is \$180,000. The COUNTY's share of the SHARED COST COMPONENTS is 64%, which is \$115,000.00, and the TOWN's share of the SHARED COST COMPONENTS is 36%, which is \$65,000. If the TOWN determines prior to the bid award for the JCW&SP, in its sole discretion, that the actual Capital Cost for the TOWN COMPONENTS or the SHARED COST COMPONENTS will exceed this estimate by an amount that is not acceptable to the TOWN, the TOWN may terminate this Agreement by providing written notice of such termination to the COUNTY. If the COUNTY determines prior to the bid award for the JCW&SP, in its sole discretion, that the actual Capital Cost for the COUNTY COMPONENTS or the SHARED COST COMPONENTS will exceed this estimate by an amount that is not acceptable to the COUNTY, the COUNTY may terminate this Agreement by providing written notice of such termination to the TOWN.

SECTION 5. FUNDING.

(A) The TOWN is obligated to pay the Capital Costs of the TOWN COMPONENTS and the TOWN's share of the SHARED COST COMPONENTS. The TOWN shall use its best efforts to transfer or obtain funds sufficient to fund and award a bid for the Capital Cost of the TOWN COMPONENTS and the TOWN's share of the

SHARED COST COMPONENTS. In the event the TOWN is unable to obtain such funds, the TOWN may terminate this Agreement prior to the bid award for the JCW&SP by providing written notice of such termination to the COUNTY. The COUNTY is obligated to pay the Capital Costs of the COUNTY COMPONENTS and the COUNTY's share of the SHARED COST COMPONENTS. The COUNTY shall use its best efforts to transfer or obtain funds sufficient to fund and award a bid for the Capital Cost of the COUNTY COMPONENTS and the COUNTY's share of the SHARED COST COMPONENTS. In the event the COUNTY is unable to obtain such funds, the COUNTY may terminate this Agreement prior to the bid award for the JCW&SP by providing written notice of such termination to the TOWN.

(B) In the event both parties have: (1) obtained sufficient funds to fund the Capital Cost of the **JCW&SP** pursuant to Section 5(A) above; and (2) elected not to otherwise terminate this Agreement, then the TOWN will be obligated to construct the TOWN COMPONENTS, the SHARED COST COMPONENTS and the COUNTY COMPONENTS, and the COUNTY will be obligated to pay the TOWN the Capital Costs for the COUNTY COMPONENTS and the COUNTY's share of the SHARED COST COMPONENTS. The COUNTY's obligation shall be equal to the actual costs incurred by the TOWN for the COUNTY COMPONENTS and the COUNTY's share of the SHARED COST COMPONENTS. Upon issuance of a Notice to Proceed by the TOWN

to the Contractor awarded the bid for the JCW&SP, the COUNTY shall deposit with the TOWN the sum of the total bid amount related to the Capital Costs for the COUNTY COMPONENTS and the COUNTY's share of the SHARED COST COMPONENTS, along with an additional fifteen percent (15%) for contingency. In the event of scope changes requiring a contract change order and additional funds, the parties agree to the procedures in Section 8(B) below. At the completion of the JCW&SP, the TOWN shall refund any balance of the COUNTY's deposit to the COUNTY.

(C) The TOWN shall promptly review and provide COUNTY a copy for timely review and approval, of any and all the Contractor's invoices submitted in connection with the JCW&SP and either approve or disapprove in accordance with the Local Government Prompt Payment Act, §218.70 et. seq Fla. Stat, allowing for ten (10) business days after such approval or disapproval for the TOWN to issue or object to payments as appropriate. Upon approval of the invoices by both parties, the TOWN will issue payment to the Contractor with the pro rata share of the invoices for the TOWN COMPONENTS and the TOWN's share of the SHARED COSTS COMPONENTS paid from TOWN funds and for the COUNTY COMPONENTS and the COUNTY's share of the SHARED COST COMPONENTS paid from the COUNTY's deposit held by the TOWN.

SECTION 6. DESIGN. The TOWN agrees to, at its sole expense, design and obtain all necessary regulatory approvals for the TOWN's COMPONENTS, the SHARED COSTS COMPONENTS and the COUNTY's COMPONENTS.

SECTION 7. CONSTRUCTION BID – BID DOCUMENTS, ADVERTISEMENT, REVIEW, AND AWARD. The TOWN agrees to develop bid documents, for review and comment by the COUNTY, and advertise for a Contractor to construct the JCW&SP in accordance with the construction plans and technical specifications following the procurement requirements and procedures of the TOWN. Subject to Sections 4 and 5(A) above, the TOWN will review the bids, receive comments from the COUNTY on the bids, award, and enter into a contract with the Contractor who provides the best value, as determined by the TOWN in its sole discretion, for the JCW&SP.

SECTION 8. CONSTRUCTION OF PROJECT;

(A) The TOWN agrees to construct the JCW&SP in accordance with design and regulatory approvals. The TOWN will manage the construction contract and will be responsible for ensuring that the construction of the JCW&SP meets all requirements and is completed on schedule in accordance with the contract, and construction documents.

(B) During construction of the JCW&SP, the TOWN's Design Engineer shall respond to any inquiries from the Contractor regarding the design of the JCW&SP and

shall recommend and approve any change orders, work change directives, substantial completion and final completion. The parties agree that all change orders requested by Contractor, shall be submitted to the TOWN by the Contractor. TOWN and COUNTY shall promptly review such change order request and if approved, the TOWN shall issue such change order to the Contractor. COUNTY agrees to be responsible for the total cost of any change order or work change directive related to the COUNTY COMPONENTS. The TOWN shall be responsible for the total cost of any change order or work change directive related to the TOWN COMPONENTS. Any cost for a change order or work change directive related to the SHARED COST COMPONENTS or both the COUNTY COMPONENTS and the TOWN COMPONENTS shall be allocated between the parties as agreed by the parties, absent which the dispute resolution provisions of Section 13 apply. Upon agreement to a change order or work change directive, the COUNTY shall deposit with the TOWN the amount of any cost for the change order or work change for the COUNTY COMPONENTS and the COUNTY's share of the SHARED COST COMPONENTS.

(C) Upon completion of the COUNTY's COMPONENTS and the SHARED COST COMPONENTS, the TOWN shall determine whether the COUNTY's COMPONENTS and the SHARED COST COMPONENTS were constructed in accordance with the design and regulatory approval requirements and provide its determination to the COUNTY in

writing and if approved, and if all COUNTY invoices payable to the TOWN have been paid, such approval shall constitute acceptance by the TOWN of the COUNTY's COMPONENTS and the SHARED COST COMPONENTS. If the TOWN identifies any deficiencies with the construction, the TOWN shall notify the COUNTY and the TOWN shall require the Contractor to remedy the deficiency. Upon acceptance of the COUNTY's COMPONENTS and the SHARED COST COMPONENTS, the COUNTY shall transfer ownership of the COUNTY's COMPONENTS and its interest in the SHARED COST COMPONENTS to the TOWN by Bill of Sale acceptable to the TOWN. Upon transfer of ownership of the COUNTY's COMPONENTS and the SHARED COST COMPONENTS to the TOWN, the TOWN shall be solely responsible for the operation, maintenance, repair and replacement of the COUNTY's COMPONENTS and the SHARED COST COMPONENTS, and the TOWN shall look solely to the Contractor's and Vendor's warranties for remedy of any subsequently identified defects in the construction of the COUNTY's COMPONENTS and the SHARED COST COMPONENTS.

SECTION 9. ROAD RIGHT OF WAY PERMIT. The COUNTY shall grant to the TOWN a permit to use the road rights of ways within the JCW&SP area for construction, operation, maintenance and replacement, and expansion of the COUNTY COMPONENTS, the SHARED COST COMPONENTS and the TOWN'S

COMPONENTS. The TOWN acknowledges that the use of the Right of Way is subject to the provisions of §125.42, Fla. Stat.

SECTION 10. TERM OF INTERLOCAL AGREEMENT. Unless earlier terminated by the parties as provided above, this Interlocal Agreement shall terminate on the date the COUNTY's COMPONENTS and the SHARED COST COMPONENTS are transferred by the COUNTY to the TOWN as provided in Section 8(C), and any pending disputes between the parties pursuant to Section 13 shall survive termination until finally resolved.

SECTION 11. FILING. A copy of this Interlocal Agreement shall be filed with the Clerk of the Circuit Court in and for Martin County, Florida.

SECTION 12. LIMITED LIABILITY. Neither the TOWN nor the COUNTY, or any agent, officer, official or employee of the TOWN or the COUNTY shall be liable for any action taken pursuant to this Interlocal Agreement in good faith or for any omission, except gross negligence, or for any act or omission or commission by the other party hereto and its agents, officers, officials or employees. The terms of this Section 12 shall survive termination or expiration of this Agreement.

SECTION 13. DISPUTE RESOLUTION.

(A) The parties agree to resolve any dispute related to the interpretation or performance of this Interlocal Agreement in the manner described in this Section 13 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 13 is intended to provide a dispute resolution process in lieu of the process provided in Chapter 164, Florida Statutes.

(B) After transmittal and receipt of a notice specifying the area or areas of disagreement, the parties agree to have their authorized representatives meet at reasonable times and places, as mutually agreed upon, to discuss the issues.

(C) If discussions between the parties authorized representatives fail to resolve the dispute within sixty (60) days of the notice described in subsection (A) above, the parties shall appoint a mutually acceptable neutral third party to act as a mediator. If the parties are unable to agree upon a mediator, the mediators selected by the parties shall, by mutual agreement, select a mediator who is a mediator certified by the Supreme Court of Florida and is a practicing mediator in Indian River, St. Lucie, Martin, or Palm Beach County. The mediation contemplated by this subsection (C) is intended to be an informal and non-adversarial process with the objective of helping the parties reach a mutually acceptable and voluntary agreement. The decision-making shall rest solely with the

parties. The mediator shall assist the parties in identifying issues, fostering joint problem-solving and exploring settlement alternatives. The mediator's fee shall be paid in equal shares by each party to the mediator.

(D) If the parties are unable to reach a mediated settlement within one hundred twenty (120) days of the mediator's appointment, any party may terminate the settlement discussions by written notice to the other party. In such event, any party may initiate litigation within one hundred twenty (120) days of the notice terminating the settlement discussions. Failure by the party initiating the dispute resolution procedure to commence litigation within the 120-day period shall be deemed to constitute an acceptance of the interpretation or performance of the other party.

(E) In any dispute, each party shall pay the fees, charges and expenses of its own counsel, experts and witnesses.

(F) The terms of this Section 13 shall survive termination or expiration of this Agreement.

SECTION 14. AMENDMENTS. This Interlocal Agreement may be amended in writing at any time by the concurrence of the TOWN and the COUNTY and subsequent ratification by each party's respective governing body.

SECTION 15. PROFESSIONAL FEES AND COSTS. Each party shall pay the fees, charges and expenses of its own counsel and professionals in connection with the preparation and implementation of this Agreement.

SECTION 16. ASSIGNMENT. This Interlocal Agreement may not be assigned, in whole, or in part, by any party at any time.

SECTION 17. NON-WAIVER. The failure of either party to insist upon the other party's compliance with its obligations under this Interlocal Agreement in any one or more instances shall not operate to release such other party from its duties to comply with such obligations in all other instances.

SECTION 18. NOTICES. All notices, certificates, demands, approvals or other communications hereunder shall be sufficiently given and shall be deemed given on the date such written communication is delivered by hand delivery, courier or facsimile transmission or three (3) days after the date mailed by registered or certified mail, postage prepaid, to the parties at the following addresses:

Town: Town of Jupiter Island
2 Bridge Road
Hobe Sound, Florida 33475
Attention: Town Manager

Required Copy to: Town Counsel
Phillip C. Gildan
Greenberg Traurig, P.A.
777 So. Flagler Drive, Suite 300 East
West Palm Beach, FL 33401

County: County Administrator
Martin County Board of County Commissioners
2401 Monterey Road
Stuart, FL 34996

Required Copy to: County Attorney
Martin County Board of County Commissioners
2401 SE Monterey Road
Stuart, FL 34996

SECTION 19. EXECUTION IN COUNTERPARTS. This Interlocal Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 20. SEVERABILITY. In the event that any provision of this Interlocal Agreement shall, for any reason, be determined invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the other provisions of this Interlocal Agreement shall remain in full force and effect.

SECTION 21. ENTIRE AGREEMENT. This Interlocal Agreement and the exhibit attached hereto constitute the entire agreement between the parties pertaining to subject matter hereof and may not be modified orally or otherwise except by written amendments executed by each party hereto.

SECTION 22. BINDING EFFECT. The obligations and covenants of this Interlocal Agreement shall bind and benefit the successors of the parties hereto.

SECTION 23. APPLICABLE LAW. This Interlocal Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

SECTION 24. EFFECTIVE DATE. This Interlocal Agreement shall become effective on the later of (A) the dated date hereof, or (B) the date the last party hereto executes this Interlocal Agreement and the filing requirements of Section 11 hereof are satisfied.

[Signature pages follow]

IN WITNESS WHEREOF, this Interlocal Agreement has been executed by and on behalf of the County by its Chairman, its seal affixed hereto, as attested by its Clerk as of the __ day of _____, 2021.

**BOARD OF COUNTY COMMISSIONERS
OF MARTIN COUNTY, FLORIDA**

(SEAL)

ATTEST:

By: _____
Stacey Hetherington, Chair

By: _____
Carolyn Timmann, Clerk of the Circuit
Court and Comptroller

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Sarah Woods, County Attorney

IN WITNESS WHEREOF, this Interlocal Agreement has been executed by and on behalf of the Town by its Mayor, its seal affixed hereto, as attested by its Clerk all as of the 25 day of February 2021.

(SEAL)

ATTEST:



TOWN OF JUPITER ISLAND, FLORIDA

By:

Whitney D. Pidot
Whitney D. Pidot, Mayor

By:

Kimberly Haggos
Town Clerk

EXHIBIT A

DESCRIPTION OF COUNTY COMPONENTS

The County COMPONENTS of the project consist of the installation of the low pressure force main sewer system including the following:

- Two (2) 4" plug valves
- Approximately 600 linear feet of 2" PVC force main via open cut
- Approximately 4,700 linear feet of 2" HDPE force main via directional drill
- Approximately 7,000 linear feet of 3" HDPE force main via directional drill
- Approximately 500 linear feet of 3" PVC force main via open cut
- Approximately 560 linear feet of 4" HDPE force main via directional drill
- Five (5) 3" gate valves
- All associated HDPE and PVC fittings
- Nine (9) terminal flushing ports
- Five (5) 3" x 3" connections to the proposed force main
- Two (2) 3" x 4" connections to the proposed force main
- Two (2) 6" x 3" connection to the existing force main
- All associated site restoration, including concrete, roadway, irrigation system, and landscaping disturbed during construction of these components.

EXHIBIT B

DESCRIPTION OF TOWN COMPONENTS

The Town COMPONENTS of the project consist of the installation of the potable water distribution system including the following:

- Rehabilitation of existing lift station
- One 4" force main connection to existing lift station
- Approximately 9,000 linear feet of 6" HDPE water main via directional drill
- Approximately 1,000 linear feet of 6" PVC water main via open cut
- Approximately twenty-five (25) 6" gate valves
- Approximately twenty-five (25) fire hydrant assemblies with sample points
- Approximately ninety-six (96) new 2" double potable water services
- Seven (7) connections to the existing water main via 8" x 6" tapping sleeves and valves
- All associated HDPE fittings
- All associated site restoration, including concrete, roadway, irrigation system, and landscaping disturbed during construction of these components.

EXHIBIT C

DESCRIPTION OF SHARED COST COMPONENTS

The SHARED COST COMPONENTS of the project consist of the installation of wastewater infrastructure to increase capacity to the existing utility system within the project area including the following:

- Approximately 3,000 linear feet of 3" HDPE force main via directional drill
- Approximately 2,600 linear feet of 4" HDPE force main via directional drill
- Approximately 500 linear feet of 4" PVC force main via open cut
- All associated HDPE and PVC fittings
- Four (4) 3" gate valves
- Three (3) 4" gate valves
- All associated site restoration, including concrete, roadway, irrigation system, and landscaping disturbed during construction of these components.

EXHIBIT D

TOWN WATER PROJECT AREA (TWPA)

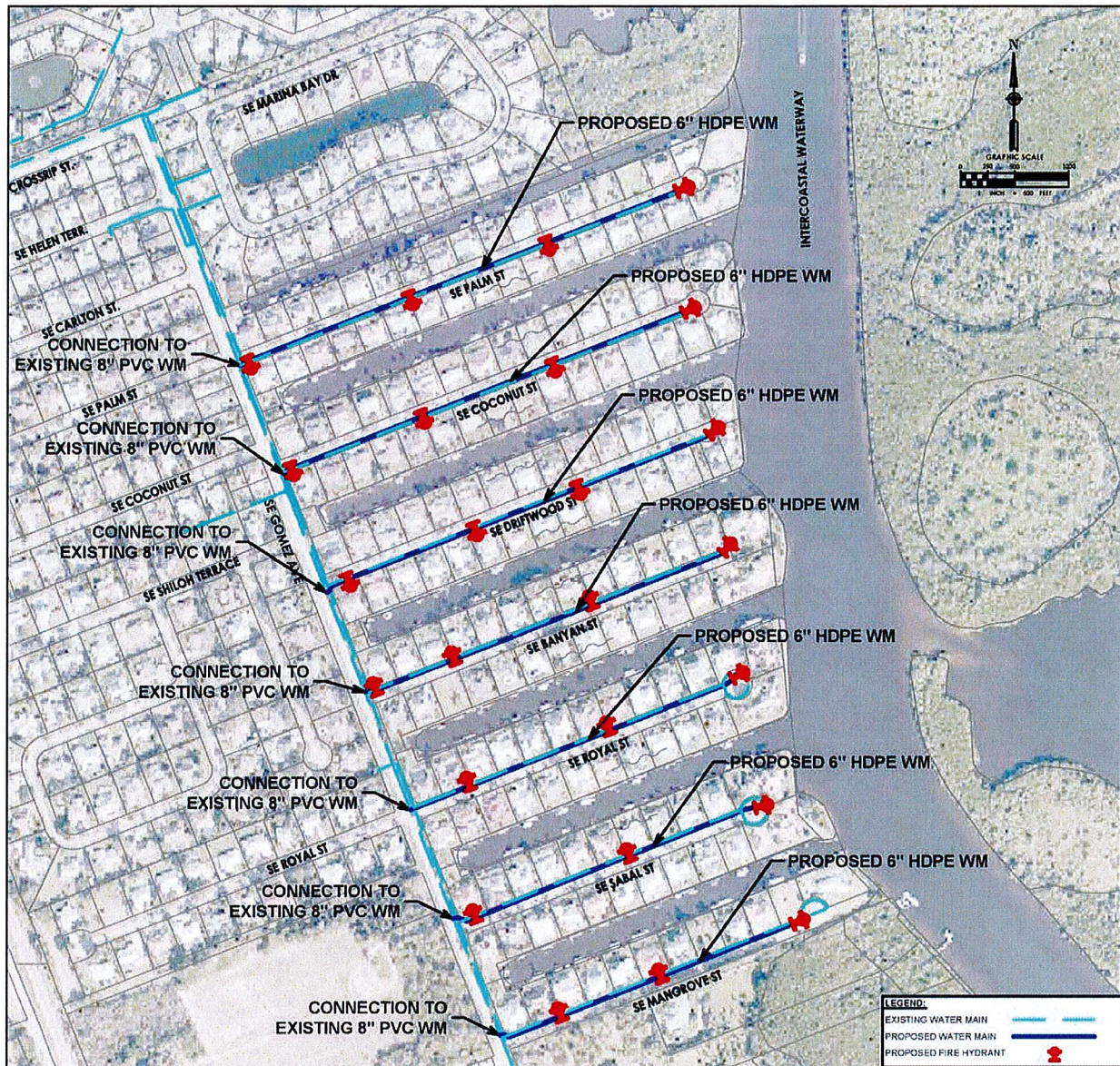


EXHIBIT E

GOMEZ NEIGHBORHOOD RESTORATION PROJECT AREA (GNRA)



GOMEZ SEWER CONVERSION AREA (GSCA)



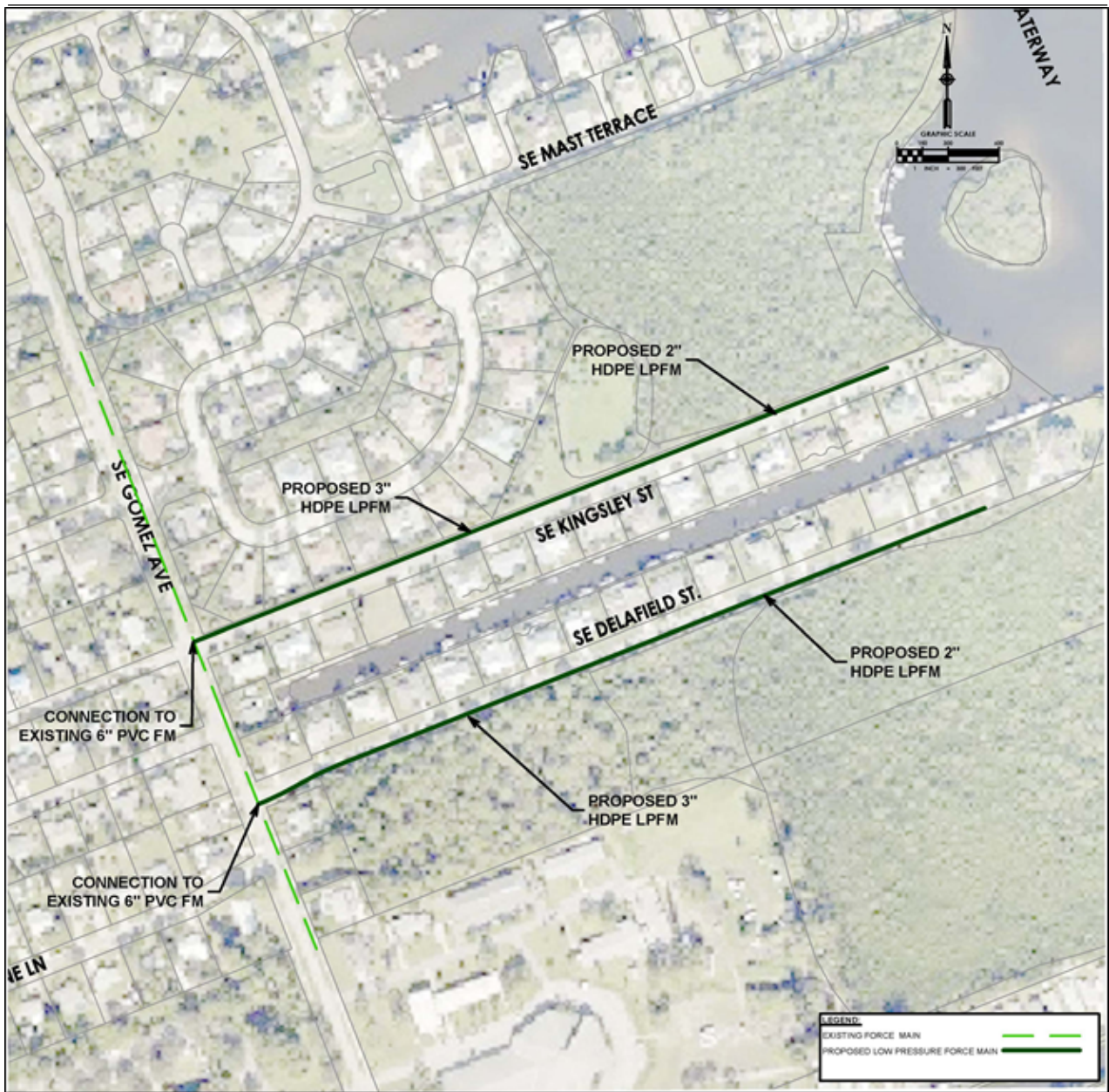
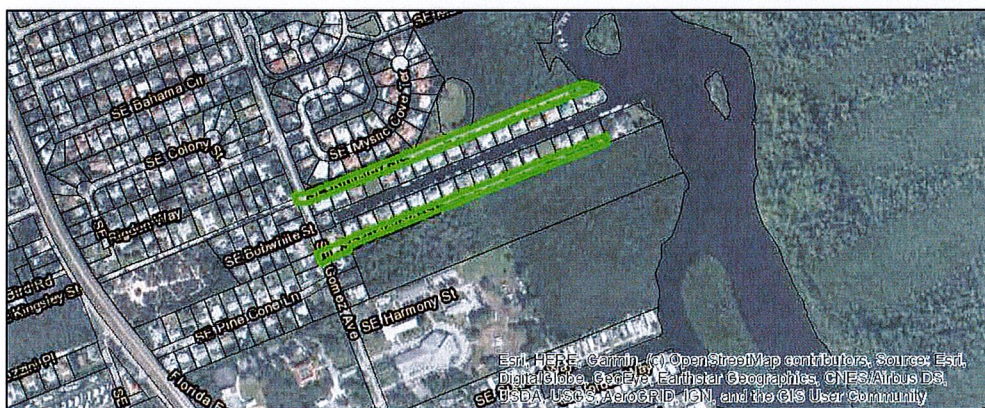
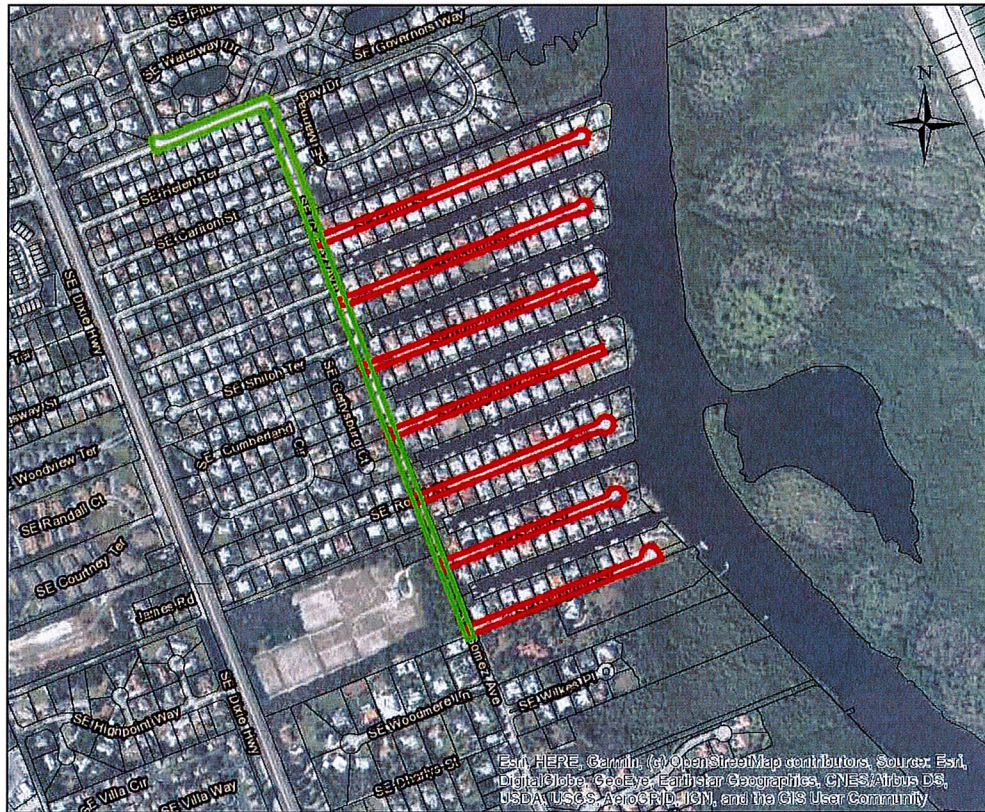


EXHIBIT G **JOINT COMBINED WATER & SEWER PROJECT (JCW&SP) AREA**



Legend

- ▬ LPFM and WM
- ▬ LPFM Only

0 250 500 1,000
 Feet

