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April 16, 2004
VIA HAND DELIVERY

Ms. Blanca Bayo
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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Re: Farmton Water Resources, LLC; Docket No. 021256-WU
Application for Original Certificate
Our File No. 36029.01

Dear Ms. Bayo:

Attached hereto in accordance with the requirements of the Prehearing Order and supplemental revisions thereto are the original and 15 copies of the rebuttal testimony and exhibits of the rebuttal witnesses of Farmton Water Resources, LLC. These include testimony and exhibits by:

Earl M. Underhill	04594-04
Charles W. Drake, P.G.	04593-04
Gerald C. Hartman, P.E.	04592-04
Howard M. Landers	04595-04

Sincerely,

ROSE, SUNDSTROM & BENTLEY

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F. Marshall Deterding
For The Firm

FMD/tms
cc: Jennifer A. Rodan, Esq. (without attachments)
Edward P. de la Parte, Jr. Esq.
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Scott L. Knox, Esq.
Frank Roberts, City Manager

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

APPLICATION OF FARMTON WATER RESOURCES, LLC

FOR AN ORIGINAL WATER CERTIFICATE

DOCKET NO. 021256-WU

ON BEHALF OF FARMTON WATER RESOURCES, LLC

REBUTTAL TESTIMONY OF GERALD C. HARTMAN

Q. What is your name and employment address?

A. Gerald Hartman, 201 East Pine Street, Suite 1000, Orlando, Florida 32801.

Q. Are you the same Gerald C. Hartman who provided direct testimony in this docket?

A. Yes.

Q. Have you reviewed the direct testimony of Richard H. Martens on behalf of Brevard County, Florida?

A. Yes.

Q. Have you reviewed the direct testimony of Gloria Marwick on behalf of Volusia County, Florida?

A. Yes.

Q. Have your reviewed the direct testimony of Raynetta Curry Grant on behalf of the City of Titusville?

A. Yes.

Q. What is the purpose of your rebuttal testimony?

A. I will provide rebuttal to certain portions of the aforementioned three (3) individual's direct testimony as well as others.

Q. Mr. Hartman, have you served as the staff and/or as an expert witness

on behalf of counties which have taken back jurisdiction from the FPSC?

A. Yes.

Q. In which counties have you served?

A. St. Johns County, Flagler County, Collier County, Hillsborough County, Sarasota County and DeSoto County.

Q. Have you participated in cases involving multi-county investor-owned utilities in Florida related to questions of the proper regulatory authority of the FPSC versus County regulation of those entities?

A. Yes. In the case of General Development Utilities in Sarasota and Charlotte Counties on behalf of the City of North Port.

Q. What was the outcome?

A. In that matter, the FPSC asserted jurisdiction due to the multi-county nature of the utility. This was an interpretation of the FPSC's authority to regulate systems whose service was located in more than one county.

Q. Are you aware of similar cases?

A. Yes. A quick summary includes the following:

1) Lake Suzy Utilities, Inc. case vs. DeSoto County - Result FPSC Jurisdiction;

2) Nocatee Utilities, Inc. case vs. St. Johns County - Result FPSC Jurisdiction

3) United Utilities case - Result FPSC Jurisdiction

4) Florida Water Services Corporation cases (various) - Result FPSC Jurisdiction, to name a few.

Q. Would you review the direct written testimony of Richard H. Martens and

provide your comments?

A. Yes. On Page 2, lines 23 through 25, his answer shows "Policy 3.4, Newly proposed service areas, expanding restricted service areas, or Public Service Commission (PSC) regulated service areas shall be reviewed and approved by Brevard County and applicable agencies." In my experience relative to County regulation and other types of service area reviews, the certification of a multi-county entity is under the purview of the Florida Public Service Commission. Under Section 367.011, Florida Statutes that jurisdiction by the PSC is exclusive. The referenced Comprehensive Plan policy could be appropriate if Brevard County has taken back jurisdiction from the Florida Public Service Commission and if the applicant was solely in Brevard County. If the County has not taken back jurisdiction, then such a policy would not be appropriate because the FPSC would have exclusive jurisdiction. Nonetheless, since the Farmton application is a multi-county application, then this portion of the policy statement that he delineates does not apply.

Q. Are there multi-county utilities providing service in Brevard County?

A. Yes. On Page 5, lines 4 and 5, Mr. Martens states that the private entity providing input to the County was East Central Florida Services, Inc. I serve this utility as a consultant. This investor-owned utility regulated by the Florida Public Service Commission, is a multi-county utility similar to that being requested in the Farmton Water Resources application. Having a multi-county investor-owned utility such as Farmton Water Resources would be a similar situation as already

exists in Brevard County with ECFS, Inc.

Q. The consent by the Brevard County Commission to private utilities providing service to existing customers and new customers within their (FPSC) certificated areas has what significance?

A. That statement provides the concurrence of the local government to the activities of the FPSC regulated investor-owned utility. The County is stating that it recognizes and approves FPSC certificated utilities. Such a statement does not limit existing investor-owned utilities to their existing certificated areas. Hypothetically, if ECFS, Inc. wished to amend, modify or change their service area, they are fully capable of doing so via appropriate application to the FPSC and based upon the order of the FPSC. If Farmton Water Resources wishes to establish their service area, they are fully capable of doing so through the same process. The Florida Public Service Commission has the exclusive authority to certificate water utilities and not Brevard County especially when there is a multi-county utility involved.

Q. Based upon Mr. Martens' testimony, does Brevard County provide potable water service or raw water service to the proposed Farmton Water Resources certificated area?

A. Based upon my review of his representations, Brevard County does not provide either raw water service, fire protection service, or potable water service to the Farmton Water Resources proposed certificated area, nor has the County provided facilities to do so, nor has the County provided costs, specific plans, nor included the area within the County's active utility operations area.

Q. Mr. Martens said that the area known as the North Brevard Water System, generally located in and around the Mims area, has excess capacity through the Year 2029 and beyond. Does that mean they have capacity for the same time period for the Farmton Water Resources application area as well as their own?

A. No, it does not. His projections for plant capacity are for solely the Mims/North Brevard water system service area as delineated on the maps attached as Exhibit GCH-R1 hereto. The Water Use Permit is for the reasonable and beneficial use within that area and there appears to be no available capacity at this time. The Farmton Water Resources application area is outside of the established North Brevard water system service area and thereby would not utilize such capacity.

Q. Has Brevard County ever served the Farmton Water Resources application area raw water, fire protection, water or potable water?

A. Not to my knowledge.

Q. Why hasn't Brevard County provided raw water service, bulk water service, or other types of water service to the City of Titusville?

A. Based upon my experience in investigating the water resources of Titusville's north and south wellfields in the freshwater lens with Dr. Nicholson while I was a principal with Dyer, Riddle, Mills and Precourt, we found in the 1984 through 1985 time period that Brevard was not willing to provide bulk raw water to Titusville from its wells at Mims and that they do not have adequate capacity in those wells to provide such service. To my knowledge, since 1984 to date, Brevard County has not entered into any agreement to provide bulk raw water

service, fire protection service or potable water service to Titusville or to the Farmton area.

Q. Have you had the opportunity to prepare a graphic which delineates the utility service areas in this region?

A. Yes, I have and that map, which delineates the service areas of the various utilities within the regions, is shown as GCH-R1 to this rebuttal testimony.

Q. What issues do you have from your review of Gloria Marwick's written direct testimony?

A. She states on Page 2, line 3 that the south central portion of Volusia County was not included in the groundwater simulation models of either the St. Johns River Water Management District or the Volusian Water Alliance.

Q. Why is that important?

A. As long as the Farmton Water Resources service area contains the impacts of water withdrawals within the service area, then the importance of such an issue is not great, rather, it is informational and of an update nature to those models. There are several small systems which are not in the model. The groundwater simulation models of both entities are more of a macro/regional scale regarding water resources and not oriented specifically to this area. Moreover, few of the future systems are in the model. A certain amount of agricultural use is reflected in the models, primarily those with water use permits. The various existing governmental utility systems' future growth, as best those can be estimated, have been included in the simulation

models, but the future new systems within Volusia or Brevard County have not been included.

Q. Couldn't Farmton Water Resources belong to WAV?

A. If the group would allow them, yes. I believe that Farmton Water Resources could belong to WAV in the same fashion as Florida Water Services Corporation and Farmton's representative Mr. Underhill, belonged to the Volusia Water Alliance (VWA). WAV is somewhat different than VWA in that it was created by an interlocal (governmental) agreement, and as such the participants would have to agree.

Q. Could then all the coordination and information and other activities for appropriate water management be conducted in that fashion?

A. Yes.

Q. Have you reviewed the comments made by Ms. Grant relative to need for a potable water utility in Northern Brevard County?

A. Yes. She states that there is no need for a utility in this area.

Q. Do you agree with her conclusion?

A. No. There are requests for service in this area for a public water utility. An investor-owned, raw, fire protection, and potable water utility provides many benefits for the area. I have provided a summary of the East Central Florida Services, Inc. example where raw, fire, and potable water service are provided and the significant public benefit which was derived from these services. This summary is shown on Exhibit GCH-R2 attached hereto. The City of Titusville has been in need of additional raw water supplies since my studies for that City in

the mid-1980's and there have been numerous ordinances and practices to optimize the freshwater lens which is utilized for the north and south wellfields as well as to make the maximum percolation and recharge from the stormwater throughout the City. Raw water resources have been a significant and not a speculative need in the Titusville water service area for some 20 years. Neither the City of Cocoa nor Brevard County has offered to meet these raw water needs for the City of Titusville. Many years ago, Titusville built a 16 MGD lime-softening WTP and configured its potable water transmission from that point. The City of Titusville has been put in the position to purchase potable water from the City of Cocoa and thereby not utilize existing capacity in their treatment facilities, which were built many years ago.

Q. Mrs. Grant states that the City and the County have a long history of working cooperatively to ensure that water supply needs are met and you are stating that the neither the City of Cocoa nor the County have met the raw water supply needs of the City of Titusville identified over 20 years ago. Is this correct?

A. Yes. The review of the record for the past 20 years will readily show the City of Titusville's need for raw water supply and neither Brevard County nor the City of Cocoa offering to supply bulk raw water supplies to the City of Titusville. A component of the Farmton Water Resources application serves the regional need for raw water in an appropriate fashion while allowing for proper water resource stewardship. The customers' choice within this very large tract of property, which is multi-county, is to have service from an investor-owned utility.

Neither Brevard County or the City of Titusville include the Farmton area within their active utility facilities service areas prior to the filing of this application.

In addition, while the City of Titusville is receiving bulk water from the City of Cocoa, they are paying retail rates for that service. Since Cocoa is unregulated, they have imposed this high bulk rate on everyone to whom they provide bulk water service. In addition, because as noted, the City of Titusville has substantial excess treatment capacity in its water treatment facilities, its real need is for bulk raw water. The City of Cocoa has not proposed to provide that to them and Farmton Water Resources will propose to provide that to them in a much more efficient and environmentally friendly manner than any other entity can, including the City itself. Plus, Farmton's provision of such service will be regulated and the price charged for such service will be overseen by the Florida Public Service Commission. This constitutes a real advantage over unregulated service of the wrong kind from the City of Cocoa.

Q. Have you reviewed Ms. Grant's statement that "the sole purpose of the Farmton application is to give Miami Corporation leverage in opposing the City of Titusville's water use permit application for its new wellfield and to force the City to purchase bulk water from the Miami Corporation through Farmton Water Resources, LLC?"

A. The City of Titusville, if it wishes, can develop water resources in a variety of locations. The City has brackish water reserves within the City limits which can be treated via membrane technologies. The City

has various capabilities throughout the region for a variety of water resources. The purpose of the application by Farmton Water Resources is stated in the application and that is the applicant's valid and sincere desire to provide water services within the proposed territory and to provide bulk services to adjacent areas as needed in the most effective and efficient manner possible, while protecting the resource and the environment. Farmton is in a much better position to do this than any other entity. The purpose of the application is simply delineated in the application and there is no other purpose to my knowledge of the application. The fact that Farmton Water Resources, LLC has offered to assist and help the City of Titusville with its raw water supply problems is not a negative, but rather a very positive way to conduct themselves to facilitate the appropriate and responsible development of water resources.

Q. Ms. Grant stated that the water utility proposed by Farmton is not in the public interest. Do you agree?

A. I believe that the Farmton Water Resources application is in the public interest. As shown in Exhibit GCH-R2, and demonstrated and testified to in his direct testimony by Richard Martens of Brevard County, ECFS, Inc. has participated with Brevard County in a very positive fashion. It is conjecture by Ms. Grant to state that Farmton Water Resources would conduct itself in any other fashion than similar to ECFS, Inc. to the benefit of Brevard County. Therefore, as to those issues, it is my testimony that granting Farmton Water Resources application for certification is in the public interest for the public health, safety

and welfare.

Q. As a professional engineer specializing in Florida water and wastewater utilities for the past 28 years, have you had an occasion to address the public policy and interest declarations as stated in Chapter 373.016 and Chapter 403.021 Florida Statutes?

A. Yes, I have. Most recently on April 2, 2004 regarding the DeSoto County water utility water use permit.

Q. Would you address the above-referenced public policies as they relate to the Farmton Water Resources application?

A. Yes. I will address Chapter 373.016 F.S. and 403.021 F.S. (Exhibit GCH-R3) with the number and letter subsection (if applicable) provided at the beginning. Chapter 373.016 F.S. states the following to the policies of the State which are to be promoted:

(2) It is the Department of Environmental Regulation and the Governing Board of the Water Management District who take into account the cumulative impacts of water resources and it is through these Departments that appropriate management of these resources is conducted to ensure their sustainability. It is not the responsibility or within the authority of City of Titusville to attempt to do so through their home rule powers, in the City limits, or their alternative water source reserve area, much less outside of it.

(3)(a) Again, is similar to (2), the Department provides for the management of water and related land resources.

(3)(b) The Department promotes conservation and only Farmton could implement such activities to replenish, recapture, enhance, and develop

the proper utilization of surface and groundwater on their property which they own.

(3)(d) To promote the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems is the declaration of policy in these areas. The natural systems of the Farmton Water Resources are on the related party's property and the availability of sufficient water for such future reasonable-beneficial uses is to be promoted.

(3)(e) To prevent damage from floods, soil erosion, and excessive drainage which is proper stewardship of lands is of extreme interest to the landowner and Farmton Water Resources to maintain the value and sustainability of their property and to protect the resource which sustains it and properties surrounding it.

(3)(f) To minimize degradation of water resources caused by the discharge of stormwater - Farmton Water Resources' related party owns the property where stormwater accumulates from rainfall and can best minimize the degradation of water resources by containing stormwater for recharge. Other entities which do not have adequate land area, cannot avail themselves of the utilization of stormwater to minimize the degradation of water resources.

(3)(g) To preserve natural resources, fish and wildlife - Farmton Water Resources' related party landowner is in the business of preserving the natural resources of the property and in fact, the natural resources of the property are integral to the operations of this entity. ECFS, Inc., as an example, has preserved the natural resources, fish and

wildlife in an effective manner by becoming certificated to provide very similar water services and it is anticipated by Farmton Water Resources that such certification will enable it to do the same things. (3)(h) This portion refers to Chapter 403.021 of the Florida Statutes and in that section, (1) The pollution of the air and waters of the State constitute a menace to the public health and welfare; creates public nuisances; is harmful to wildlife and fish and other aquatic life; and impairs domestic, agricultural, industrial, recreational, and other beneficial uses of air and water. It has been shown that both the City of Cocoa and the City of Titusville have allowed for the pollution of groundwaters through the inducement of saltwater intrusion. This has significant effects and was one of the primary reasons for the certification of ECFS, Inc. in Brevard, Orange and Osceola Counties. The success of ECFS, Inc. in these arenas has maintained the ability to develop alternative water supplies (Taylor Creek Reservoir), maintain water resources which are not polluted for agricultural, domestic, industrial, recreational and other beneficial uses, and has provided for enhanced water resource management. (3)(j) Otherwise promote the health, safety and general welfare which certainly public utility systems whether investor-owned or governmentally-owned should do in their practice and operations. (4)(a) To protect such water resources and to meet the current and future needs of those areas with abundant water, the Legislature directs the Department and the water management districts to encourage the use of water from sources nearest the area of use or application

whenever practicable. This has been generally described as a portion of the "local sources first" doctrine where it is preferred by the State of Florida to have service provided to an area from sources within that area. The Farmton Water Resources application accomplishes this declaration of State policy and no other service provider would be able to accomplish the same within the Farmton area since Farmton's related party owns the property and existing facilities within the proposed certificated area.

Q. Have similar statements as those made by Ms. Grant in her direct testimony been made previously by others in a similar setting and what has become the outcome?

A. Yes. Ms. Grant's statements concerning public interest were used by others previously in a similar nature and in similar cases. The facts are that no other entity but Farmton Water Resources can as efficiently or effectively serve the customers requiring service within the proposed certificated area. Titusville's WTP is several miles away as shown on Exhibit GCH-R1 and would require a costly duplication of pipelines for service and such service could not be as efficient or effective as service provided by Farmton. Brevard County does not have the Water Use Permit capacity or facilities to provide the services currently needed. Volusia has neither the facilities nor capacity to do it. Witnesses for Brevard County and the City of Cocoa made statements similar to those made here by Ms. Grant, in the ECFS, Inc. certification case. None of those statements were valid and have been proven to be invalid over the past decade.

Q. Has there been a change in the request for the extent of the Farmton Water Resources certificated area?

A. Yes. A settlement has been reached between Farmton Water Resources and the City of Edgewater. The resulting proposed certificated area from the settlement agreement is shown on the maps and legal descriptions shown in composite Exhibit GCH-R4. The modified proposed service area deletes the northern three sections, basically one section north/south and three sections east/west at the very northern part of the previously requested service area.

Q. Have similar settlements occurred in other FPSC certification cases that you have participated in?

A. Yes. One example would be the ECFS, Inc. settlement with Orange County.

Q. Do you have any additional comments concerning Mr. Marten's testimony?

A. Yes. First, Mr. Martens states that the Mims/Brevard County active utility water service area does not overlap Farmton Water Resources' application. In essence, he is saying that Farmton Water Resources is not within the Brevard County utility's active service area and therefore the typical functions that Brevard County would provide for an entity that may be within its active service area are not being provided for the Farmton Water Resources area. The active Brevard County in his testimony is the northernmost service area in the County and is bounded on the south and west by the City of Cocoa and in the central and east southern areas, by the City of Titusville. Therefore, Brevard County is the closest utility service area to the Farmton Water

Resources application area and the two other utilities, the City of Cocoa and the City of Titusville both would have to traverse the Brevard County service area to get to the Farmton Water Resources service area. The Brevard County active utility service area extends one or two miles west of I-95. It should be noted that Brevard County has not planned for and has not developed the cost of service to provide services for Farmton Water Resources customers.

Q. What are Brevard County's facilities and capacities?

A. The County expanded Mims water treatment plant to a maximum daily flow capacity of 2.4 MGD as a lime-softening plant. The County derives its water supply from shallow wells similar to the City of Titusville's wellfield though further inland and to the north and that the Brevard County wellfield abuts and is to the north of the City of Titusville's northern wellfield.

Q. Was there any other testimony concerning service to the Farmton Water Resources area?

A. The Brevard County studies did not include service to the Farmton Water Resources area and the County does not plan to develop water as a raw water source in the Farmton Water Resources service area that is being applied for to the Florida Public Service Commission, and that the Farmton Water Resources area and development of water resources doesn't adversely impact the County's existing water system or the expansions planned by the County.

Q. Does Brevard County have plans for their active service area which is a few miles south Farmton Water Resources?

A. Yes, Brevard County is planning to expand their wellfield with new well sites adjacent to the existing wellfield area. The Walkabout Development has one existing new well and additional wells will be constructed within the Walkabout Development areas. The average annual demand in the Mims service area is about 750,000 to 800,000 gallons per day and he admits that Brevard County is presently overpumping their water use permit and is violation of that permit at this time. In addition, this overpumping has continued for one to two years. Brevard County has projected water use needs of 1.8 MGD on an average basis over the next 20 years within their active service area, which specifically excludes the Farmton Water Resources proposed certificated area. Their wells include nine wells are south of SR 46 with one well north of SR 46 in the Walkabout Development. Brevard County's near future plans include three more sites in that development. A total of 11 new wells in the Walkabout area for a total of 20 wells at build-out are estimated to yield up to 3 MGD raw water capacity at build-out of the overall service area and that all wells would be from the surficial aquifer system. In essence, Brevard County is considering to expand from the nine wells to the 20 wells in the future and all well sites and facilities have been planned for, evaluated, and are included in a logical development plan with agreements with the Walkabout Developers. There is no capacity being developed by Brevard County for the City of Titusville and at build-out there will be no capacity developed by Brevard County for the City of Titusville and Brevard County has not planned for or embarked upon any activities to provide raw water supply

to the City of Titusville.

Q. Did Mr. Martens express his concerns relative to the Farmton Water Resources Application?

A. Yes. He was concerned about Brevard County water being transported north into Volusia County. He was not worried about the urban sprawl or development aspects within Farmton Water Resources since the County's enforcement is from the issuance of building permits and has other remedies versus intervening in the FPSC case.

Q. Did Mr. Martens testify that Brevard County had availability of facilities to serve Farmton Water Resources?

A. No. He has not testified that Brevard County could or would have facilities to serve countywide or to serve systems that are not planned for at this time by County utilities.

Q. Did Mr. Martens comment about any other investor-owned utility (IOU) in Brevard County?

A. Yes, he did. He referenced the ECFS, Inc. system and stated that regarding the ECFS, Inc. that this IOU has not participated with the County on water issues.

Q. In summary, how would you summarize from Mr. Martens' position?

A. That Brevard County is the nearest utility system to the Farmton Water Resources applied for certification area in Brevard County and that it buffers both the City of Titusville and the City of Cocoa from the Farmton Water Resources proposed certificated area. That Brevard County has no plans, does not have an active utility service area overlapping the applied for service area, has no facilities, has no

capacity, and such service to Farmton Water Resources is not within the short or long range capital planning of Brevard County for service. That the county utilities and water resources department are involved in the case due to its concerns of transportation of Brevard County "water" north to Volusia County. That Mr. Martens has no complaints from the certification of ECFS, Inc. and, in fact, in his direct testimony, has shown that they have participated in a beneficial manner with the County.

Q. Have you reviewed Ms. Gloria Marwick's testimony of Volusia County?

A. Yes.

Q. Does Ms. Marwick have an opinion relative to publicly-owned utilities versus privately-owned utilities?

A. Yes. She believes that Volusia County would object to the formation of any private utility in the County.

Q. Does Ms. Marwick have an opinion relative to the "local sources first" statutes and the State of Florida Water Policy?

A. Yes. She believes that fresh groundwater for the County should come from the County. This supports the Farmton Water Resources application since the local sources on Farmton Water Resources will be utilized first to serve the local on-site demand of the certificated area. Volusia County's present use was fairly small, only 3.3 million gallons per day on an annual average basis and Volusia County has a 4.8 MGD Water Use Permit for its various small systems distributed throughout that County.

Q. Would such small withdrawals and distributed small systems relatively

far from Farmton Water Resources be impacted by the Farmton Water Resources' public utility functions?

A. No. Not only from the water resource engineering standpoint, such small systems distant from Farmton Water Resources have relatively small cones of influence and due to the land area that any kind of impact by Farmton Water Resources probably would be contained primarily on-site and would not impact any of Volusia County's systems. Generally, I believe that the closest Volusia County utility with its own independent fresh groundwater wellfield to the Farmton Water Resources application is the City of Edgewater system, and that Volusia County buys water for its customers in and around Edgewater from the City of Edgewater as the supplier. As stated earlier in my rebuttal testimony, the City of Edgewater has settled out of this case with the modification to the proposed certificated area. Therefore, the only utility within Volusia County which is the nearest utility has determined that it would not be impacted and has settled the case with Farmton Water Resources. It is obvious that the Edgewater system would not be impacted and the cones of influence would not overlap. The technical information bears this out and we do have a professional geologist, Mr. Charles W. Drake, who historically has served New Smyrna Beach, Edgewater, and Titusville while working with me over the years. He can provide the hydrogeological cones of influence and any professional hydrogeological testimony, modeling, impact analysis, etc. that may be necessary. The County doesn't operate a fresh groundwater source facility close to the Farmton Water Resources area and that the

County does not have a system in that southeastern area of the County. The closets source facility owned by Volusia County is generally over some ten (10) miles away.

Q. Does Volusia County have any plans for service of the Farmton Water Resources area?

A. No.

Q. Have you reviewed the testimony of Raynetta Curry Grant on behalf of the City of Titusville?

A. Yes.

Q. Does Ms. Grant object to the Farmton Water Resources application?

A. Yes, she states that it is not in the best interest of the City. The formation of another utility and to provide public utility service is typically found to be a public purpose and she objects simply on the basis of the formation of another utility within Brevard County which she believes will compete with the potential option of a wellfield along the FECR right-of-way and that the Farmton Water Resources, LLC offer to the City costs more than the City's own program. Note that the Farmton Water Resources proposed certificated area is outside the service area of the City of Titusville. That the Brevard County service area then abuts the City of Titusville service area between the Farmton Water Resources proposed certificated area and the City of Titusville service area. That no other utility provides service in this area being proposed for certification, that no other utility has planned for providing service to these properties nor has developed facilities nor has the abilities to serve these properties.

Q. Is her objection contingent on some other unrelated factor?

A. Yes. Ms. Grant does not have a reason to object if the City of Titusville gets its wellfield and water use permit which is located along the Florida East Coast Railroad right-of-way.

Q. Is there a competition for service by the City of Titusville for this area?

A. No. The City of Titusville has not stated an interest in serving Farmton Water Resources proposed certificated area.

Q. Please explain the City of Titusville's facilities.

A. The existing water use permit is about 6 million gallons per day and will be increasing to 6.5 million gallons per day based upon specific terms and conditions of the permit. The safe yield of the north and south wellfields is about 4 MGD. The water use permit is some 2 MGD greater than the safe yield of both the north and south wellfields. The existing lime-softening plant has a capacity of 16 MGD and that the average annual demand being serviced by the system is about 4.2 MGD. If you start with the 4.2 MGD AAD, and subtract the 0.8 MGD which is served by the City of Cocoa from potable water results in approximately 3.4 MGD of raw water being used on an average annual basis from the existing north and south wellfields of the City of Titusville. Cocoa agreed to supply 3 MGD for a capital cost of $8 million. The ability to purchase this quantity of water from the City of Cocoa is due to the fact that the capacity was made available to the City of Cocoa due to the ECFS, Inc. Taylor Creek Reservoir facilitation, the Pipeline Road intermediate aquifer wellfield facilitation and the ECFS, Inc.

recommendations to backplug and optimize the Tram Road wellfield and other actions by ECFS, Inc. such that capacities would be available from the City of Cocoa. Moreover, the City of Titusville has found that the cost for the City of Cocoa capacity to be greater than what they could accomplish themselves and are negotiating that existing and available supply down from 3 MGD to 1.5 MGD. The proposed new City of Titusville's wellfield and the objection from the City of Titusville is all about cost to the City because the problem was solved with the 3 MGD from the City of Cocoa to the City of Titusville, but the City desired to reduce its cost and is renegotiating that agreement down leaving a future shortfall. Moreover, the City of Cocoa sells potable water to the City of Titusville at its retail rate versus a bulk rate, which is implied to be excessive and without regulation or oversight by the FPSC. The renegotiations to reduce capacity may have a higher per unit capital charge such as 1.5 MGD having a capital charge of $5 million associated with it versus 3 MGD @ $8 million. There continued to be a proposed minimum "take or pay" provision reducing over time.

Q. Has the City of Cocoa treated the City of Titusville and differently than a developer or any other customer?

A. No. The City of Cocoa has dealt equally with the City of Titusville as with a developer or any other customer of the system providing for potable service with retail rates and capital charges as well as CIAC to connect to their system. Their rates have a base charge which is converted to a minimum for the larger customer. They have simply followed their rules and regulations with no significant concessions

based upon my review.

Q. It would appear that bulk raw water service would fit the City of Titusville's needs the best since they have more than adequate treatment plant capacity and significant high-service pumping and transmission capacity, would it not?

A. Yes. Presently the treatment plant is used at about 30% of its capacity and the storage within the system, high-service pumping and transmission facilities were designed and laid out to accommodate a significant supply from that location. There have been no agreements with any utility for bulk raw water service and that the City of Titusville has not even thought about it. Of course, bulk raw water service would make the maximum utilization of the existing facilities in the City of Titusville at their regional water treatment plant location. This has been stated to the City of Titusville in the 1980's and has never been pursued.

Q. What are the options for supplemental water supply for the City of Titusville?

A. The options include (1) the Florida East Coast Railroad right-of-way wellfield and raw water transmission system; (2) a surface water supply; (3) the City of Cocoa for potable water supply; (4) a reverse osmosis plant using the City of Titusville's brackish water reserves; (5) a reverse osmosis from a regional RO facility; and, (6) the Farmton Water Resources bulk raw water supply.

Q. From these options, which two would be the least cost options for the City of Titusville for service?

A. The two least cost options would be the options to utilize existing capacity at the water treatment plant and its high-service pumping and transmission capacity for the system. The only two options which accomplish this are the Florida East Coast Railroad right-of-way option and the Farmton Water Resources bulk raw water proposal to the City of Titusville.

Q. Couldn't both of these options be accomplished?

A. Yes. The Florida East Coast Railroad option will not supply and is not being permitted to supply the full capacity of the existing water treatment plant or the full capacity of the high-service transmission system of the City of Titusville. The wellfield will simply increase the supply from its raw water sources allowing the north and south wellfields to be pumped at lower than their safe yield (approximately 4 MGD) and supplementing that flow from the Railroad right-of-way as their proposal. This capacity plus the maximum of 1.5 MGD purchased from the City of Cocoa is anticipated by the City of Titusville to meet their raw water needs for several years. If the City of Titusville supported Farmton Water Resources application and facilitated development of water resources on the property, a lower cost option than the City's own option could be facilitated. In addition, it may be possible to reduce the dependency on the City of Cocoa and utilize greater capacity from existing facilities if the City of Titusville would purchase water from Farmton Water Resources. Farmton Water Resources has the land area to contain all induced impacts from groundwater withdrawals and has the ability to rotate well utilization

and manage the water resources such that saltwater intrusion and/or pollution of the freshwater strata does not occur. This is quite similar to the ECFS, Inc. capabilities and the ECFS, Inc. accomplishments working with the City of Cocoa. Water use permitting has significant obstacles for attainment of a permit. Those obstacles involve not adversely impacting existing legal users, not adversely impacting the environment, and not adversely impacting water quality over time as well as others. Of course, Farmton Water Resources has the land area to better manage the water resources such that their real estate properties are not adversely impacted by groundwater pollution. Farmton Water Resources has a vested interest in stewardship of appropriate water resource development in environmentally sound and hydrogeologically appropriate fashion for sustainable development of water supplies. It is not in the interest of Farmton Water Resources to pollute their own property, to adversely impact their environmental resources, or to manage the system in a fashion to overpump permitted quantities or to overpump safe yield quantities (such as Brevard County overpumping their water use permit for the past one or two years at Mims or the City of Titusville obtaining a water use permit in excess of their safe yield). ECFS, Inc. is an excellent example of landowner stewardship and the vested interest of such landowners to maintain a high quality environmentally sound and appropriately managed water resource.

Q. Do you know of any proposed changes in the Titusville service area?

A. No, I do not. As of this date, I am not aware there are any proposed

changes to the City of Titusville service area. This would further confirm that Farmton Water Resources would not be obtaining service from the City of Titusville and that there is no competition for customers in the Farmton Water Resources service area.

Q. Mr. Hartman, have you ever assisted local government counties in establishing a countywide utility service area?

A. Yes, I have, several throughout the State of Florida.

Q. Would you discuss a few for me?

A. The latest three (3) that I was involved in include St. Johns County countywide utility service area ordinance, the Marion County countywide utility service area ordinance, and the DeSoto County countywide utility service area ordinance. In St. Johns County, the ordinance actually is a little bit more specific than either Brevard or Volusia Counties. It has the active utility zones and the reserve zones as well as the future zones. With those classifications, it is readily apparent that in the active zones it would be competitive with the County utility; in the reserve zones, the utility is planning or has installed or planned for the capacity to extend to such zone; and finally, the future zones are zones which have not had the planning or facilities investment capacity or other items accomplished for those areas. Additionally, such future areas may be known not to be economically practical for the County to serve.

Q. How would you classify Brevard and Volusia County's countywide ordinances and their active utility service areas?

A. I would classify their active areas as very similar to St. Johns

County's active service area and reserve area. Those other areas which have not been planned for, do not have a CIP for, and no not have existing or planned for plant capacity allocated would be analogous to the future zone in St. Johns County.

Q. In that future zone, what was the determination by the St. Johns County Board of County Commissioners?

A. That if water and wastewater service was to be provided, then it should be provided by a public utility such that there is regulation and oversight protecting the public health, safety and welfare. In many counties, there have been individual well and individual commercial private septic tanks, not public utilities which have caused environmental and public health problems. Basically, it is a determination by the Board of County Commissioners. There is a preference to have public utility service in areas which would obtain utility service and that such cluster areas are preferred to have an entity which has oversight either by the Board of County Commissioners, the Florida Public Service Commission, the FDEP, and/or the water management district.

Q. You mentioned that you served Marion County in the preparation of their countywide ordinance. Would you tell me something about that?

A. Yes, in Marion County there are numerous investor-owned utilities, governmentally-owned utilities and private non-regulated utilities. There were some 400 package plants in the County. I assisted the County in the adoption of the countywide utility service area ordinance. This ordinance depicted all the existing investor-owned

utility service areas as well as their expansion areas that they have requested with the County in coordination with the County planning. In addition, it reflected the interlocal agreements between the County and the various cities for service areas and reserve areas for their utilities. The most significant one was with the City of Ocala. The Board of County Commissioners had similar environmental and public health needs as in St. Johns County.

Q. You assisted DeSoto County in its countywide service area ordinance. Tell us something about that.

A. Yes, I did. DeSoto County was late in coming into the utility business. It entered the utility business with the purchase of Florida Water Services service areas and assets and then worked with various State agencies in the expansion of their utility system. The Board of County Commissioners of DeSoto County also had similar findings as in St. Johns and Marion County that it was preferable to have a public utility system, whether governmentally-owned or investor-owned utility owned in providing service such that there was proper oversight and regulation for the proper stewardship of the resources and protection of the public health, safety and welfare.

Q. Have you had any experiences with multi-county investor-owned utilities in each of these counties?

A. Yes. In St. Johns County, I served as the regulatory staff of the County in the consideration of the Nocatee multi-County (Duval and St. Johns) certification and agreement with JEA. This issue was of course, resolved at the Florida Public Service Commission. The County

Regulatory Board found that since it was a multi-county utility, they did not have jurisdiction, the Board of County Commissioners had the same finding. Nonetheless, the St. Johns County Utilities participated in the Nocatee proceeding at the Florida Public Service Commission. In Marion County, the Villages, Little Lake Sumter Utility Company, etc. serve in Marion County, Sumter County and Lake County. The Board of County Commissioners recognized that a multi-County utility system did not violate the countywide utility ordinance and was under the purview of the FPSC. In DeSoto County, Aquasource owned Lake Suzy Utilities, Inc. In fact, prior to my serving DeSoto County, Lake Suzy Utilities, Inc. had a case relative to whether the County would have regulation since they had taken it back from the Florida Public Service Commission or whether the FPSC would have regulation since Lake Suzy Utilities only had a few customers outside of DeSoto County in Charlotte County. That case was completed and the FPSC had jurisdiction over Lake Suzy Utilities. In the year 2000, I was hired by DeSoto County and we adopted a countywide utility ordinance following the acquisition of Florida Water Services Corporation. The Lake Suzy Utility assets were deemed not under the authority of the countywide utility ordinance due to the fact that FPSC had jurisdiction in a previous case. Subsequently, Aquasource sold its assets within the State of Florida to Philadelphia Suburban with Mr. Rick Hugus being involved in that transaction for Philadelphia Suburban. I represented the County in the review of that transaction and stated that the County could obtain information, but that it was my belief and previous rulings were clear

that such a utility purchase and sale and transfer of certificated area were under the purview of the FPSC. The Board of County Commissioners and their special counsel as well as their County Attorney's office basically agreed. Lake Suzy Utilities as part of Aquasource and now Philadelphia Suburban remains a multi-county utility under the purview of the FPSC. In my professional experience, the above three (3) countywide ordinances have no less authority than the Brevard County and Volusia County countywide ordinances. I have been hired to review both the Volusia and Brevard ordinances prior to this case and found them to be similar in nature as other countywide utility service area ordinances. They reflect the finding by the Board of County Commissioners that it is more important to have public utility service for the reasons that I have stated above.

Q. Does Brevard County-Mims wellfield abut the City of Titusville's wells?

A. Yes. The northern Titusville wellfield is adjacent to the southern end of the Brevard County-Mims wellfield which are of the same type and Brevard County is overpumping an adjacent wellfield water use permit next to the City.

Q. Has Miami Corporation offered to provide bulk raw water service to the City of Titusville?

A. The City had discussions with Miami Corporation about bulk raw water supply.

Q. Does the City of Titusville have plans for service in the Farmton Water Resources area?

A. No. The City of Titusville has no plans to my knowledge for service to

the Farmton Water Resources area which is contrary to her direct testimony.

Q. Is there potential service from Brevard County?

A. No. For the County to serve the Farmton Water Resources area is in a manner to compete more greatly with the City of Titusville's northern wellfield which would not be very practical.

Q. Does Ms. Grant contradict herself about bulk raw water as an option?

A. Yes. Her opinion appears that Farmton Water Resources is trying to force the City to purchase bulk raw water from them. Yet, Farmton Water Resources is only an option and there are other options, and Farmton Water Resources is not forcing the City to purchase bulk raw water from them, it is just that Farmton Water Resources may become the best option for the City to buy bulk raw water supply from.

Q. Does the City of Titusville have interconnections with other utility systems?

A. Yes. The City of Titusville has potable water interconnections with the both City of Cocoa and Brevard County and can provide facilities to have flows go either way from those connections. In essence, Titusville could serve Brevard County system and could backfeed to the City of Cocoa if additional water supplies were made available to the City of Titusville. This has been an important point since the City of Titusville already has the investment completely paid off for treatment and transmission for a 16 MGD system. The 16 MGD system was anticipated to have approximately 12 MGD average annual flow from the system. This system was designed by the late Carlton Wilder, P.E.,

then of Black, Crow and Eidness, Inc. In essence, if the City of Titusville had greater bulk raw water supplies and builds its transmission main to its proposed Florida East Coast Railroad wellfield, then the purchase of raw water from Farmton Water Resources would be a marginal cost or a very small incremental cost with raw water transmission, water treatment, and high-service transmission system facilities already in place. In this fashion, the City of Titusville could provide cost-effective service to Brevard County, Cocoa and other customers within its service area.

Q. What the lowest tier in the "take or pay" agreement from the City of Cocoa would be under their present and reduced interlocal agreement which was renegotiated?

A. To my knowledge that in either 2007 or 2008, 0.5 MGD is the lowest tier in the present "take or pay" agreement.

Q. Has Mr. Thomson delineated any service area conflicts to your knowledge for Volusia County?

A. Mr. Thomson states that Farmton Water Resources is in the County service area and that the County service area is consistent with the comp plan. Yet, Farmton Water Resources as its own service area is not consistent with the comp plan. This is due to the fact that the County has determined that all areas not within another governmental utility service area, as the County's service area. Therefore, Volusia County has made the determination that all lands should be in a utility service area within Volusia County. Note that Brevard County has made a similar finding. Gloria Marwick stated that Farmton Water Resources

was not within the County's active utility service area and that Volusia County had no plans, facilities or other infrastructure or availability for service to the Farmton Water Resources area. Therefore, there is a distinct conflict between a Director of Water Resources and Utility Director of Volusia County and the staff comprehensive planner, Mr. John Thomson. It is clear that being in the County service area does not mean that the County would actually serve the area. Actual services would be based upon cost and would be determined by the utility. Gloria Marwick seems to be the better person to determine whether or not the Farmton Water Resources proposed certificated area would obtain service and she has stated that it would not obtain service from Volusia County and that there has been no planning, no available resources, no available facilities and no cost for service to the Farmton Water Resources proposed certificated area.

Q. Does the County have a capital improvement program for utilities in Volusia County?

A. It has come to our attention that Quentin L. Hampton and Associates, Inc. is the County's capital improvement program and plan consultant for Volusia County Utilities.

Q. Does Volusia County classify a FPSC certificate as development?

A. No. There is no classification in the land use or zoning for a certificated territory by the Florida Public Service Commission. Therefore, a certificate by itself should <u>not</u> constitute "development" in Volusia County. It does not in Orange, Osceola, Brevard, Lake, Marion or Flagler Counties to my knowledge either.

Q. Would you summarize your comments concerning Mr. Thomson's testimony?

A. Yes. Mr. Thomson provides information showing that Volusia County finds that all land should be in a utility service area and that if a service area has not been provided, then the default service area becomes Volusia County. That, being in the Volusia County utility service area, does not mean that you would actually get utility service and that service would be based upon cost. He does not state whether any capital funds or financial feasibility has been accomplished for service to the Farmton Water Resources proposed certificated area. Gloria Marwick states that service would not be provided by Volusia County.

Q. Have you had the opportunity to review Mr. Henry Thomas's testimony?

A. Yes. Mr. Thomas offers testimony from an economic perspective.

Q. What is the thrust of Mr. Thomas's testimony?

A. He states that Titusville is cheaper than what Farmton Water Resources offered and he is referring solely to bulk raw water service and his statements are only given in comparison to the City of Titusville serving themselves bulk raw water. He is not stating that Titusville is cheaper to service Farmton Water Resources proposed certificated area than Farmton Water Resources. His perception of public interest is the City of Titusville's water rates and not Farmton Water Resources and not the general public. He has framed his testimony solely to the impact on the City of Titusville's rates and charges for bulk raw water service.

Q. Does he address other issues other than the City of Titusville rates?

A. His thrust is primarily the rate impact to the City of Titusville. He has not considered environmental issues or other issues other than the impact on the City of Titusville rates if the Farmton Water Resources bulk raw water option is a greater cost than the City of Titusville FECR wellfield option and that the City is somehow blocked from implementing those options both. He has not considered the City of Titusville's utility management capability of just not purchasing Farmton Water Resources bulk raw water if they decide that it is too expensive. He does not state that if Farmton Water Resources obtains the certificated area whether it would stop the City's wellfield. He has no basis for objecting to this certificated area, which just provides another option for the City of Titusville versus its presently proposed raw water wellfield, which is remote to the City and on the other side of Brevard County's service area other than a hypothetical economic scenario.

Q. Does Mr. Thomas know that there are other options?

A. Yes. Titusville has numerous water supply options and others are possible. Mr. Thomas assumes that the Titusville water use permit will be impacted by the Farmton Water Resources FPSC application. He has no basis for that opinion since his area of testimony is solely economic and not environmental nor hydrogeological. He does not even consider the scenario of the Titusville water use permit and wellfield being granted and Farmton Water Resources certificate being granted and that both could complement each other. He assumes that it must be one or the other which I believe is erroneous.

Q. Does Mr. Thomas focus on the City performing its own wellfield as the most cost-effective?

A. Yes. He states that the City would be more cost-effective in doing its project than Farmton Water Resources, yet has no idea of the pipeline distances, configuration of wells or the engineering, hydrogeological and environmental factors. His conclusion is based solely upon financial numbers given to him to utilize and are hypothetical estimates at best with no actual construction cost basis. He unequivocally states that Farmton Water Resources cannot build a cheaper system and cannot finance it any cheaper than the City of Titusville. He has no basis for either statement since both programs have not been bid out and both programs have not been financed. He knows that the City is limited to the Florida East Coast Railroad right-of-way and therefore could not build a direct pipeline from the wellfield to the City and discounts the fact that Farmton Water Resources, of course, would have a lesser cost facility configuration than the City of Titusville.

Q. Generally, does Mr. Thomas have a opinion generally about investor-owned utilities versus governmentally-owned utilities?

A. Yes. He generally states that City facilities are cheaper than investor-owned utilities no matter what and assumes service solely to the City service area and not to Farmton Water Resources. Such testimony may be appropriate for a Titusville rate hearing, but has no applicability to cost of service within Farmton Water Resources. In fact, Mr. Thomas has not provided any estimates or any comparisons for

the cost of service to Farmton Water Resources and does not state that the City of Titusville would provide service to Farmton Water Resources proposed certificated area. All of his work is for service by the City of Titusville within the City's service area and not to Farmton Water Resources gets any service at all from the City of Titusville. He has assumed that Titusville will not sell water to others. This assumption is that the City of Titusville would not have adequate raw water resources. If bulk raw water was available, he obviously would be mistaken considering the excess treatment plant capacity and transmission capacity which is the vast majority of the cost already owned by the City of Titusville and paid for by that entity.

Q. Does Mr. Thomas assume the use of both a City and Farmton Water Resources bulk raw water supply?

A. No. Mr. Thomas assumes exclusivity either City or Farmton Water Resources, but not both wellfields. Of course, if the City is permitted and builds the line, then Farmton Water Resources is in position to be more competitive on the next expansion than any other supplier for bulk raw water and would provide for the future water resources of the City of Titusville and potentially others. A similar situation occurred for the City of Cocoa which has taken the City of Cocoa out of the position of not having adequate water supplies to serve its service area when ECFS, Inc. worked with them to provide for the shallow aquifer Pipeline Road wells as delineated by ECFS, Inc. for implementation, the back-plugging of the Tram Road deeper wells and optimization of the well rotation in that area; as well as the

implementation of the Taylor Creek Surface Water Reservoir all within the ECFS, Inc. certificated area and cooperatively accomplished between ECFS, Inc. and the City of Cocoa. This is the reason why the City of Cocoa has excess potable water supply through its cooperation with an investor-owned utility having significant land resources and working cooperatively with that certificated entity. This has been documented over the last 10-years.

Q. Have any other options been evaluated by Mr. Thomas such as the desalinization alternative water supply being studied by the water management district?

A. No. Mr. Thomas did not include the water management district's alternative supply program which involves developing desalinization facilities at either or both the Reliant Energy Indian River or at the Cape Canaveral power plants. The reported capital cost of these options range from $80 million to $200 million for plants 10 million to 60 million gallons per day. This is from $3.33 per gallon of capacity to $8 per gallon of capacity for plant costs alone and a plant processing cost of $3 per 1,000 gallons. The public hearing in Titusville on this issue was held by the Southwest Florida Water Management District. These options have not been incorporated into the City of Titusville's alternative water supply evaluation.

Q. Would you summarize Henry Thomas's testimony in your area of expertise?

A. Yes. Basically, he does not testify at all about Farmton Water Resources service area service to itself, competition for retail water service or any economic or operation capability of Farmton Water

Resources. Mr. Thomas' focus is solely the cost of water to the City of Titusville's water customers which are remote to this proposed certificated area and for the City of Titusville to import water across the Brevard County service area down to its Garden Street 16 MGD water treatment plant and to minimize the cost for the City's water service area customers. It is undisputed by Mr. Thomas that Farmton Water Resources has the financial capability and the operational capability to accomplish the provision of service in the Farmton Water Resources proposed certificated area. In addition, Mr. Thomas considers the Farmton Water Resources proposal as the most competitive proposal to the City's proposal as one of the two most cost-effective options for the City of Titusville. Finally, Mr. Thomas does not include facilities configuration and the potential that both water resource opportunities could be developed that would significantly benefit the City of Titusville for many years into the future in the utilization of the existing and paid for treatment plant and transmission components of the City of Titusville's water system.

Q. Ms. James notes in her testimony that the application's area is outside of the County's designated service area and that the future land use elements of both the Brevard and Volusia County Comprehensive Plans prohibit extension of water lines or establishment of central systems of potable water outside of the water service areas. What is your understanding of the Brevard countywide service area and the Volusia countywide service area?

A. The Brevard countywide service area is a non-exclusive service area.

Generally, if another utility does not claim the service area, it defaults to Brevard County. If a city or other utility extends service and there are no facilities operated by Brevard County utilities in the area, then that city or other utility in Brevard County would have the ability to provide service.

Q. What entities in Brevard County and other public utilities have you served relative to utilities?

A. The City of Cape Canaveral, the City of Cocoa Beach, the City of Melbourne, the City of Palm Bay, the Canaveral Port Authority and East Central Florida Services, Inc.

Q. Has the Brevard County generalized countywide service area impacted any of these utilities operations or service areas or certifications to your knowledge?

A. To my knowledge, the countywide generalized service area has not had an impact on these entities as they may expand or modify their utility service areas.

Q. What cities and public utilities do you serve in Volusia County concerning utilities?

A. The City of Daytona Beach, the City of Daytona Beach Shores, the City of DeLand, the City of Deltona, the Utilities Commission, City of New Smyrna Beach, the City of Edgewater, the City of Orange City, and the City of Ponce Inlet.

Q. Has the Volusia County generalized countywide service area impacted the service areas of any of these cities or utility commissions?

A. No. The countywide service area ordinance has not impacted any of

these utilities to my knowledge. Rather, Volusia County has signed interlocal service area agreements with several of my clients that delineate the agreed upon service areas in an interlocal agreement which is recognized and adhered to between the parties. Not all of my clients have signed an interlocal agreement with Volusia County as listed above, but some have.

Q. How would you characterize the Volusia countywide service area?

A. The Volusia countywide service area again is similar to the Brevard service area as a default provision, providing under the finding that the remainder of the County should be within a utility service area, if not provided by another entity. Generally, Volusia County does not service many areas of Volusia County and the Volusia County utility system is relatively small compared to the other cities and other utilities within the County.

Q. Do you believe that County utilities can be inconsistent with their own comprehensive plans?

A. Yes, our firm serves some 28 Florida counties and in general, they are consistent with their comprehensive plans, but a few do have inconsistencies with their own comprehensive plans which are either perfected with the modification of the comprehensive plan by the Board of County Commissioners and then sent for approval to DCA in Tallahassee, or another mechanism is utilized. But the simple answer is yes, counties have in the past been inconsistent with their own comprehensive plans.

Q. Do you have any experience relative to cities being inconsistent with

their own comprehensive plans?

A. Yes, we serve some 87 Florida cities relative to water and wastewater utilities. Again, several of the cities have decided to provide utility infrastructure not consistent with their comprehensive plan and to perfect the comprehensive plan after the fact. Nonetheless, most of the Florida cities that our firm serves do comply with the majority of the comprehensive planning requirements listed under Chapter 9J5.

Q. Have you reviewed the testimony of Ms. James relative to the causal relationship between FPSC certification and urban sprawl?

A. Yes. In the middle of Page 3 of her testimony she makes references to this certification of Farmton as violating the provisions of the local government Comprehensive Plans' intents to limit urban sprawl. She however agreed in her deposition clarifying this that she was not aware of any PSC certification that has led directly to urban sprawl. It is also to my personal knowledge in serving several investor-owned utilities throughout the State, that I am not aware of any FPSC certification that led directly to urban sprawl. I also serve as the consultant to ECFS, Inc. which is a major investor-owned utility also in Brevard County, and located in Orange and Osceola Counties. I was a member of the Policy Advisory Committee representing the State of Florida American Society of Civil Engineers under Lt. Governor Jim Williams on the original drafting of the utility element of the State Comprehensive Plan. During all the sessions, I don't remember any correlation between an FPSC certificate and urban sprawl ever being discussed or that the utility element of the Comprehensive Plan would

preclude certification in and of itself. Moreover, I have assisted several Florida cities and counties on their Chapter 9J5 portions of their approved comprehensive plans. To my knowledge, there has not been a correlation between an FPSC certificate and urban sprawl in those utility elements of the comprehensive plans under Chapter 9J5. As evidenced in over a decade of operations, ECFS, Inc. has appropriately operated and facilitated beneficial activities in the public interest and has not created any of the hypothetical allegations which planners had assigned to ECFS, Inc. during the original certification process. Again, refer to GCH rebuttal exhibits on this issue.

Q. From a planning perspective, have the economics of the provision of service to the Farmton Water Resources areas by any of the entities providing testimony been provided?

A. No. While both witnesses for Brevard County, City of Titusville, and Volusia County have suggested their ability to provide service as and when needed to this area, none of these entities have proposed to provide the raw water, fire protection or potable water service to the Farmton Water Resources area. None of the utilities have planned to serve the area; none of the utilities have available resources to serve the area; none of the utilities have the availability to serve the area and none of the utilities have budgeted to serve the area.

Q. Mr. Thomson, and perhaps others, have provided testimony about the fact that proposal by Farmton to provide water service in this area has not been included in the water supply planning efforts in the region. If a

utility does not participate in the water management district plan, does that preclude that utility from developing its water resources?

A. Absolutely not. One great example would be the City of North Miami Beach which was included in the Lower East Coast Water Supply Plan by the South Florida Water Management District at 17 MGD, but did not participate in the planning activity with the SFWMD. Within a few months of the final adoption of the SFWMD plan, HAI on behalf of the City applied for expansion of its water use permit from 17 MGD to 48 MGD. After several months of processing, the City of North Miami Beach received a water use permit for the 48 MGD meeting the rules and regulations of the water management district. It is compliance with rules and regulations that is important not necessarily participation in water resource planning efforts by some other entity. In contrast, ECFS, Inc. has participated in the water management district planning activities and participated with Brevard County in its utility planning activities and has provided good input to the various entities that have been accomplishing planning in and around their large service area. To date, Farmton Water Resources is not a certificated utility and one would expect Farmton Water Resources once it became a certificated utility to participate in the water resource planning activities. Prior to becoming a certificated public utility, it may not choose to participate, as it is rare for individual landowners to participate, although Mr. Earl Underhill did when allowed by the VWA, in the water resource planning activities of regional entities, the water management district, and/or the State of Florida.

Q. Does that complete your rebuttal testimony?

A. Yes.

Dated this 16th day of April, 2004

Docket No. 021256-WU
G. C. Hartman Exhibit No. R-1
Service Areas and Locations of Major Facilities Within the Areas

Maps not scanned —
forwarded to division

STATE OF FLORIDA

DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES
BLANCA S. BAYÓ
DIRECTOR

Public Service Commission

Maps

* *

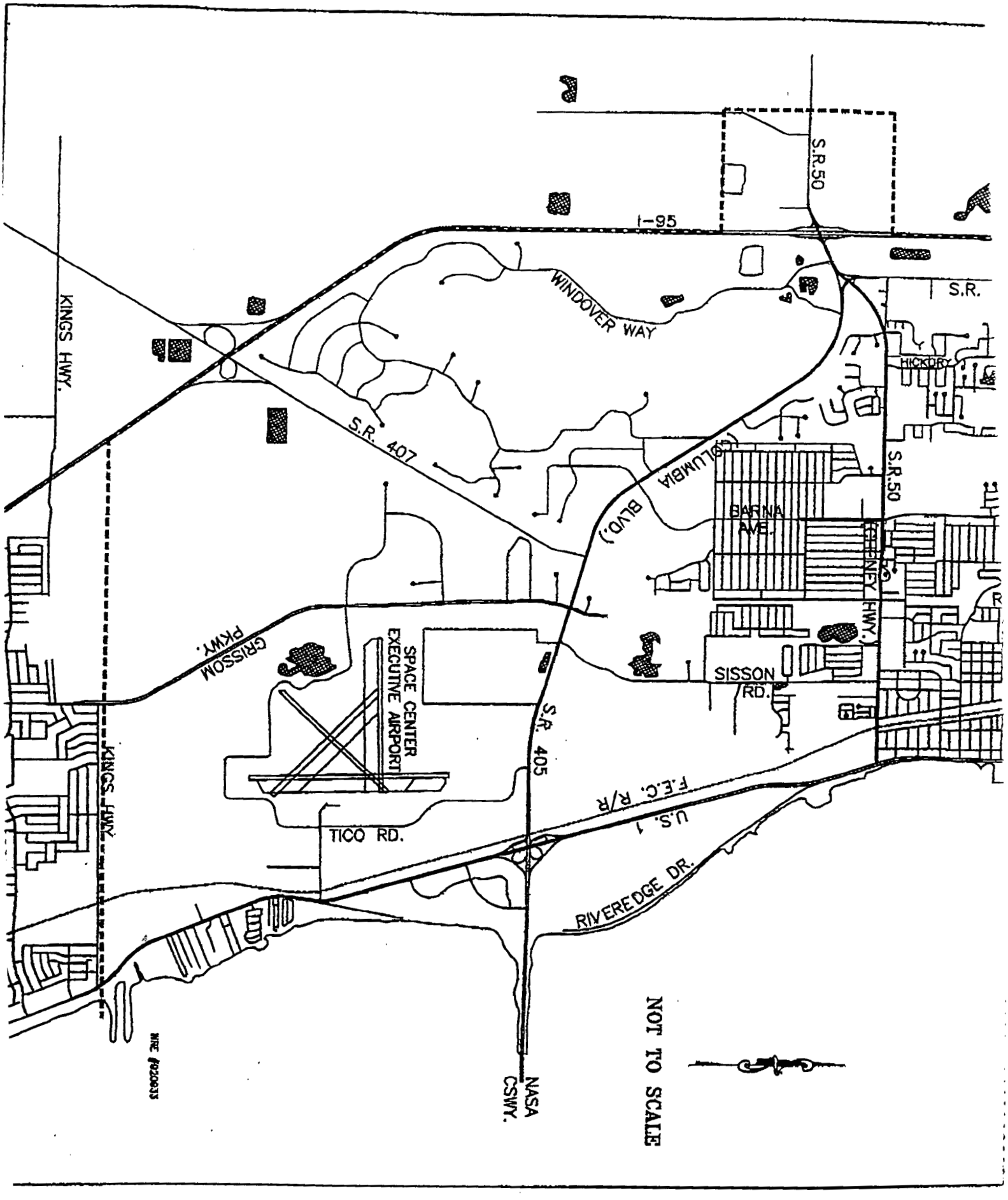
Docket No. :021256-WS

Docket Title: Application for certificate to provide water service in Volusia and Brevard Counties by Farmton Water Resources LLC.

04592-04: FARMTON (DETERDING) - REBUTTAL TESTIMONY OF GERALD C. HARTMAN WITH EXHIBIT NOS. R-1 THROUG R-4. [R-1: SERVICE AREAS OF MAJOR FACILITIES WITHIN SERVICE AREA; R-4: REVISED FARMTON RESOURCES REQUESTED CERTIFICATION AREA.]

[CCA NOTE: ITEM CAN BE FOUND IN MAPS MICROFILM.]

FOX LAKE RD.
I-95
DAIRY RD.
CARPENTER RD.
HOLDER RD.
PARRISH RD.
WAR EAGLE BLVD.
GARDEN ST.
SINGLETON AVE.
(SOUTH ST.)
PARK AVE.
TROPIC ST.
S.R.406
HWY.
AIRPORT RD.
OLD DIXIE
LA GRANGE RD.
JAY JAY RD.
U.S.1
F.E.C. R/R
HARRISON ST.
DELEON AVE.
COUNTRY CLUB DR.
HOPKINS AVE
SYCAMORE ST.
MAIN ST.
NORWOOD AVE.
A. MAX BREWER MEMORIAL PKWY.
INDIAN RIVER
WATER SERVICE AREA
LEGEND
F.E.C. R/R
WATER
TITUSVILLE WATER SERVICE AREA
City of Titusville
WATER RESOURCES
ENGINEERING DIVISION
2836 GARDEN STREET
Titusville, Florida 32796
(407) 268-5077


S.R.50
I-95
WINDOVER WAY
KINGS HWY.
S.R. 407
S.R.
HICKORY
COLUMBIA BLVD.)
S.R.50
BARNA AVE.
FENNEY HWY.)
GRISSOM PKWY.
SPACE CENTER EXECUTIVE AIRPORT
SISSON RD.
S.R. 405
KINGS HWY.
TICO RD.
F.E.C. R/R
U.S. 1
RIVEREDGE DR.
NASA CSWY.
NOT TO SCALE

ORDINANCE NO. 88-0-12

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWATER, FLORIDA, PURSUANT TO CHAPTER 180, FLORIDA STATUTES CREATING A RESERVE AREA FOR THE PROVISIONS OF WATER AND WASTEWATER SERVICE FOR THE CITY OF EDGEWATER TO BE KNOWN AS THE GREATER EDGEWATER WATER AND WASTEWATER SERVICR AREA; PROVIDING A LEGAL DESCRIPTION FOR SAID AREA; PROVIDING THAT SAID SERVICE AREA SHALL NOT EXTEND FOR MORE THAN FIVE (5) MILES FROM THE CORPORATE LIMITS FROM THE CITY OF EDGEWATER; PROVIDING FOR WATER AND SEWER AVAILABILITY AND CONNECTIONS AND AVAILABILITY CHARGES; CONTAINING A REPEALER PROVISION, A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statute Section 180.02 (1985) provides that any muncipality may extend and execute all of its corporate powers applicable for the accomplishment of the purposes of Chapter 180, Municipal Public Works, outside of its corporate limits, as may be desirable or necessary for the promotion of the public health, safety and welfare, provided, however, that said corporate powers shall not extend or apply within the corporate limits of another municipality, and,

WHEREAS, the Local Planning Agency required and recommended that the City Attorney prepare an Ordinance on the subject.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF EDGEWATER, FLORIDA:

SECTION 1. Creation; Purpose. There is hereby created under authority of Florida Statutes Section 180.02 (1985) an area defined as the "City of Edgewater Water & Wastewater Service Area" for the purpose of delivering to that area water and wastewater services and exercising within that area the powers provided for by law.

SECTION 2. The Edgewater Water & Wastewater Service Area shall include the described property in Volusia County, attached hereto as Exhibit "A", and by reference incorporated herein as if fully set forth.

SECTION 3. That the Greater Edgewater Service Area shall not extend for more than five (5) miles from the corporate limits from the City of Edgewater, as amended from time to time.

SECTION 4. None of the Greater Edgewater Service Area includes any area within the city limits of any other incorporated municipality.

SECTION 5. Legal Description. The legal description by metes and bounds of the land in Volusia County, Florida, included within the City of Edgewater City Water & Wastewater Service Area is on file with the city clerk and available for inspection and copying.

SECTION 6. Reference to Greater Edgewater City Service Area. Wherever reference is made in this chapter to the Greater Edgewater Service Area, such reference shall be construed to mean the Greater Edgewater Water & Wastewater Service Area.

SECTION 7. Water and Sewer Availability.

(1) To the full extent permitted by law, all buildings and structures, which are located or constructed on property in the Greater Edgewater Water and Wastewater Service Area and which are adjacent to a public right-of-way or easement that has a water main or gravity sanitary sewer located in it, are hereby required, except as provided in subsection (2) and (3), to connect with and use the services and facilities of the City of Edgewater water and wastewater systems in order to preserve the health, safety and welfare of the citizens and inhabitants of the Edgewater Water and Wastewater Service Area.

(2) A water main or gravity sanitary sewer is considered adjacent or available to a property when it is located anywhere in a public right-of-way or easement adjoining the property. A water main or gravity sanitary sewer will not be considered available in a State Road right-of-way unless it is located on the same side of the paved roadway as the property to be served. When the water main and/or gravity sanitary sewer is available to a property, that property will be billed a water service availabilty charge and/or a wastewater service availability charge as set forth in Section 19-47.12. The service availability charge will be credited toward the development fee at the time the building or structure located on the property is connected to the City of Edgewater water and/or wastewater systems as set forth in Section 19-42.

(3) If a water main is adjacent or available to a property, and a building or structure located on that property is connected

to an individual well, then that building or structure will be required to be connected to the City of Edgewater's water system when the well system fails, becomes contaminated or experiences a dry well condition or a permit is requested from the Volusia County Health Department or other appropriate authority for a replacement well. If a gravity sanitary sewer is adjacent or available to a property, and a building or structure located on that property is connected to a septic tank system, then that building or structure will be required to be connected to the City of Edgewater's wastewater system when the septic tank fails or a permit is requested from the Volusia County Health Department or other appropriate authority for a septic tank or drainfield replacement.

SECTION 8. Section 19-47.12 of the Code of Ordinances is hereby amended to read as follows:

Credit given against development fee when individuals connect who have been previously paying monthly service availability charges for utility service, although notconnected to the system.

The City of Edgewater City will allow the application of monthly service availability charges paid for water and/or wastewater service as a credit not to exceed the total cost of the development fee assessed to the connector.

SECTION 9. That all ordinances or parts of ordinances and all resolutions in conflict herewith, be and the same are hereby repealed.

SECTION 10. If any section, part of a section, paragraph, clause, phrase or word of this ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

SECTION 11. This Ordinance shall take effect immediately upon its adoption by the City Council of the City of Edgewater, Florida, and approval as provided by law.

This Ordinance was introduced by Councilman Prater.

This Ordinance was read on first reading and passed by a vote of the City Council of the City of Edgewater City, Florida, and approval as provided by law, at a regular meeting of said Council held on the 4th day of April, 1988.

The second reading of this Ordinance to be at a regular meeting of the City Council of the City of Edgewater, Florida, to be held on the 2nd day of May, 1988.

ROLL CALL VOTE ON ORDINANCE NO. 88-0-12

Mayor	Yes
Councilman-Zone One	Yes
Councilman-Zone Two	Yes
Councilman-Zone Three	Yes
Councilman-Zone Four	Yes

SECOND READING:

Mayor	Yes
Councilman-Zone One	Yes
Councilman-Zone Two	Yes
Councilman-Zone Three	Yes
Councilman-Zone Four	Yes

ATTEST:

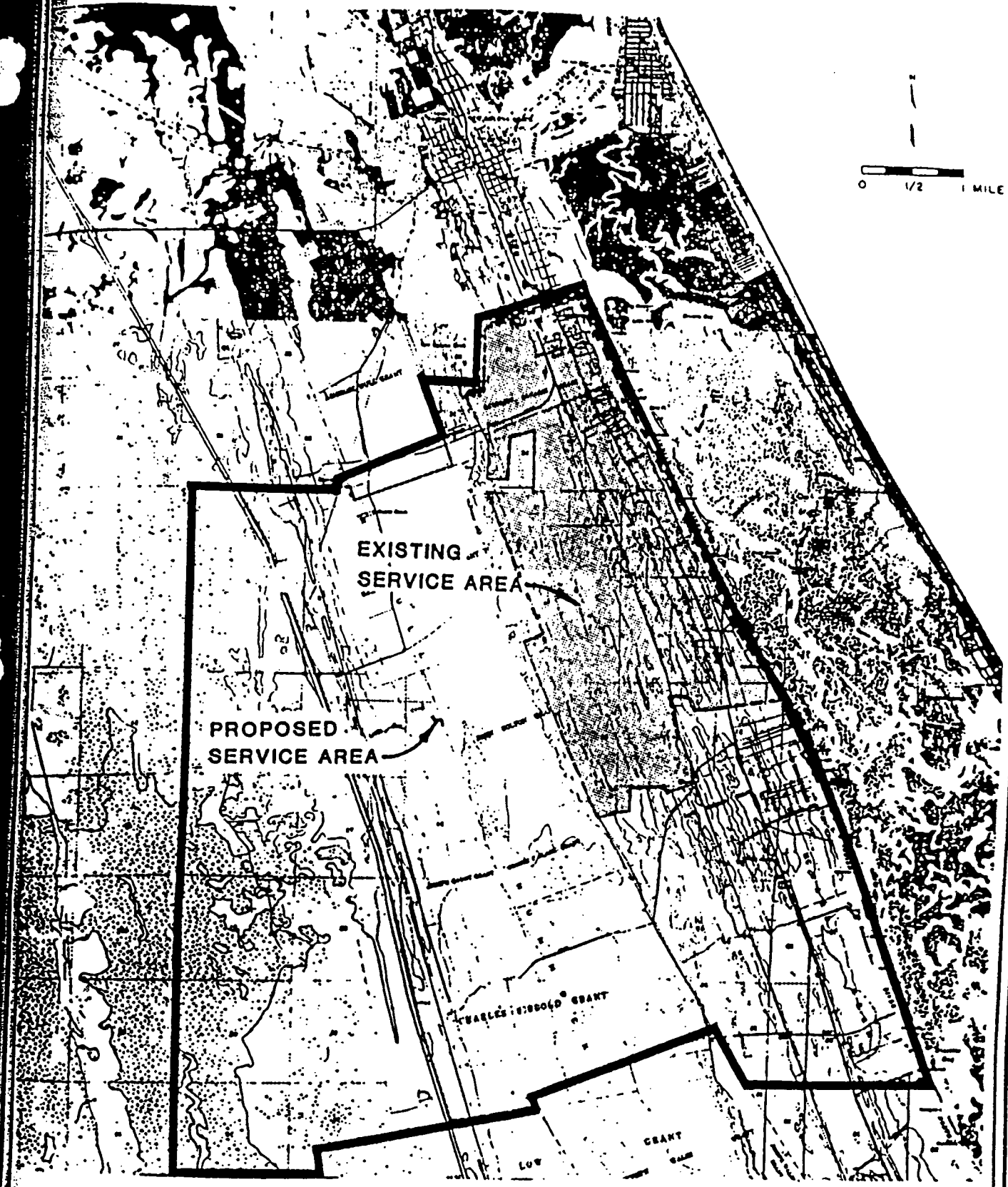
City Clerk

This Ordinance read and adopted on second reading at a regular recessed meeting of the City Council of the City of Edgewater Florida, and authenticated this 5th day of May, 1988.

Mayor

This Ordinance prepared by:

City Attorney



DYER, RIDDLE, MILLS AND PRECOURT, INC.
ENGINEERS • SURVEYORS

CITY OF EDGEWATER
CHAPTER 180 RESERVE AREA

CHAPTER 180 RESERVE AREA:

Beginning at an old stake situated ninety-seven feet (97') East of the center of the bridge South Canal, Gabordy's Canal at its junction with the Indian River North, and the Southeast Corner of the Pedro De Cala Grant also being the southeast corner of the Seymour Pickett Grant, supposed to be located within a few feet of the Northeast corner of said bridge, and on the North shores of said Canal, in Township 17S, Range 34 East; thence Westerly along the South line of said Pickett Grant approximately 5,000 feet to a point. Said point being the Northwest corner of Section 29, Township 17 South, Range 34 East, thence southerly along the west line of said Section 29 approximately 3,070 feet to the North line of the Geronimo Alvarez Grant; thence westerly along the north line approximately 600 feet to the Northwest corner of said Alvarez Grant; thence southerly along the west line of said grant approximately 225 feet to the southeast corner of Section 30, Township 17 South, Range 33 East, thence west along the south line of said Section 30 approximately 2,000 feet to a point on the east line of the Ambrose Hull Grant; thence southerly along said east line approximately 3,000 feet to a point on the north right-of-way line of the Florida East Coast Railroad. Thence westerly along said right-of-way line approximately 6,000 feet to a point on the south line of Township 17 South, Range 33 East. Thence west along said south line approximately 7,500 feet to the northwest corner of Section 6, Township 18 South, Range 34 East; thence south along west line of said Township 18 South, Range 34 East, approximately 35,800 feet to the southwest corner of Section 31, Township 18 South, Range 34 East; thence east along the south line of Township 18 South, Range 34 East, approximately 7,600 feet to a point on the west line of the John Low Grant; thence northerly along said west line approximately 1,800 feet to the northwest corner of said John Low Grant; thence northeasterly along north line of said Grant approximately 11,700 feet to a point on the west line of the Joseph Wales Grant; thence northwesterly along the west line approximately 800 feet to the northwest corner of said Joseph Wales Grant; thence easterly along the north line of said grant approximately 10,000 feet to the northeast corner of said grant; thence southerly along the east line of said grant approximately 3,700 feet to a point on the south line of Section 25, Township 18 South, Range 34 East; thence easterly along the south line of Sections 25 and 30 approximately 5,900 feet to a point on the west line of the McHardy Grant; thence southerly along said west line approximately 200 feet to the southwest corner of said McHardy Grant; thence westerly along south line of said grant approximately 3,600 feet to a point on the center line of the United States Government Main Channel of the Indian River north; thence northerly along said center line approximately 43,500 feet to a point on the south line of the Pedro De Cala Grant; thence westerly along said south line approximately 1,000 feet to the Point of Beginning.

Less the following:

For a Point of Beginning, start at the intersection of the centerline of U.S. Highway No. 1, and the South section line of Said Section 13, Township 18 South, Range 34 East, thence in a southerly direction along said highway centerline a distance of 350 feet, more or less, to the North boundary line of Riverfront Estates, thence easterly along said north boundary line of Riverfront Estates on a bearing of North 88° 23' East for a distance of 2,600 feet more or less to the median highwater line of the Indian River; thence following said median high water line in a generally Northerly direction to a point of 175 feet north of the south boundary line of the Jane Murray Grant, said south boundary line of the Jane Murray Grant also being the south boundary line of said Section 49 and the north boundary lines of said Sections 13 and 50; thence moving in a southwesterly direction, remaining 175 feet north of and parallel to said south boundary line of the Jane Murray Grant, a distance of 2,930 feet, more or less, to the centerline of said U.S Highway No. 1; thence in a southerly direction and following said centerline of U.S. Highway No. 1 a distance of 175 feet, more or less, to the North section line of said Section 13; thence South 68° 38' 36" West a distance of 1,811.88 feet, more or less, thence South 00° 50' 02" East a distance of 1,010 feet, more or less, to a point; thence North 89° 32' 43" East a distance of 220 feet more or less, to a point; thence North 00° 50' 02" West a distance of 85 feet more or less, to a point; thence North 87° 35' 58" East a distance of 2,094 feet, more or less, to the centerline of said U.S. Highway No. 1; thence following said centerline in a Southeasterly direction a distance of 1,400 feet, more or less, to a Point of Beginning.

CHAPTER 180

MUNICIPAL PUBLIC WORKS

180.01 Definition of term "municipality."—The term "municipality," as used in this chapter, shall mean any city, town, or village duly incorporated under the laws of the state.

History.—s. 1, ch. 17118, 1935; CGL 1936 Supp. 3100(6).

180.02 Powers of municipalities.—

(1) For the accomplishment of the purposes of this chapter, any municipality may execute its corporate powers within its corporate limits.

(2) Any municipality may extend and execute all its corporate powers applicable for the accomplishment of the purposes of this chapter outside of its corporate limits, as hereinafter provided and as may be desirable or necessary for the promotion of the public health, safety and welfare or for the accomplishment of the purposes of this chapter; provided, however, that said corporate powers shall not extend or apply within the corporate limits of another municipality.

(3) In the event any municipality desires to avail itself of the provisions or benefits of this chapter, it is lawful for such municipality to create a zone or area by ordinance and to prescribe reasonable regulations requiring all persons or corporations living or doing business within said area to connect, when available, with any sewerage system or alternative water supply system including, but not limited to, reclaimed water, aquifer storage and recovery, and desalination systems, constructed, erected and operated under the provisions of this chapter; provided, however, in the creation of said zone the municipality shall not include any area within the limits of any other incorporated city or village, nor shall such area or zone extend for more than 5 miles from the corporate limits of said municipality.

History.—s. 1, ch. 17118, 1935; CGL 1936 Supp. 3100(6); s. 5, ch. 95-323.

180.03 Resolution or ordinance proposing construction or extension of utility; objections to same.—

(1) When it is proposed to exercise the powers granted by this chapter, a resolution or ordinance shall be passed by the city council, or the legislative body of the municipality, by whatever name known, reciting the utility to be constructed or extended and its purpose, the proposed territory to be included, what mortgage revenue certificates or debentures if any are to be issued to finance the project, the cost thereof, and such other provisions as may be deemed necessary.

(2) Any objections to any of the provisions of said resolution or ordinance shall be in writing and filed with the governing body of the municipality, and hearing thereupon shall be held within 30 days after the passage of the resolution by the legislative body of said municipality.

History.—s. 1, ch. 17118, 1935; CGL 1936 Supp. 3100(6).

180.04 Ordinance or resolution authorizing construction or extension of utility; election.—If after the passage of said resolution the said city council or other legislative body, by whatever name known, shall determine to proceed toward the construction of said utility, but not earlier than 40 days after the passage of said ordinance or resolution, the said city council or other legislative body, by whatever name known, shall pass an ordinance or resolution authorizing the construction of the utility or any extension thereof, reciting the purpose and the territory to be included, correcting any errors, remedying any sustained objections, authorizing the issuance of mortgage revenue certificates or debentures to pay for the construction and all other costs of the said utility, and containing all other necessary provi

ns. All other legislative and administrative functions and proceedings shall be the same as provided for the government of the municipality. The city council or other legislative body, by whatever name known, of the municipality, may adopt and provide for the enforcement of all resolutions and ordinances that may be required for the accomplishment of the purposes of this chapter, and its decision shall be final in determining to construct the utility, or any extension thereof as and where proposed, to promote the public health, safety, and welfare by the accomplishment of the purposes of this chapter; provided, that where any mortgage revenue certificates, debentures, or other evidences of indebtedness shall come within the purview of s. 12, Art. VII of the State Constitution, the same shall be issued only after having been approved by a majority of the votes cast in an election in which a majority of the owners of freeholds not wholly exempt from taxation who are qualified electors residing in such municipality shall participate, pursuant to the provisions of ss. 100.201-100.221, 100.241, 100.261-100.341, and 100.351.

History.—s. 1, ch. 17118, 1935; CGL 1936 Supp. 3100(6); s. 15, ch. 69-216; s. 64, ch. 77-175.

180.05 Definition of term "private company."—A "private company" shall mean any company or corporation duly authorized under the laws of the state to construct or operate water works systems, sewerage systems, sewage treatment works, garbage collection and garbage disposal plants.

History.—s. 2, ch. 17118, 1935; CGL 1936 Supp. 3100(7).

180.06 Activities authorized by municipalities and private companies.—Any municipality or private company organized for the purposes contained in this chapter, is authorized:

(1) To clean and improve street channels or other bodies of water for sanitary purposes;

(2) To provide means for the regulation of the flow of streams for sanitary purposes;

(3) To provide water and alternative water supplies, including, but not limited to, reclaimed water, and water from aquifer storage and recovery and desalination systems for domestic, municipal or industrial uses;

(4) To provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;

(5) To provide for the collection and disposal of garbage;

(6) And incidental to such purposes and to enable the accomplishment of the same, to construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works;

(7) To construct airports, hospitals, jails and golf courses, to maintain, operate and repair the same, and to construct and operate in addition thereto all machinery and equipment;

(8) To construct, operate and maintain gas plants and distribution systems for domestic, municipal and industrial uses; and

(9) To construct such other buildings and facilities as may be required to properly and economically operate and maintain said works necessary for the fulfillment of the purposes of this chapter.

However, a private company or municipality shall not construct any system, work, project or utility authorized to be constructed hereunder in the event that a system, work, project or utility of a similar character is being actually operated by a municipality or private company in the municipality or territory immediately adjacent thereto, unless such municipality or private company consents to such construction.

History.—s. 3, ch. 17118, 1935; s. 1, ch. 17119, 1935; CGL 1936 Supp. 3100(8); s. 5, ch. 93-51; s. 6, ch. 95-323.

180.07 Public utilities; combination of plants or systems; pledge of revenues.—

(1) All such reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, intakes, pipelines, distribution systems, purification works, collecting systems, treatment and disposal works, airports, hospitals, jails and golf courses, and gas plants and distribution systems, whether heretofore or hereafter constructed or operated, are considered a public utility within the meaning of any constitutional or statutory provision for the purpose of acquiring, purchasing, owning, operating, constructing, equipping and maintaining such works.

(2) Whenever any municipality shall decide to avail itself of the provisions of this chapter for the extension or improvement of any existing utility plant or system, any then-existing plant or system may be included as a part of a whole plant or system and any two or more utilities may be included in one project hereunder. The revenues of all or any part of any existing plants or systems or any plants or systems constructed hereunder may be pledged to secure moneys advanced for the construction or improvement of any utility plant or system or any part thereof or any combination thereof.

History.—s. 4, ch. 17118, 1935; s. 2, ch. 17119, 1935; CGL 1936 Supp. 3100(9).

180.08 Revenue certificates; terms; price and interest; three-fifths vote of governing body required.

(1) Any municipality which acquires, constructs or extends any of the public utilities authorized by this chapter and desires to raise money for such purpose, may issue mortgage revenue certificates or debentures therefor without regard to the limitations of municipal indebtedness as prescribed by any statute now in effect or hereafter enacted; provided, however, that such mortgage revenue certificates or debentures shall not impose any tax liability upon any real or personal property in such municipality nor constitute a debt against the municipality issuing the same, but shall be a lien only against or upon the property and revenues of such utility, including a franchise setting forth the terms upon which, in the event of foreclosure, the purchaser may operate the same, which said franchise shall in no event extend for a period longer than 30 years from the date of the sale of such utility and franchise under foreclosure proceedings.

(2) Such mortgage revenue certificates or debentures shall be sold for at least 95 percent of par value and shall bear interest not to exceed 7.5 percent per annum.

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(3) No mortgage revenue certificates or debentures shall be issued except upon a three-fifths affirmative vote of the city council, or other legislative body of the municipalities by whatever name known; such mortgage revenue certificates or debentures shall provide that out of the revenues and income derived and obtained from the operation of the utility so constructed, such portion thereof as may be deemed sufficient after all operating costs have been paid, shall be set aside annually in a sinking fund for the payment of interest on said certificates or debentures and the principal thereof at the maturity of the same.

History.—s. 5, ch. 17118, 1935; CGL 1936 Supp. 3100(10); s. 18, ch. 73-302

180.09 Notice of resolution or ordinance authorizing issuance of certificates.—Upon the adoption of resolution or ordinance by the city council, or other legislative body, by whatever name known, authorizing the issuance of mortgage revenue certificates or debentures, a notice thereof shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the county in which the municipality is located, or by posting a notice in at least three conspicuous places within the limits of the municipality, one of which shall be posted at the door of the city hall or city offices; provided, that if any of the mortgage revenue certificates or debentures are to be purchased by the United States of America, or any instrumentality or subdivision thereof, it shall not be necessary to advertise or offer the same for sale by competitive bidding.

History.—s. 5, ch. 17118, 1935; CGL 1936 Supp. 3100(10).

180.10 When election necessary.—Where any mortgage revenue certificates, debentures, or other evidences of indebtedness shall come within the purview of s. 12, Art. VII of the State Constitution, the same shall be issued only after having been approved by a majority of the votes cast in an election in which a majority of the owners of freeholds not wholly exempt from taxation who are qualified electors residing in such municipality shall participate, pursuant to the provisions of ss. 100.201-100.221, 100.241, 100.261-100.341, and 100.351.

History.—s. 7, ch. 22858, 1945; s. 15, ch. 69-216; s. 64, ch. 77-175.

180.11 Referendum and procedure therefor.—

(1) A referendum may be held upon the issuance of such mortgage revenue certificates or debentures in the following manner: a petition shall be filed with the clerk within 30 days after the date of the first publication of the notice of the issuance of the proposed mortgage revenue certificates or debentures or after the posting of the notice, as hereinbefore provided. The petition shall contain the nature of the objection to the proposed utility or the issuance of said mortgage revenue certificates or debentures and shall be signed by 20 percent of the registered and qualified electors of said municipality. Such referendum shall be held not later than 60 days after the date of the first publication of said notice as aforesaid or the posting of such notice.

(2) The aforesaid petition shall be filed with the city clerk, or the officer performing the corresponding duties, and the said clerk or officer shall ascertain immediately if the requisite number of registered and qualified electors have signed the said petition; whereupon the clerk or officer shall immediately report in writing to the mayor, or the executive officer of said municipality, and to the city council or other legislative body of the municipality, by whatever name known; whereupon a resolution or ordinance shall forthwith be enacted determining if the requisite number of registered and qualified electors have signed the petition, a resolution or ordinance shall forthwith be enacted setting forth the date upon which the referendum shall be held, appropriating sufficient funds to pay the expenses of said election, designating the places of voting and providing for the form of ballot to be used. In determining the number of registered and qualified electors for the purposes of determining the sufficiency of the petition for referendum, the city clerk, or such other officer, shall use the number of registered and qualified electors at the last municipal election held by the said municipality. All rules, regulations, ordinances or resolutions pertaining to municipal elections shall apply under the referendum herein set forth, except where the same are inconsistent with the proceedings herein authorized.

History.—s. 5, ch. 17118, 1935; CGL 1936 Supp. 3100(10); s. 938, ch. 95-147.

180.12 Examinations and surveys.—Any municipality, to carry out the purpose of this chapter, may, through its officers, committees, agents, servants or employees, enter into and upon private property where it is proposed to construct said utility, or extensions thereof to make necessary examinations and surveys, and for such other purposes as may be required in the accomplishment of the purposes of this chapter; provided, however, the municipality, before constructing any of said works upon private property, shall first acquire the right to take and use the property by agreement or purchase or by proceedings or by the exercise of the right of eminent domain in a court of the state having jurisdiction of the same in the manner prescribed by law.

History.—s. 6, ch. 17118, 1935; CGL 1936 Supp. 3100(11).

180.13 Administration of utility; rate fixing and collection of charges.—

(1) The city council, or other legislative body of the municipality, by whatever name known, may create a separate board or may designate certain officers of said municipality to have the supervision and control of the operation of the works constructed under the authority of this chapter, which said board or designated officers may make all necessary rules or regulations governing the use, control and operation of said works; subject, however, to the approval of the city council, or other legislative body, by whatever name known.

(2) The city council, or other legislative body of the municipality, by whatever name known, may establish just and equitable rates or charges to be paid to the municipality for the use of the utility by each person, firm or corporation whose premises are served thereby; and provided further, that if the charges so fixed are not paid when due, such sums may be recovered by the said municipality by suit in a court having jurisdiction of said cause or by discontinuance of service of such utility until all delinquent charges for services thereof are paid, includ-

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History.—s. 7, ch.

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ing charge covering any reasonable expense for reconnecting such service after such delinquencies are paid, or any other lawful method of enforcement of the payment of such delinquencies.
History.—s. 7, ch. 17118, 1935; CGL 1936 Supp. 3100(12).

180.135 Utility services; refusal or discontinuance of services for nonpayment of service charges by former occupant of rental unit prohibited; unpaid service charges of former occupant not to be basis for lien against rental property; exception.—

(1)(a) Any other provision of law to the contrary notwithstanding, no municipality may refuse services or discontinue utility, water, or sewer services to the owner of any rental unit or to a tenant or prospective tenant of such rental unit for nonpayment of service charges incurred by a former occupant of the rental unit; any such unpaid service charges incurred by a former occupant will not be the basis for any lien against the rental property or legal action against the present tenant or owner to recover such charges except to the extent that the present tenant or owner has benefited directly from the service provided to the former occupant.

(b) This section applies only if the former occupant of the rental unit contracted for such services with the municipality or if the municipality provided services with knowledge of the former occupant's name and the period the occupant was provided the services.

(2) The provisions of this section may not be waived through any contractual arrangement between a municipality and a landlord whereby the landlord agrees to be responsible for a tenant's or future tenant's payment of service charges.

(3) Any other provision of law to the contrary notwithstanding, any municipality may adopt an ordinance authorizing the municipality to withdraw and expend any security deposit collected by the municipality from any occupant or tenant for the provision of utility, water, or sewer services for the nonpayment of service charges by the occupant or tenant.

(4) In any case where a tenant subject to part II of chapter 83 does not make payment for service charges to a municipality for the provision of utility, water, or sewer services, the landlord may thereupon commence eviction proceedings. Nothing in this section shall be construed to prohibit a municipality from discontinuing service to a tenant who is in arrears 30 days or more, or as required by bond covenant.
History.—s. 1, ch. 84-292; s. 1, ch. 88-332; s. 1, ch. 89-272.

180.14 Franchise for private companies; rate fixing.—A private company or corporation organized under the laws of the state for any of the purposes recited in this chapter, may construct, operate and maintain such works provided for in this chapter, within or without the corporate limits of any municipality, upon application by such company or corporation to the city council, or other legislative body of the municipality, by whatever name known, and the said municipality may grant to said private company or corporation the privilege or franchise of exercising its corporate powers for such terms of years and upon such conditions and limitations as may be deemed expedient and for the best interest of said municipality for the accomplishment of the purposes set forth in this chapter; said franchise, however, to be for a period of not longer than 30 years; provided further, that the rates or charges to be made by the private company or corporation to the individual users of the utility constructed or operated under authority of this chapter shall be fixed by the city council, or other legislative body of the municipality, by whatever name known, upon proper hearing had for that purpose.
History.—s. 8, ch. 17118, 1935; CGL 1936 Supp. 3100(13).

180.15 Liability of private companies.—Any private company or corporation constructing or operating any of the works provided for in this chapter, within or without the corporate limits of any municipality, shall be liable for all damages occasioned by the acts, negligence or injury to the rights of other persons, firms or corporations in the same manner and with the same limitations as any other private corporation chartered under the laws of the state.
History.—s. 9, ch. 17118, 1935; CGL 1936 Supp. 3100(14).

180.16 Acquisition by municipality of property of private company.—When a municipality has granted to a private company or corporation a privilege or franchise, as set forth in s. 180.14, if at the expiration of the term of the privilege or franchise and after petition of the private company or corporation, the municipality fails or refuses to renew the privilege or franchise, then upon further petition of the private company or corporation, its property, consisting of all the works constructed and used in the operation and use of the utility, together with the appurtenances, materials, fixtures, machinery, and real estate appertaining thereto, which is on hand at the time of the expiration of said privilege or franchise, shall be purchased by the said municipality at a price to be mutually agreed upon; provided, however, if the price for same cannot be agreed upon, the price shall be determined by an arbitration board consisting of three persons, one of whom shall be selected by the city council or other legislative body, one shall be appointed by the private company or corporation, and the two persons so selected shall select a third member of said board; and provided further, that in the event said board cannot agree as to the price to be paid by the said municipality, then the municipality shall file appropriate condemnation proceedings under chapter 73, within 6 months after the date of filing the original petition.
History.—s. 10, ch. 17118, 1935; CGL 1936 Supp. 3100(15).

180.17 Contracts with private companies.—Any municipality may contract by and through its duly authorized officers with any private company or corporation which is organized for any purpose related to the provisions of this chapter, and may contract with said private company or corporation for the construction or use of such works authorized by this chapter.
History.—s. 11, ch. 17118, 1935; CGL 1936 Supp. 3100(16).

180.18 Use by municipality of privately owned utility.—Whenever a private company or corporation shall construct or operate any of the works authorized by this chapter, the municipality wherein the same shall be constructed or operated shall not use the said works in any

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manner except by and with the consent of the private company or corporation in the manner and upon the terms and conditions which are mutually agreeable to the private company or corporation and the municipality, except as hereinbefore provided.

History.—s. 12, ch. 17118, 1935; CGL 1936 Supp. 3100(17).

180.19 Use by other municipalities and by individuals outside corporate limits.—

(1) A municipality which constructs any works as are authorized by this chapter, may permit any other municipality and the owners or association of owners of lots or lands outside of its corporate limits or within the limits of any other municipality, to connect with or use the utilities mentioned in this chapter upon such terms and conditions as may be agreed between such municipalities, and the owners or association of owners of such outside lots or lands.

(2) Any private company or corporation organized to accomplish the purposes set forth in this chapter, which has been granted a privilege or franchise by a municipality, may permit the owners or association of owners of lots or lands outside of the boundaries of said municipality granting said privilege or franchise, or other municipality, to connect with and use the utility operated by the said private company or corporation upon such terms as may be agreed between the said private company or corporation and the owners or association of owners of said lots or lands or the said municipality.

History.—s. 13, ch. 17118, 1935; CGL 1936 Supp. 3100(18).

180.191 Limitation on rates charged consumer outside city limits.—

(1) Any municipality within the state operating a water or sewer utility outside of the boundaries of such municipality shall charge consumers outside the boundaries rates, fees, and charges determined in one of the following manners:

(a) It may charge the same rates, fees, and charges as consumers inside the municipal boundaries. However, in addition thereto, the municipality may add a surcharge of not more than 25 percent of such rates, fees, and charges to consumers outside the boundaries. Fixing of such rates, fees, and charges in this manner shall not require a public hearing except as may be provided for service to consumers inside the municipality.

(b) It may charge rates, fees, and charges that are just and equitable and which are based on the same factors used in fixing the rates, fees, and charges for consumers inside the municipal boundaries. In addition thereto, the municipality may add a surcharge not to exceed 25 percent of such rates, fees, and charges for said services to consumers outside the boundaries. However, the total of all such rates, fees, and charges for the services to consumers outside the boundaries shall not be more than 50 percent in excess of the total amount the municipality charges consumers served within the municipality for corresponding service. No such rates, fees, and charges shall be fixed until after a public hearing at which all of the users of the water or sewer systems; owners, tenants, or occupants of property served or to be served thereby; and all others interested shall have an opportunity to be heard concerning the proposed rates, fees, and charges. Any change or revision of such rates, fees, or charges may be made in the same manner as such rates, fees, or charges were originally established, but if such change or revision is to be made substantially pro rata as to all classes of service, both inside and outside the municipality, no hearing or notice shall be required.

(2) Whenever any municipality has engaged, or there are reasonable grounds to believe that any municipality is about to engage, in any act or practice prohibited by subsection (1) or subsection (5), a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person or persons aggrieved.

(3) This section shall apply to municipally owned water and sewer utilities within the confines of a single county and may apply, pursuant to interlocal agreement, to municipally owned water and sewer utilities beyond the confines of a single county.

(4) This section shall not apply to a municipality in a county operating under a home rule charter if that county has in operation under the charter an agency regulating water and sewer systems except as provided in subsection (5).

(5)(a) Any municipality operating a municipally owned water and sewer utility and providing water and sewer service outside the boundaries of the municipality, which municipality is eligible for and specifically exercises the exemption from county rate regulation as provided for in paragraph (b), shall charge consumers outside the boundaries the same just and equitable rates, fees, and charges as consumers inside the municipal boundaries.

(b) The provisions of this section shall be applicable within a county that was regulating water and sewer rates on or before May 1, 1988, with respect to any municipality operating a municipally owned water and sewer utility outside the boundaries of the municipality, provided that:

1. The municipality was providing water and sewer service to any consumers outside its municipal boundaries before May 1, 1988;

2. The governing body of the municipality adopts an ordinance, under the authority of this section, modifying the current water and sewer system rate structure in such manner as may be necessary to bring the method of rate determination into compliance with the provisions of this subsection and declaring the municipality's exemption, to take effect upon the effective date of said ordinance, from county agency regulation of water and sewer rates, fees, and charges; and

3. The municipality remains in compliance with the provisions of this subsection.

Nothing in this subsection shall be construed to require eligible municipalities to so exempt themselves from county rate regulation or to subject municipal water or sewer utility rates, fees, and charges for services rendered within the boundaries of a municipality to regulation by a county agency, and any such rates, fees, and charges shall remain a matter of municipal determination in accordance with law.

(6) In any action commenced pursuant to this section, the court in its discretion may allow the prevailing

party treble damages and, in addition, a reasonable attorney's fee as part of the cost.
History.—ss. 1, 2, 3, 4, 5, ch. 70-997; s. 1, ch. 88-301; s. 1, ch. 92-181.

180.20 Regulations by private companies; rates; contracts.—Whenever any private company or corporation organized for the accomplishment of the purposes of this chapter is granted a privilege or franchise by a municipality, it may prescribe the terms upon which owners and occupants of houses, buildings or lots may obtain the use of the utility constructed and operated by the said private company or corporation, and the rate charged for such use, and also the rate and terms upon which the municipality may use such utility for public purposes; such rates, however, shall be subject to the approval of the city council, or other legislative body of the municipality, by whatever name known; provided, however, that the municipality may contract with the said private company or corporation to pay the said company or corporation a flat or fixed rate for such service and use of the utility and may pay out of the general revenue or any special revenue such rate as agreed.
History.—s. 14, ch. 17118, 1935; CGL 1936 Supp. 3100(19).

180.21 Powers granted deemed additional.—The authority and powers granted by this chapter to municipalities shall be in addition to but not in limitation of any of the powers heretofore or hereafter granted to municipalities now existing or hereafter created.
History.—s. 15, ch. 17118, 1935; CGL 1936 Supp. 3100(20).

180.22 Power of eminent domain.—

(1) Any municipality or private company or corporation authorized to carry into effect any or all of the purposes defined in this chapter may exercise the power of eminent domain over railroads, traction and streetcar lines, telephone and telegraph lines, all public and private streets and highways, drainage districts, bridge districts, school districts, and any other public or private lands or property whatsoever necessary to enable the accomplishment of the purposes of this chapter.

(2) Any municipality which exercises its power under this section outside of its corporate boundaries for the accomplishment of the purposes of this chapter may finance such extraterritorial project in any manner in which it is presently authorized by law to finance a like project within its corporate boundaries.
History.—s. 16, ch. 17118, 1935; CGL 1936 Supp. 3100(21); s. 1, ch. 78-198.

180.23 Contracts with engineers, attorneys and others; boards.—Any municipality desiring to construct, maintain or operate any of the utilities described in this chapter, may contract with engineers and attorneys for professional services required for the accomplishment of any or all of the purposes of this chapter; provided, however, that such employment is to be evidenced by written agreement setting forth the terms and conditions of the employment; provided further, that such municipality may also create such other offices and boards as may be necessary and expedient for carrying out the purposes of this chapter and shall provide suitable and fit compensation for the same.
History.—s. 17, ch. 17118, 1935; CGL 1936 Supp. 3100(22).

180.24 Contracts for construction; bond; publication of notice; bids.—

(1) Any municipality desiring the accomplishment of any or all of the purposes of this chapter may make contracts for the construction of any of the utilities mentioned in this chapter, or any extension or extensions to any previously constructed utility, which said contracts shall be in writing, and the contractor shall be required to give bond, which said bond shall be executed by a surety company authorized to do business in the state; provided, however, construction contracts in excess of $25,000 shall be advertised by the publication of a notice in a newspaper of general circulation in the county in which said municipality is located at least once each week for 2 consecutive weeks, or by posting three notices in three conspicuous places in said municipality, one of which shall be on the door of the city hall; and that at least 10 days shall elapse between the date of the first publication or posting of such notice and the date of receiving bids and the execution of such contract documents. For municipal construction projects identified in s. 255.0525, the notice provision of that section supersedes and replaces the notice provisions in this section.

(2) All contracts for the purchase, lease, or renting of materials or equipment to be used in the accomplishment of any or all of the purposes of this chapter by the municipality, shall be in writing; provided, however, that where said contract for the purchase, lease, or renting of such materials or equipment is in excess of $10,000, notice or advertisement for bids on the same shall be published in accordance with the provisions of subsection (1).
History.—s. 18, ch. 17118, 1935; CGL 1936 Supp. 3100(23); s. 3, ch. 73-129; s. 19, ch. 90-279; s. 27, ch. 95-196.
[1]Note.—Section 55, ch. 95-196, provides that "[n]othing in this act shall be construed to authorize a state agency to discontinue the collection and maintenance of information contained in any required report repealed or modified by this act, unless the state agency is specifically authorized to discontinue such collection and maintenance pursuant to this act or another section of law."
Note.—Former s. 255.26.

180.25 Contents of notice of issuance of certificates.—The form of the notice for advertising the proposed issuance of mortgage revenue certificates or debentures shall contain the amount of the certificates to be sold and the rate of interest thereon; a description in general terms of the utility to be constructed; the time, place and date where bids for the sale of the same are to be received; and such other pertinent information as may be deemed necessary.
History.—s. 19, ch. 17118, 1935; CGL 1936 Supp. 3100(24).

180.26 Form of certificates.—The certificate of indebtedness to be issued under the terms and conditions of this chapter shall contain a description of the utility, the revenue of which is pledged, together with the terms of payment of the same, as is established by the ordinances or resolutions of the municipality, in accordance with the conditions heretofore established in this chapter, and may or may not have attached thereto interest coupons, and shall contain such other and further conditions as shall be determined by the governing body of the municipality, in accordance with the terms and conditions of this chapter.
History.—s. 20, ch. 17118, 1935; CGL 1936 Supp. 3100(25).

180.301 Purchase or sale of water, sewer, or wastewater reuse utility by municipality.—No munici-

pality may purchase or sell a water, sewer, or wastewater reuse utility that provides service to the public for compensation, until the governing body of the municipality has held a public hearing on the purchase or sale and made a determination that the purchase or sale is in the public interest. In determining if the purchase or sale is in the public interest, the municipality shall consider, at a minimum, the following:

(1) The most recent available income and expense statement for the utility;

(2) The most recent available balance sheet for the utility, listing assets and liabilities and clearly showing the amount of contributions-in-aid-of-construction and the accumulated depreciation thereon;

(3) A statement of the existing rate base of the utility for regulatory purposes;

(4) The physical condition of the utility facilities being purchased or sold;

(5) The reasonableness of the purchase or sales price and terms;

(6) The impacts of the purchase or sale on utility customers, both positive and negative;

(7) Any additional investment required and the ability and willingness of the purchaser to make that investment, whether the purchaser is the municipality or the entity purchasing the utility from the municipality;

(8) The alternatives to the purchase or sale and the potential impact on utility customers if the purchase or sale is not made; and

(9) The ability of the purchaser to provide and maintain high-quality and cost-effective utility service, whether the purchaser is the municipality or the entity purchasing the utility from the municipality.

The municipality shall prepare a statement showing that the purchase or sale is in the public interest, including a summary of the purchaser's experience in water, sewer, or wastewater reuse utility operation and a showing of financial ability to provide the service, whether the purchaser is the municipality or the entity purchasing the utility from the municipality.

History.—s. 2, ch. 84-84; s. 6, ch. 93-51.

RESOLUTION NO. 86-R-30

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EDGEWATER, FLORIDA, AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE AN AGREEMENT WITH THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, TO PROVIDE POTABLE WATER TO THE CITY OF EDGEWATER, IN TIMES OF EMERGENCY; REPEALING ALL RESOLUTIONS IN CONFLICT HEREWITH AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, at a regular Council meeting held on the 2nd day of June, 1986, the City Council unanimously agreed to enter into an agreement with the Utilities Commission, City of New Smyrna Beach, for potable water to be provided to the City of Edgewater, Florida, in times of emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EDGEWATER, FLORIDA:

SECTION 1. That the appropriate officials of the City of Edgewater, Florida, are authorized to execute the Interconnect Agreement with the Utilities Commission, City of New Smyrna Beach, for potable water to be provided to the City of Edgewater, Florida, in times of emergency.

SECTION 2. That said agreement is attached to this Resolution and by reference incorporated herein, as if fully set forth herein with full force and effect.

SECTION 3. That all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed.

SECTION 4. That this Resolution shall take effect immediately upon its adoption by the City Council of the City of Edgewater, Florida, at a regular meeting of said Council held on the 16th day of June, 1986, and approved as provided by law.

This Resolution was introduced and sponsored by Councilman Councilman Rotundo and was read and passed by a vote of the City Council at a regular meeting held on the 16th day of June, 1986, and authenticated as providded by law.

ROLL CALL VOTE AS FOLLOWS:

MAYOR — Yes

COUNCILMAN - ZONE ONE — Yes

Excused

COUNCILMAN - ZONE TWO

COUNCILMAN - ZONE THREE — Yes

COUNCILMAN - ZONE FOUR — Yes

ATTEST:

CITY CLERK

Authenticated this 16th

day of June, 1986.

MAYOR

This Resolution prepared by:

CITY ATTORNEY

AGREEMENT

AGREEMENT made this 16th day of June of 1986, by and between the Utilities Commission, City of New Smyrna Beach, Florida, hereinafter the "Commission", and the City of Edgewater, Florida, hereinafter "Edgewater", whereby the Commission intends to comply with the request of Edgewater to provide potable water in times of emergency.

FOR AND in consideration of the mutual exchange of promises hereinafter contained, the parties do agree as follows:

1. Purpose. The interconnect is for a one way transmission of water from the Commission's system to the Edgewater system during times of emergencies. Emergencies shall include, but are not limited to, power failure, mechanical failure, water main breakage, fire demand and construction disruption, but do not include periods, if any, during which the Commission is experiencing a water shortage.

2. Cost. The responsibility and entire cost of construction operation and maintenance of the interconnection, including but not limited to, design consultant's fees, inspection, testing, disinfection and permitting shall be accomplished and/or paid for by Edgewater. Such cost incurred and paid directly by the Commission shall be reimbursed by Edgewater.

3. Construction. Contruction must be in accordance with the standards of the American Water Works Association, approved by both parties and the installed configuration shall be inspected and accepted by the Commission before the interconnect will become operable.

4. Operating the Interconnect. The Edgewater Superintendent of Utilities or his designated representative shall, in his discretion, notify the operator of the Commission's water treatment plant of any emergency and the Commission's operator shall be responsible for having someone meet Edgewater's representative at the interconnect site within the hour of notification of need for the joint operation of the interconnect. Discontinuance shall occur in the same fashion.

5. Cost of Water. The cost of water transfered shall be at the Commission's prevailing rate, plus such monthly and/or standby charges as is applicable for Fire Service.

6. Indemnification. This contract in no way creates a duty or contractual obligation of the Commission to the customers of Edgewater. Edgewater agrees to indemnify and hold the Commission harmless against claims of Edgewater's customers.

7. Termination. Both parties reserve the right to discontinue this agreement when, in the opinion of either party expressed in writing, furnishing water under this agreement is detrimental to the quality or quantity of the water supply of either party as follows:

This agreement may be terminated by Edgewater upon thirty (30) days written notice to the Commission.

This agreement may be terminated by the Commission upon not less than two (2) years written notice to Edgewater.

IN WITNESS WHEREOF the parties have set their hands and seals on the day and year first written above.

CITY OF EDGEWATER, FLORIDA

By: _____
City Clerk/Administrator

_____ (seal)

UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA

By: _____
Chairman

_____ (seal)

Approved as to Form and Correctness,

_____
J.F. Bolt Utilities Commission Counsel

AGREEMENT BY AND AMONG
VOLUSIA COUNTY, FLORIDA, THE CITY OF NEW SMYRNA BEACH, FLORIDA, AND THE UTILITIES COMMISSION CITY OF NEW SMYRNA BEACH, FLORIDA

WHEREAS, Chapter 125, Section 125.01(1)(K), Florida Statutes, (1987) as amended, provides that county government shall have the power to "Provide and regulate waste and sewage collection and disposal, water supply, and conservation programs"; and,

WHEREAS, the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Florida Statutes, as amended, and Rule Chapter 9J-5, Florida Administrative Code, as amended, provide requirements and guidelines regarding land use planning, establishment of "levels of service", capital improvement programming for infrastructure requirements, inter-governmental coordination and cooperation, consistency of comprehensive plans, both internally and with adjacent jurisdictions, and concurrency of infrastructure provision with development approvals; and

WHEREAS, the Utilities Commission (U.C.), an agency of the City currently owns and operates water distribution and wastewater collection, treatment and disposal systems which serve customers both within and without the City's corporate limits, and which have or will have, additional capacity sufficient to serve continued development within and without the City; and

WHEREAS, the County desires to assure availability of water and sewer services to areas designated for said services

in the Volusia County Comprehensive Plan and all amended plans; and

WHEREAS, the Utilities Commission, City of New Smyrna Beach will be increasing its water plant capacity from 6.2 million gallons per day to 9.3 million gallons per day as one part of its most recent 5 Year Capital Improvement Program, based partially on projected demands for water in the "Service Area" described herein; and

WHEREAS, in order to make available a safe and secure supply of raw water, necessary to meet the projected demands in the "Water Service Area" as defined herein, the Utilities Commission expects to augment the existing supply by an additional six wells for the necessary increased capacity; and

WHEREAS, the Utilities Commission, City of New Smyrna Beach, currently operates a sewage treatment plant rated at 4 million gallons per day capacity, but said plant is currently operating at approximately fifty percent (50%) of such capacity; and

WHEREAS, the City of New Smyrna Beach 1989 Comprehensive Plan projects year 2010 sewage treatment requirements of the "Service Area" to be 4.7 million gallons per day; and

WHEREAS, the City and the County desire for the U.C. to provide for water and sewer utility services and to designate a service area within which the County shall not provide, nor allow the provision of water or sewer utility services except

where County or City standards allow the use of individual wells and/or septic tanks; and

WHEREAS, the parties make and enter into this Agreement for the purpose of accomplishing the goals and objectives stated hereinabove:

NOW, THEREFORE, for $10.00 and other good and valuable consideration given by each party to the other, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The foregoing recitations are true, correct and incorporated herein by specific reference.

2. Incorporated herein by specific reference, and attached hereto is a map, being Exhibit 1, comprising the intended water and wastewater service areas of the County and City, respectively, which may in the future be amended as hereinafter set forth. Also attached hereto as Exhibits 2 and 3 respectively, are agreements between the City and the Cities of Port Orange and Edgewater.

3. The map and boundary description described as Exhibit 1 involves, in the public interest, the results of studies, negotiations, engineering evaluations and analysis, and examinations by the respective parties as to the best and most practical division of potable water service and wastewater service areas, and methods for the provision of such within the unincorporated County and the adjacent City of New Smyrna Beach. As to that territory described in Exhibit 1, the U.C.

hall have the exclusive right to provide potable water and wastewater service within the area marked "City of New Smyrna Beach Water and Sewer Service Area", both on a wholesale and retail basis as determined herein. As to that area on Exhibit 1 marked "Potential Future City Service Area", the U.C. shall have the exclusive right to provide potable water and wastewater service within such area, should the County amend its Comprehensive Plan to require such service in said area. As to the remaining area on Exhibit 1 marked "Volusia County Water and Wastewater Service Area", the County shall have the exclusive right to provide potable water and wastewater service within such area, both on a wholesale and retail basis.

4. The County agrees that it shall not provide water or wastewater services within the City Service Area without the prior consent of the City, unless the U.C. is first given the opportunity to provide such services, and has indicated that it cannot or does not desire to provide such services. For purposes of interpretation of this provision, if, within 6-month's notice to do so, the U.C. either cannot or will not provide water and/or wastewater capacity commitment or within 24 months of that notice, cannot or will not provide water and/or wastewater service to an area within the Service Area or if the U.C. or the City indicate in advance that it will not be able to provide such services, then the provisions of this paragraph are hereby waived and the County shall be entitled to provide such water and/or wastewater services. In the inter-

pretation of this provision, it is mutually agreed and understood by and between the parties hereto that the City and U.C. shall, at all times, use its best efforts to provide such water and/or wastewater services, it being the intention of the parties that the U.C. shall always have a prior right to provide water and/or wastewater services within and without the areas immediately adjacent to the incorporated municipality of New Smyrna Beach. Nothing herein shall preclude the County from permitting development on lands which do not have an urban zoning or land use classification in the Volusia County Comprehensive Plan with individual wells and/or sanitary septic sewage disposal systems. The provisions of this Agreement shall be further subject to and limited by commonly understood principles of force majeure.

5. The County hereby declares that although it believes it has the legal right, it is not its intention to be the provider of potable water and/or wastewater services within the designated City Service Areas as depicted on Exhibit 1.

6. In order that the U.C. may recover its extraordinary capital costs for extending lines and providing additional services, the U.C. may charge users other than the County up to a twenty-five percent (25%) surcharge on in-city water and wastewater rates, fees and charges which are of a periodic and recurring nature until no later than December 31, 1999. No surcharge shall be made on in-city fees and charges involved in initial connection to the U.C. system on or after the effective

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date of this agreement. On or after January 1, 2000, neither the City nor the Utilities Commission shall be entitled to collect any surcharge which may otherwise be allowable and shall charge in-city water and wastewater rates, fees, and charges throughout the New Smyrna Beach Water and Sewer Service Area.

7. The City will not require annexation agreements as a condition to providing service to existing and new development not contiguous to the City boundaries, effective 12:01 AM, January 1, 1990. Annexation within the Service Area will be controlled by applicable Florida law and federal regulations.

8. The City and the U.C. shall prepare a water and wastewater plan for the New Smyrna Beach Water and Wastewater Service Area which is consistent with the Volusia County Comprehensive Plan and sufficient to meet the requirements of Chapter 163, Florida Statutes, and Rule 9J-5, Florida Administrative Code.

The U.C. shall provide service throughout the designated service area. U.C. policies and procedures for financing and extension of water distribution and/or sewage collection and transmission lines within unincorporated portions of the service area shall be consistent with such policies and procedures within the City boundaries. The County, upon request by the City or U.C., shall provide such assistance as determined appropriate by the County Council, regarding financing and installation of local water distribution and/or

sewage collection systems and acquisition of rights-of-way or easements for such installations, including, but not limited to use of special assessment procedures and/or eminent domain.

9. Each party agrees that it will not unreasonably interfere with or withhold consent for the use by the other of rights-of-way, express or implied easements or the exercise of any other possessory interest which is now in use or which may become necessary to effectuate the intent hereof. Each party will abide by the rights-of-way use regulations of the other.

10. The U.C. agrees that should the County desire wholesale potable water and/or sewage treatment service for County Service Areas from the U.C., the U.C. will negotiate and enter into wholesale service agreement(s) with the County under such terms and conditions as may be mutually acceptable to all parties of this Agreement.

11. The parties hereto recognize and agree that time is of the essence in this Agreement. They additionally recognize and agree that failure of performance by any party of the terms of this Agreement may result in injury to the other that may not be adequately redressed by a remedy at law.

12. The parties hereto agree that at any time after the execution hereof they will, upon the request of the other, execute and deliver such other documents and further assurances as may be reasonably required by such other party in order to carry out the intention of this Agreement. Each party agrees that should it fail to do all things necessary to complete this

Agreement, through no fault of the others, that the others shall have the right of specific performance of this provision.

13. Failure to insist upon strict compliance of any of the terms, covenants, or conditions hereof shall not be deemed a waiver of such terms, covenants, or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one time or times be deemed a waiver or relinquishment of such right or power at any other time or times.

14. This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

15. It is agreed by and among the parties hereto that all words, terms, and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one heading may be construed equally applicable under another in the interpretation of this Agreement.

16. All notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly affected on the first business day after mailing by U.S., registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

As to Volusia County:

Dr. Thomas C. Kelly
County Manager
Volusia County, Florida
123 West Indiana Avenue
DeLand, Florida 32720-4612

with a copy to:

Richard M. Kelton
Assistant County Manager for
Development Services
Volusia County, Florida
123 West Indiana Avenue
DeLand, Florida 32720-4253

Daniel D. Eckert, Esquire
County Attorney
123 West Indiana Avenue
DeLand, Florida 32720-4612

- AND -

- AND -

As to City:

Mr. Frank Roberts
City Manager
City of New Smyrna Beach
210 Sams Avenue
New Smyrna Beach, FL 32069-9985

As to Utilities Commission:

Mr. R. Ronald Hagen
Director of Utilities
Utilities Commission,
City of New Smyrna Beach
P. O. Box 100
New Smyrna Beach, FL 32170

with a copy to:

City Attorney
City of New Smyrna Beach
210 Sams Avenue
New Smyrna Beach, FL 32069-9985

17. The County, the City and the Utilities Commission acknowledge that they each participated in the drafting of this Agreement. In the event that any term of this Agreement shall be interpreted by a court of competent jurisdiction, the Agreement shall not be construed more or less favorably on behalf of any party hereto on the ground that such party was or was not the drafter of this Agreement.

18. In connection with any litigation, including appellate proceedings arising out of the terms of this Agreement, the prevailing party shall be entitled to attorney's fees and costs.

19. All terms of this Agreement, including all covenants, representations and warranties contained and made herein, shall survive the execution hereof.

20. This agreement may be amended from time to time by mutual consent of the parties. Any party may propose an amendment to this Agreement. All amendments shall be in writing. No amendment shall be effective until approved by all parties to this agreement.

21. This agreement shall become effective at 12:01 AM on January 1, 1990.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of this _____ day of _____, 1989.

VOLUSIA COUNTY, FLORIDA

BY: _____
County of Volusia, Florida
by Chairman, County Council

ATTEST:

_____
County Manager

_____
Charles W. Bruso, Purchasing Director

CITY OF NEW SMYRNA BEACH, FLORIDA

By: George E Mooney
Mayor

ATTEST:

Lynne L. Schmidt
City Clerk

Utilities Commission, City of New Smyrna Beach

By: Albert J. Venick
Chairman

ATTEST:

Delna Simmons
Executive Secretary

AREA #1

Beginning with the intersection of the south line of Section 9, Township 18S Range 34E and the Atlantic Ocean, travel westerly along south line of Section 9 to the center of Turner Flats, thence travel northwesterly through Turner Flats and Shipyard Canal and through an unnamed waterway to a point just south of Three Sisters Islands, then due West to the channel of the Intracoastal Waterway, turning northerly along said channel to the south boundary line of New Smyrna Beach thence turning easterly along said south boundary line to its intersection with the Atlantic Ocean, thence turning southeasterly along the Ocean to the point of beginning.

AREA #2

Beginning with a point on the Southwest Boundary line of Ponce Inlet and following the Ponce Inlet City Limits in a northwesterly direction along the west bank of the Halifax River to the channel of Spruce Creek, traveling westerly through Strickland Bay and following Spruce Creek to the intersection of Spruce Creek and the city limits of Port Orange (located in Section 33, Township 16S, Range 33E), thence turning South and following the Port Orange city limits to the north right-of-way of Pioneer Trail (County Road 4118), changing direction and traveling northwesterly and westerly along Pioneer Trail to the east right-of-way of I-95. Turn south following the east right-of-way of I-95 to the northeast corner of Section 21, Township 17S, Range 33E, then turning westerly along said north line for a distance of approximately 3500 feet, thence

turning south and parallel with the west line of Section 21 to the south line of Section 21 thence turning easterly along the south line of Sections 21 and 22 to the east right-of-way line of I-95, turning south and traveling along the east right-of-way line of I-95 to the intersection of an imaginary line which is a westerly prolongation of the boundary line between New Smyrna Beach and Edgewater, traveling easterly along said prolongation to the southwest corner of city limits of New Smyrna Beach, thence turn northwesterly, following the city limits to the point of beginning. Said area includes all enclaves within the City of New Smyrna Beach which are situated within above described boundaries.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment of Certificate No. 249-S in Volusia County by North Peninsula Utilities Corporation.	) DOCKET NO. 900659-SU) ORDER NO. 2427) ISSUED: 3/21/91	

ORDER AMENDING CERTIFICATE TO INCLUDE ADDITIONAL TERRITORY AND CLOSING DOCKET

BY THE COMMISSION:

On July 26, 1990, North Peninsula Utilities Corporation (North Peninsula or Utility) filed an application with this Commission to amend Certificate No. 249-S to include additional territory in Volusia County, Florida. The notice included with the application was incorrect in that notice was given in the newspaper for only one week instead of once a week for three consecutive weeks. The Utility renoticed the proposed amendment. Also, the legal description filed with the application was incorrect. The application is now in compliance with Section 367.045, Florida Statutes, and other statutes and administrative rules concerning an application for amendment of certificate. In particular, the notarized application contains:

1. A filing fee in the amount of $150.00, as prescribed by Rule 25-30.020, Florida Administrative Code.

2. Adequate service territory and system maps and a territory description, as prescribed by Rule 25-30.035, Florida Administrative Code. The additional territory in Volusia County is described in Attachment A of this Order.

3. Proof of notice to interested governmental and regulatory agencies and utilities within a four-mile radius of the territory, and proof of advertisement in a newspaper of general circulation in Volusia County, as prescribed by Rule 25-30.030, Florida Administrative Code.

4. Evidence that the Utility owns the land upon which its facilities are located as required by Rule 25-30.035, Florida Administrative Code.

No objections to the application have been received and the time for filing such has expired.

North Peninsula has been operating the system satisfactorily since 1989. The Utility has demonstrated that it has the expertise and the capital necessary to provide quality service to the customers in the additional territory. In addition, the Department of Environmental Regulations has no outstanding notices of

violations or corrective orders against the Utility. Therefore, we find that it is in the public interest to amend Certificate No. 249-S to include the territory described in Attachment A of this Order, which by reference is incorporated herein. The Utility has submitted Certificate No. 249-S for entry reflecting the territory described in Attachment A. North Peninsula has also submitted tariff sheets reflecting the additional territory.

It is, therefore,

ORDERED by the Florida Public Service Commission that Certificate No. 249-S, held by North Peninsula Utilities Corporation, Post Office Box 2803, Ormond Beach, Florida 32175, is hereby amended to include the territory described in Attachment A of this Order. It is further

ORDERED that the customers in the territory added herein shall be charged the rates approved in the Utility's tariff. It is further

ORDERED that Docket No. 900659-SU is hereby closed.

By ORDER of the Florida Public Service Commission, this 21st day of MARCH, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

ALC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative

hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

ATTACHMENT A
Page 1 of 3

DESCRIPTION OF NORTH PENINSULA UTILITIES CORPORATION

IN VOLUSIA COUNTY

Township 13 South, Range 32 East

In Section 21

Commence at the intersection of the North Line of Section 21 of said Township and range with the westerly line of State Road A-1-A (Ocean Shore Blvd.), an 80 foot Right of Way as now laid out; Thence Southerly along said Westerly line a distance of 1,172.89 feet to the Point of Beginning; Thence continue South 23° 16' 39" East along the Westerly line of State Road A-1-A, a distance of 267.49 feet; Thence South 88° 06' 52" West a distance of 1,847.20 feet; Thence South 89° 06' 52" West a distance of 31.30 feet to a point on the easterly line of John Anderson Drive (formerly John Anderson Highway), a 50 foot Right of Way in this Section; Thence North 18° 36' 26" West along said Easterly line, a distance of 154.48 feet; Thence North 88° 04' 46" East and parallel with the North line of said Section, a distance of 155.00 feet; Thence North 18° 36' 26" West and parallel with the Easterly line of John Anderson Drive, a distance of 104.40 feet; Thence North 88° 04' 46" East a distance of 1,700.42 feet to the Point of Beginning.

DESCRIPTION OF NORTH PENINSULA UTILITIES CORPORATION

IN VOLUSIA COUNTY

Barrier Isle Subdivision

Township 13 South, Range 32 East

In Section 21

Commence at the intersection of the North line of Section 21, of Said Township and Range, with the westerly line of State Road A-1-A (Ocean Shore Blvd.), an 80 foot Right of Way as now laid out; Thence Southerly along the Westerly line of State Road A-1-A, a distance of 1014.45 feet, to the Northwest corner of Marlin Drive and State Road A-1-A, said point also being the Point of Beginning of this description, Thence South 88° 04' 46" West (along Marlin Drive) a distance of 298.02 feet; Thence North 23° 19' 36" West a distance of 104.71 feet; Thence South 88° 04' 46" West a distance of 1,534.67 feet; Thence North 18° 38' 19" West a distance of 62.64 feet (also parallel to and adjacent to John Anderson Drive, formerly John Anderson Highway); Thence North 88° 04' 46" East a distance of 181.33 feet; Thence North 18° 38' 33" West a distance of 114.87 feet; Thence North 88° 04' 46" East a distance of 1635.79 feet; Thence South 23° 19' 36" East a distance of 287.31 Feet to the Point of Beginning.

4C

ATTACHMENT A
Page 3 of 3

DESCRIPTION OF NORTH PENINSULA UTILITIES CORPORATION

IN VOLUSIA COUNTY

Township 13 South, Range 32 East

In Section 16

Commence at the intersection of the North line of Section 16, of Said Township and Range, with the Westerly Right of Way line of State Road A-1-A (Ocean Shore Blvd.), an 80 foot Right of Way as now laid out; Thence Southerly along the Westerly line of State Road A-1-A, a distance of 2,912 feet, more or less, to the Point of Beginning; thence continue along the Westerly line of State Road A-1-A South 22° 05' 50" East, 212.59 feet; thence South 87° 59' 20" West along the Northerly line of Ocean Aire Terrace (also parallel to the North line), 1,555.58 feet; thence North 15° 38' 45" West, parellel to and 30.00 feet Easterly of the Easterly right of way line of John Anderson Highway, 206.33 feet; thence North 88° 01' 15" East along the one-half Section line of said Section 16, 1,531.20 feet to the Point of Beginning.

Docket No. 021256-WU
G. C. Hartman Exhibit No. R-2
ECFS, Inc. Summary

FPSC CERTIFICATION PUBLIC INTEREST EXAMPLE

East Central Florida Services, Inc.

BACKGROUND

In the early 1990s, a large landowner (Corporation of the President of the Church of Jesus Christ of Latter-Day Saints) certificated the largest land area FPSC regulated water and wastewater utility in the State of Florida. This large piece of property had singularity of land ownership. The owner was constantly impacted by governmental entities wishing to utilize this property for waste solids, solid waste, water resource development, and effluent disposal as well as other matters. The area had experienced forest fires and there was a need for fire protection in eastern Osceola, southeastern Orange and western Brevard Counties. No fire station was located in this region. Though sparse and spread out, there were many hunting camps on the property desirous of potable water service and had requested the same from the landowner. In addition, there are several home sites on the property for workers, managers and administrators of the property. These individuals and their families also wished to have adequate utility services. There was a future 50-year potential for certain types of development on the property. There were major corporations, which were desirous of utility service and access to the I-95 Power Transmission Corridor.

Land stewardship is very important to the owner. The use of water for land management was needed. The water resources underneath the property were being contaminated by saltwater intrusion at an alarming rate. The saltwater wedge was moving from the east to the west at an average rate of approximately 1,500 linear feet per year. The City of Cocoa's easternmost wells were being pumped so hard that saltwater upconing was also occurring and both were polluting the freshwater Floridan aquifer water resources to the extent of several square miles of the property each year. Prior to the FPSC certification, the landowner intervened on the City of Cocoa's water use permit (1988 through 1991) and the condemnations of well sites (1990 through 1991). The facts were that the City of Cocoa's more eastern Tram Road wells were increasing in salinity and that the monitor wells to the east were showing the saltwater pollution moving across the property. The St. Johns River Water Management District (SJRWMD) granted the complete request by the City of Cocoa for additional Floridan aquifer freshwater supplies and found such utilization to be in the general public interest that the environmental harm being caused was solely to one landowner and thereby insignificant, that the environmental damage to wetlands, etc. was also acceptable in nature, and that the use of fresh groundwater from the Floridan aquifer was reasonable and beneficial use to serve the customers of the City of Cocoa regional water system.

The City of Cocoa derives 90-percent (90%) of its water revenues from customers outside of the city limits. Only 10-percent (10%) of the revenues are within the city limits. The City of Cocoa historically applied a 35-percent (35%) "outside the city" surcharge to those customers outside the city limits and was transferring significant sums of money to the general fund of the City of Cocoa. Customers of the City of Cocoa included the Federal Government (military and aerospace installations), Titusville, the beach communities and cities, the City of Melbourne, and

the inland cities generally north of Melbourne and south of Titusville. During this same time period, the beach communities and other communities, other than the City of Melbourne, surrounding the City of Cocoa obtained the Volusia County surcharge limitation legislation. This was accomplished through the legislative delegation in Brevard County, which passed the Florida legislature limiting specifically as an exception to the 180.02 F. S. a Brevard County Outside City Limit of 110%. In addition, the court system found that the wells on the landowner's property had necessity for condemnation and very small wellhead properties were condemned by the City of Cocoa for integration into its regional raw water system. Shortly thereafter, the lower court found that the southern properties adjacent to the landowner (the Holland properties), would be considered "water banking" and there was not enough necessity for the condemnation of those parcels due to the City of Cocoa's demand projections and testimony at trial. Interestingly, the lower court opinion was appealed by the City of Cocoa and the Circuit Court of Appeals reversed the lower court ruling and provided again small well sites on the Holland property and provided for the condemnation of these small wells sites basically usurping all of the Fresh Floridan aquifer water resources in this area of Orange County to the City of Cocoa.

In contrast, to the north, within Orange County's utility service area and the International Corporate Park located just north of the owner's property, the well sites were not accomplished. In that situation, Orange County offered to provide raw water service to Cocoa if it so desired and stated that the County would develop its water resources within the County's Urban Service Area boundary. A major fact that the landowner, Holland Properties, ICP, Orange County, etc. pointed out was that the City of Cocoa virtually had no reuse, no alternative water supply development, no conservation, or other demand mitigating or resource protecting activities of substance.

Since the fresh water resources of Deseret from the main Floridan aquifer were being polluted at an alarming rate and no help was in sight, and due to the fact that there was a need for service on the property and that Deseret had hired professional hydrogeologists and water resource engineers to demonstrate environmentally acceptable water resource development alternatives; Deseret searched for an avenue which met all the needs of proper stewardship of the land, the community, and satisfied the ever-increasing potable water needs of the Space Coast via Cocoa's regional system.

In addition, the South Brevard Water Authority (a special act legislatively created entity) was searching for additional water supplies on Deseret and the Bull Creek Wildlife Area for an additional 50 million gallons per day. Osceola County, the State of Florida Department of Natural Resources, and Parks and Recreation personnel as well as the landowner and other landowners and their representatives within the Eastern Osceola area, all banded together and objected to both on a permitting, environmental, and legislative basis to this additional withdrawal of Floridan aquifer freshwater in Eastern Osceola County. The SJRWMD supported the South Brevard Water Authority and was willing to issue the water use permit for the area on the landowner's property, on Bull Creek property, and on other properties. Due to negotiations with the SJRWMD, the Bull Creek property was to be utilized at no cost to the Authority for land and easements, etc. The impacts of a regional well field at that location would be similar to the Cocoa wellfield and would lower or stop the flow in the agricultural wells in the area as well

as have significant environmental harm. The hearing officer, after a lengthy case, found that the environmental harm was unacceptable, that the alternatives for water supply existed, that the alternative water supply development had not occurred and should be allowed to occur and that though the use would be considered reasonable and beneficial use and the highest priority use (for potable water service) and that the engineering and hydrogeology conducted for its development were appropriate, that the permits should not be issued. This plus the legislative activities of the community finally led to the unique situation by the Florida Legislature to dissolve a regional water supply authority which has only occurred once in the State's history.

With this historical background, the major landowner in the area submitted for certification to Florida's Public Service Commission its holdings under to corporate name of East Central Florida Services, Inc. (ECFS). Osceola County, Special Water Districts 1, 2, 3, and 4, the City of Palm Bay and others supported the ECFS application. The Cities of Kissimmee, St. Cloud, OUC, Titusville, Rockledge and Melbourne did not intervene in the matter. Initially, Orange County intervened, but with a slight modification to the service area requested (a deletion of properties within the Orange County USA), settled out of the case. Both Brevard County and the City of Cocoa intervened and alleged conflicts with comprehensive plans, overlapping facilities and service areas. The Florida Public Service Commission (FPSC) conducted the hearing and weighed the testimony in the matter. The FPSC granted ECFS, Inc. the water and wastewater service area as amended.

TRACK RECORD OF ECFS, INC.

1. Financial

For over the past decade, ECFS, Inc. has only had to apply for a few of the many annual FPSC inflation derived deflator indexing provision. Although, a) millions of dollars have been invested by or contributed, transferred or loaned to ECFS, Inc.; b) the SJRWMD, SFWMD, FDEP and Orange, Osceola and Brevard Counties have required or requested many things of ECFS, Inc.; and, c) ECFS, Inc. has cumulatively operated approximating a not-for-profit entity – ECFS, Inc. has had little in rate relief.

2. Service

There have been no service complaints in over a decade of service. In fact, the hunting camps, residences, development, governments, fire districts, and major corporations have had their need for service met promptly. The quality of service and facilities has improved greatly and continuously ever since FPSC certification. ECFS, Inc. has improved water treatment and service for its potable customers. ECFS, Inc. has made more efficient use of existing facilities through its raw water service to its customers. Examples of new customers include:

- Additional hunting camps
- Additional single-family homes
- The new church facilities
- Major telecommunication customers

- Osceola County Fire Station (a sorely needed service could be provided with ECFS, Inc. water supply)
- Reliant Energy Corporation merchant power plant cooling water, fresh water for potable, boiler water make-up, and other uses.

3. Intergovernmental

ECFS, Inc. has an exemplary track record in assisting various levels of government in accomplishing worthwhile projects, programs and/or activities. A few of the examples include:

a. ECFS, Inc. providing information to Osceola, Orange and Brevard Counties for comprehensive planning and other purposes.

b. ECFS, Inc. and Deseret have consolidated their water use permits for easier regulation and have provided water facility, use, and resource information for improved regulation to both the SFWMD and SJRWMD.

c. ECFS, Inc. has agreed with the City of Palm Bay to provide alternative water supply and/or fresh raw water supply when the City elects to avail itself of the supply. This combined with the City of Palm Bay's new membrane treatment facilities assures that the City's potable supply needs will be met.

d. ECFS, Inc./City of Orlando/Orange county reclaimed water program cooperative activities developed environmental wetland renourishment, silvaculture, sod, agriculture and saltwater encroachment barrier opportunities. This program is one of the priority listing reclaimed water uses following CHSEC cooling water use and residential/golf course uses on the eastside of Orange County.

e. Alternative Water Supply Programs:

1) City of Cocoa/ECFS, Inc./Deseret:
   - Taylor Creek Reservoir:
     This lease created the largest new surface water source use in Florida over the past 20 years
   - Pipeline Road Secondary Aquifer Shallow Wells:
     ECFS, Inc. developed the concept and City of Cocoa implemented 11 such wells providing wellfield stress rotation and management benefits.

2) Cities of Melbourne and Palm Bay:
   With Florida Legislature's dissolving of the SBWA, both cities have developed major reclaimed water reuse and alternative water supply – membrane treatment – sources to meet their potable needs versus the previous SBWA program of inland fresh Floridan aquifer groundwater sources.

f. Managed Land Stewardship Programs:

1) Brevard County Landfill Site:
This site is accommodated in the northeast corner of the unit north of 192 and downstream of the Class I Lake Washington Reservoir and with the additional protection of the Deseret Berm.

2) City of Cocoa Lime Sludge:
The City of Cocoa's lime sludge from the Claude Dyal lime softening units is stockpiled on their site in Orange County. This waste product is beneficially reused upon the property as a soil sweetener.

3) City of Orlando and Others Domestic Biosolids:
This material is either directly applied or composed and applied to add organics to the sandy soil matrix.

There are several other land stewardship programs occurring on Deseret Ranches which do not include intergovernmental cooperation/ facilitation/assistance.

INTERVENOR OBJECTIONS – A DECADE LATER

1. Comprehensive Plan Compliance -

There have been no developments on other activities that have conflicted with either the Brevard County or City of Cocoa comprehensive plans after over a decade of operations.

2. Competition with Existing Utilities

Neither the City of Cocoa nor Brevard County serve on the west side of the St. Johns River or anywhere close to ECFS, Inc. after over a decade of operations.

3. Competition for Water Use Permits

a. ECFS, Inc. has facilitated the City of Cocoa getting the WUP's for the Pipeline Road Wells and the Taylor Creek Surface Water Reservoir. Now the City of Cocoa has more raw water resources than ever and their Tram Road wellfield that was previously becoming more saline is recovering and improving in water quality.

b. ECFS, Inc. has never commented, competed or intervened on any Brevard County WUP and Brevard County has not commented, competed or intervened on any ECFS, Inc. WUP.

4. Public Interest

None of the objections or theories of negative public interest by either City of Cocoa or Brevard County have occurred in over a decade of operations.

All of the positive public interest statements by the applicant ECFS, Inc. have occurred and are documented.

5. Water Resources

The devastation and pollution at an alarming rate of the fresh Floridan aquifer water quality due to overpumping in concentrated areas by the City of Cocoa have been stemmed to approximately that level of pollution present in 1992 and in some areas some limited water quality recovery has occurred. The westward migration of salinity has been slowed to a small fraction of the previous pace.

ECFS, Inc. has facilitated the largest percent growth of Alternative Water Supplies in any major/regional (Space Coast) water supply area in the State of Florida. ECFS, Inc. has provided the GIS mapping and information to both the SJRWMD and SFWMD to better regulate and manage the water resources of the region.

Docket No. 021256-WU
G. C. Hartman Exhibit No. R-3
Chapters 373.016 and 403.021 Florida Statutes

Select Year: 2003 GO

The 2003 Florida Statutes

Title XXVIII	Chapter 373	View Entire
NATURAL RESOURCES; CONSERVATION, RECLAMATION, AND USE	WATER RESOURCES	Chapter

373.016 **Declaration of policy.--**

(1) The waters in the state are among its basic resources. Such waters have not heretofore been conserved or fully controlled so as to realize their full beneficial use.

(2) The department and the governing board shall take into account cumulative impacts on water resources and manage those resources in a manner to ensure their sustainability.

(3) It is further declared to be the policy of the Legislature:

(a) To provide for the management of water and related land resources;

(b) To promote the conservation, replenishment, recapture, enhancement, development, and proper utilization of surface and ground water;

(c) To develop and regulate dams, impoundments, reservoirs, and other works and to provide water storage for beneficial purposes;

(d) To promote the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems;

(e) To prevent damage from floods, soil erosion, and excessive drainage;

(f) To minimize degradation of water resources caused by the discharge of stormwater;

(g) To preserve natural resources, fish, and wildlife;

(h) To promote the public policy set forth in s. 403.021;

(i) To promote recreational development, protect public lands, and assist in maintaining the navigability of rivers and harbors; and

(j) Otherwise to promote the health, safety, and general welfare of the people of this state.

In implementing this chapter, the department and the governing board shall construe and apply the policies in this subsection as a whole, and no specific policy is to be construed or applied in isolation from the other policies in this subsection.

(4)(a) Because water constitutes a public resource benefiting the entire state, it is the policy of the Legislature that the waters in the state be managed on a state and regional basis. Consistent with this directive, the Legislature recognizes the need to allocate water throughout the state so as to meet all reasonable-beneficial uses. However, the Legislature acknowledges that such allocations have in the past adversely affected the water resources of certain areas in this state. To protect such water resources and to meet the current and future needs of those areas with abundant water, the Legislature directs the department and the water management districts to encourage the use of water from sources nearest the area of use or application whenever

practicable. Such sources shall include all naturally occurring water sources and all alternative water sources, including, but not limited to, desalination, conservation, reuse of nonpotable reclaimed water and stormwater, and aquifer storage and recovery. Reuse of potable reclaimed water and stormwater shall not be subject to the evaluation described in s. 373.223(3)(a)-(g). However, this directive to encourage the use of water, whenever practicable, from sources nearest the area of use or application shall not apply to the transport and direct and indirect use of water within the area encompassed by the Central and Southern Florida Flood Control Project, nor shall it apply anywhere in the state to the transport and use of water supplied exclusively for bottled water as defined in s. 500.03(1)(d), nor shall it apply to the transport and use of reclaimed water for electrical power production by an electric utility as defined in section 366.02(2).

(b) In establishing the policy outlined in paragraph (a), the Legislature realizes that under certain circumstances the need to transport water from distant sources may be necessary for environmental, technical, or economic reasons.

(5) The Legislature recognizes that the water resource problems of the state vary from region to region, both in magnitude and complexity. It is therefore the intent of the Legislature to vest in the Department of Environmental Protection or its successor agency the power and responsibility to accomplish the conservation, protection, management, and control of the waters of the state and with sufficient flexibility and discretion to accomplish these ends through delegation of appropriate powers to the various water management districts. The department may exercise any power herein authorized to be exercised by a water management district; however, to the greatest extent practicable, such power should be delegated to the governing board of a water management district.

(6) It is further declared the policy of the Legislature that each water management district, to the extent consistent with effective management practices, shall approximate its fiscal and budget policies and procedures to those of the state.

History.--s. 2, part I, ch. 72-299; s. 36, ch. 79-65; s. 70, ch. 83-310; s. 5, ch. 89-279; s. 20, ch. 93-213; s. 250, ch. 94-356; s. 1, ch. 97-160; s. 1, ch. 98-88.

Select Year: 2003 Go

The 2003 Florida Statutes

Title XXIX PUBLIC HEALTH | Chapter 403 ENVIRONMENTAL CONTROL | View Entire Chapter

403.021 **Legislative declaration; public policy.**--

(1) The pollution of the air and waters of this state constitutes a menace to public health and welfare; creates public nuisances; is harmful to wildlife and fish and other aquatic life; and impairs domestic, agricultural, industrial, recreational, and other beneficial uses of air and water.

(2) It is declared to be the public policy of this state to conserve the waters of the state and to protect, maintain, and improve the quality thereof for public water supplies, for the propagation of wildlife and fish and other aquatic life, and for domestic, agricultural, industrial, recreational, and other beneficial uses and to provide that no wastes be discharged into any waters of the state without first being given the degree of treatment necessary to protect the beneficial uses of such water.

(3) It is declared to be the public policy of this state and the purpose of this act to achieve and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state. In accordance with the public policy established herein, the Legislature further declares that the citizens of this state should be afforded reasonable protection from the dangers inherent in the release of toxic or otherwise hazardous vapors, gases, or highly volatile liquids into the environment.

(4) It is declared that local and regional air and water pollution control programs are to be supported to the extent practicable as essential instruments to provide for a coordinated statewide program of air and water pollution prevention, abatement, and control for the securing and maintenance of appropriate levels of air and water quality.

(5) It is hereby declared that the prevention, abatement, and control of the pollution of the air and waters of this state are affected with a public interest, and the provisions of this act are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

(6) The Legislature finds and declares that control, regulation, and abatement of the activities which are causing or may cause pollution of the air or water resources in the state and which are or may be detrimental to human, animal, aquatic, or plant life, or to property, or unreasonably interfere with the comfortable enjoyment of life or property be increased to ensure conservation of natural resources; to ensure a continued safe environment; to ensure purity of air and water; to ensure domestic water supplies; to ensure protection and preservation of the public health, safety, welfare, and economic well-being; to ensure and provide for recreational and wildlife needs as the population increases and the economy expands; and to ensure a continuing growth of the economy and industrial development.

(7) The Legislature further finds and declares that:

(a) Compliance with this law will require capital outlays of hundreds of millions of dollars for the installation of machinery, equipment, and facilities for the treatment of industrial wastes which are not productive assets and increased operating expenses to owners without any financial return and should be separately classified for assessment purposes.

(b) Industry should be encouraged to install new machinery, equipment, and facilities as technology in environmental matters advances, thereby improving the quality of the air and waters of the state and benefiting the citizens of the state without pecuniary benefit to the owners of industries; and the Legislature should prescribe methods whereby just valuation may be secured to such owners and exemptions from certain excise taxes should be offered with respect to such installations.

(c) Facilities as herein defined should be classified separately from other real and personal property of any manufacturing or processing plant or installation, as such facilities contribute only to general welfare and health and are assets producing no profit return to owners.

(d) In existing manufacturing or processing plants it is more difficult to obtain satisfactory results in treating industrial wastes than in new plants being now planned or constructed and that with respect to existing plants in many instances it will be necessary to demolish and remove substantial portions thereof and replace the same with new and more modern equipment in order to more effectively treat, eliminate, or reduce the objectionable characteristics of any industrial wastes and that such replacements should be classified and assessed differently from replacements made in the ordinary course of business.

(8) The Legislature further finds and declares that the public health, welfare, and safety may be affected by disease-carrying vectors and pests. The department shall assist all governmental units charged with the control of such vectors and pests. Furthermore, in reviewing applications for permits, the department shall consider the total well-being of the public and shall not consider solely the ambient pollution standards when exercising its powers, if there may be danger of a public health hazard.

(9)(a) The Legislature finds and declares that it is essential to preserve and maintain authorized water depth in the existing navigation channels, port harbors, turning basins, and harbor berths of this state in order to provide for the continued safe navigation of deepwater shipping commerce. The department shall recognize that maintenance of authorized water depths consistent with port master plans developed pursuant to s. 163.3178(2)(k) is an ongoing, continuous, beneficial, and necessary activity that is in the public interest; and it shall develop a regulatory process that shall enable the ports of this state to conduct such activities in an environmentally sound, safe, expeditious, and cost-efficient manner. It is the further intent of the Legislature that the permitting and enforcement of dredging, dredged-material management, and other related activities for Florida's deepwater ports pursuant to this chapter and chapters 161, 253, and 373 shall be consolidated within the department's Division of Water Resource Management and, with the concurrence of the affected deepwater port or ports, may be administered by a district office of the department or delegated to an approved local environmental program.

(b) The provisions of paragraph (a) apply only to the port waters, dredged-material management sites, port harbors, navigation channels, turning basins, and harbor berths used for deepwater commercial navigation in the ports of Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Pensacola, Fernandina, and Key West.

(10) It is the policy of the state to ensure that the existing and potential drinking water resources of the state remain free from harmful quantities of contaminants. The department, as the state water quality protection agency, shall compile, correlate, and disseminate available information on any contaminant which endangers or may endanger existing or potential drinking water resources. It shall also coordinate its regulatory program with the regulatory programs of other agencies to assure adequate protection of the drinking water resources of the state.

(11) It is the intent of the Legislature that water quality standards be reasonably established and applied to take into account the variability occurring in nature. The department shall recognize the statistical variability inherent in sampling and testing procedures that are used to express water quality standards. The department shall also recognize that some deviations from water quality

standards occur as the result of natural background conditions. The department shall not consider deviations from water quality standards to be violations when the discharger can demonstrate that the deviations would occur in the absence of any human-induced discharges or alterations to the water body.

History.--s. 3, ch. 67-436; s. 1, ch. 78-98; ss. 1, 5, ch. 81-228; s. 4, ch. 84-79; s. 46, ch. 84-338; s. 11, ch. 85-269; s. 1, ch. 85-277; s. 8, ch. 86-186; s. 3, ch. 86-213; s. 143, ch. 96-320; s. 1004, ch. 97-103; s. 4, ch. 99-353.

Docket No. 021256-WU
G. C. Hartman Exhibit No. R-4
Revised Farmton Resources Requested Certification Area and Legal Description

MAPS not scanned -
forwarded to ECR

STATE OF FLORIDA

DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES
BLANCA S. BAYÓ
DIRECTOR

Public Service Commission

Maps

* *

Docket No. :021256-WS

Docket Title: Application for certificate to provide water service in Volusia and Brevard Counties by Farmton Water Resources LLC.

04592-04: FARMTON (DETERDING) - REBUTTAL TESTIMONY OF GERALD C. HARTMAN WITH EXHIBIT NOS. R-1 THROUG R-4. [R-1: SERVICE AREAS OF MAJOR FACILITIES WITHIN SERVICE AREA; R-4: REVISED FARMTON RESOURCES REQUESTED CERTIFICATION AREA.]

[CCA NOTE: ITEM CAN BE FOUND IN MAPS MICROFILM.]

GCH-R4

LEGAL DESCRIPTION
Proposed Farmton Water Resources LLC Service Area
November 20, 2001
As amended April 6, 2004

The following lands lying in Township 18 South, Range 33 East, Volusia County, Florida, more particularly described as follows:

All of Sections 13 and 14.

Blocks 1 and 4 of Howe and Curriers Allotment, Section 15, according to the Plat thereof, as recorded in Map Book 4, Page 44 in Section 15.

Blocks 1 and 4 of Howe and Curriers Allotment, Section 22, according to the Plat thereof, as recorded in Map Book 4, Page 44 in Section 22.

All of Sections 23, 24, 25, 26, 27, and 28.

Blocks 1, 2, 3, and 4 of The Florida Homeland Company, Section 31, according to the Plat thereof, as recorded in Map Book 1, Page 107 in Section 31.

All of Sections 32, 33, 34, 35, and 36.

Together with the following lands lying in Township 19 South, Range 33 East, Volusia County, Florida, more particularly described as follows:

All of Sections 1, 2, 3, and 4.

Blocks 1 and 2- Block 3 except Lot 10; and Block 4 of The Florida Homeland Company, according to the Plat thereof, as recorded in Map Book 5, Page 75 in Section 5.

Block 1; Block 2 except Lot 12; Block 3 except Lot 10; And Block 4 of The Florida Homeland Company, according to the Plat thereof, as recorded in Map Book 4, Page 107 in Section 6.

Lots 1 to 10 inclusive, and Lots 14, 15, and 16 of Block 1; Block 2; Lots 4, 5, 6, 9, 10, 12, 13, 14, 15, 16 of Block 3; and Lots 2, 3, 5, 8, 11, 12, 13, 14, 15, and 16 of Block 4 of The Florida Homeland Company, according to the Plat thereof, as recorded in Map Book 4, Page 108 in Section 7.

Blocks 1, 2 and 3; And Lots 1 to 10 inclusive and Lots 13 and 15 of Block 4 of The Florida Homeland Company, according to the Plat thereof, as recorded in Map Book 4, Page 108 in Section 8.

Blocks 1, 2, 3 and 4 of The Florida Homeland Company, according to the Plat thereof, as recorded in Map Book 4, Page 108 in Section 9.

All of Sections 10, 11, 12, 13 and 14.

Blocks 1, 2, 3, and 4 of the Florida Homeland Company, according to the Plat thereof, as recorded in Map Book 4, Page 108 in Section 15.

Lots 9 to 16 inclusive of Block 1; Blocks 2, 3, and 4 of The Florida Homeland Company according to the Plat thereof, as recorded in Map Book 4, Page 106 in Section 16.

Blocks 1, 2, 3, and 4 of The Florida Homeland Company, according to the Plat thereof, as recorded in Map Book 4, Page 108 in Section 17.

Blocks 3 and 4 of The Florida Homeland Company, according to the Plat thereof, as recorded in Map Book 4, Page 108 in Section 18.

Blocks 1, 2, 3, 4 and 5; Block 6 except Lots 16, 17, and 18; Block 7 except Lots 38, 39, and 40; Blocks 8, 9, 10, 11, 12 and 13; Block 14 except Lot 14; Block 15; Block 16 except Lots 1 and 2; Blocks 17 to 25 inclusive; Block 26 except Lot 4; Block 27 except Lot 15; Blocks 28 to 60 inclusive of Farmton (formerly Celery City), according to the Plat thereof, as recorded in Map Book 5, Page 44 in Section 18.

Unnamed Lot(s) lying between Orange Avenue and the right of way of Florida East Coast Railway and North of Blocks 2, 3, 4, and 5; Unnamed Lot(s) lying between Orange Avenue and

the right of way of Florida East Coast Railway and North of Blocks 8, 9, and 10; Unnamed Lot(s) North of the right of way of the Florida East Coast Railway and East of 5th Street; All that Lot lying North of the right of way of Florida East Coast Railway right of way and between 5th Street and 7th Street; All that Lot lying North of the right of way of the Florida East Coast Railway and West of 7th Street of Farmton (formerly Celery City), according to the Plat thereof, as recorded in Map Book 5, page 44 in Section 18.

The Northeast 1/4; The Southeast 1/4; The North 1/2 of the Northwest 1/4; The Southeast 1/4 of the Northwest 1/4; and the East 1/2 of the Southwest 1/4 in Section 19.

Block 1 except Lots I and 2; and Blocks 2, 3 and 4 of The Florida Homeland Company, according to the Plat thereof, as recorded in Map Book 4, Page 108 in Section 20.

The Northwest 1/4; The Southwest 1/4; The Southeast 1/4; The North 1/2 of the Northeast 1/4; The South four (4) chains of the East 3/8 of the Southwest 1/4 of the Northeast 1/4; and the West 5/8 of the Southwest 1/4 of the Northeast 1/4 of Section 21.

Block 1 except the West 1/2 of Lot 10; and Blocks 2, 3 and 4 of The Florida Homeland Company, according to the Plat thereof, as recorded in Map Book 4, Page 106 in Section 22.

The East 1/2 of the Northeast 1/4; The Northwest 1/4 of the Northeast 1/4; The Southeast 1/4 The Northeast 1/4 of the Northwest 1/4, except the East 12 chains of the South 10 chains; The Southwest 1/4; The West 1/2 of the Northwest 1/4 in Section 23.

Section 24 less and except railroad right of way and road right of way.

Section 25 less and except railroad right of way and road right of way.

All of Section 26.

Block 1 except Lots 7 and 8; and Block 2, 3, and 4 of The Florida Homeland Company, according to the Plat thereof, as recorded in Map Book 4, Page 106 in Section 27.

All of Sections 28 and 29.

The East 1/2; The East 1/2 of the Northwest 1/4; And all that part of the Southwest 1/4 lying in Volusia County, Florida, in Section 30.

All of that part of the Northeast 1/4 lying North of the abandoned right of way of the Florida East Coast Railroad; The Northeast 1/4 of the Northwest 1/4; And the South 13.67 chains of the Southeast 1/4 of the Northwest 1/4 lying north and east of the river in Section 31.

All of that part Sections 32 and 33 lying North of the right of way of the Florida East Coast Railroad.

All of that part of the East 1/2 of the Northeast 1/4 lying North of the right of way of the Florida East Coast Railway Company; The Northwest 1/4 of the Northeast 1/4-, and all that part of the Northwest 1/4 lying North of the right of way of the Florida East Coast Railway Company in Section 34.

All of that part of Section 35 lying North of the right of way of the Florida East Coast Railway Company.

All of Section 36.

Together with the following lands lying in Township 20 South, Range 33 East, Volusia County, Florida, more particularly described as follows:

All of Sections 1, 12, and 13.

All of Fractional Section 24.

Together with all of that portion of Bernard Sequi Grant in Section 37, Township 21 South, Range 33 East, Volusia County, Florida.

Together with the following lands lying in Township 18 South, Range 34 East, Volusia County, Florida, more particularly described as follows:

BEGIN at the Northwest comer of Section 17, Township 18 South, Range 34 East, thence SOUTH, on the West line of said Section 17, a distance of, 1407.60 feet to a point; Thence North

79 degrees 47 minutes East, a distance of, 2794.30 feet to a point; Thence NORTH, a distance of, 912.00 feet to the North line of said Section 17; Thence WEST, a distance of 2751.00 feet more or less to the POINT OF BEGINNING.

All of Sections 18 and 19.

All that part of Section 20 lying South of a line beginning at the Northwest corner of the Sibbald Grant and running thence West parallel to the North line of said Section 20 to the West line of said Section 20.

All fractional Section 29.

All of Sections 30 and 3 1.

All of fractional Section 32 (being all of Section 32, except that portion in the Sibbald Grant and that portion in the John Lowe Grant).

That part of Lots 62 and 167 lying West of 1-95 right of way of the Assessor's Subdivision of the Charles Sibbald Grant in Sections 42, 43, and 44, Township 18 South, Range 34 East, according to the Plat thereof, as recorded in Map Book 3, Page 151 of the Public Records of Volusia County, Florida.

That part of Lots 13B, 14B, and 15B lying West of the 1-95 right of way of the Assessor's Subdivision of the Charles Sibbald Grant in Sections 43 and 44, Township 18 South, Range 34 East, according to the Plat thereof, as recorded in Map Book 3, Page 151 of the Public Records of Volusia County, Florida, less and except Borrow Pit No. 11 and the Haul Access.

Together with the following lands lying in Township 19 South, Range 34 East, Volusia County, Florida, more particularly described as follows:

Government Lots 1, 2, 3, and 4, in Section 5.

All of section 6.

All of Block 1, 2, 3, and 4 of The Florida Homeland Company, according to the Plat thereof, as recorded in Map Book 4, Page 106 in Section 7.

All of fractional Section 8 and 17.

Blocks 1, 2, 3, and 4 of The Florida Homeland Company, according to the Plat thereof, as recorded in Map Book 4, Page 106 in Section 18.

All of Section 19.

All of fractional Section 20.

All of fractional Section 21 except railroad right of way and Maytown Road right of way.
All of fractional Section 28 except railroad right of way and Maytown Road right of way.

All of Section 29 except railroad right of way and Maytown Road right of way.

The Northeast 1/4; The North 1/2 of the Southeast 1/4; The Southeast 1/4 of the Southeast 1/4; The Southeast 1/4 of the Southwest 1/4 (less and except the East 72 feet of the Southeast 1/4 of the Southwest 1/4 and less and except that part of Southeast 1/4 of Southwest 1/4 lying Northeast of the right of way of the Florida East Coast Railway Company); The Southwest 1/4 of the Southwest 1/4; The North 1/2 of the Northwest 1/4; The East 1/2 of the Southeast 1/4 of the Northwest 1/4 (less and except a triangular strip of land sold to the Florida East Coast Railway Company in the East 1/2 of the Southeast 1/4 of the Northwest 1/4, located in the wye of said railroad); The Southwest 1/4 of the Northwest 1/4; and That part of land in the North 1/2 of the Southwest 1/4 lying North of the Florida East Coast Railway Company right of way in Section 30.

All of Section 31 except Florida East Coast Railway right of way.

All of Blocks 1, 2, 3, and 4 of The Florida Homeland Company, according to the Plat thereof, as recorded in Map Book 4, page 106 in Section 32.

All of fractional Section 33.

Less and excepting from all of the above described lands, all railroad rights of way of the Florida East Coast Railway Company.

Together with the following lands lying in Township 20 South, Range 34 East, Brevard County, Florida, more particularly described as follows:

All of fractional Section 4.

All of Sections 5, 6, 7, 8, 17, and 18.

All of fractional Sections 19 and 20.

Together with the following lands lying in Township 20 South, Range 34 East and Township 21 South, Range 34 East, Brevard County, Florida, more particularly described as follows:

All of Sections 6, 7, 8, 10, 11, 12, 25, 26, and 27, Indian River Park, according to the Plat thereof, as recorded in Plat Book 2, Page 33 of the Public Records of Brevard County, Florida.

Lots 2 to 8 inclusive of Block 1; Blocks 2 and 3; Lots 3 to 6 inclusive of Block 4; Lots 3 to 6 inclusive of Block 5; Blocks 6 and 7; and Lots 3 to 6 inclusive of Block 8 in Section 13, Indian River Park, according to the Plat thereof, as recorded in Plat Book 2, Page 33 of the Public Records of Brevard County, Florida.

Lots 3 to 6 inclusive of Block 1; Block 2; Block 3 except Lot 5; Lots 3 to 8 inclusive of Block 4; Lots 3 to 6 inclusive and Lot 8 of Block 5; Blocks 6 and 7; and Lots 5 to 8 inclusive of Block 8 in Section 24, Indian River Park, according to the Plat thereof, as recorded in Plat Book 2, Page 33 of the Public Records of Brevard County, Florida.