

Ruth Nettles

090459-WS

From: sueburban@aol.com
Sent: Wednesday, October 14, 2009 4:31 PM
To: Filings@psc.state.fl.us
Subject: Objection to Application of Bluefield Utilities, LLC; Docket No. 090459-WS
Attachments: SCAN0848_000.pdf

- a. R. N. Koblegard, III, Attorney for Fort Pierce Utilities Authority, 200 S. Indian River Drive, Suite 201, Fort Pierce, FL 34950, koblegardlaw@bellsouth.net
- b. Docket No. 090459-WS; In re: Application by Bluefield Utilities, LLC to operate a Water and Wastewater Utility in Martin and St. Lucie Counties, Florida
- c. Fort Pierce Utilities Authority
- d. 22 pages
- e. Objection of Fort Pierce Utilities Authority to Application for Original Certificates for Proposed Water & Wastewater System & Request for Initial Rates & Charges

Susan Burban, Assistant to
R. N. Koblegard, III, Esq.
200 S. Indian River Drive, Suite 201
Fort Pierce, FL 34950
Telephone: (772) 461-7772
Email: sueburban@aol.com

*Done
10/15/09
R. N. K.*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Docket No. 090459-WS

In re: Application of Bluefield Utilities, LLC
to operate a Water and Wastewater Utility
in Martin and St. Lucie
Counties, Florida.

OBJECTION OF FORT PIERCE UTILITIES
AUTHORITY TO APPLICATION FOR ORIGINAL CERTIFICATES
FOR PROPOSED WATER AND WASTEWATER SYSTEM AND REQUEST
FOR INITIAL RATES AND CHARGES

Fort Pierce Utilities Authority (FPUA), by and through its undersigned attorney, hereby adopts St. Lucie County's Objection dated October 6, 2009 and Amended Objection dated October 7, 2009 to the above-referenced application as approved by the Board of County Commissioners of St. Lucie County, Florida, on October 6, 2009, inasmuch as FPUA is the bulk water provider for St. Lucie County under an agreement dated February 10, 2004, a copy of which is attached hereto. The service area set forth in FPUA's agreement with St. Lucie County is included within the Territory Description set forth in the above-referenced application.

Based on the foregoing, FPUA objects to the Bluefield Utilities, LLC application and requests the Commission deny the Application to the extent of removing the St. Lucie County Territory from consideration by the Commission.

s/R. N. Koblegard, III
R. N. Koblegard, III
Attorney for FPUA
200 S. Indian River Drive
Suite 201
Fort Pierce, FL 34950
Telephone: 772-461-7772
Fax No.: 772-461-0226

I HEREBY CERTIFY that on the 14th day of October, 2009, this Objection was electronically filed with the Office of Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32309-0850 and was mailed

DOCUMENT NUMBER-DATE

10562 OCT 14 8

FPSC-COMMISSION CLERK

to Bluefield Utilities, LLC, 660 Beachland Boulevard, Suite 301,
Vero Beach, FL 32963.

s/R. N. Koblegard, III
R. N. Koblegard, III, Esq.

Return to: (E)
OFFICE OF CITY CLERK
CITY OF FT. PIERCE
100 N. U.S. 1
P.O. BOX 1480
FT PIERCE, FL 34954

INTERLOCAL AGREEMENT

THIS AGREEMENT made entered into this 10 day of February 2004, by and among the CITY OF FORT PIERCE ("CITY"), a Florida municipal Corporation, The FORT PIERCE UTILITIES AUTHORITY ("FPUA"), a Special District organized under the Charter of the City of Fort Pierce, ST. LUCIE COUNTY ("County"), a political subdivision of the State of Florida.

WITNESSETH:

WHEREAS, the CITY and COUNTY are currently adverse parties in *St. Lucie County v. City of Fort Pierce*, Case No.: 02-CA-000390(PC), in the Circuit Court of the Nineteenth Judicial Circuit in and for St. Lucie County and *City of Fort Pierce v. St. Lucie County*, Case No.: 03-CA-000483(OC), in the Circuit Court of the Nineteenth Judicial Circuit in and for St. Lucie County; and,

WHEREAS, all parties hereto are likewise parties to *City of Fort Pierce and Fort Pierce Utilities Authority v. St. Lucie County and Port St. Lucie*, Case No.: 03-CA-000530(OC), in the Circuit Court of the Nineteenth Judicial Circuit in and for St. Lucie County; and,

WHEREAS, there exists numerous disputes between the CITY and COUNTY over the CITY's annexation policy wherein the CITY imposes a requirement that property owners agree to annexation when property becomes contiguous, as a condition for receipt of potable water and wastewater services from the FPUA; and,

WHEREAS, the COUNTY is desirous of entering into an agreement with the CITY and FPUA for potable water and wastewater services in certain geographical areas under a bulk sale agreement; and,

JOANNE HOLMAN, CLERK OF THE CIRCUIT COURT - SAINT LUCIE COUNTY
File Number: 2365476 OR BOOK 1917 PAGE 1819
Recorded: 03/11/04 08:41

WHEREAS, there exists a dispute between the City and FPUA on the one hand, and the COUNTY on the other, over whether FPUA is the sole provider of potable water and wastewater services in certain geographical areas and whether provisions of service by the County in any of these geographical areas violates the COUNTY's Comprehensive Plan, any element thereof, the COUNTY's potable water/wastewater master plan, County Resolution 91-106, and other implementing documents; and

WHEREAS, the parties are desirous of eliminating disputes over their current and future utility service areas and boundaries as to which they respectively provide or will provide potable water and wastewater services; and,

WHEREAS, the parties jointly recognize declared public policy of this state, as expressed by Fla. Stat. Section 164.102, that conflicts between governmental entities be resolved to the greatest extent possible without litigation wherein it is in the public's interest that expense and uncertainty of such litigation be avoided and where important public policies involving annexation, future revenues and provision of potable water and wastewater services are better served by what follows; and

WHEREAS, it is the purpose and intent of this Agreement to resolve most, but not all of the current disputes between the parties, and to further provide a framework within which such disputes and concerns as aforesaid may be discussed and potentially resolved as herein provided for; and,

WHEREAS, the parties intend to be bound by the terms and provisions hereof and further recognize that this Agreement sets forth specific legal rights and remedies with respect to the subject matter herein contained.

NOW THEREFORE, it is agreed by and among the parties hereto as follows:

DR BOOK 1917 PAGE 1820

1. COUNTY shall not provide potable water or wastewater utility service within the boundaries of the area designated on Exhibit 1 attached hereto, such area known hereafter as "Area A", without the prior written consent of CITY and FPUA, which consent may be withheld at the sole discretion of CITY and FPUA. FPUA shall provide potable water and wastewater utility service in Area "A". The County acknowledges that FPUA will provide such utility services within Area "A" in a manner consistent with the City's annexation policies. The County further agrees to adopt appropriate policies within the County's Comprehensive Plan, Utility Master Plan and other growth management regulations acknowledging, without prejudice, that FPUA will provide water and wastewater service within Area "A" in a manner consistent with the City's annexation policies. COUNTY shall withdraw and agrees not to proceed with all pending objections to any CITY annexation located within Area "A", whether currently in litigation or conflict resolution. CITY shall withdraw without prejudice those Ordinances (Nos. K-129 through K-134) that proposed to annex all of those properties that were included as part of the City's plan to annex the County-owned airport properties and agrees not to proceed with the adoption of those Ordinances. Notwithstanding anything to the contrary in this Agreement, the currently existing annexation agreement covering the St. Lucie County Airport will remain in full force and effect and no party shall be deemed to have waived any right or entitlement under the annexation agreement or any objection to the annexation agreement by entering into this Agreement. Upon signing this Agreement, CITY and COUNTY shall, immediately work together towards the goal of entering into a Joint Planning Agreement to eliminate future annexation disputes within Area "A" and coordinate the provision of governmental services related to such

DR BOOK 1917 PAGE 1821

annexation. The County, City and FPUA agree to cooperate on the eventual relocation of the FPUA's Hutchinson Island wastewater treatment plant.

2. The FPUA shall not provide potable water and wastewater utility service within the boundaries of the area designated on Exhibit 1 as attached hereto, such area known hereafter as "Area B" (except as to customers currently being serviced by the FPUA, and as listed in Exhibit 3 attached hereto), without the prior written consent of County, which consent may be withheld at the sole discretion of County.

3. FPUA may provide the County with bulk potable water, wastewater and reclaimed water service within Area B in accordance with the terms of the bulk service agreement (the "Bulk Service Agreement") in Exhibit 4 attached hereto. The parties shall execute the Bulk Service Agreement upon execution of this Agreement. When provided, the FPUA shall provide such bulk services to the County without the requirement of annexation into the City as a condition to such service.

4. It is expressly intended that nothing in this Agreement be construed as creating or evidencing an obligation on the part of any of the parties to unconditionally provide potable water or wastewater services in Area "A" or Area "B" That is FPUA may not be compelled by any party, person or entity to provide service within Area A, and COUNTY may not be compelled by any party, person or entity to provide service within Area B.

5. In accordance with FPUA Resolution UA 91-8, and subject to the conditions set forth below, FPUA shall sell the FPUA water distribution system south of the Florida Power & Light nuclear power plant ("FP&L Plant") to the County. FPUA will retain retail water service to the area between the current City limits (Blue Heron Boulevard) and the FP&L Plant in Area A. From that point south to the Martin County Line, FPUA will continue to provide retail water

OR BOOK 1917 PAGE 1822

service until bulk water revenues from the County on the County's mainland utility system equal the difference between combined current FPUA revenues on North and South Hutchinson Island and the bulk water revenues for those areas at the \$1.90 per 1000 gallons rate (plus any incremental increases as allowed by the Bulk Service Agreement). At such time, the County shall compensate FPUA for the value of the water distribution system and Repump No. 2., which value is to be determined to the mutual satisfaction of the County and FPUA.

6. COUNTY agrees, for itself, that the Bulk Rate Utility Interlocal Agreement entered into by the City of Port St. Lucie and COUNTY, as approved by the County Commission on or about November 4, 2002, and as may be subsequently modified or amended, shall not apply to any potable water or wastewater service within Area "A" which is reserved by this Agreement to CITY and FPUA.

7. The parties agree that no development order shall be issued, nor any construction commence, after this Agreement is approved by each of the parties and it becomes effective according to the terms hereof which may be inconsistent with the terms and provisions above which, among other things, establish service Area "A" to CITY and FPUA, and service Area "B" to COUNTY.

8. The parties agree that within sixty (60) days after this Agreement becomes effective, COUNTY will conduct a straw poll of the residents of the Indian River Estates area as to whether or not they desire to receive water service and if so, whether they desire to receive retail utility service from the FPUA subject to a deferred annexation policy of 15 years as approved and ratified by previous action of the CITY, or if they desire to receive retail utility service by COUNTY with bulk utility service provided by FPUA. The CITY and FPUA shall prepare the form of the straw poll ballot with COUNTY providing CITY a description of the COUNTY

DR BOOK 1917 PAGE 1823

service option as well as the no water service option. The parties agree that service to the Indian River Estates area will be provided based upon the decision of the majority vote of those residents participating in the straw poll. In the event that the residents approve retail service by FPUA, FPUA agrees to contribute \$3,500,000 toward the construction of the MSBU project.

9. The parties understand and represent that the terms of this Agreement either are, or should be consistent with requirements of their respective comprehensive plans and current potable water/wastewater master plans. Each will provide the other written confirmation of consistency, in form and substance acceptable to the others, and approved by the governing body. In the event there is a material inconsistency between the terms of this Agreement and either or both of any party's comprehensive plan and potable water/wastewater master plan, such inconsistency shall be promptly reviewed and addressed within the next one hundred eighty (180) days in the manner provided by law, based upon considerations of public health, safety and general welfare and such other factors as are properly considered in the course of normal review. Such review is not to be construed as "contract planning" as prohibited by law inasmuch as no party hereto commits itself in advance to eliminate any such inconsistency based solely upon this Agreement.

10. In the event that either party considers an amendment of its Comprehensive Plan or potable water/wastewater Master Plan which could reasonably be interpreted or understood as inconsistent with any term of this Agreement, such party shall give immediate written notice of the considered provision to the other parties as early in the process of proposed adoption as possible.

11. Upon execution of this Agreement by all governing bodies, through resolution, and when it further becomes effective, it shall be submitted for approval by the Court, as incorporated in joint motions for approval, and shall be binding upon the parties as to any subject matters covered

DR BOOK 1917 PAGE 1824

by this Agreement, which may be embodied within issues in each of the pending cases named above, numbers 02-CA-000390(PC), 03-CA-000483(OC), and 03-CA-000530(OC). To the extent this Agreement may constitute a full and final settlement of all issues pending in such case, the parties shall agree to a stipulated final judgment, and such cases will then be dismissed. Such dismissal shall be with prejudice except that it shall be without prejudice to any matter, cause, or issue not otherwise governed by this Agreement, and shall further be without prejudice to revival to any proceedings otherwise dismissed in the event this Agreement or any part thereof is invalidated hereafter through final judgment by a court of competent jurisdiction in any proceeding brought by a person or entity who is not a party to this Agreement. Should any such action be refiled after dismissal, it is agreed that no Section 95.11, or defense of collateral estoppel, or other defense based upon passage of time, nor shall any subsequent voluntary dismissal by any party thereafter be deemed an adjudication on the merits for purposes of Fla.R.Civ.P. Rule 1.420(a) by virtue of the original dismissal pursuant to this Agreement.

DR BOOK 1917 PAGE 1825

12. The parties to this Agreement agree that neither the City, the FPUA, nor the County shall take any actions, either directly or indirectly, to prevent the implementation of this Agreement or alter the terms of this Agreement, including, but not limited to filing legal actions or administrative actions.

13. This Agreement may be executed in counterparts, and shall become effective upon filing with the Clerk of the Circuit Court.

14. This Agreement has been approved by the governing political bodies of the CITY, County and FPUA, and each signatory hereto represents their authority to execute this Agreement on behalf of their respective local government.

15. Nothing in this Agreement shall be deemed to affect the rights of any person not a party to

this Agreement. This Agreement is not intended to benefit any third party who is not a signatory to this Agreement.

16. Each party to this Agreement shall bear its own costs, including attorneys' fees, incurred in connection with the legal proceedings resolved by this Agreement.

17. All parties to this Agreement are deemed to have participated in its drafting. In the event of any ambiguity in the terms of this Agreement, the parties agree that such ambiguity shall be construed without regard to which of the parties drafted the provision in question.

18. Should any part of this Agreement be found and declared by a Court of competent jurisdiction to be invalid for any reason, such invalid portion shall be severed from this Agreement and the remainder of the Agreement not otherwise declared expressly invalid shall remain in full force and effect.

19. Each party further agrees and consents that in the event of a breach or threatened breach of the provisions of this Agreement by any party, in addition to any other rights and remedies available to any party under this Agreement or otherwise, any party shall be entitled to an injunction to be issued by a court of competent jurisdiction, restricting or prohibiting the other party from committing or continuing any violation of this Agreement, and upon a proper showing as to the breach or threatened breach, irreparable harm, damage, or injury shall be presumed. The parties further agree that if either party avails itself of the procedure set forth in Florida Statute 164.1041(2)(as such statute exists or is hereafter amended), and a finding is made that an immediate danger to health, safety, or welfare of the public requires immediate legal action, or that significant legal rights will be compromised if a court proceeding does not take place immediately, the other party shall not challenge or otherwise object to the factual finding by the governing body of the other party except as to any procedural error or defect.

OR BOOK 1917 PAGE 1826

20. All notices required or permitted to be given under the terms and provisions of this Agreement by either party to the other shall be in writing and shall be sent by registered or certified mail, return receipt requested, to the parties as follows:

As to the CITY:

Fort Pierce City Manager
Fort Pierce City Hall
100 North U.S. 1
Post Office Box 1480
Fort Pierce, Florida 34954-1480

With a copy to:

Fort Pierce City Attorney
Fort Pierce City Hall
100 North U.S. 1
Post Office Box 1480
Fort Pierce, Florida 34954-1480

As to the FPUA:

Fort Pierce Utilities Authority Director
206 South 6th Street
Fort Pierce, Florida 34950

With a copy to:

Fort Pierce Utilities Authority Attorney
401-A South Indian River Drive
Fort Pierce, Florida 34950

As to the COUNTY:

St. Lucie County Administrator
2300 Virginia Avenue
Administrative Annex
Fort Pierce, Florida 34982

With a copy to:

St. Lucie County Attorney
2300 Virginia Avenue
Administrative Annex
Fort Pierce, Florida 34982

21. In the event suit is brought to resolve any dispute between the parties arising from this Agreement, each party shall bear its own attorneys' fees, court costs and litigation expenses, including all fees and costs of all experts, consultants, and other related out-of-court expenses. Each party shall bear its own costs, including attorneys fees, incurred in connection with the legal proceedings resolved by this Agreement.

22. This Agreement shall not be changed, modified or amended in any respect except by written instrument signed by the parties hereto.

DR BOOK 1917 PAGE 1827

IN WITNESS WHEREOF the parties have executed the Agreement.

ST. LUCIE COUNTY

CITY OF FORT PIERCE

Paula A. Lewis, Chairman

By: Paula A. Lewis
CHAIR BOCC
DATE: 2/10/04

By: Robert J. Benton, III, Mayor

DATE: March 1, 2004

FORT PIERCE UTILITIES AUTHORITY

APPROVED AS TO FORM AND CORRECTNESS

BY: [Signature]
Assistant City Attorney

By: Thomas K. Perona, Chairman

DATE: 3/2/04

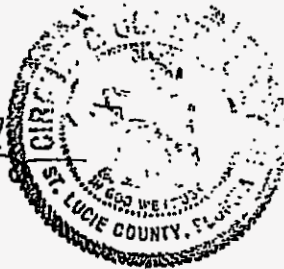
ATTEST:

[Signature]
By: Cassandra Starks, City Clerk
Date: March 1, 2004



ATTEST:

[Signature]
DEPUTY CLERK












OR BOOK 1917 PAGE 1828

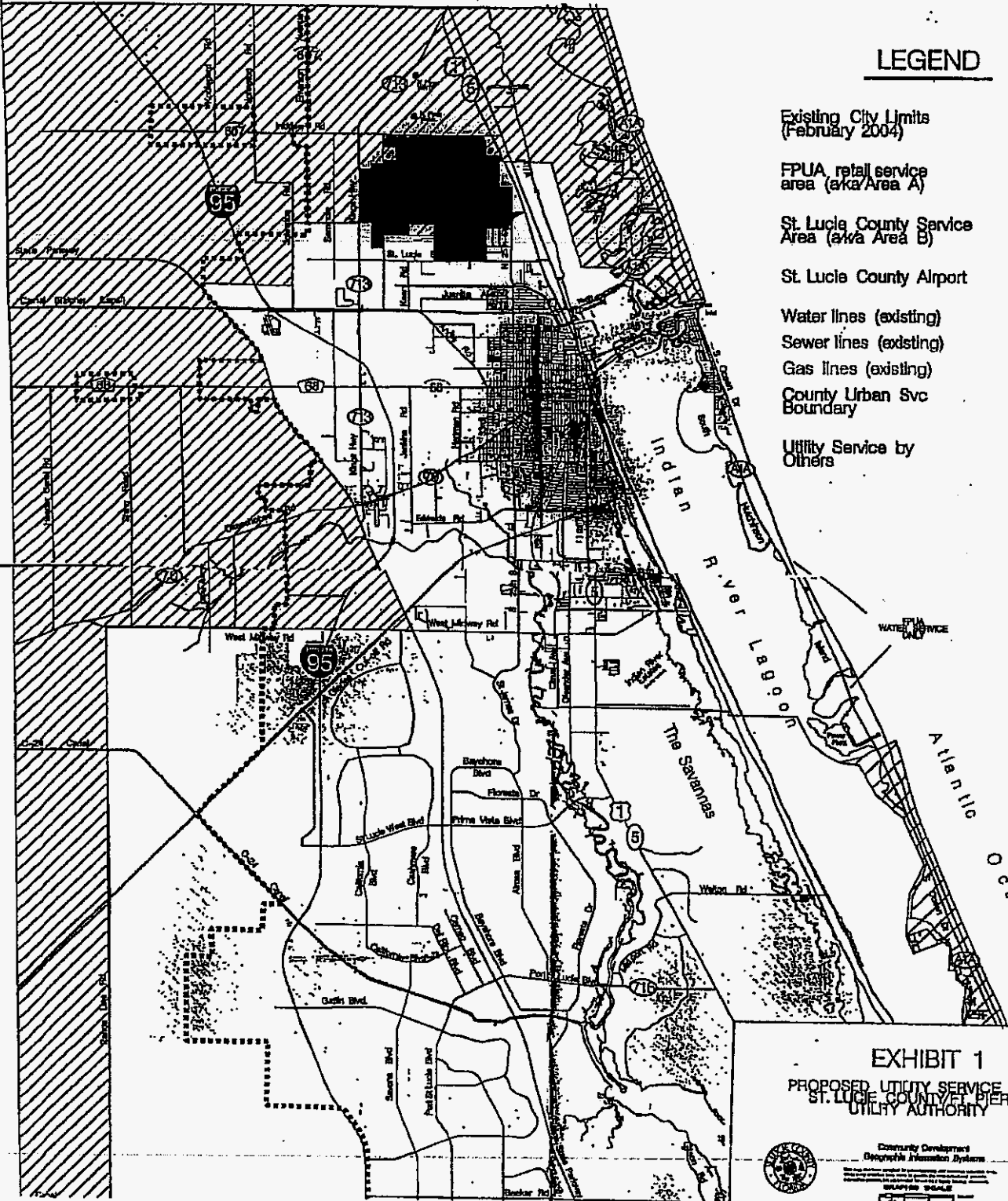
APPROVED AS TO FORM AND CORRECTNESS

[Signature]
COUNTY ATTORNEY

Indian River County

LEGEND

- Existing City Limits (February 2004) 
- FPUA retail service area (aka Area A) 
- St. Lucie County Service Area (aka Area B) 
- St. Lucie County Airport 
- Water lines (existing) 
- Sewer lines (existing) 
- Gas lines (existing) 
- County Urban Svc Boundary 
- Utility Service by Others 



DR BOOK 1917 PAGE 1829

EXHIBIT 1

PROPOSED UTILITY SERVICE AREA
ST. LUCIE COUNTY/FT. PIERCE
UTILITY AUTHORITY



Community Development
Geographic Information Systems

Scale: 1" = 1/2 Mile

N

Martin County

NOTE: DETAILED COLOR-CODED MAP (Exhibit 1) IS ATTACHED TO THE ORIGINAL INTERLOCAL AGREEMENTS ON FILE WITH THE CITY OF FORT PIERCE, ST. LUCIE COUNTY, AND THE FORT PIERCE UTILITIES AUTHORITY.

EXHIBIT 2

(INTENTIONALLY OMITTED)

OR BOOK 1917 PAGE 1830

EXHIBIT 3

Customers Serviced by FPUA within Area B

As of the effective date of the Interlocal Agreement and Bulk Service Agreement, FPUA provides service to the following customers in Area B:

St. Lucie County Landfill – Wastewater Service Only



Elie J. Boudreaux III, PE
Director of Utilities

EXHIBIT 4

**AGREEMENT BETWEEN FORT PIERCE UTILITY AUTHORITY
AND ST. LUCIE COUNTY, FLORIDA, FOR PROVISION OF
BULK WATER, WASTEWATER AND RECLAIMED WATER SERVICE**

THIS AGREEMENT is entered into between the Fort Pierce Utility Authority, a Special District organized under the Charter of the City of Fort Pierce ("FPUA"), and St. Lucie County, Florida, a political subdivision of the State of Florida ("St. Lucie County").

WITNESSETH:

WHEREAS, St. Lucie County has various needs from time to time throughout the areas that St. Lucie County's utility department provides service to purchase bulk potable water, wastewater and reclaimed water service; and

WHEREAS, FPUA has available water, wastewater and possible future reclaimed water service from time to time which it desires to make available to St. Lucie County for Purchase; and

WHEREAS, both St. Lucie County and FPUA have the legal ability and authority to enter into an agreement for the sale and purchase of water and wastewater; and

WHEREAS, the Parties find that this Agreement serves a public purpose and is to the public's benefit; and

WHEREAS, St. Lucie County and FPUA desire to enter into this Agreement to accomplish the purposes set forth above (the "Agreement").

NOW, THEREFORE, in consideration of the premises and covenants herein contained, FPUA and St. Lucie County agree as follows:

1. Whereas Statements: The foregoing statements are true and correct.
2. Agreement to Serve:

a. FPUA agrees to provide bulk potable water, wastewater and reclaimed water service ("Bulk Service") to St. Lucie County, in accordance with the terms and provisions of this Agreement. Subject to availability at the time of request, St. Lucie County may, from time to time, request FPUA to provide water, wastewater or reclaimed water service to St. Lucie County at points of connection located outside of FPUA's existing utility service area as proposed by St. Lucie County. To the extent that the service requested by St. Lucie County (a "Service Request") is available at the time of request and interconnection with the St. Lucie County utility system at the proposed points of connection is economically feasible, as determined in the reasonable discretion of FPUA, and provided that the provisions of Section 3 below are complied with, including a determination that utility service within the city limits of Fort Pierce or FPUA service area will not be impaired or detrimentally affected, FPUA shall provide the requested service. Provided each Service Request complies with the requirements of this Agreement, the respective staffs of St. Lucie County and FPUA are authorized to implement the terms of this Agreement with respect to such Service Request without further action of the St. Lucie County Commission or FPUA governing board. There is no annexation requirement

DR BOOK 1917 PAGE 1832

as a condition of provision of service by FPUA to St. Lucie County pursuant to the terms of this Agreement.

b. As required by all applicable FPUA resolutions addressing FPUA's Industrial Pretreatment Program and City of Fort Pierce Sewer Use Ordinance No. UA 98-5 or succeeding revised Sewer Use Ordinance, any industrial users that connect to the St. Lucie County utility system served by FPUA Bulk Wastewater Service will be subject to FPUA's industrial pretreatment program. This program is governed by Administrative Code 62-625 and administered by the State of Florida Department of Environmental Protection, Tallahassee, Florida. All permitting and operational costs, including surcharges/excess strength fees as defined and applicable in the FPUA resolutions, will be collected by St. Lucie County from such industrial users and remitted to FPUA with the next month's billing of Bulk Service Rates. The specific responsibilities of FPUA and St. Lucie County with regard to implementing and enforcing an Industrial Pretreatment Program that meets all state and federal requirements will be delineated in a separate Interlocal Agreement dealing only with the Industrial Pretreatment program in the bulk wastewater service areas.

3. Method of Extension and Delivery of Service: The provisions for the construction, installation and operation of the facilities of FPUA up to the point(s) of connection and the facilities of St. Lucie County past the point(s) of connection will be determined jointly by FPUA and St. Lucie County. St. Lucie County shall share equitably with FPUA in the capital cost associated with the extension of new mains or oversizing of mains necessary to bring adequate quantities of water to the bulk metering point(s) of connection in accordance with the then current FPUA policies for extending water and sewer service to new customers. St. Lucie County shall bear the initial capital cost of the master meter(s), backflow prevention devices, and pressure-sustaining valves required for service to St. Lucie County and shall transfer ownership of such master meter(s) and other backflow prevention or pressure sustaining devices to FPUA, which shall, after transfer, assume the obligation to operate, maintain and replace such master meter(s) and other devices. All master meters and backflow prevention devices shall be tested annually by FPUA, with the cost of such testing to be paid by St. Lucie County. FPUA shall provide service to St. Lucie County at the points of connection in accordance with then existing regulations and standards not in conflict with the terms of this Agreement or the Charter of the City of Fort Pierce.

4. Rates and Charges: St. Lucie County agrees to pay the following bulk rates for the services requested. FPUA shall charge St. Lucie County for bulk water service at a rate of \$1.90 per thousand gallons (the "Bulk Water Rate"), for bulk wastewater service at a rate of \$4.60 per thousand gallons (the "Bulk Wastewater Rate") and a rate for bulk reclaimed water service (including Capital Improvement Charges, if any) as shall be agreed upon between the parties at such time as FPUA institutes a reclaimed water service program (the "Bulk Reclaimed Water Rate"), all as measured at master meter(s) for each service (collectively, the "Bulk Service Rates"). Bulk wastewater volumes for billing shall be determined from bulk water meter readings and retail irrigation-only meter readings within the bulk water service area, as described in Paragraph 6. The Bulk Service Rates may be revised from time to time by FPUA, at such time and in the same percentage as FPUA revises its retail residential customer class commodity charges for the lowest consumption level. There shall be no surcharge imposed on the Bulk Rates charged to St. Lucie County. Retail water and wastewater rates established by St. Lucie County for the bulk water service areas shall be structured such that they will not be lower than the retail water and wastewater rates for FPUA customers within the City of Fort Pierce.

5 Payments of Water/Wastewater Capital Improvement Charges:

a. Provisions with respect to St. Lucie County's payment of Water and Wastewater Capital Improvement Charges are as follows: Water Capital Improvement Charges: \$1,378.00 per

DR BOOK 1917 PAGE 1833

equivalent residential connection ("ERC"). A Water ERC is based upon 300 gallons per day; Wastewater Capital Improvement Charges: \$1,222.00 per ERC. A Wastewater ERC is based upon 240 gallons per day. Separate Capital Improvement Charges will be assessed for irrigation-only water use, in accordance with standard FPUA policies. All Capital Improvement Charges may be revised from time to time by FPUA, at such time and in the same percentage as the FPUA revises its retail residential customer class Capital Improvement Charges. There shall be no other capital or impact charges to St. Lucie County for Bulk Service.

b. St. Lucie County will collect the Water Capital Improvement Charges and Wastewater Capital Improvement Charges and remit the same to FPUA upon the earlier of the initial provision of utility service by St. Lucie County to a customer or the receipt of payment by St. Lucie County of such Capital Improvement Charges pursuant to a developers agreement reserving utility capacity with St. Lucie County. St. Lucie County and FPUA shall resolve in good faith any issues regarding whether a particular customer or developer agreement is being provided utility service pursuant to this Bulk Service Agreement. St. Lucie County and FPUA shall perform a true-up of Capital Improvement Charge payments as of October 1 of each year during the term of this Agreement based upon the average daily flows for the prior 12 months, as measured at the master meter(s), divided by the agreed upon Water ERC and Wastewater ERC set forth above ("True Up ERC's). In the event that the True Up ERC's exceed the number of ERC's for which St. Lucie County has made payment to FPUA, then St. Lucie County shall pay the difference between the True Up ERC's and the paid ERC's. If bulk average daily flows indicate a lower demand than ERC projections, there shall be no downward adjustment of ERC's or Capital Improvement Charges. The bulk wastewater service areas will coincide with bulk water service areas.

c. It is the intention of FPUA to utilize the existing South Hutchinson Island (SHI) Water Reclamation Facility (WRF) to it's fullest capacity. ERC's for wastewater treatment will be issued to FPUA and St. Lucie County bulk wastewater customers until 100% of the SHI WRF capacity is reached. St. Lucie County agrees that Capital Improvement Charges collected for bulk wastewater ERC's connected to the SHI WRF are reimbursements to FPUA for sunk cost of treatment and transmission facilities necessary to transport and treat the wastewater. Both parties understand that when certain capacity limits are reached, State regulations require certain steps to be taken to start the process for a new plant to be sited, designed and constructed. Both parties agree that in the event the SHI WRF is required to be taken out of service by a regulatory agency or by any statute, rule, regulation or court order, it will be the joint responsibility of St. Lucie County and FPUA to plan for replacement capacity at another site. FPUA and St. Lucie County will plan for and construct the future mainland wastewater treatment plant as partners, with each party paying it's share of costs on an allocated capacity basis, rather than a capital improvement charge basis.

DR BOOK 1917 PAGE 1834

6. Billing: FPUA shall bill St. Lucie County each month for Bulk Service, subject to the provisions of the FPUA rules and regulations, as amended from time to time. Bulk wastewater billings shall be based upon bulk water meter readings, less the aggregate sum of all irrigation-only water meter readings within the County's bulk water service area. FPUA shall separate each month's bill by points of connection between FPUA and St. Lucie County. Bills are due when rendered and will be considered late if not paid within 15 days. Notwithstanding provisions in the FPUA Code to the contrary, FPUA shall not discontinue Bulk Service to St. Lucie County for non-payment unless it has provided St. Lucie County 30 days written notice of FPUA's intention to discontinue service for non-payment by St. Lucie County with a right to cure. In the event of a dispute over the accuracy of a bill, St. Lucie County shall pay the non-disputed portion of the bill to FPUA and provide FPUA written notice detailing the reason for the disputed portion of the bill. FPUA shall not discontinue service for non-payment of the disputed portion of the bill. Disputes over billing accuracy that are not amicably resolved between the parties within 20 days of written notice to FPUA from St. Lucie County shall be resolved pursuant to the Dispute Resolution provisions set forth in Section 10 below.

7. North Hutchinson Island Service Agreement: Upon execution of this Agreement, the current North Hutchinson Island Bulk Utility Service Agreement between the County and FPUA ("NHI Bulk Service Agreement") shall be automatically terminated, and the Bulk Service Agreement shall take immediate effect for service to North Hutchinson Island, subject to the following bulk water rate transition period: (1) for a period of two years from the date of this Agreement, the bulk water rate shall remain at the current rate charged by FPUA to the County under the NHI Bulk Service Agreement ("Current Rate"); (2) commencing at the end of the two year period, and on the same date for the next three years, the bulk water rate will be reduced by one quarter of the difference between the Current Rate and the bulk water rate for the same time frame as calculated under the Bulk Service Agreement (including any applicable incremental increases); (3) commencing at the end of fifth year, the bulk water rate shall be the same as the then current bulk water rate under the Bulk Service Agreement (including any applicable incremental increases). St. Lucie County shall pay no Capital Improvement Charges or impact fees for development that is existing (or fully permitted by St. Lucie County and FDEP) at the time of this Agreement and for a period of two years from the date of this Agreement. St. Lucie County shall pay capacity fees to FPUA for all development on North Hutchinson Island permitted after said two-year period.

8. Airport Properties Service Agreement: Upon execution of this Agreement, the existing water service agreements between FPUA and St. Lucie County for service to St. Lucie County's Airport Properties shall be automatically terminated and replaced by this Agreement. The parties agree that such termination shall be without prejudice to the separate annexation agreement which shall otherwise remain in full force and effect, and no party shall be deemed to have waived any right or entitlement under the annexation agreement or any objection to the annexation agreement by entering into this Agreement. The rates for bulk service as set forth in this Agreement shall commence with the next billing cycle 30 day after the execution of this Agreement ("Changeover Date"). The rates for bulk service in the existing bulk water service agreement shall apply until the Changeover date. St. Lucie County shall pay no Capital Improvement Charges or impact fees for the existing bulk service provided at the Changeover Date. St. Lucie County shall pay capacity fees to FPUA for all development on St. Lucie County's Airport Properties permitted after the Changeover Date.

9. Term: The term of this Agreement shall be 30 years, and may be extended by the parties for 2 additional terms of 30 years which extension must be agreed upon on or before the 15th year of the initial term or an extension term, as applicable. Either party may terminate this agreement upon providing the other party 15 years written notice of termination; provided, however, that in the event the remaining term at the time of notice of termination is less than 15 years, the term of this Agreement shall be extended so that the Agreement will terminate in not less than 15 years.

10. Force Majeure: In the event that performance of this Agreement by either party to this Agreement is prevented or interrupted beyond the control of either party, including, but not limited to, act of God or the public enemy, war, national emergency, allocation or of other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, radical or civil rights disorder or demonstration, strike embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe, failure or breakdown of pumping transmission or other facilities, governmental rules or acts or orders or restrictions or regulations of requirements, acts or action of any government or public or governmental authority or commission or board or agency or agent or official officer, the enactment of any statute or ordinance or resolution or regulation or rule or ruling or order, in order to decree or judgment or restraining order or injunction of any court, said party shall not be liable for such non-performance.

DR BOOK 1917 PAGE 1B35

11. Laws of Florida: This Agreement shall be governed by the laws of the State of Florida and it shall become effective immediately upon execution by both parties hereto, subject to any approvals which must be obtained from governmental authority, if applicable, and subject to all conditions precedent for the rendering of service as set forth in this Agreement.

12. Dispute Resolution: In the event either party to this Agreement is required to enforce this Agreement the following procedure shall be followed:

12.1 Prior to initiating any litigation between the parties, the initiating party shall provide a written notice to the non-initiating party of its intent to bring litigation together with a reasonably detailed description of the nature of the claim. Within ten (10) days of receipt of such notice, the parties shall schedule a pre-litigation mediation proceeding which meeting shall take place within twenty (20) days or such other time as the parties may agree to attempt to mediate an amicable resolution of the dispute. The parties shall cooperate with each other to select a mutually agreeable mediator. The cost of mediation shall be borne equally by each party. Mediation shall take place at the FPUA administrative complex.

12.2 Any controversy or claim arising out of or relating to this Agreement, or any breach thereof, that is not resolved through the mediation process specified in subsection 12.1, shall be resolved by binding arbitration, before a three member panel, in accordance with the rules then obtaining of the American Arbitration Association. Each party shall select one arbitrator and the two arbitrators so selected shall select a third arbitrator. The third arbitrator must have experience in the water and wastewater utility operations and management business. Arbitration shall take place at the FPUA's administrative complex. Any judgment upon the award rendered may be entered in any court having jurisdiction. The cost of arbitration shall be borne equally by each party. Each party shall bear its own attorneys fees and costs arising out of any mediation and arbitration.

MISCELLANEOUS PROVISIONS

13. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine, feminine and neuter genders shall each include the others.

14. Exhibits mentioned in this Agreement are hereby incorporated herein by reference and made a part hereof as fully set forth herein.

15. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

16. No agreement shall be effective to add to, change, modify, waive or discharge this Agreement, in whole or in part, unless such agreement is in writing and signed by the parties hereto. In the event that any non-material provision of this Agreement is determined to be of no force and effect by a court of law, such provision shall be severed from this Agreement and the remaining Agreement shall continue in full force and effect.

17. Whenever approvals of any nature are required by either party to this Agreement, it is agreed that same shall not be unreasonably withheld or delayed.

18. Within sixty days of execution of this Agreement, St. Lucie County shall provide FPUA with a 5-year projection of bulk water and wastewater demands at all connection points. St. Lucie County shall update the 5-year projection annually thereafter during the term of this Agreement.

DR BOOK 1917 PAGE 1836

At least annually, FPUA shall also provide the City of Fort Pierce a written report analyzing the extension of facilities, services and capacities required of it under this Agreement.

19. In the event that during the term of this Agreement, St. Lucie County elects to construct water or wastewater treatment capacity for new development not already served under this Agreement, then St. Lucie County shall provide FPUA with 5 years prior notice of such construction. Such construction may not replace existing demand on FPUA's bulk supply (unless such notice is accompanied by a notice of termination of this Agreement, in which event the constructed capacity may not be used to replace existing demand on FPUA's bulk supply until the effective date of the termination of this Agreement).

20. During the term of this Agreement, St. Lucie County shall not reduce the number of ERC's of water and wastewater service utilized under this Agreement and furnish those St. Lucie County Customers with water and wastewater service from another source, including one owned and operated by St. Lucie County (provided the County may continue to provide water and wastewater service from its existing water and wastewater facilities until the current capacity of those existing systems is fully utilized). This requirement shall allow, however, for normal fluctuations in water and wastewater demand.

21. During the term of this Agreement, FPUA shall be the exclusive bulk service provider to St. Lucie County within Area B, subject to the following conditions: (1) to the extent that FPUA denies a Service Request from St. Lucie County, St. Lucie County may meet such Service Request from another source, including one owned and operated by St. Lucie County; (2) to the extent that St. Lucie County currently receives bulk utility service from the City of Port St. Lucie for the Okeechobee Road corridor, St. Lucie County may continue such bulk service but only to the extent of capacity reserved as of the date of this Agreement as set forth on Attachment A to this Agreement; and (3) to the extent that St. Lucie County secures emergency interconnections with other utility systems and utilizes such emergency interconnections for temporary or emergency service needs.

22. St. Lucie County's retail customers in the bulk water service areas will be subject to the same water use restrictions as may be imposed on FPUA's retail customers under emergency conditions.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature:

FORT PIERCE UTILITIES AUTHORITY

By: [Signature]
Chairman

OR BOOK 1917 PAGE 1837

ATTEST:

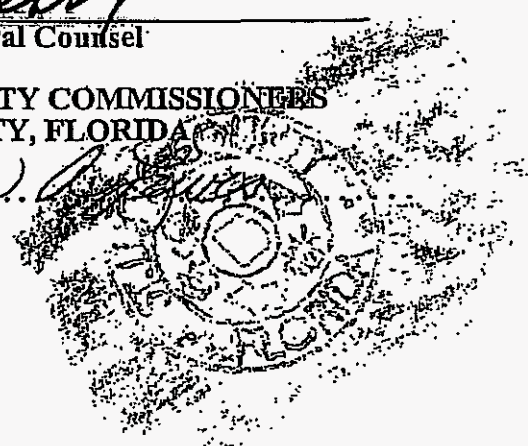
[Signature]
Secretary

APPROVED AS TO FORM AND CORRECTNESS:

By: [Signature]
FPUA General Counsel

**BOARD OF COUNTY COMMISSIONERS
ST. LUCIE COUNTY, FLORIDA**

By: [Signature]
Chairman



ATTEST:



APPROVED AS TO FORM AND CORRECTNESS:

[Handwritten Signature]
Deputy Clerk

[Handwritten Signature]
St. Lucie County Attorney

DR BOOK 1917 PAGE 1838