WATER AND SEWER AGREEMENT

THIS AGREEMENT, made and entered into this 10th day of May, 2005, by and between the CITY OF TALLAHASSEE, a Florida municipal corporation (hereinafter referred to as "City"), and LEON COUNTY, a political subdivision of the State of Florida (hereinafter referred to as "County").

WITNESSETH

WHEREAS, the County has determined that it will be the sole local governmental entity to authorize the planning, construction and operation of water systems and sewage disposal systems within the unincorporated area of the County and will provide such services when it deems it appropriate; and

WHEREAS, the County has specifically determined that it is in the best interest of the citizens of the County if the City is granted an exclusive water and sewer franchise to serve all of that part of the County that is not currently served by other water and sewer providers, with conditions thereon; and

WHEREAS, the City, by accepting an exclusive water and sewer franchise pursuant to this Agreement, does not waive or relinquish any rights to which it is entitled under Florida Statutes, Chapter 180; and

WHEREAS, the County recognizes that, until such time as the City has its countywide system in place, there are areas of the County that cannot reasonably, efficiently and economically be served by the City and that other water and sewer providers may be able to provide the necessary service and, accordingly, upon notice from the City that the City cannot serve the area, the County will revoke the City's exclusive franchise for any specific geographic area and grant a franchise to another water and/or sewer provider so that the needs of the citizens of the County will be met.

NOW, THEREFORE, in consideration of the following mutual promises and covenants, and other good and valuable consideration the sufficiency of which is being acknowledged, the City and County hereby agree as follows:

Section 1. Term. The Term of this Agreement shall commence upon full execution hereof and shall continue until September 30, 2030, unless earlier terminated pursuant to the terms of this Agreement. This Agreement shall be extended automatically for an unlimited number of additional five (5) year periods unless written notice is provided by either party at least twenty-four (24) months prior to the end of the original or any extended agreement period.

Section 2. Franchise.

a. The County does hereby grant unto the City, and the City hereby accepts, an exclusive franchise to provide water service to all properties located within the County that are not located within an existing or applied for water franchise area at the time this Agreement becomes effective. Exhibit A identifies all existing water and sewer utility franchise areas at the

time of execution of this Agreement and is attached hereto and incorporated as if fully set forth herein. Further, the County does hereby grant unto the City, and the City does hereby accept, an exclusive franchise to provide sewer service to all properties located within the County that are not located within an existing or applied for sewer franchise at the time this Agreement becomes effective. Both the sewer and water service franchises granted herein shall be subject to and contingent upon the terms and conditions contained in this Agreement.

b. Portions of the sewer franchise granted herein are subject to the Tallahassee-Leon County Comprehensive Plan restrictions prohibiting the installation of municipal sewers. The City shall not be obligated to provide service in these areas until such time as amendments are made to the Tallahassee-Leon County Comprehensive Plan, which shall have the effect of partially or completely removing those restrictions.

Section 3. Target Water and Sewer Service Areas.

- a. The City and County agree that, within the franchise area granted herein there are specific geographic areas, the Woodville Community, Centerville Trace Subdivision and Harbinwood Subdivisions, hereinafter referred to as Target Areas. It is agreed that these Target Areas are in need of water and/or sewer service due to the lack of proper utilities or the failure of utilities on which they were developed and that these Target Areas will be prioritized for the provision of water and/or sewer services.
- b. Target Areas have been identified by the City and County and are attached hereto and incorporated as if fully set forth herein as Exhibit A. Target Areas will be updated annually by the County no later than December 1 of the preceding fiscal year prior to anticipated action by the City.
- c. The City and County agree that, at the time that a Target Area is to be provided with water and/or sewer service by others, the City and County will enter into a Target Area Implementation Agreement. Said Implementation Agreement will specify the rights and responsibilities of each party in the provision of the utility service to the Target Area and the terms and conditions of service. The County agrees that the City is not obligated to participate in the development and construction of the water distribution or sewer collection system within the Target Area. The City agrees to provide some or all of the conveyance to or from the Target Area subject to the Implementation Agreement.
- d. The City agrees that it will maintain or plan for treatment and disposal capacity to serve the identified Target Areas.

Section 4. Rights and responsibilities of City.

a. The City is responsible for providing water and/or sewer service to all properties located within the franchise area except as provided in this Agreement. City water and/or sewer service to existing developed properties within the franchise area shall be determined on the basis of a site specific evaluation by the City that includes cost feasibility, availability of easements, and other pertinent factors in a manner similar to that used within the City limits.

- b. All City policies, standards, procedures, regulations, rates, fees, and charges for water and sewer services shall be the same, inside and outside City 's corporate limits, with the exception of the rebate policy, and as provided herein. City shall have the exclusive right to manage and operate its water and sewer system in the unincorporated area except as limited by this Agreement.
- c. The City may assess a surcharge of up to 50% on water and/or sewer services in accordance with Florida Statutes commencing no sooner than October 1, 2005. Upon termination of the Parks and Recreation Agreement entered into by and between the parties on May 10, 2005 the provisions of this Section 4. paragraph c. shall expire.
- d. The City shall not require annexation into the City as a condition for providing water and/or sewer service to any property in the franchise area.
- e. The City's rights to require connection of existing properties shall be as prescribed in applicable statutes and codes. This agreement does not add to or detract from those rights.

Section 5. Annual Review of Long Range Master Plan.

- a. The City shall, within 18 months of the effective date of this agreement, develop and maintain a long range master plan for the provision of water and sewer service within the franchise area granted herein. Said master plans shall be approved by the County and shall be updated and submitted for County approval every five years.
- b. The County shall have the right to provide input to the City's budget process concerning priorities for water and sewer projects in the County. Such input shall be provided no later than December 1 of the preceding fiscal year. The City shall submit no later than June 1 the proposed City five-year capital improvement plan (CIP) for water and sewer projects in the County for annual review and approval by the County. City shall submit no later than October 20 to the County the final approved City CIP for water and sewer projects in the County. The CIP shall be based upon the approved long range master plans described above.

Section 6. Determination of City Sewer Service Availability for New Development

- a. City sewer service shall be considered available to new developments which require site and development plan approval or issuance of a development order if it is capable of being connected to by the plumbing of a development, establishment or residence which has adequate permitted capacity to accept the sewage to be generated by the development, establishment or residence; and
 - 1. All references to lots in this section are to developments having an average lot size of 2 acres in area or less.
 - 2. For a new development on an existing parcel which has an estimated sewage flow of 1,000 gallons per day or less, a gravity sewer line to maintain gravity

flow from the property's drain to the sewer line, or a low pressure or vacuum sewage collection line in those areas approved for low pressure or vacuum sewage collection exists in a public easement or right-of-way within 100 feet of the property line of the lot, residence, or establishment.

- 3. For a new development on an existing parcel which has an estimated sewage flow exceeding 1,000 gallons per day, a point of connection to a sewer line exists in a public easement or right-of-way that abuts the property of the establishment or is within 400 feet of the property line of the establishment as accessed via existing rights-of-way or easements.
- 4. For residential subdivisions with 10 lots or less, and for commercial subdivisions with less than 5 lots, a point of connection to a sewer line exists within 400 feet of the development as measured and accessed via existing easements or rights-of-way.
- 5. For residential subdivisions with 11-20 lots, a point of connection to a sewer main exists within 800 feet of the development as measured and accessed via existing easements and rights-of-way.
- 6. For residential subdivisions with greater than 20 lots and for commercial subdivisions with 5 or more lots, a point of connection to a sewer main exists within 1200 feet of the development as measured and accessed via existing easements and rights-of-way.
- b. The determination of availability of sewer for any new development shall be made based upon existing conditions at the time of the first Site Development Plan review meeting, as defined under Chapter 10, Leon County Code of Laws, except that the City reserves the right to extend its sewer system at its cost to make sewer available in accordance with the availability criteria set forth herein to existing and developing parcels within six months after the issuance of a site plan approval or development order as may be applicable to the new development.
- c. When the City sewer system is available within the respective distances specified above, the property owner will be responsible for extending to the sewer main the remaining distance to their property and also for installing any on-site sewer collection system.
- d. If the City Manager and the County Administrator or their designees agree that the connection of a development to City sewer is not economically feasible, regardless of the criteria defined herein, said service shall be determined to be not available.
- e. The City reserves the right to develop agreements with property owners and developers to make service available within time frames and at locations that vary from these criteria subject to mutual agreement between City and developer.

Section 7. Determination of City Water Service Availability for New Development

- a. City water service shall be considered available to new developments which require site and development plan approval or issuance of a development order if it is capable of being connected to the plumbing of a development, establishment or residence and has adequate permitted capacity and pressure to supply water to the development, establishment or residence; and
 - 1. All references to lots in this section are to developments having an average lot size of 2 acres in area or less.
 - 2. For a new development on an existing parcel a water main exists in a public easement or right-of-way within 200 feet of the property line of the lot, residence, or establishment.
 - 3. For residential subdivisions with 10 lots or less, and for commercial subdivisions with less than 5 lots, a point of connection to a water line exists within 400 feet of the development as measured and accessed via existing easements or rights-of-way.
 - 4. For residential subdivisions with 11-20 lots, a point of connection to a water main exists within 800 feet of the development as measured and accessed via existing easements and rights-of-way.
 - 5. For residential subdivisions with 20 or more lots, for commercial subdivisions with 5 lots or more, a water system exists within 1200 feet of the development as measured and accessed via existing easements or rights-of-way.
- b. The determination of availability of water for any new development shall be made based upon existing conditions at the time of the first Site Development Plan review meeting, as defined under Chapter 10, Leon County Code of Laws, except that the City reserves the right to extend its water system at its cost to make water available in accordance with the availability criteria set forth herein to existing and developing parcels within six months after the issuance of a site plan approval or development order as may be applicable to the new development.
- c. When the City water system is available within the respective distances specified above, the property owner will be responsible for extending the water main the remaining distance to their property and also for installing any on-site water distribution system.
- d. If the City Manager and the County Administrator or their designees agree that the connection of a development to City water is not economically feasible, regardless of the criteria defined herein, said service shall be determined to be not available.

e. The City reserves the right to develop agreements with property owners and developers to make service available within time frames and at locations that vary from these criteria subject to mutual agreement between City and developer.

Section 8. When City Service is not Available for New Development

- a. City shall provide written notification to the County and the property owner within 14 days after the first formal review of the proposed site plan. Said notification shall advise whether service is or is not available, and shall describe the conditions which qualify it as being available. Upon notification that service is not available, property owner shall be allowed to install potable water wells and/or septic sewage systems in accordance with applicable County Codes of Law, or to seek services from another water and/or sewer service provider.
- b. If City Service is not available as per notification received by the County described in Paragraph a above, County may, in accordance with Leon County Code and the provisions of this agreement, revoke the franchise for the geographic area in question and grant water and/or sewer franchises to other providers.

Section 9. Standards for Construction and Operation.

- a. The City water and sewer construction standards, as they exist or may be modified, shall apply to all City water and sewer franchise area.
- b. Standards for the design and construction of water and sewer systems by providers other than City shall be at least equal to those of City. Such standards for water systems shall include minimum requirements for water main sizes, fire hydrant distribution, and flow capacities to provide adequate fire protection.
- c. State and Federal regulations relative to the construction and operation of water and sewer facilities shall be adhered to by all utility providers in Leon County.
- d. County standards and permit procedures must be adhered to by City and all franchise holders for any water and/or sewer construction that impacts County maintained facilities such as roads or drainage facilities.
- Section 10. Termination. If either Party fails to comply with any of the terms or conditions of this Agreement or defaults in any of its obligations under this Agreement and shall fail, within ninety (90) calendar days after written notice from the other Party, to correct such default or noncompliance, the non-defaulting Party may, at its option, forthwith terminate this Agreement after Section 11 provisions have been complied with. Upon termination, geographic areas physically served shall be converted into specific water and/or sewer franchises.

Section 11. Dispute Resolution.

a. The Parties shall attempt to resolve any disputes that arise under this Agreement in good faith and in accordance with this Section. The provisions of the "Florida Governmental

Conflict Resolution Act" shall not apply to disputes under this Agreement, as an alternative dispute resolution process, is hereby encompassed within Section 11. The aggrieved Party shall give written notice to the other Party, setting forth the nature of the dispute, date of occurrence (if known), and proposed resolution, hereinafter referred to as the "Dispute Notice".

- b. The appropriate City and County department heads shall meet at the earliest opportunity, but in any event within 10 days from the date the Dispute Notice is received, to discuss and resolve the dispute. If the dispute is resolved to the mutual satisfaction of both, the department heads shall report their decision, in writing, to the City Manager and the County Administrator.
- c. If the department heads are unable to reconcile the dispute, they shall report their impasse to the City Manager and the County Administrator who shall then communicate at their earliest opportunity regarding the dispute, but in any event within 20 days following receipt of the Dispute Notice, to attempt to reconcile the dispute.
- d. If a dispute is not resolved by the foregoing steps within thirty (30) days after receipt of the Dispute Notice, unless such time is extended by mutual agreement of the Parties, then either Party may require the dispute to be submitted to mediation by delivering written notice thereof (the "Mediation Notice") to the other Party. The mediator shall meet the qualifications set forth in Rule 10.100(c), Florida Rules for Mediators, and shall be selected by the Parties within 10 days following receipt of the Mediation Notice. If agreement on a mediator cannot be reached in that 10-day period, then either Party can request that a mediator be selected by an independent conflict resolution organization, and such selection shall be binding on the Parties. The costs of the mediator shall be borne equally by the Parties.
- e. If an amicable resolution of a dispute has not been reached within 60 calendar days following selection of the mediator, or by such later date as may be mutually agreed upon by the Parties, then such dispute may be referred to binding arbitration by either Party. Such arbitration shall be conducted in accordance with the Florida Arbitration Code (Chapter 682, Florida Statutes).
- f. Such arbitration shall be initiated by delivery, from one Party (the "Claimant") to the other (the "Respondent"), of a written demand therefor containing a statement of the nature of the dispute and the amount, if any, involved. The Respondent, within ten (10) days following its receipt of such demand, shall deliver an answering statement to the Claimant. After the delivery of such statements, either Party may make new or different claims by providing the other with written notice thereof specifying the nature of such claims and the amount, if any, involved.
- g. Within ten (10) days following the delivery of such demand, each Party shall select an arbitrator and shall deliver written notice of that selection to the other. If either Party fails to select an arbitrator within such time, the other Party may make application to the court for such appointment in accordance with the Florida Arbitration Code. Within ten (10) days following delivery of the last of such written notices, the two arbitrators so selected shall confer

and shall select a third arbitrator. Each of the arbitrators so appointed shall have experience in local government and/or utility issues.

The arbitration hearing shall be commenced in Leon County, Florida within sixty (60) days following selection of the third arbitrator. Except as may be specifically provided herein, the arbitration shall be conducted in accordance with Rules R-23 – R-48, of the Commercial Arbitration Rules of the American Arbitration Association.

Section 12. Indemnification

To the extent permitted by law and subject to the limitations, conditions, and requirements of Section 768.28, Florida Statutes, which the Parties do not waive, each Party agrees to indemnify, defend and hold harmless the other Party, their officials, officers, and employees, from and against all liabilities, damages, costs and expenses, resulting from or arising out of any acts or omissions by the indemnifying Party, or its officials, officers, or employees, relating in any way to this Agreement.

Section 13. General Provisions.

- a. <u>Governing Law and Venue</u>. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any action to enforce any of the provisions of this Agreement must be maintained in Tallahassee, Leon County, Florida.
- b. <u>Waiver</u>. Failure to insist upon strict compliance with any term, covenant or condition of this Agreement shall not be deemed a waiver of it. No waiver or relinquishment of a right or power under this Agreement shall be deemed a waiver of that right or power at any other time.
- c. <u>Modification</u>. This Agreement shall not be extended, changed or modified, except in writing duly executed by the Parties hereto.
- d. <u>Binding Effect</u>. This Agreement shall be binding upon the successors and, subject to below, assigns of the Parties hereto.
- e. <u>Assignment</u>. Because of the unique nature of the relationship between the Parties and the terms of this Agreement, neither Party hereto shall have the right to assign this Agreement or any of its rights or responsibilities hereunder to any third Party without the express written consent of the other Party to this Agreement, which consent shall not unreasonably be withheld.
- f. <u>Entire Agreement</u>. This Agreement constitutes the entire agreement between the Parties with respect to the matters contained herein, and all prior agreements or arrangements between them with respect to such matters are superceded by this Agreement.
- g. <u>Headings</u>. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

- h. <u>Ambiguity</u>. This Agreement has been negotiated by the Parties with the advice of counsel and, in the event of an ambiguity herein, such ambiguity shall not be construed against any Party as the author hereof.
- i. <u>Public Bodies.</u> It is expressly understood between the Parties that the City is a duly incorporated municipal corporation of the State of Florida and that the County is a political subdivision of the State of Florida. Nothing contained herein shall be construed as a waiver or relinquishment by either of the Parties to claim such exemptions, privileges or immunities as may be provided to that Party by law.
- j. <u>Force Majeure</u>. A Party shall be excused from performance of an obligation under this Agreement to the extent, and only to the extent, that such performance is affected by a "Force Majeure Event" which term shall mean any cause beyond the reasonable control of the Party affected, except where such Party could have reasonably foreseen and reasonably avoided the occurrence, which materially and adversely affects the performance by such Party of its obligation under this Agreement. Such events shall include, but not be limited to, an act of God, disturbance, hostility, war, or revolution; strike or lockout; epidemic; accident; fire; storm, flood, or other unusually severe weather or act of nature; or any requirements of law.
- k. <u>Cost(s)</u> and Attorney Fees. In the event of litigation between the Parties to construe or enforce the terms of this Agreement or otherwise arising out of this Agreement, the prevailing Party in such litigation shall be entitled to recover from the other Party its reasonable costs and attorneys fees incurred in maintaining or defending subject litigation. The term litigation shall include appellate proceedings.
- 1. <u>Severability</u>. It is intended that each Section of this Agreement shall be viewed as separate and divisible, and in the event that any Section, or Party thereof, shall be held to be invalid, the remaining Sections and parts shall continue to be in full force and effect.
- m. <u>Subject to Appropriation</u>. All payment obligations of the Parties as set forth herein shall be subject to appropriation of funding therefore by the applicable legislative bodies; however, failure to appropriate funding adequate to meet such payment obligations shall be dealt with as a dispute under this Agreement.
- n. Exceptions to Agreement. All provisions of Chapter 18, of the Leon County Code of Laws, not in conflict with the provisions herein, shall remain in full force and effect. All provisions of the City of Tallahassee Code, particularly Chapter 21 not in conflict with the provisions herein, shall remain in full force and effect. The Water and Sewer Agreement entered into by and between Leon County and the City February 11, 1993 shall be cancelled as of the effective date of this agreement and shall have no effect upon the terms and conditions of this Agreement, nor the Franchise granted herein.

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized representative, have executed this Water and Sewer Agreement as of the date first written above.

LEON COUNTY, FLORIDA

CLIFF THABLL, Chairman

of the Board of County Commissioners

ATTESTED TO:

By: ///// DOWNER OF

Leon County, Florida

APPROVED AS 700 FORM:

HERBERT W.A. THIELE, Esq.

COUNTY ATTORNEY

CITY OF TALLAHASSEA

FLORIDA

JOHN R. MARKS, III, Mayor

of the City of Tallahassee

ATTESTED TO:

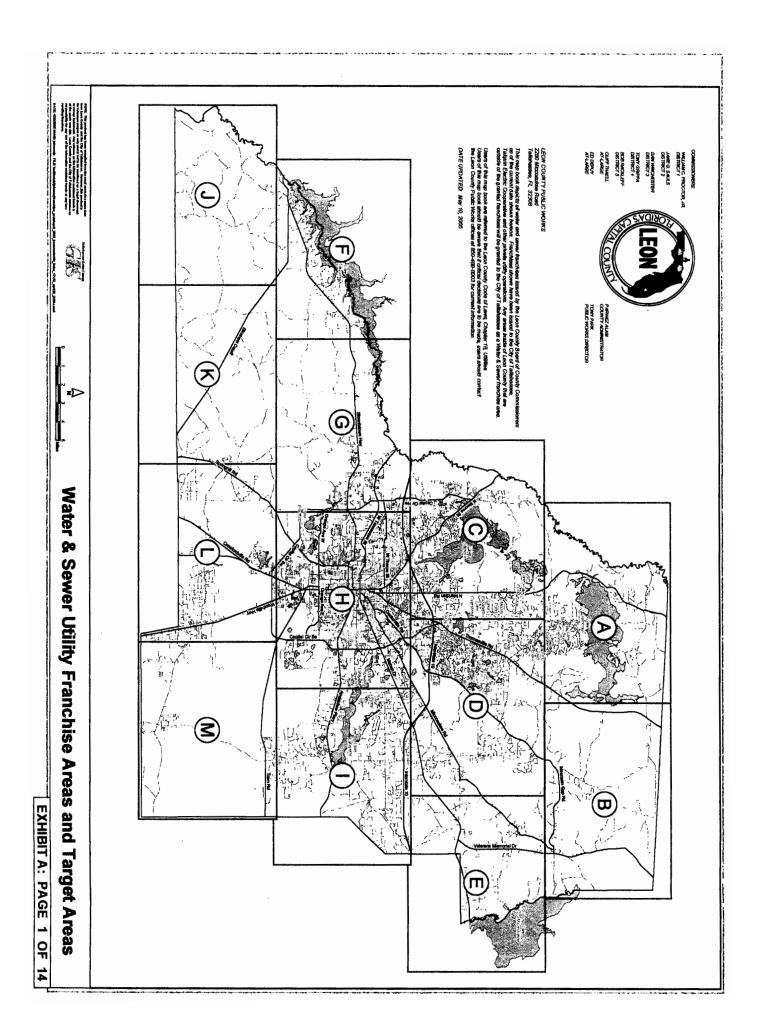
GARY HERNDON

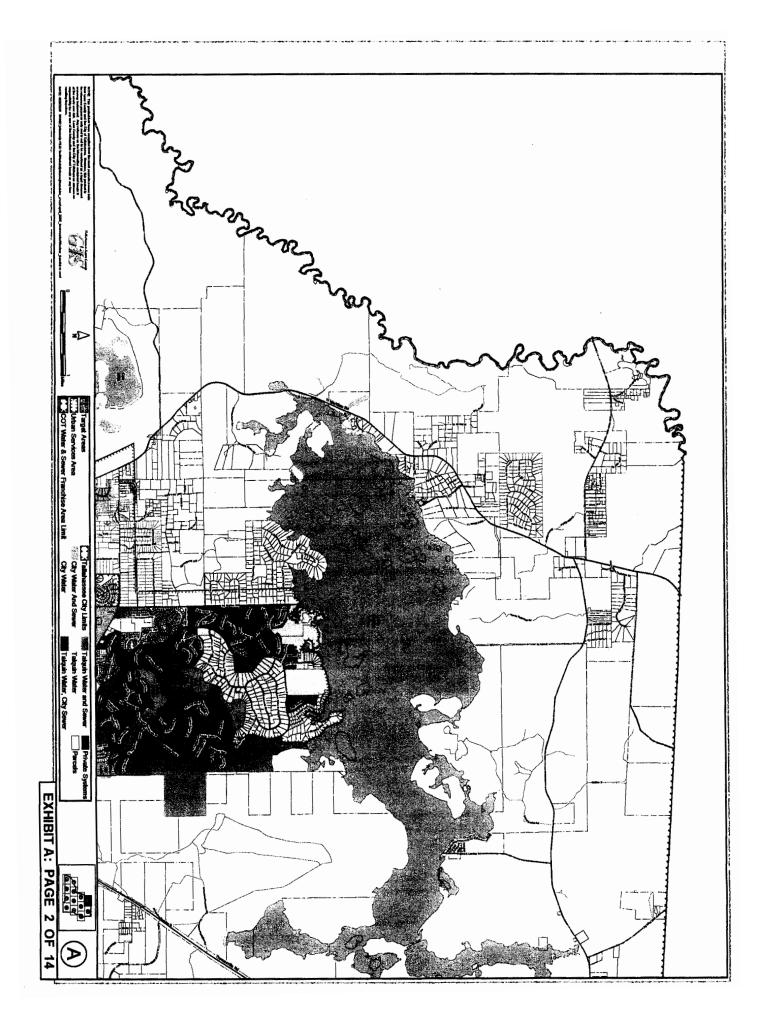
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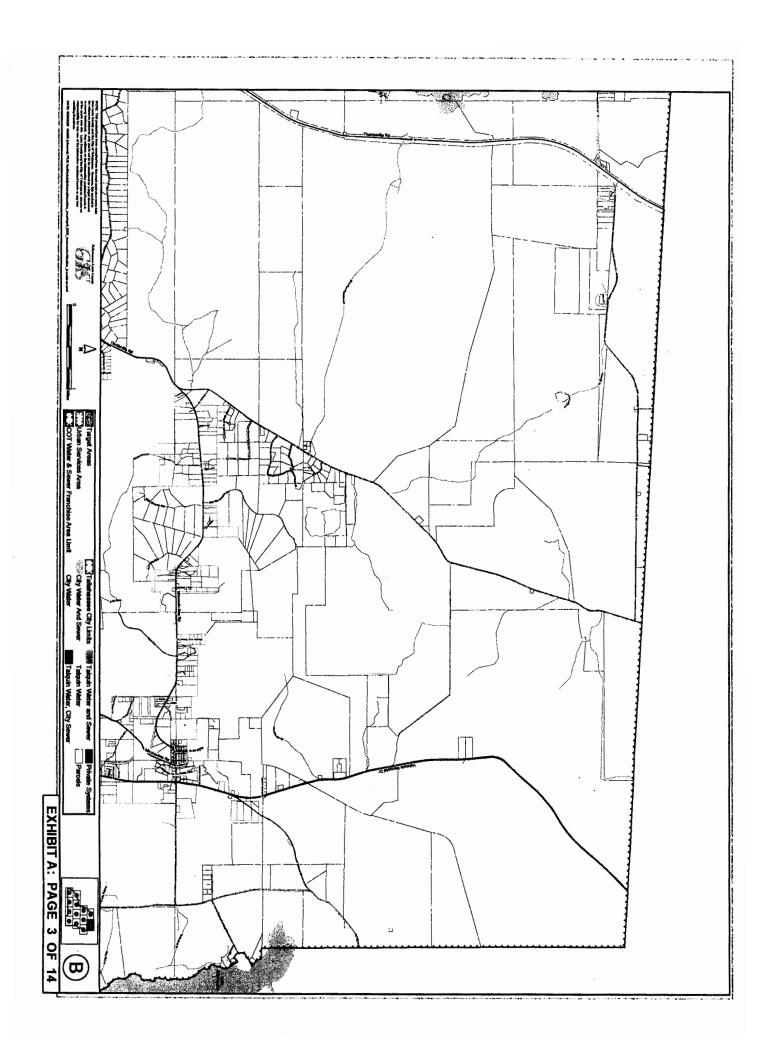
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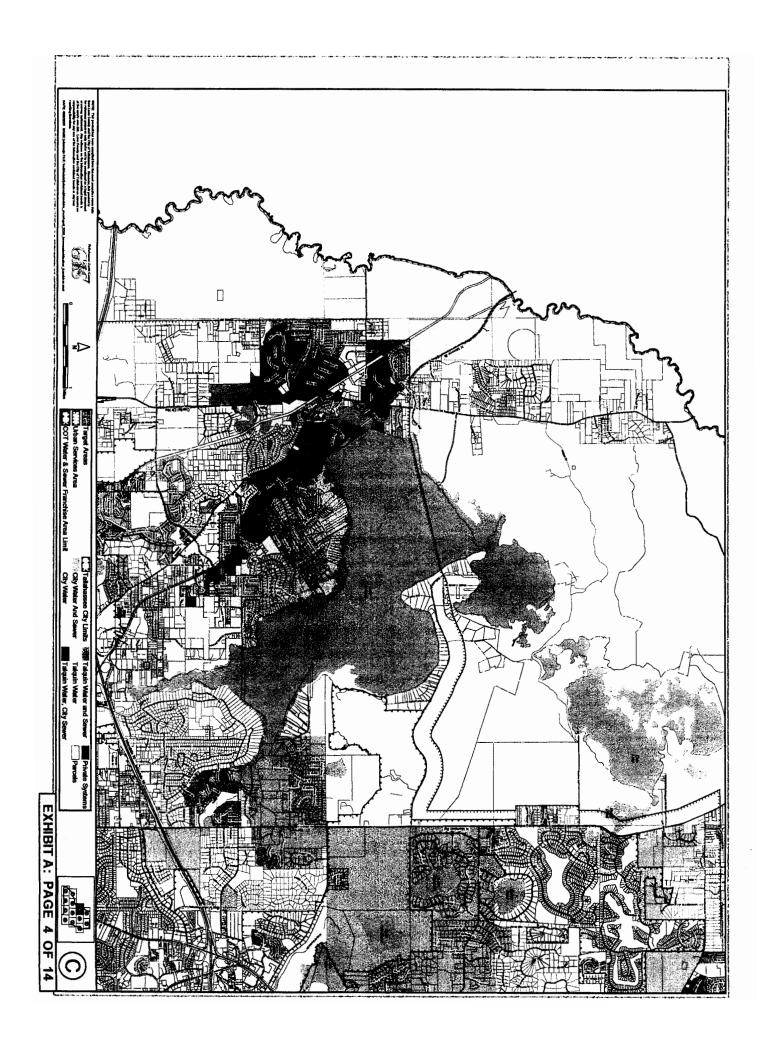
By: JAMES R. ENGLISH, Esq.

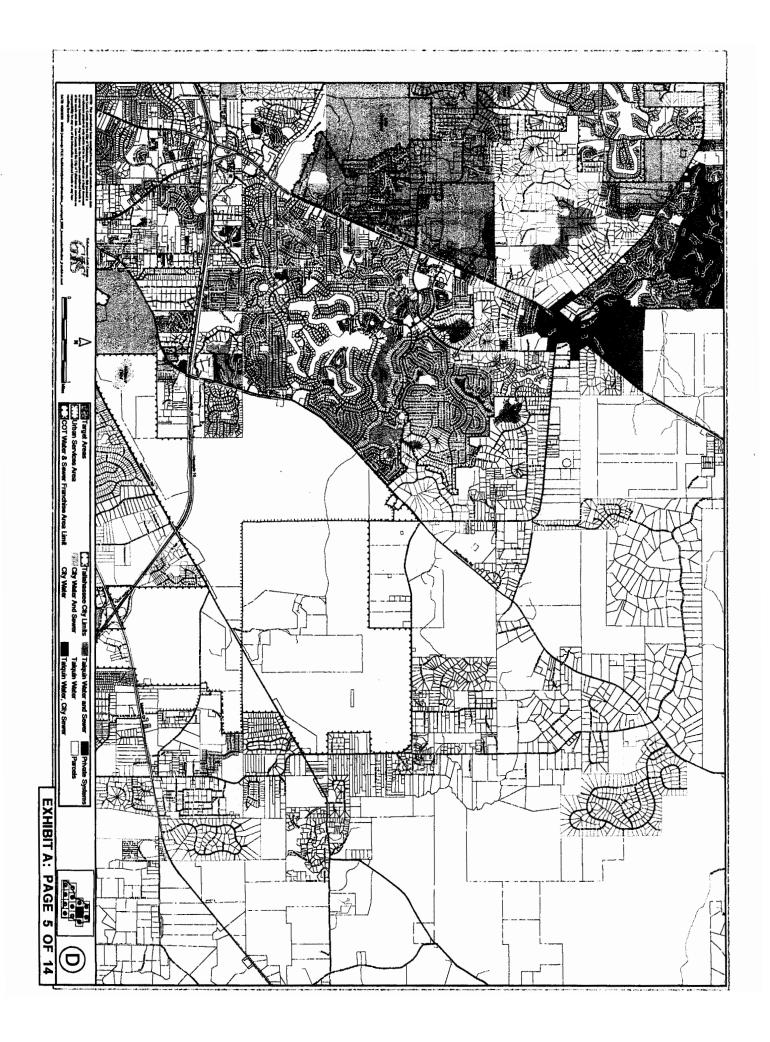
CITY ATTORNEY

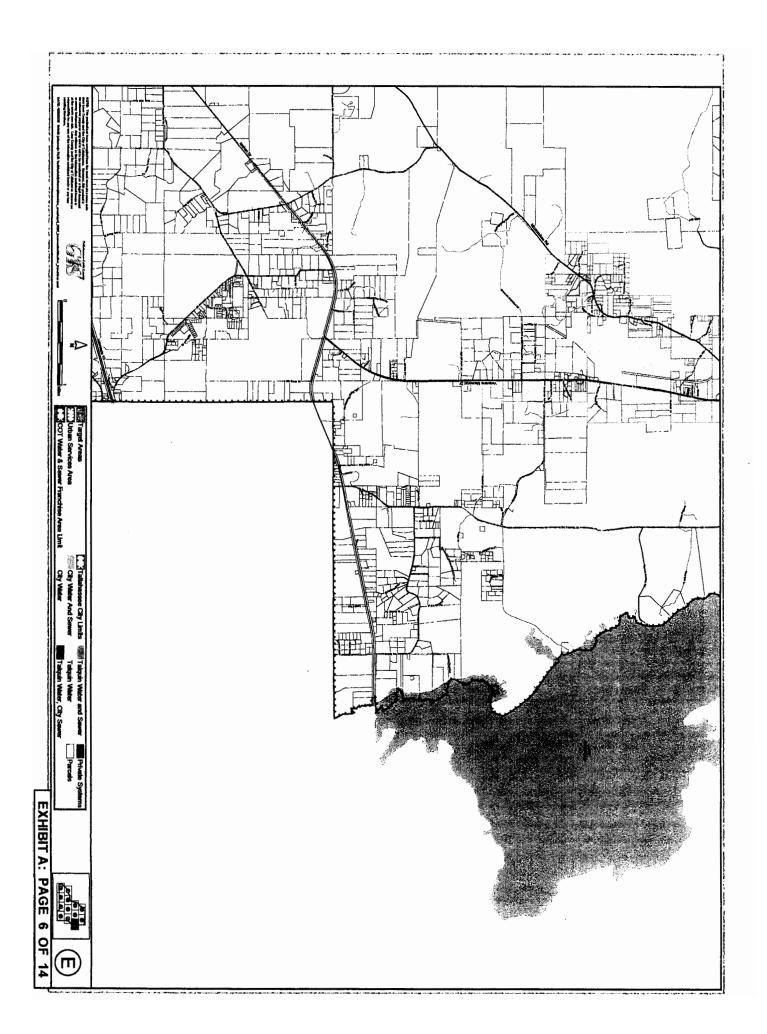


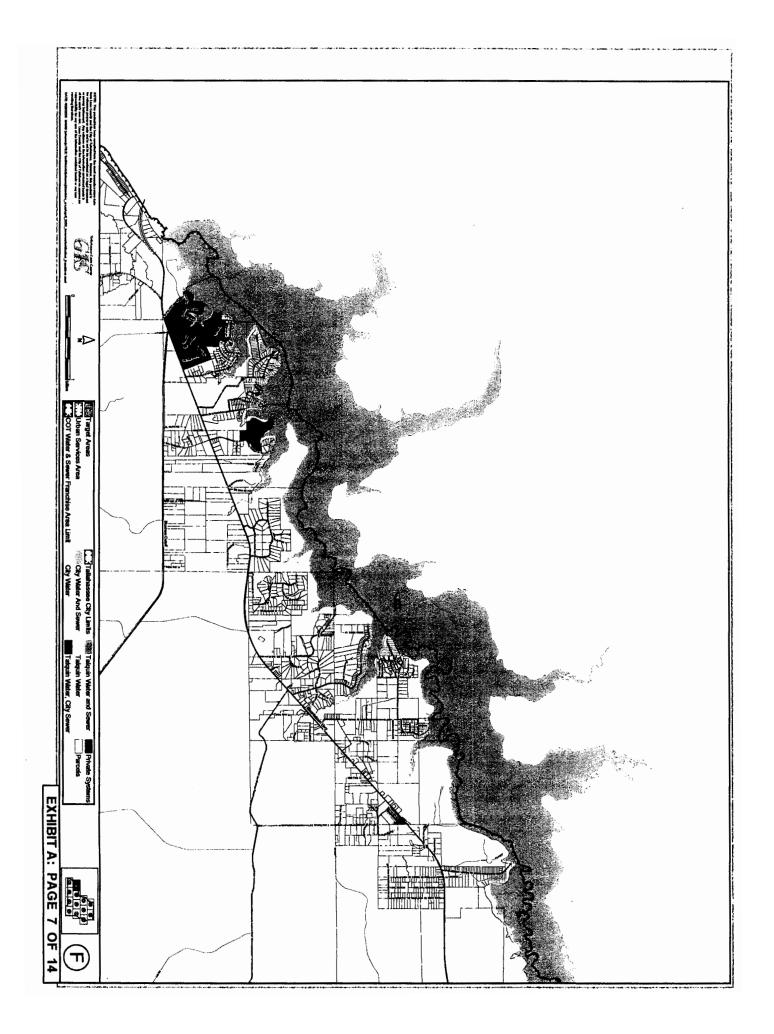


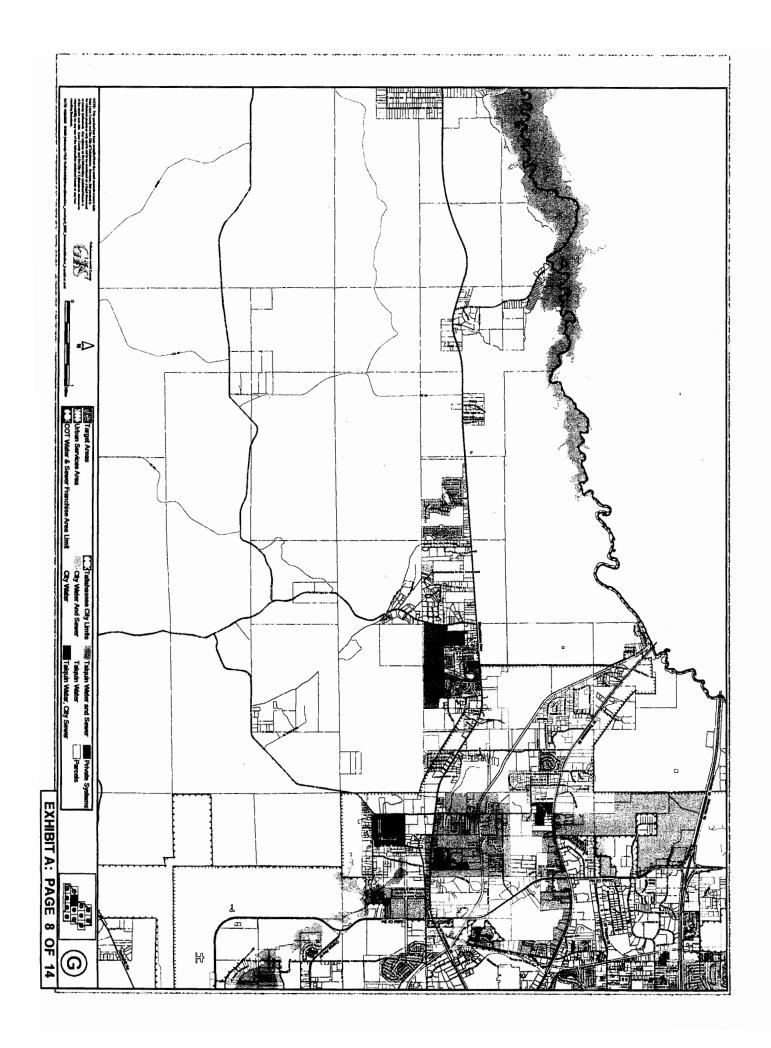


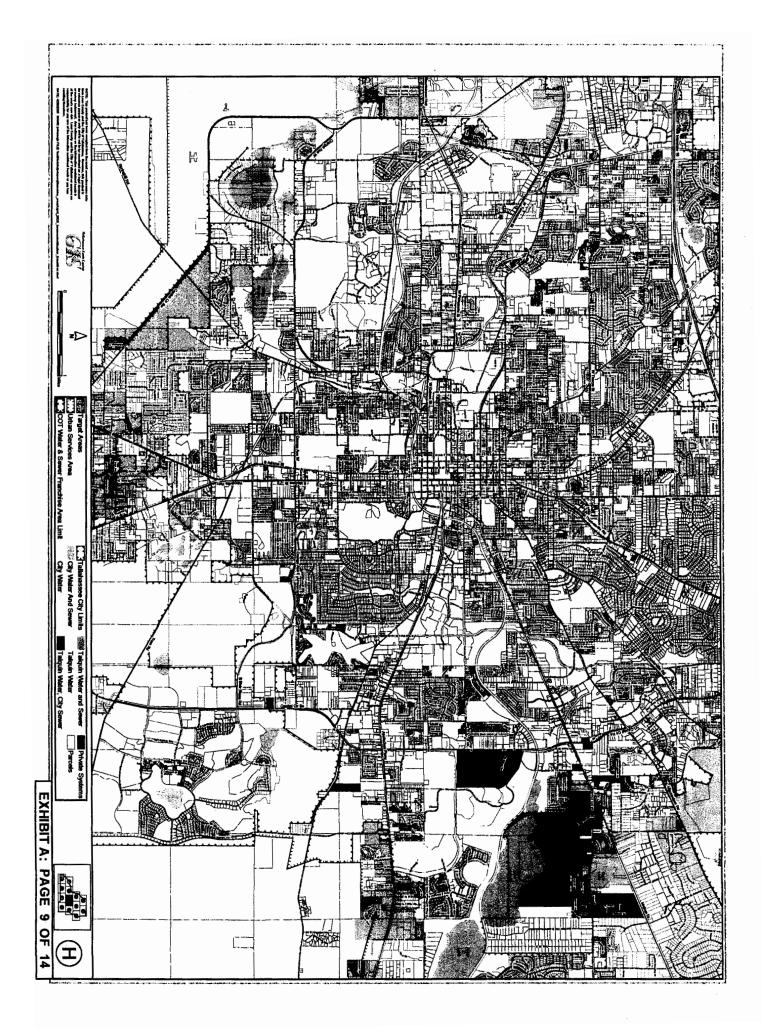


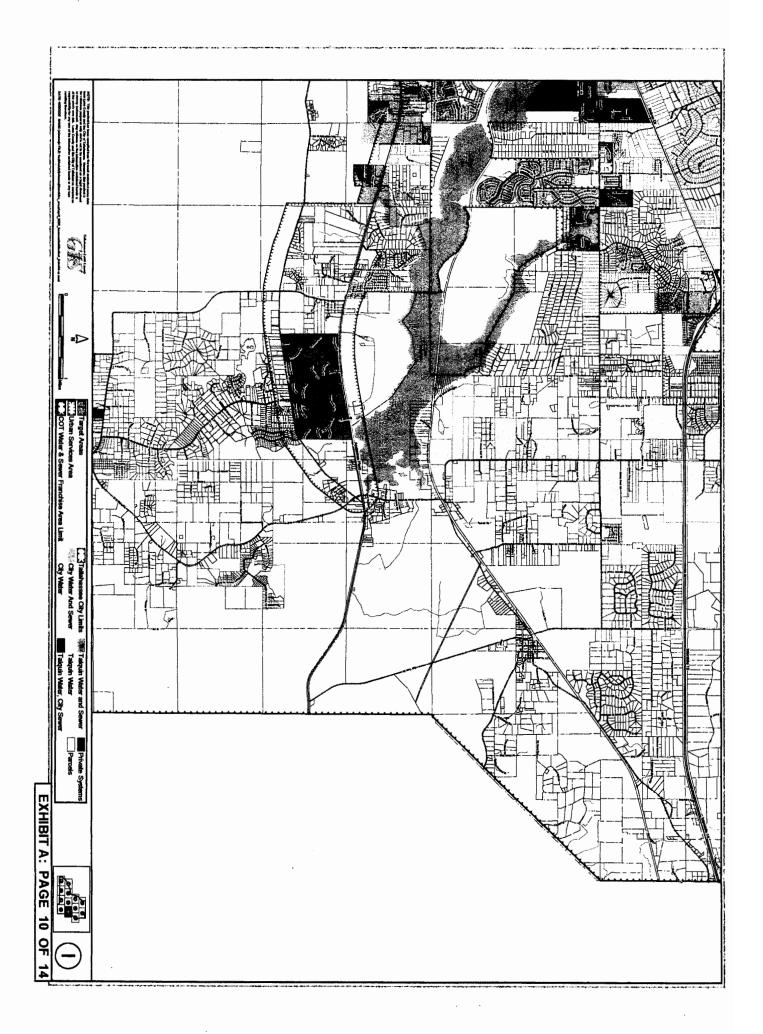


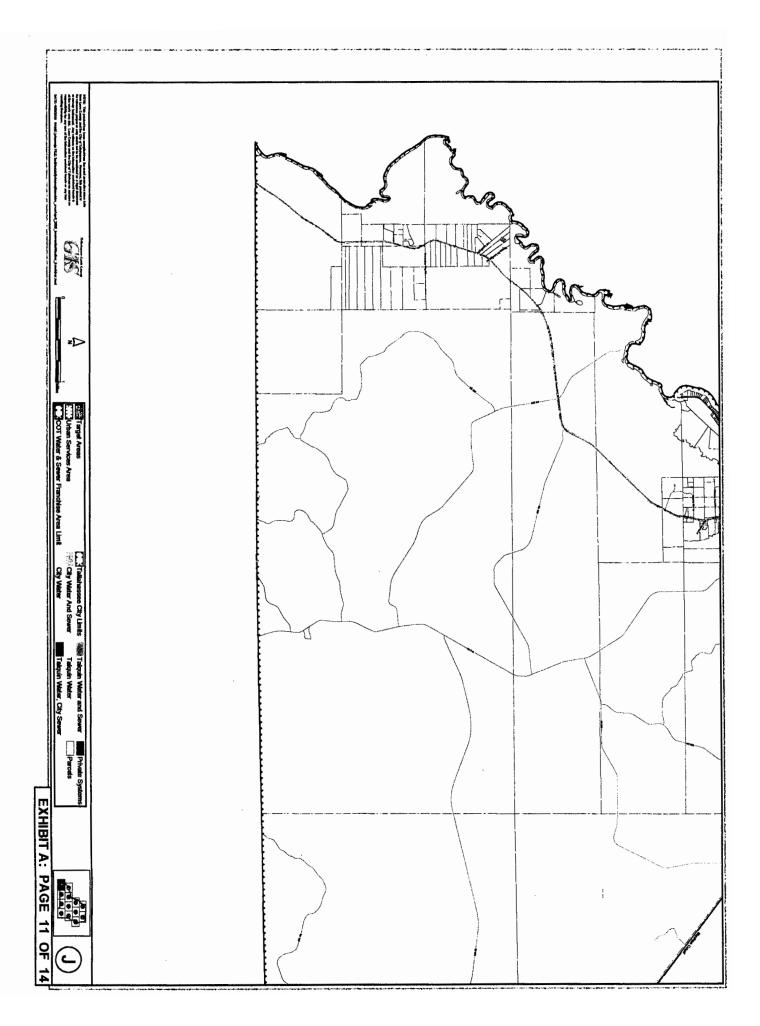


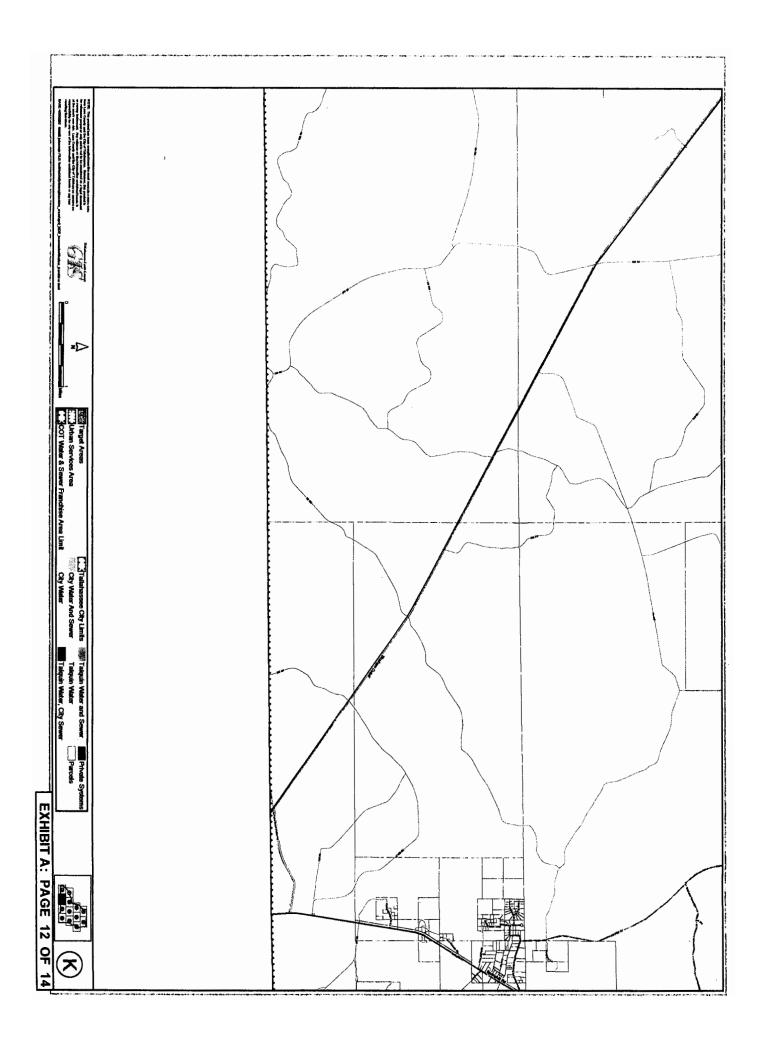


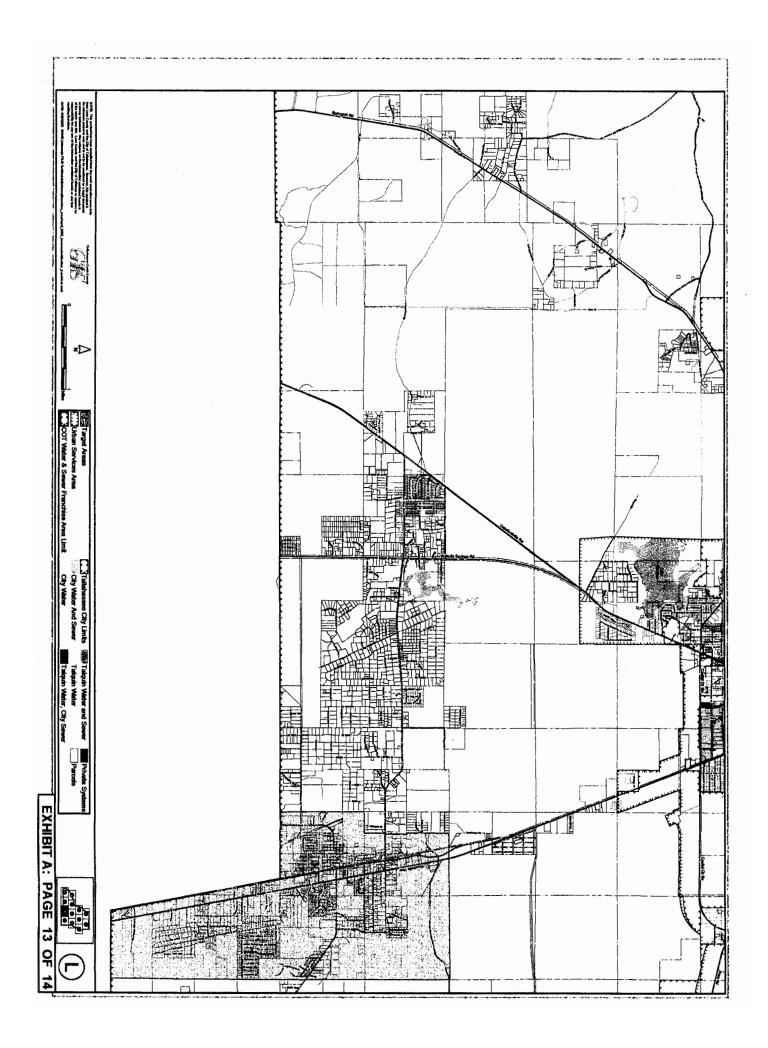


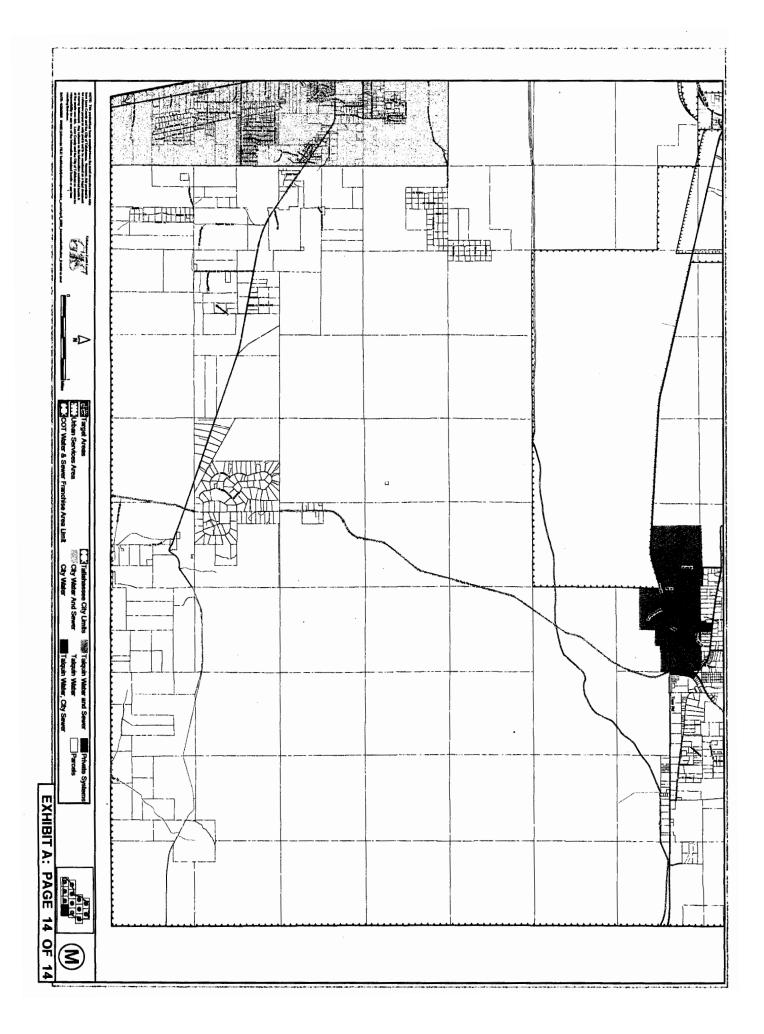












LEON COUNTY **CONTRACT ROUTING SLIP** Original County Contract No. 2850 Renewal Amendment Phone #: 488-8003 Division Contact Division: Location: Contractor: Address City, State, Zip **Contract Period:** From Renewal Periods: Number Term Contract Total \$ Amount: Procurement Method: Forms Required: Contract Type: Conservation Easement Bid* Public Entity Crimes Statement RFP* Performance Bond Construction Continuing Supply Sole Source Materials & Payment Bond Gov't Entity Warranty Bond Deed ✓ Interlocal Agreement Certification Regarding Debarment Other (Explain Below) Grant Lease Insurance Certificates: General Liability *Bid/RFP # Other Services Professional Liability Performance Agreement Agenda Date Professional Services Workers' Compensation Errors & Omissions Purchase Other (Explain below) Automobile Coverage Comments: Routing: **Initials** Date Required Originating Division (Purchasing Minority/Women Business Enterprise Risk Management **Grants Coordinator** County Attorney's Office County Administrator's Office Chairman, BCC Clerk's Office (Finance) Return completed documents to:

Rev. 11/02