BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: September 20, 2006 Division: BOCC

Bulk Item: Yes ___ No X Department: BOCC

Staff Contact Person: Suzanne Hutton/Liz Wood

AGENDA ITEM WORDING:
Discussion and approval of an interlocal agreement (ILA) between the Board of County Commissioners and the Florida Keys Aqueduct Authority for the Summerland/Cudjoe/Upper Sugarloaf Regional wastewater project.

ITEM BACKGROUND:
This ILA sets forth the commitments, understandings, duties and responsibilities of each party in completing a wastewater project for the Conch Key/Duck Key area. The agreement is the standard format of the previous agreement for the Big Coppitt area project.

PREVIOUS RELEVANT BOCC ACTION:
Approval of several interlocal agreements, committing to work with FKAA to provide funding for wastewater systems.

CONTRACT/AGREEMENT CHANGES:

STAFF RECOMMENDATIONS:
Approval

TOTAL COST: $45,0-00,000 **BUDGETED:** No

COST TO COUNTY: $45,000,000 **SOURCE OF FUNDS:** Mixed
Ad valorem & unknown

REVENUE PRODUCING: Yes ___ No X **AMOUNT PER MONTH**
Year___

APPROVED BY: County Atty ___ OMB/Purchasing ___ Risk Management ___

DIVISION DIRECTOR APPROVAL:
Suzanne A. Hutton, County Attorney

DOCUMENTATION: Included X Not Required___

DISPOSITION:_____ **AGENDA ITEM #**_____

Revised 2/05

INTERLOCAL AGREEMENT
BETWEEN
MONROE COUNTY
AND
FLORIDA KEYS AQUEDUCT AUTHORITY
FOR THE
SUMMERLAND/CUDJOE/UPPER SUGARLOAF REGIONAL WASTEWATER SYSTEM

THIS INTERLOCAL AGREEMENT (Agreement) is entered into this ___ day of _____, 2006, pursuant to Florida Statute Sec. 163.01, by and between Monroe County (County), a political subdivision of the State of Florida, and the Florida Keys Aqueduct Authority (FKAA), an independent special district.

WHEREAS, the County is authorized by Florida Statute Sec. 125.01(1) to provide, assist in providing, and fund centralized wastewater treatment systems; and

WHEREAS, Section 6, Chapter 99-395, Laws of Florida, and the County's Comprehensive Plan require that certain wastewater treatment levels be achieved by the year 2010, which levels can best be achieved by central wastewater treatment systems; and

WHEREAS, the FKAA is authorized by Chap. 76-441, Laws of Florida, as amended, and Chapter 98-519, Laws of Florida, to design, construct, and operate, wastewater treatment systems; and

WHEREAS, the FKAA and the County have entered into previous interlocal agreements establishing and confirming their ongoing partnership in providing wastewater facilities in the Florida Keys; and

WHEREAS, the County adopted Ordinance No. 38-2004, authorizing the levy of ad valorem taxes in the Summerland/Cudjoe/Upper Sugarloaf Municipal Service Taxing Unit, in order to provide an initial source of funding for the Summerland/Cudjoe/Upper Sugarloaf Regional Wastewater Project (Project); and

WHEREAS, FKAA has initiated planning, design and other services for the Project for which it may be paid with taxing unit funds; and

WHEREAS, the County by Interlocal Agreement dated September 6, 2005, and by Master Lease dated as of September 6, 2005, has committed to seek funding through federal and state grants and loans and the issuance of revenue bonds backed by the pledge of infrastructure sales tax; and will be providing additional funds to the FKAA for the administration, planning and construction of future wastewater projects in unincorporated Monroe County; and

WHEREAS, the County may have other funding mechanisms, including but not limited to infrastructure sales tax, grant and loan funding and ad valorem taxes, available to it for the provision of sewers and wastewater treatment; and

WHEREAS, County and FKAA desire to put in place procedures for the allocation, expenditure, and reimbursement of funds for the Project;

NOW, THEREFORE, in consideration of the mutual consideration and promises set forth below, the parties agree as follows:

1. COUNTY FUNDING. The County by resolution of its Board of County Commissioners, shall appropriate from any lawfully available source, those funds which have been duly approved for the estimated costs of administration, planning and construction of the Project, which shall not exceed Forty-Five million Dollars ($45,000,000). Summerland/Cudjoe/Upper Sugarloaf Municipal Service Taxing Unit ad valorem tax proceeds collected by County shall be provided to FKAA as part of the funding under this Agreement and shall be disbursed as described in paragraph 3 below. Before such disbursement, County may deduct its costs of administration and professional costs from the MSTU funds collected. As the Project progresses, and estimates are altered to reflect a combination of actual costs incurred and changes in pricing due to contracts resulting from bid processes, or other changed conditions, the FKAA shall provide such information to the County. This Agreement shall be modified as necessary to reflect such changes in the estimates in order to provide for adequate funding to be available for the timely and efficient construction of the project. The amount of the funding may be changed by written amendment to this Agreement approved by the parties.

2. PROJECT. The Project shall consist of a collection system, transmission main and method of treatment to Advanced Wastewater Treatment standards sufficient to serve the needs of the residents and businesses in the Summerland/Cudjoe/Upper Sugarloaf Wastewater Service District. Both FKAA and County shall perform their respective obligations and responsibilities under the Interlocal Agreement dated September 6, 2005. Attached are a project area map and project description (Exhibit A).

2. EXPENDITURE OF FUNDS. The FKAA shall initially be funded in the amount of Three Million Dollars ($3,000,000.00) for the administration, planning, design and construction of the Project. Thereafter, during the course of the Project, the FKAA may request reimbursement for payments made by FKAA upon submission of documentation of previous expenditures from the Three Million Dollars ($3,000,000.00) until the total amount allocated by the County is exhausted. The FKAA shall submit this documentation to the County Senior Administrator (CSA) for Sewer Projects describing the services performed and stating for which wastewater district/Project the funds were expended. The submission must be in a form satisfactory to the CSA and Clerk of the Circuit Court (Clerk). If the CSA approves the submission, she shall forward the same to the Clerk. If the CSA or the Clerk determine that the submission is unacceptable, either of them shall return it to the FKAA in writing with a written description of the deficiency(ies).

3. FISCAL CONTROLS AND QUARTERLY REPORTS. The FKAA shall establish fiscal controls and fund accounting procedures that comply with generally accepted government accounting principles, satisfactory to the Clerk, in order to assure that the funds provided to the FKAA are spent for the purposes set forth in this Agreement. All FKAA financial records pertaining to this Agreement must be made available, upon request, to the Clerk, an auditor employed by the County or the State of Florida. The records must be retained by the FKAA for five years following the receipt by the FKAA of its last payment pursuant to this Agreement. Any funds transferred by the County to the FKAA under this Agreement that are determined by the Clerk, or an auditor employed by the County or employed by the State to have been spent on a purpose not contemplated by this Agreement must be paid back to the County with interest calculated pursuant to Florida Statute Sec. 55.03(1), from the date the auditor determines the funds were expended for a purpose not authorized by this Agreement. The FKAA agrees to

provide the Clerk with quarterly status reports concerning the expenditure of these funds in sufficient detail to demonstrate compliance with the provisions of this Agreement.

4. RECORDS – ACCESS AND AUDITS. FKAA shall maintain adequate and complete records for a period of five years after termination of this Agreement. The State, the County, their officers, employees, agents and contractors shall have access to FKAA's books, records, and documents related to this Agreement upon request. The access to and inspection of such books, records, and documents by the aforementioned government representatives shall occur at any reasonable time.

5. RELATIONSHIP OF PARTIES. FKAA is, and shall be an independent contractor and not an agent or servant of the County. FKAA shall exercise control, direction, and supervision over the means and manner that its personnel, contractors and volunteers perform the work for the purpose of this Agreement. FKAA shall have no authority whatsoever to act on behalf of or as agent of the County in any promise, Agreement or representation other than specifically provided for in this Agreement. The County shall at no time be legally responsible for any negligence on the part of FKAA, its employees, agents or volunteers resulting in either bodily or personal injury or property damage to any individual, property or corporation.

6. TAXES. FKAA must pay all taxes and assessments, if any, including any sales or use tax, levied by any government agency with respect to FKAA's operations related to this Agreement.

7. INSURANCE.The parties to this Agreement stipulate that each is a state governmental agency as defined by Florida Statutes and represents to the other that it has purchased suitable Public Liability, Vehicle Liability, and Workers' Compensation insurance, or is self-insured, in amounts adequate to respond to any and all claims under federal or state actions for civil rights violations not limited by Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes Section 768.28 and Chapter 440, arising out of the activities governed by this Agreement.

To the extent allowed by law, each party shall be responsible for any acts of negligence on the part of its employees, agents, contractors, and subcontractors and shall defend, indemnify and hold the other party harmless from all claims arising out of such actions.

FKAA agrees to keep in full force and effect the required insurance coverage during the term of this Agreement. If the insurance policies originally purchased which meet the requirements of this lease are canceled, terminated or reduced in coverage, then FKAA must immediately substitute complying policies so that no gap in coverage occurs. Copies of current policy certificates shall be filed with the County whenever acquired or amended.

8. HOLD HARMLESS. To the extent allowed by law, FKAA is liable for and must fully defend, release, discharge, indemnify and hold harmless the County, the members of the County Commission, County officers and employees, County agents and contractors, and the Sheriff's Office, its officers and employees, from and against any and all claims, demands, causes of action, losses, costs and expenses of whatever type - including investigation and witness costs and expenses and attorneys' fees and costs - that arise out of or are attributable to FKAA's operations in connection with this Agreement except for those claims, demands, damages, liabilities, actions, causes of action, losses, costs and expenses that are the result of the sole negligence of the County. FKAA's purchase of the insurance required under this Agreement does not release or vitiate its obligations under this paragraph. FKAA does not waive any of its

sovereign immunity rights including but not limited to those expressed in Section 768.28, Florida Statutes.

9. NON-DISCRIMINATION. FKAA and County agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. FKAA and County agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101- 6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patent records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Ch. 13, Art. VI, prohibiting discrimination on the bases of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; and 11) any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

10. GOVERNING LAW, VENUE, INTERPRETATION, COSTS, AND FEES. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the County and FKAA agree that venue shall lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida. Neither this Agreement nor any of its terms is subject to arbitration. The County and FKAA agree that, in the event of conflicting interpretations of the terms or a term of this Agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

11. SEVERABILITY. If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The County and FKAA agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

12. ATTORNEY'S FEES AND COSTS. The County and FKAA agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, courts costs, investigative, and out-of-pocket expenses in appellate proceedings.

13. BINDING EFFECT. The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and FKAA and their respective legal representatives, successors, and assigns.

15. AUTHORITY. Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.

16. CLAIMS FOR FEDERAL OR STATE AID. FKAA and County agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.

17. ADJUDICATION OF DISPUTES OR DISAGREEMENTS. County and FKAA agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.

18. COOPERATION. In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, County and FKAA agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. County and FKAA specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

19. COVENANT OF NO INTEREST. County and FKAA covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

20. CODE OF ETHICS. County agrees that officers and employees of the County recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

21. NO SOLICITATION/PAYMENT. The County and FKAA warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or

agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the FKAA agrees that the County shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

22. PUBLIC ACCESS. The County and FKAA shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and FKAA in conjunction with this Agreement; and the County shall have the right to unilaterally cancel this Agreement upon violation of this provision by FKAA.

23. NON-WAIVER OF IMMUNITY. Notwithstanding the provisions of Sec. 786.28, Florida Statutes, the participation of the County and the FKAA in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the County or the FKAA be required to contain any provision for waiver.

24. PRIVILEGES AND IMMUNITIES. All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the County or the FKAA, when performing their respective functions under this Agreement within the territorial limits of the County shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the County.

25. LEGAL OBLIGATIONS AND RESPONSIBILITIES. Non-Delegation of Constitutional or Statutory Duties. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the County, except to the extent permitted by the Florida constitution, state statute, and case law.

26. NON-RELIANCE BY NON-PARTIES. No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and the FKAA agree that neither the County nor the FKAA or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

27. ATTESTATIONS. FKAA agrees to execute such documents as the County may reasonably require, to include a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement.

28. NO PERSONAL LIABILITY. No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Monroe

County or the FKAA in his or her individual capacity, and no member, officer, agent or employee of Monroe County or the FKAA shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

29. EXECUTION IN COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by singing any such counterpart.

30. SECTION HEADINGS. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

31. TERMINATION. The County may treat FKAA in default and terminate this Agreement immediately, without prior notice, upon failure of FKAA to comply with any provision related to compliance with all laws, rules and regulations. This Agreement may be terminated by County due to breaches of other provisions of this Agreement if, after written notice of the breach is delivered to FKAA, FKAA does not cure the breach within 7 days following delivery of notice of breach. The County may terminate this Agreement upon giving sixty (60) days prior written notice to FKAA. Any waiver of any breach of covenants herein contained shall not be deemed to be a continuing waiver and shall not operate to bar either party from declaring a forfeiture for any succeeding breach either of the same conditions or covenants or otherwise. Should the Agreement be terminated, County shall pay for reimbursable costs to the effective date of termination. Termination of this Agreement for this project shall have no effect on any other agreement between the County and the FKAA.

32. ASSIGNMENT. FKAA may not assign this Agreement or assign or subcontract any of its obligations under this Agreement without the approval of the County's Board of County Commissioners. All the obligations of this Agreement will extend to and bind the legal representatives, successors and assigns of FKAA and the County.

33. SUBORDINATION. This Agreement is subordinate to the laws and regulations of the United States, the State of Florida, and the County, whether in effect on commencement of this Agreement or adopted after that date.

34. INCONSISTENCY. If any item, condition or obligation of this Agreement is in conflict with other items in this Agreement, the inconsistencies shall be construed so as to give meaning to those terms which limit the County's responsibility and liability.

35. GOVERNING LAWS/VENUE. This Agreement is governed by the laws of the State of Florida and the United States. Venue for any dispute arising under this Agreement must be in Monroe County, Florida. In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs.

36. ETHICS CLAUSE. FKAA warrants that it has not employed, retained or otherwise had act on its behalf any former County officer or employee subject to the prohibition of Section 2 of ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 010-1990. For breach or violation of this provision, the County may, in its discretion, terminate this Agreement without liability and may also, in its discretion, deduct from the Agreement or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift or consideration paid to the former County officer or employee.

37. CONSTRUCTION. This Agreement has been carefully reviewed by FKAA and County. Therefore, this Agreement is not to be construed against any party on the basis of authorship.

38. NOTICES. Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

COUNTY:	FKAA
County Administrator	Executive Director
1100 Simonton Street	1100 Kennedy Drive
Key West, FL 33040	Key West, FL 33040

39. FULL UNDERSTANDING. This Agreement is the parties' final mutual understanding. It replaces any earlier agreements or understandings, whether written or oral. This Agreement cannot be modified or replaced except by another written and signed agreement.

40. ANNUAL APPROPRIATION: Funding by County is subject to an annual appropriation by the Board of County Commissioners.

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

(SEAL)
Danny L. Kolhage, Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Mayor/Chairperson

FLORIDA KEYS AQUEDUCT AUTHORITY

ATTEST:

By: _____
Clerk

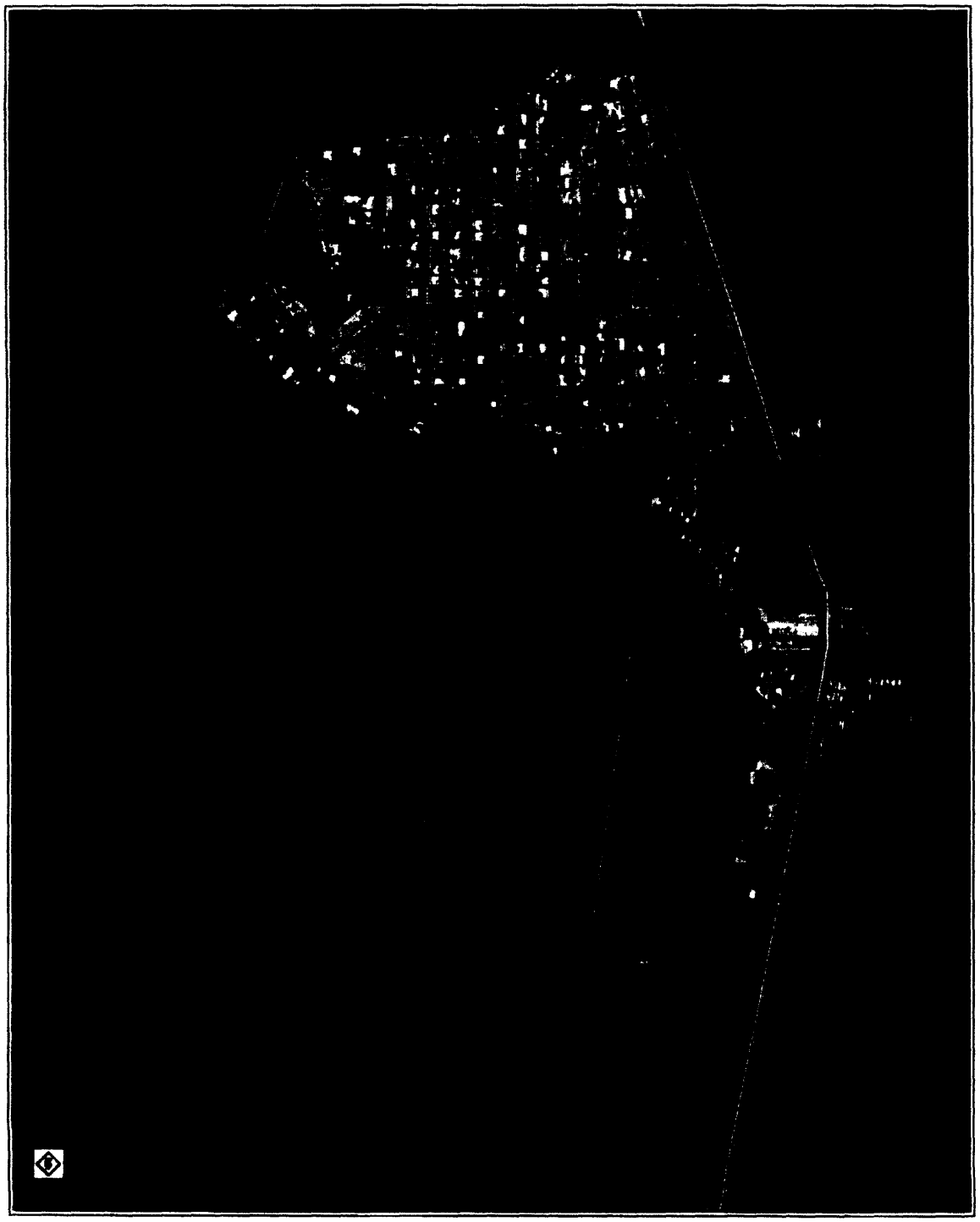
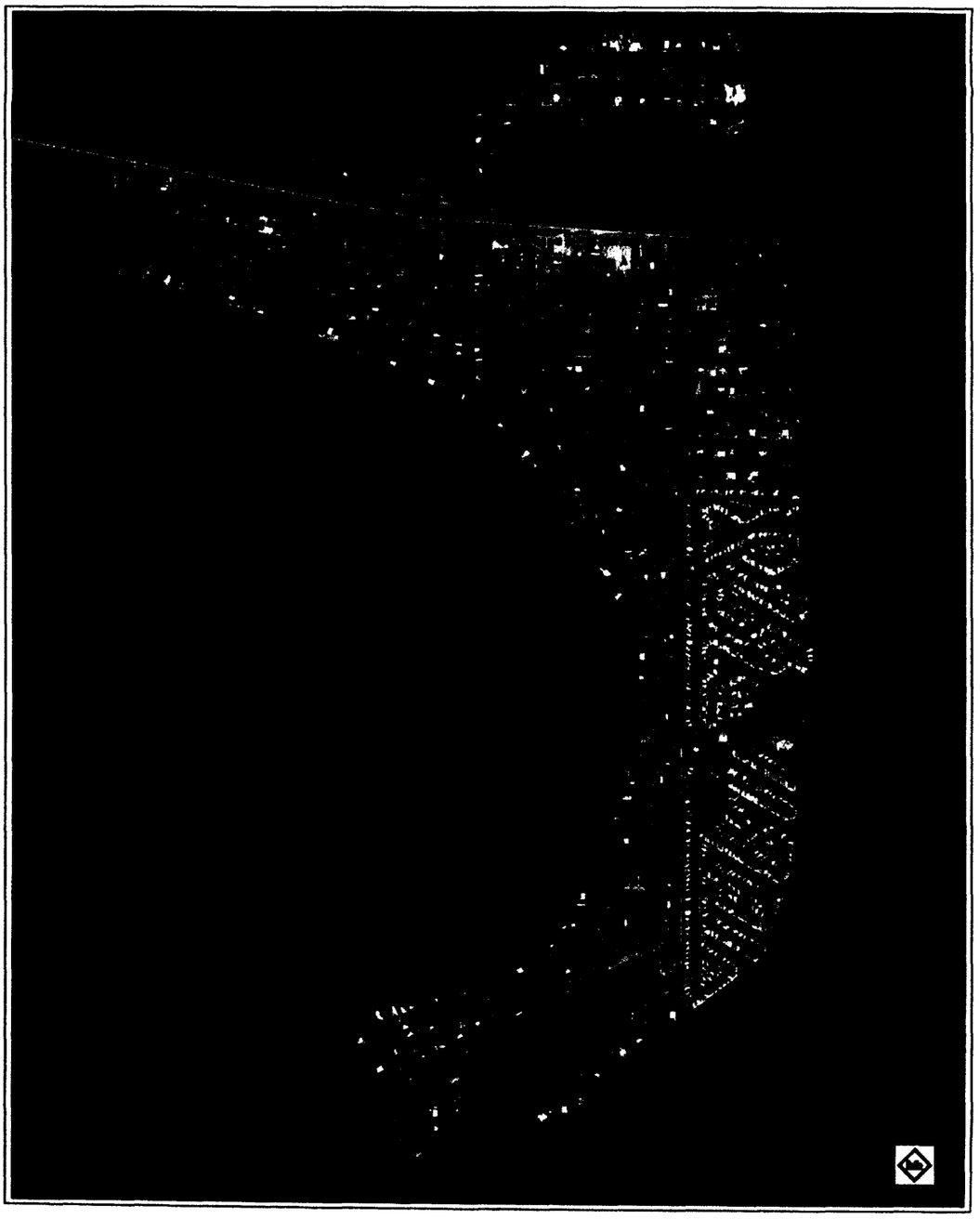
By: _____
Chairman

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:
SUZANNE A. HUTTON
COUNTY ATTORNEY
Date 9/5/06

EXHIBIT "A"

PROJECT DESCRIPTION

SUMMERLAND/CUDJOE/UPPER SUGARLOAF REGIONAL WASTEWATER SYSTEM

Gravity wastewater collection and transmission system to serve Summerland Key/Cudjoe Key/Upper Sugarloaf. New wastewater treatment plant at the Cudjoe Key Transfer Station to treat flows to meet advanced wastewater treatment standards.

See ATTACHED PROJECT AREA MAP