

**INTERLOCAL AGREEMENT
FOR
REUSE OF RECLAIMED WATER IN
THE EVERS WATERSHED**

**Manatee County, Florida
City of Bradenton, Florida**

This **INTERLOCAL AGREEMENT** (the "Agreement") is made and entered into as of the 17th day of AUGUST, 2011, by and between **Manatee County**, a political subdivision of the State of Florida, (the "County") and the **City of Bradenton**, a municipal corporation created and existing under the laws of the State of Florida, (the "City").

RECITALS

- A. The County has adopted a revised Policy 3.2.1.8 ("Policy") of the Conservation Element of the Manatee County Comprehensive Plan ("Comprehensive Plan") that allows the beneficial reuse of reclaimed water in a portion of the Evers Reservoir Watershed ("Beneficial Reuse Area") from public wastewater treatment plants under certain terms and conditions as stated in the Policy.
- B. Paragraph (a) of the Policy provides that such beneficial reuse of reclaimed water shall be limited to public wastewater treatment plants that attain Advanced Wastewater Treatment (AWT) Standards as defined in Section 403.086, Florida Statutes (or successor Statute) and that provide reclaimed water pursuant to Chapter 62-610, Part III, Florida Administrative Code (or successor Rule).
- C. As the Beneficial Reuse Area is within the Evers Reservoir Watershed, with the Evers Reservoir being the supply of drinking water for the City, the Policy is intended to allow and encourage the beneficial reuse of reclaimed water in the Beneficial Reuse Area but in a manner that controls nutrient-loadings within the Watershed. Therefore, reclaimed water that is discharged into the Beneficial Reuse Area must be treated to AWT Standards (as defined herein).
- D. Paragraph (c) of the Policy provides that such beneficial reuse of reclaimed water shall be accomplished pursuant to a surface water monitoring program approved pursuant to an interlocal agreement entered into between the County and the public entity proposing such beneficial reuse. The City is proposing such beneficial reuse.
- E. Section 163.01 of Florida Statutes, the "Florida Interlocal Cooperation Act" ("The Act") permits the County and City to enter into this Interlocal Agreement to mutually exercise the powers, privileges, and authority that they share in common, and which each might exercise separately, in order to make the most efficient use of their powers.

F. The County and the City wish to enter into this Interlocal Agreement pursuant to Policy 3.2.1.8(c) of the Comprehensive Plan.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the County and the City agree as follows:

Article I AUTHORITY

This Interlocal Agreement is entered into pursuant to the powers and authority granted to the City and the County under the Constitution and laws of the State of Florida, including expressly (but not limited to) Sections 1 and 2 of Article VIII of the Constitution of the State of Florida, Chapters 125 and 166 of Florida Statutes, and Section 163.01 of Florida Statutes. Further, this Interlocal Agreement is entered into pursuant to Policy 3.2.1.8(c) of the Conservation Element of the Manatee County Comprehensive Plan to effect the provisions set forth therein.

Article II DEFINITIONS

Unless defined otherwise herein, the following words and phrases used herein and in **Exhibit "A"** shall have the following meanings:

2.1 "AWT Standards" shall mean the advanced wastewater treatment standards prescribed in in Section 403.086, Florida Statutes (or successor Statute).

2.2. "Beneficial Reuse Area" shall mean the portion of the Evers Reservoir Watershed depicted on the Map entitled "BENEFICIAL REUSE AREA OF THE EVERS RESERVOIR WATERSHED" as referenced in Paragraph (b) of the Policy and included in the Conservation Element of the Comprehensive Plan.

2.3 "BRU" shall mean Braden River Utilities, LLC, a Florida limited liability company.

2.4 "City" or "City of Bradenton" shall mean the City of Bradenton, a municipal corporation created and existing under the laws of the State of Florida.

2.5 "City DPWU" shall mean the City's Department of Public Works and Utilities.

2.6 "County" or "Manatee County" shall mean Manatee County, a political subdivision of the State of Florida.

2.7 "County DNR" shall mean the County's Department of Natural Resources.

2.8 "F.A.C." shall mean the Florida Administrative Code. References to specific Chapters or Rules therein shall be deemed to include a successor Chapter or Rule.

2.9 "Monitoring Locations" shall mean the monitoring locations shown on Figure 1 to Exhibit A hereto that are identified by the prefix "BRU."

2.10 "NELAC" shall mean National Environmental Laboratory Accreditation Conference.

Article III
SURFACE WATER MONITORING PROGRAM; EXERCISE OF CITY POWERS;
CITY REVIEW AND APPROVAL

3.1 Program Implementation. The City shall implement the surface water monitoring program as described in Exhibit "A" attached hereto and made a part hereof by reference, and shall perform such program throughout the term of this Agreement, for the purpose of collection and analysis of data related to the application of reclaimed water in the Beneficial Reuse Area. The City may perform the provisions of this paragraph either directly or through independent contractors and may enter into separate agreement(s) with another public or private entity to implement such monitoring program. Notwithstanding the foregoing, the City shall remain solely responsible to the County for the implementation and performance of the monitoring program and all other obligations of the City set forth in this Agreement.

3.2. Consent to Exercise of City Powers within Unincorporated Area of County. The County hereby consents to the exercise by the City of City powers within the unincorporated area of the County, to the extent, and only to the extent, necessary for the City to carry it its obligations under this Agreement.

3.3 City Review and Approval. The City may authorize other public entities to deliver reclaimed water for distribution within the Beneficial Reuse Area, so long as the City or its independent contractors continue to perform the monitoring program, and so long as such reclaimed water is from a public wastewater treatment plant that meets the standards set forth in the Policy and this Agreement. The City shall remain solely responsible for obtaining any necessary data or documentation, and reviewing the same, to determine whether such public wastewater treatment facility satisfies such standards. To satisfy this responsibility and to facilitate such review, any public entity supplying such reclaimed water and any independent contractor delivering same shall provide City DPWU and County DNR with the following:

- one (1) copy of their most recent Facility Permit as issued by the Florida Department of Environmental Protection (FDEP); and
- one (1) copy of their most recent Monthly Operating Report (MOR) submitted on a monthly basis no later than the last day of the month that the report is submitted to the FDEP.

The City, in its sole discretion and with no obligation, may require or request additional information from any public entity supplying such reclaimed water and any independent contractor delivering same.

Because any such reclaimed water applied within the Beneficial Reuse Area has the potential to be conveyed to the various surface waters that are tributaries to the Evers Reservoir, and the Evers Reservoir is the sole source of the City's drinking water supply, the City shall have the full right, in its sole and absolute discretion, to reject any and all sources of reclaimed water proposed to be applied within the Beneficial Reuse Area.

Article IV TERM; TERMINATION; DEFAULT

4.1 Effective Date. This Agreement shall take effect as of its date set forth above.

4.2 Term. The term of this Agreement shall be twenty (20) years from the Effective Date of this Agreement, after which time this Agreement shall be automatically extended for successive periods of five (5) years unless the parties hereto agree to terminate this Agreement. Notwithstanding the immediately-previous sentence, this Agreement shall terminate (a) in the event the distribution of reclaimed water within the Beneficial Reuse Area has not commenced by the date that is ten (10) years after the Effective Date of this Agreement, or (b) as otherwise provided in this Article IV. Upon termination, the parties hereto shall have no further rights and obligations under this Agreement.

4.3 Default. If at any time during the term of this Agreement, any party is in default in a material respect in the performance of any of its obligations under this Agreement, and such default is not cured within sixty (60) days after receipt of notice from the other party of such default, the non-defaulting party may terminate this Agreement. Notwithstanding the immediately preceding sentence, the notice of default must be specific as to the nature of the default, and if sixty (60) days is not a reasonably sufficient time in order to cure such a default, the defaulting party may have such additional time as is reasonably necessary to cure same as long as such party diligently pursues such cure.

Article V AMENDMENTS; ENFORCEMENT

5.1 Amendments Generally. This Interlocal Agreement may be amended, and its material provisions may be waived, only by written instrument expressly approved for the County by the Board of County Commissioners and for the City by the City Council, and only if properly executed by all the parties hereto. This provision is not intended, however, to affect or prohibit decisions assigned to City DPWU and County DNR pursuant to **Exhibit "A."**

5.2 Enforcement. The parties to this Interlocal Agreement shall have all legal and equitable remedies provided by Florida law for enforcement hereof.

Article VI
MISCELLANEOUS PROVISIONS

6.1 Validity. After consultation with their respective legal counsel, the County and the City each represents and warrants to the other its respective authority and power under Florida law to enter into this Interlocal Agreement, acknowledges the validity and enforceability of this Interlocal Agreement, and waives any future right of defense based on claim of illegality, invalidity, or unenforceability of any nature. The City and the County each hereby represents, warrants, and covenants to and with the others (i) that this Interlocal Agreement has been validly approved by its respective governing body at a duly held public meeting, and (ii) that this Interlocal Agreement constitutes a legal, valid, and binding contract enforceable against the respective party in accordance with the terms hereof (assuming the due authorization, execution and delivery hereof by the other party hereto).

6.2 Force Majeure. No party shall be liable for any failure to perform, or delay in the performance of, any obligation under this Interlocal Agreement if such failure is caused directly by hurricane, tornado, fire, earthquake, civil commotion, or failure or disruption of utility services, or other like cause beyond the reasonable control of the party obliged to perform.

6.3 Ambiguities. The parties have been allowed equal input regarding the terms and wording of this Interlocal Agreement and have had the benefit of consultation with legal counsel prior to its execution, such that all language herein shall be construed equally against the parties, and no language shall be construed strictly against its drafter.

6.4 Headings. The headings or captions of sections or paragraphs used in this Interlocal Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Interlocal Agreement.

6.5 Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, and neuter, singular or plural, as the identities of the party or parties, personal representatives, subcontractors, successors, or assigns may require.

6.6 Severability. The provisions of this Interlocal Agreement are declared by the parties to be severable.

6.7 Governing Law; Venue. This Interlocal Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and venue for any action arising out of or related to this Interlocal Agreement shall be in the Circuit Court for the Twelfth Judicial Circuit in Manatee County, Florida.

6.8 Full Agreement; Filing with Clerk of Circuit Court. This Interlocal Agreement contains the entire agreement of the parties with respect to the matters addressed herein. Previous agreements and understandings of the parties with respect to such matters are null and void and of no effect. As required by Subsection 163.01(11) of Florida Statutes, this Interlocal Agreement and all amendments thereto shall be filed with the Clerk to the Circuit Court for Manatee County.

6.9 Indemnification. To the extent permitted by law, and from legally available funds, each of the parties hereto (in such context, an "indemnifying party") shall defend, indemnify and save harmless the other, from and against any and all liabilities, claims, damages, losses and expenses, including costs and attorneys fees, arising out of or resulting from the negligent or intentional wrongful acts or omissions of such indemnifying party, its officers, agents or employees, made in connection with the performance of the acts, duties, covenants and obligations of the monitoring program contemplated in, or imposed pursuant to, this Interlocal Agreement.

6.10 Notices. All notices, elections, requests, and other communications hereunder shall be in writing and shall be deemed given in the following circumstances: when personally delivered; or three (3) business days after being deposited in the United States Mail, postage prepaid, certified or registered; or the next business day after being deposited with a recognized overnight mail or courier delivery service; or when transmitted by facsimile or telecopy transmission, with receipt acknowledged upon transmission; and addressed as follows (or to such other person or at such other address, of which any party hereto shall give written notice as provided herein):

If to County: Manatee County Administrator
Manatee County Administration Center
1112 Manatee Avenue, Suite 920
Bradenton, Florida 34206
Facsimile: (941)745-3790

With copies to: Manatee County Attorney
Manatee County Administration Center
1112 Manatee Avenue, Suite 969
Bradenton, Florida 34206
Facsimile: (941)749-3089

If to City: Bradenton City Clerk
Bradenton City Clerk's Office
101 Old Main Street
Bradenton, Florida 34205
Facsimile: (941)932-9547

With copies to: City Attorney's Office
1111 MLK Ave, Suite F
Bradenton, Florida 34205
Attention: City Attorney
Facsimile: (941)747-6658

and

Grimes Goebel Grimes Hawkins Gladfelter
& Galvano, PL
1023 Manatee Avenue West
Bradenton, Florida 34205
Attention: Caleb Grimes or Leslie Gladfelter
Facsimile: (941)748-0151

In all cases, notices shall be deemed delivered to a party only upon delivery of copies to the persons indicated above in the same manner as for the party being notified.

6.11 No Third-Party Beneficiaries. The obligations contained in this Agreement are for the benefit of, and will be enforceable by, the parties hereto only. Such obligations are not intended to confer any right or benefit on any third party or to create any obligations or liability of a party to any such third party.

6.12 No Partnership. Neither of the parties hereto shall, by virtue of this Agreement, in any way or for any purpose, be deemed to be a partner of the other or a joint venturer or a member of a joint enterprise with the other.

WHEREFORE, the County and the City have executed this Interlocal Agreement as of the date and year first above written.

By: *Susan B. ...*
Attest: R.B. Shore,
Clerk of the Circuit Court



Manatee County, Florida
By: Board of County Commissioners

By: *[Signature]*
Chairman 11/8/11

Shane ...
Attest: Carl A. Callahan,
for City Clerk

City of Bradenton, Florida
By: *Patrick M. Roff*
VICE Mayor PATRICK M. ROFF

Exhibit "A"
Surface Water Monitoring Program

A. Location of Monitoring Stations

Figure 1 attached hereto and incorporated herein by reference identifies locations of the selected surface water monitoring stations. These stations were selected to be representative of constituent loadings associated with the Braden River (WBID 1914A) and certain tributaries of the Braden River. The locations of these stations have been agreed upon after consultation between representatives of the City DPWU and the County DNR. These stations are identified by the prefix BRU on **Figure 1 ("Monitoring Locations")**.

B. Background Water Quality Data

Sufficient background surface water quality exists for all proposed Monitoring Locations identified in **Figure 1** with the exception of sites BRU-3, BRU-4, BRU-5, BRU-9, BRU-10, and BRU-13. As of the Effective Date of this Agreement, City will initiate monthly monitoring at sites BRU-3, BRU-4, BRU-5, BRU-9, BRU-10, and BRU-13 for the constituents identified in **Table 1** set forth in **Section C** below. Such monthly monitoring shall continue for twelve (12) consecutive months after inception. At the end of such twelve-month period, these five sites will be incorporated into the quarterly monitoring program for all Monitoring Locations. Such collection, monitoring and reporting to the County shall be as set forth in **Section C**.

In consideration of the existing background data, its commitment to collect and report for the sites referenced above, and compliance with the other requirements of this Interlocal Agreement, the beneficial use of reclaimed water meeting AWT Standards within the Beneficial Reuse Area may begin on October 1, 2011, as long as all other requirements of this Agreement are met.

C. Constituents to Be Monitored; Analysis of Data; Ongoing Monitoring Program

Table 1 below depicts the constituents that will be examined at each Monitoring Location identified in **Figure 1**.

Within ninety (90) days after the commencement of the beneficial use of reclaimed water meeting AWT Standards within the Beneficial Reuse Area, City will (or cause its contractor[s] to) initiate an on-going surface water monitoring program for all Monitoring Locations, at City's expense, which expense may be passed along to such contractor(s). Monitoring will be performed quarterly for the constituents identified in **Table 1**; provided, however, this requirement of quarterly monitoring of all Monitoring Locations shall not replace the twelve-month monitoring requirement set forth in **Section B** above. Such twelve-month collection of background data at sites BRU-3, BRU-4, BRU-5, BRU-9, BRU-10 and BRU-13 shall continue until completed.

Table 1. Constituents to Be Monitored

Constituent	Units	Type of Analysis
Total Kjeldahl Nitrogen	mg/l	Laboratory
Nitrate + Nitrite	mg/l	Laboratory
Ammonia Nitrogen	mg/l	Laboratory
Unionized Ammonia	mg/l	Laboratory
Total Nitrogen	mg/l	Laboratory
Orthophosphorous	mg/l	Laboratory
Total Phosphorous	mg/l	Laboratory
Chlorophyll (a)	mg/m ³	Laboratory
Water Temperature	°C	<i>in situ</i>
pH	units	<i>in situ</i>
Dissolved Oxygen	mg/l	<i>in situ</i>
Conductivity	µmho/cm	<i>in situ</i>
Fecal Coliform	mpn/100ml	Laboratory
Total Alkalinity as CaCO ₃	mg/l	Laboratory
*Instantaneous stream velocity	ft/s	<i>in situ</i>

* Should there be no instantaneous stream velocity at the sampling location resulting in no streamflow, no water quality samples shall be collected

All samples will be collected by certified technicians, who are also qualified to perform the *in situ* analyses. All samples shall be collected in compliance with the requirements of Chapter 62-160 F.A.C. All laboratory analyses shall be performed by a NELAC certified laboratory. All laboratory analytical data shall meet the quality assurance requirements of FDEP guidance document EAS 01-01 (Tier II), incorporated by reference in Chapter 62-303.320(8) F.A.C. Monthly background and quarterly monitoring laboratory reports shall be submitted to County DNR within ten (10) days of receipt of the results.

Upon review of the baseline data, County DNR and City DPWU will determine if additional monitoring locations are necessary. In addition, constituents may be added or removed from **Table 1** upon agreement between the County DNR and the City DPWU; provided, however, no such consideration will be permitted until a minimum of twelve (12) data points are available for each Monitoring Location, to allow for statistical evaluation.

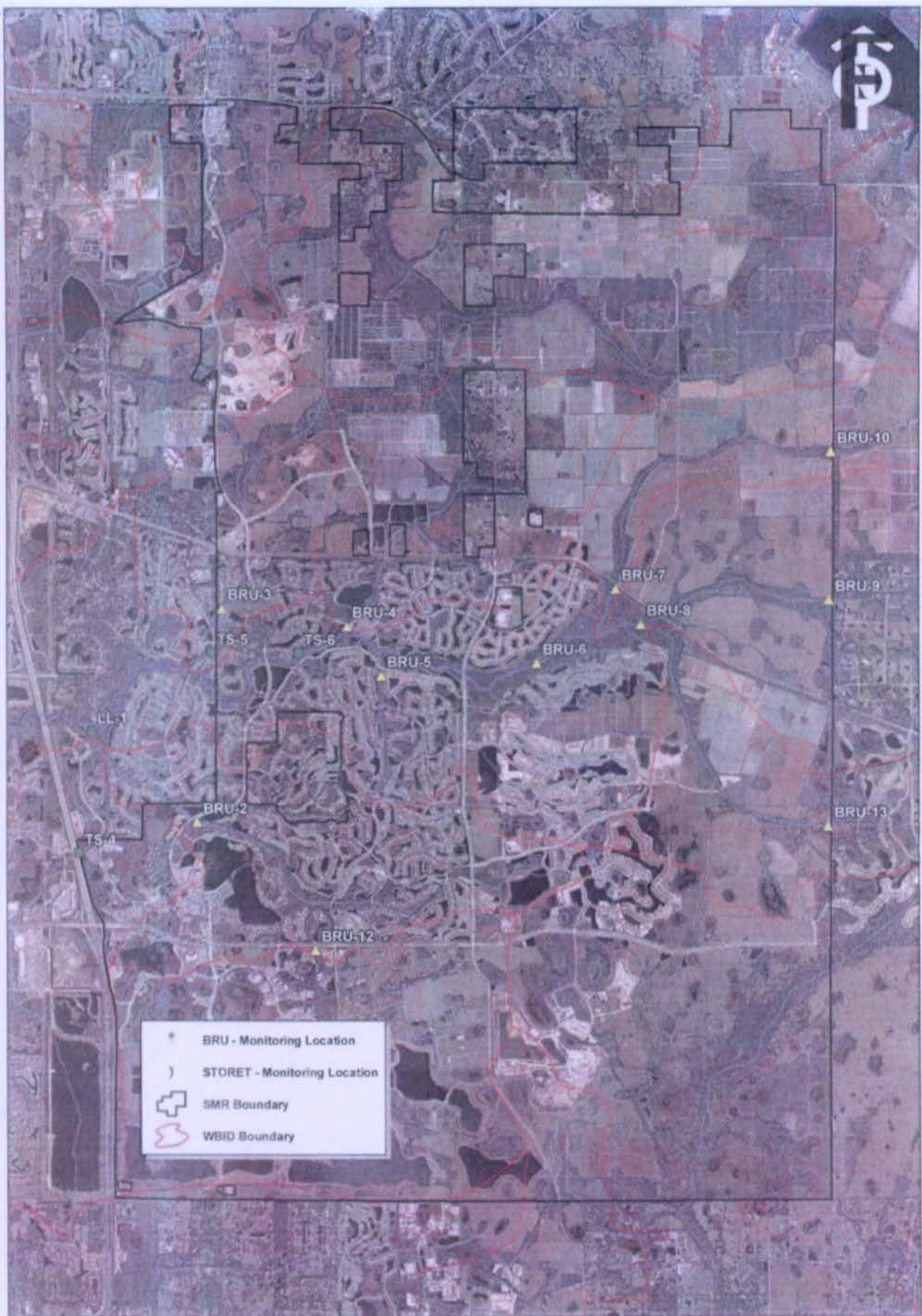
One (1) year following the initiation of the quarterly sampling program described herein, the County DNR and the City DPWU shall collaborate to prepare an annual interpretive report to define the trophic state of the water course(s) under the influence of the reclaimed water application. Subsequent reports shall be constructed on an annual basis. These reports shall also include effluent discharge monitoring data and groundwater data collected pursuant to the wastewater operational permits issued by the Florida Department of Environmental Protection (FDEP) for the AWT public wastewater treatment plant(s) producing such applied reclaimed water.

D. Costs

All costs of the monitoring programs hereunder, including but not necessarily limited to, installation and maintenance of the surface water monitoring stations and the sampling and the laboratory analysis of the samples shall be at the sole expense of the City; provided, however, nothing herein shall prohibit the City from passing along such cost to the distributor or user of such reclaimed water.

E. Compliance with Chapter 62-303, F.A.C.

Upon implementation of reclaimed water application within the Beneficial Reuse Area, exceedances of one or more parameters shall not be construed to be a violation of State water quality standards, nor shall exceedances of one or more parameters be construed to be a function of reclaimed water application only. Exceedances shall be addressed pursuant to Chapter 62-303 F.A.C.



Scale: 1:45,000

1/17/2011

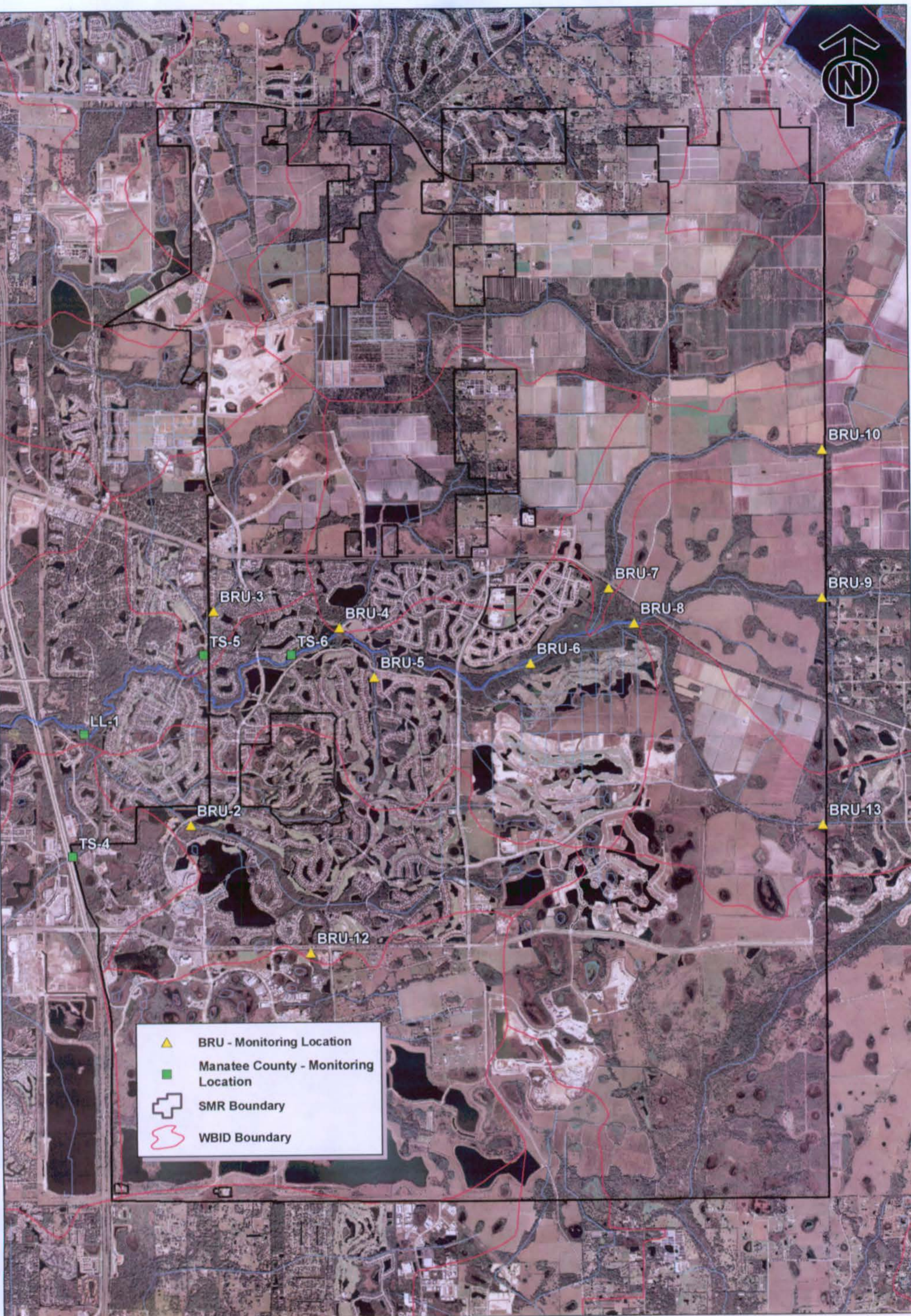
Image: 2010

0 0.2 0.4 0.8 1.2 1.6 Miles

Progressive Water Resources has provided the images or data presented in this map for informational purposes only. This data is not intended to be used in lieu of official survey data provided by a Professional Surveyor licensed by the State of Florida

FIGURE 1
Surface Water Quality
Monitor Site Locations





Scale: 1:45,000

1/17/2011

Image: 2010

0 0.2 0.4 0.8 1.2 1.6 Miles

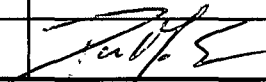
Progressive Water Resources has provided the images or data presented in this map for informational purposes only. This data is not intended to be used in lieu of official survey data provided by a Professional Surveyor licensed by the State of Florida

FIGURE 1
Surface Water Quality
Monitor Site Locations



MANATEE COUNTY GOVERNMENT

AGENDA MEMORANDUM

SUBJECT	Interlocal Agreement between City of Bradenton and Manatee County regarding use of reclaimed water in portion of Evers Watershed	TYPE AGENDA ITEM	Consent
DATE REQUESTED	11/08/11	DATE SUBMITTED/REVISED	10/10/11
BRIEFINGS? Who?	None	CONSEQUENCES IF DEFERRED	Would not be consistent with Comprehensive Plan or Land Development Code provisions
DEPARTMENT/DIVISION	Building and Development Services / Comprehensive Planning and Public Hearings	AUTHORIZED BY TITLE	John Barnett, Building and Development Services Director
CONTACT PERSON TELEPHONE/EXTENSION	Kathleen Thompson / 748-4501 ext. 6841	PRESENTER/TITLE TELEPHONE/EXTENSION	Kathleen Thompson / Planning Manager / 748-4501 ext. 6841
ADMINISTRATIVE APPROVAL			

ACTION DESIRED
 INDICATE WHETHER 1) REPORT; 2) DISCUSSION; 3) FORM OF MOTION; OR 4) OTHER ACTION REQUIRED

Authorize Chairman to sign Interlocal Agreement for Reuse of Reclaimed Water in the Evers Watershed.

ENABLING/REGULATING AUTHORITY
 Federal/State law(s), administrative ruling(s), Manatee County Comp Plan/Land Development Code, ordinances, resolutions, policy

Manatee County Comprehensive Plan and Manatee County Land Development Code; Section 163.01, Florida Statutes

BACKGROUND/DISCUSSION

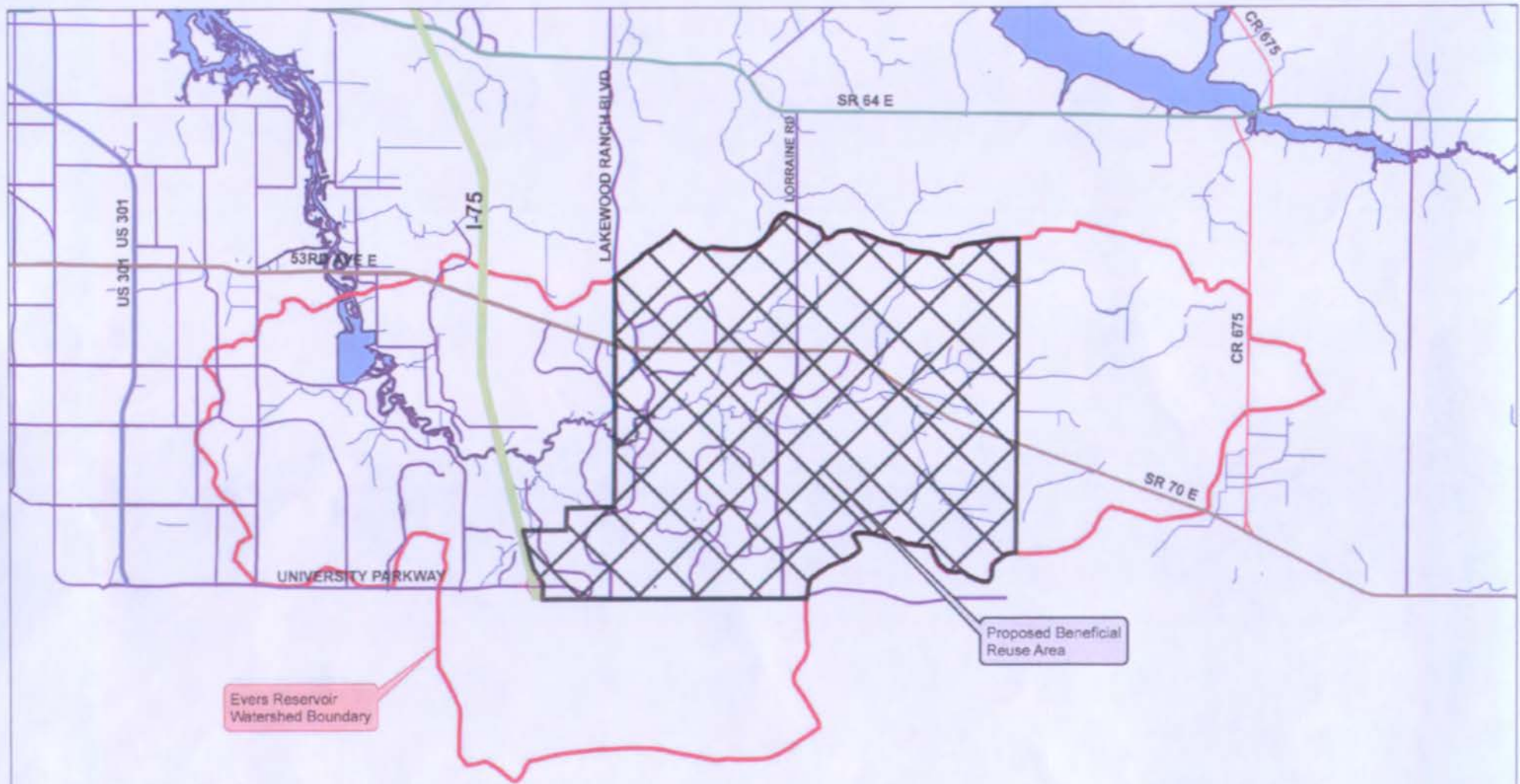
- In June 2010, the BOCC approved a Comprehensive Plan (Policy 3.2.1.8) and LDC (Section 604.1.2.9) amendment to allow the beneficial use of reclaimed water in portions of the Evers Watershed protection area.
- A condition for the allowance of reclaimed water was pursuant to a "surface water monitoring program" approved through an Interlocal Agreement between the City and County
- The City of Bradenton signed the Interlocal Agreement for Reuse of Reclaimed Water in the Evers Watershed on August 17, 2011.
- The County Attorney's Office and the Natural Resources Department developed the monitoring criteria with the City of Bradenton and SMR and are in agreement with the language in the Interlocal Agreement (ILA).
- Manatee County staff attached "Figure 1 – Surface Water Quality Monitor Site Locations" map to the Agreement. The map is referenced in Exhibit "A" Item A. Location of Monitoring Stations.

COUNTY ATTORNEY REVIEW		APPROVED IN OPEN SESSION
Check appropriate box	NOV 08 2011	
<input checked="" type="checkbox"/>	REVIEWED Written Comments: <input type="checkbox"/> Attached <input checked="" type="checkbox"/> Available from Attorney (Attorney's initials: WC)	BOARD OF COUNTY COMMISSIONERS MANATEE COUNTY, FLORIDA
<input type="checkbox"/>	NOT REVIEWED (No apparent legal issues.)	
<input type="checkbox"/>	NOT REVIEWED (Utilizes exact form or procedure previously approved by CAO.)	
<input type="checkbox"/>	OTHER	

ATTACHMENTS: (List in order as attached)		INSTRUCTIONS TO BOARD RECORDS:	
Comprehensive Plan Policy 3.2.1.8 Land Development Code Section 604.1.2.9 Two original Interlocal Agreement for Reuse of Reclaimed Water in the Evers Watershed		Please return one original Agreement and one certified copy to Kathleen Thompson, Building & Dev. Services Dept. <i>sent 11/10/11</i>	
COST:	n/a	SOURCE (ACCT # & NAME):	n/a
COMMENTS:	n/a	AMT./FREQ. OF RECURRING COSTS: (ATTACH FISCAL IMPACT STATEMENT)	n/a



Proposed Beneficial Reuse Boundary



Shurgberg No. 3127
6000 RB
LARA COB
MAP 11/8/11