This Instrument Prepared By:

Lee County Utilities

P. O. Box 398

Fort Myers, FL 33902-0398

**STRAP NO.**

**(This Space Reserved For Recording) - LCU 500283**

**AGREEMENT FOR THE DELIVERY**

**AND USE OF RECLAIMED EFFLUENT WATER**

THIS AGREEMENT is made and entered into on this    day of  20, between       and its assigns and successors in interest, hereinafter referred to as the "USER," and **LEE COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY."

**WITNESSETH:**

WHEREAS, the COUNTY owns, maintains, and operates wastewater treatment facilities in Lee County and intends to produce treated effluent water of a quality for the irrigation of grasses, woodlands, and certain crops; and

WHEREAS, the COUNTY desires to deliver this treated effluent water for irrigation use by others as a means of effluent water disposal; and

WHEREAS, the COUNTY intends to utilize a reclaimed effluent water distribution system in order that delivery can be made under pressure directly to USER in a closed system; and

WHEREAS, USER now owns or otherwise controls the land upon which the reclaimed effluent water is to be used for irrigation purposes; and

WHEREAS, the COUNTY believes that it is in the best public interest to enter into this Agreement in order to further dispose of effluent water from its wastewater treatment facilities.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the USER and COUNTY do hereby agree as follows:

**1. EASEMENT**

Since the Point of Delivery is within the USER's property, the USER had previously granted an easement to the COUNTY, for operation and maintenance of the delivery system for the reclaimed effluent water on the USER's property. The easement agreement itself, and the legal description of the property subject to the easement are incorporated by reference, attached hereto as **EXHIBIT A**, and made a part of this Agreement.

**2. TERM OF THE AGREEMENT**

The COUNTY shall deliver and the USER shall accept and use reclaimed effluent water produced by the COUNTY from one of its wastewater treatment facilities, and this Agreement shall be effective on the date of the execution (Effective Date) and for a term of twenty (20) years from the Effective Date, provide the Agreement is approved by the Lee County Board of County Commissioners. The term of this Agreement shall be renewed automatically from year to year beyond the initial twenty‑year term, unless terminated by the USER by written notice not less than one (1) year (365 days) in advance if the USER desires to terminate or by the COUNTY by written notice not less than one (1) year (365 days) in advance of the anniversary of the commencement of each renewal.

**3. USE OF RECLAIMED WATER: USER'S IRRIGATION SYSTEM**

A. The USER shall use reclaimed water delivered by the COUNTY for agricultural or urban irrigation; to include, but not be limited to, golf courses, lawns, and roadway right‑of‑way, or other purposes in any manner determined by the USER, except that use of the reclaimed water shall be consistent with all local, state, and federal regulations, and in such a manner as not to require a federal wastewater discharge permit.

B. The USER agrees to receive reclaimed water within thirty (30) days of receipt of written notice from the COUNTY that delivery will commence. The USER shall be solely responsible for the operation and maintenance of all portions of the USER's irrigation system located within the boundaries of USER's property and in accordance with the conditions established in **EXHIBIT B** of this Agreement.

**4. WATER QUALITY**

Reclaimed water delivered under this Agreement shall be treated to levels acceptable to meet the requirements of Chapter 62-610 Florida Administrative Code and Florida Department of Environmental Protection requirements for irrigation on lands for public access.

**5. VOLUME OF WATER: DELIVERY SCHEDULE**

The COUNTY will deliver reclaimed water and the USER shall accept and use a volume of gallons of reclaimed water per day in accordance with the conditions established in Exhibit B. The COUNTY will require the USER to install appropriate meters at the Point of Delivery so that the volume of reclaimed water delivered will be monitored.

**6. POINT(S) OF DELIVERY**

A. The Point(s) of Delivery of reclaimed water from the COUNTY to the USER is immediately downstream of the meter. The COUNTY shall own, operate, and maintain the reclaimed water distribution system upstream of the Point(s) of Delivery. The USER shall own, operate, and maintain all works downstream of the Point(s) of Delivery.

B. The USER shall provide, in a manner approved by the appropriate regulatory agencies, a positive check‑valve between the reclaimed water irrigation system and any other irrigation water source(s). The cost of such check‑valve and its installation shall be borne by the USER, and the complete operation of the check‑valve shall be the responsibility of the USER. The USER agrees to identify to the COUNTY all well(s) connected to the irrigation system. The USER may continue to use its existing well(s) and/or lake or pond water source(s) for its irrigation system, provided that these systems and the effluent reuse system are not operated simultaneously.

C. It shall be the USER's responsibility to construct all lines, meters, etc., necessary to extend reclaimed water lines from existing COUNTY facilities beyond the point of delivery

**7. DELIVERY OF RECLAIMED WATER UNDER ADVERSE CONDITIONS**

A. Adverse weather conditions or unforeseen circumstances may necessitate modification of the normal delivery schedule. The USER may have the right to restrict the use of the reclaimed water to be delivered in the event of adverse weather conditions or unforeseen circumstances. The USER shall not restrict the use of reclaimed water until all alternate application sites available to the USER have been utilized to their capacity. Notice to the COUNTY of the USER's intent to restrict the use of the reclaimed water shall be in writing and received by the COUNTY in advance of restricting use. If said advance notice to the COUNTY is not practical, then the USER shall give oral notice of the restriction to the COUNTY immediately following restricting use, to be followed by a written document as soon as it is practical, fully describing the circumstances for the restriction.

B. Both parties also recognize that adverse weather conditions or unforeseen circumstances may result in a need for reclaimed water greater than the volume set forth in Section 5. Each user shall have the right to draw additional water, subject to availability of reclaimed water supplies. During any period in which more than one user exercises the right to draw additional reclaimed water, the COUNTY will furnish water, if available, as the transmission and delivery systems are capable of handling. During those periods in which multiple users request additional water and COUNTY is not able to provide the total amount requested to all users, each user shall receive said additional water on a pro-rata basis.

C. If the COUNTY's transmission or distribution system fails for reasons or events beyond the COUNTY's control, then delivery of reclaimed water under the requirements of this Agreement may be interrupted or limited in quantity. In such event, COUNTY will provide USER with verbal notice as soon as practicable describing the circumstances and expected duration, followed by written notice describing same.

**8. EMERGENCY SITUATIONS**

A. The COUNTY shall not be held liable to the USER for failure to deliver reclaimed water if an emergency situation preventing such delivery exists. Emergency for purposes of this section shall be defined as an event beyond the control of COUNTY preventing delivery of adequate reclaimed water which is not the result of any reckless, or intentional act or omission on the part of the COUNTY. Emergency shall include, but not be limited to, contamination of the reclaimed water making it unsuitable for distribution based on Local, State, or Federal Law, or an act of God.

B. If and when emergency situations occur, the COUNTY will notify the USER by telephone within twenty-four (24) hours and follow up with a letter stating the nature of the emergency and the anticipated duration. County will use all reasonable efforts to restore delivery as quickly as possible following such emergency.

**9. TERMINATION OR ASSIGNMENT**

A. The USER may have the right to terminate its obligations under this Agreement upon two (2) years advance written notice to the COUNTY without incurring any penalty. In the event that USER terminates this Agreement without giving at least two (2) years advance written notice to the COUNTY, USER shall be liable for all reasonable and actual costs and expenses that the COUNTY may incur for obtaining an alternate method of disposal of that portion of the effluent not taken as the result of the USER’s early termination, unless such termination is mandated by a Local, State or Federal regulatory agency. For purposes of this section, said costs and expenses shall in no event exceed $25,000. This section shall not be construed to limit USER’s right to terminate this Agreement in accordance with Section 2, above, without incurring any penalty.

B. The COUNTY shall have the right to suspend COUNTY's performance obligation under this Agreement if said performance is prevented by third-party litigation or any other event beyond the control of the COUNTY.  In such an event, COUNTY shall provide USER with verbal notice as soon as practicable describing the circumstances and the expected duration, followed by written notice describing same.

C. The COUNTY shall have the right to transfer all or any part of the treatment or distribution facilities to others and to assign all or any part of its rights and obligations under this Agreement to others, provided the transferee/assignee accepts, becomes bound, and becomes exclusively responsible for all applicable terms and conditions of this Agreement.  Prior to such assignment, COUNTY must provide USER with written notice not less than thirty (30) days in advance.

**10. EXCUSE FROM PERFORMANCE BY GOVERNMENTAL ACTS**

If for any reason during the term of this Agreement, local, state or federal governments or agencies shall fail to issue necessary permits, grant necessary approvals, or shall require any change in the operation of the treatment, transmission and distribution systems or the application and use of reclaimed water, then to the extent that such requirements shall affect the ability of any party to perform any of the terms of this Agreement, the affected party shall be excused from the performance thereof and a new Agreement shall be negotiated by the parties hereto in conformity with such permits, approvals, or requirements.

**11. TRANSFER OR MODIFICATION OF USER'S COMMITMENT**

Sale of Land: The USER's right to sell, transfer or encumber the land described in Exhibit A shall not be restricted by this Agreement, except that USER must provide COUNTY with advance written notice of any proposed sale or transfer at the address noted in Section 20 herein. Prior to the sale or transfer, the buyer or transferee shall execute and deliver to the COUNTY, an acknowledgement and acceptance of the USER's commitment under the same terms and conditions of this Agreement. In effect, this Agreement shall run with the land, and as such, shall be properly filed with the Property Records of Lee County, Florida.

**12. INDEMNIFICATION**

A. The COUNTY will be liable for money damages in tort for any injuries to or losses of property, personal injury, or death caused by the negligent or wrongful act(s) or omission(s) of any official or employee of the County while acting within the scope of the official’s or employee’s office or employment under circumstances in which a private person would be held to be liable in accordance with the general laws of the State of Florida, subject to the limitations as set out in Section 768.28, Florida Statutes, as it may be revised or amended from time to time.

B. The obligation of the COUNTY to indemnify the USER to the extent provided by Section 768.28, Florida Statutes, shall be conditioned upon USER’s compliance with all regulatory agency requirements and regulations for the use of the reclaimed water from the point of the USER's control, provided that USER’s noncompliance with said regulations is the proximate cause of the alleged injury, illness or disease to persons or property.

C. The USER shall save and hold harmless and indemnify COUNTY, its agents, representatives, servants and employees, insofar as it legally may from all claims costs, penalties, damages and expenses (including attorney's fees) arising out of the following:

1. Claims related to the USER's construction, erection, location, operation, maintenance, repair, installation, replacement or removal of that part of the system owned by the USER for efficient disposal and reuse;

2. Claims arising out of USER's negligence or omissions upon any areas controlled by COUNTY that are contained within USER's property, or claims arising out of USER's negligence or omissions within an area controlled, operated, or maintained by USER;

3. Claims or demands that the use of the reclaimed irrigation water by the USER in the manner set forth in this Agreement constitutes a nuisance, or is in violation of Statutes or regulations, within or upon any areas controlled, operated, or maintained by USER.

D. USER's indemnification of the COUNTY in the above listed claims are subject to the terms and conditions contained in Sections 7 and 8 of this Agreement.

**13. RIGHT TO SET RATES, FEES AND CHARGES**

Nothing in this Agreement shall be construed as affecting in any way COUNTY's right and obligation to set fees, rates and charges, and its authority to regulate the delivery, storage, use, or spraying of effluent. COUNTY specifically, and without limitation, reserves the right to set rates, fees and charges for the provision of treated effluent in accordance with the authority vested in COUNTY and in accordance with the rules, regulations, and procedures prescribed for COUNTY under the Laws of Florida.

**14. CHARGES AND RELATED CONSIDERATIONS**

The COUNTY will charge the USER monthly for the number of gallons used at the current rate per 1,000 gallons as set forth in Lee County Rate Resolution, or as otherwise provided in written correspondence from COUNTY. Payment shall be made to the COUNTY within thirty (30) days following receipt of the bill by USER.

**15. ACCESS**

A. The COUNTY shall have the right, at any reasonable time and upon written notice to the USER at least forty-eight (48) hours in advance, to enter upon the property of the USER to review and inspect the practices of the USER with respect to conditions agreed to herein, to include compliance with any and all local, state and federal regulatory agencies. If written notice at least forty-eight (48) hours in advance is not practicable, COUNTY shall provide notice via telephone as soon as COUNTY is made aware access to the property of USER will be required. The USER shall have the option of having a representative accompany the COUNTY personnel during any and all inspections.

B. Unannounced entry shall be permitted for the purpose of meter reads and inspection of COUNTY owned mains and appurtenances, and for sampling at any monitoring wells located on the property of the USER.

C. All such on‑site monitoring will be at COUNTY's expense.

**16. DISCLAIMER OF THIRD PARTY BENEFICIARIES**

This Agreement is solely for the benefit of the formal parties hereto and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto.

**17. SEVERABILITY**

If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced and if the intentions of the parties can continue to be effected. To that end, this Agreement is declared to be severable.

**18. LAND USE APPROVALS**

This Agreement shall not be construed as a basis for: (1) granting, assuring or indicating, or (2) denying, refusing to grant or preventing any future grant of land use or zoning approvals, permissions, variances, special exceptions, or rights with respect to the real property in the irrigated area.

**19. APPLICABLE LAW**

This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

**20. NOTICES**

All notices required or authorized under this Agreement shall be given in writing and shall be served by mail on the parties at the addresses below:

COUNTY: LEE COUNTY UTILITIES

Post Office Box 398

Fort Myers, FL 33902‑0398

USER:

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**21. EXHIBITS AND ADDENDUMS**

This Agreement incorporates the following exhibits and addendums which are specifically made part of this Agreement:

Exhibit A: Copy of Delivery and Use of Reclaimed Water Easement (PREVIOUSLY RECORDED in the Lee County Public Records at

 Figure A-1: Point of Connection/Delivery of Effluent Water

 Figure A-2: Legal Description of Land Being Served by Effluent

Exhibit B: Contract Conditions between LEE COUNTY and

**IN WITNESS WHEREOF**, this **AGREEMENT**, with its attached Exhibits and/or Addendums, constitutes the entire Agreement between the parties and has been entered into voluntarily and with independent advice and legal counsel, and has been executed by the authorized representative of each party on the date written herein. Modifications to and waivers of the provisions herein shall be made in writing by the parties hereto.

**SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:**

|  |  |  |  |
| --- | --- | --- | --- |
| WITNESS: |  |  |  |
| [1st Witness Signature] |  |  | [User’s Signature] |
|  |  |  |  |
| [Type or Print Name] |  |  | [Type or Print Name] |
|  |  |
| [2nd Witness Signature] |  |  | [Title] |
|   |  |  |
| [Type or Print Name] |  |  |

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 The foregoing instrument was signed and acknowledged before me this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,20\_\_\_\_ by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_who produced the following as identification \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or is personally known to me, and who did/did not take an oath.

|  |  |
| --- | --- |
| [Notary Seal] |  |
| [Signature of Notary] |
|  |
| [Typed or Printed Name] |

The foregoing **AGREEMENT** was approved and accepted for and on behalf of Lee County, Florida, this \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_.

ATTEST: BOARD OF COUNTY COMMISSIONERS

LINDA DOGGETT, CLERK LEE COUNTY, FLORIDA

BY: BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Deputy Clerk Chair

APPROVED AS TO FORM FOR THE

RELIANCE OF LEE COUNTY ONLY

 BY:

Office of the County Attorney

**EXHIBIT B**

**CONTRACT CONDITIONS BETWEEN**

**USER AND LEE COUNTY**

THE FOLLOWING conditions are agreed to by      , (hereinafter referred to as "USER"), and LEE COUNTY (hereinafter referred to as "COUNTY"), for the use of reclaimed effluent water. Conditions set forth in this Exhibit B are in accordance with the Agreement and are meant to meet the specific needs of the individual USER and the COUNTY.

All conditions of this Exhibit B are specifically added to and made part of this Agreement.

**Location of Distribution Point and Property:**

The distribution point (or Point of Delivery) to the meter station where the County is to deliver the reclaimed water shall be considered a point inside the easement shown in Figure A‑1, of Exhibit A of the Agreement.

The property identified by the USER to receive reclaimed water is described in Exhibit A of the Agreement, and shown in Figure A-2 of Exhibit A of the Agreement.

**Quantity of Reclaimed Water:**

The COUNTY will deliver and the USER shall accept a monthly average flow of \_\_\_\_\_ million gallons per day (\_\_\_ GPD) reclaimed water. Availability of the reclaimed water shall be determined by the COUNTY based upon: flow into the treatment facility, quality of the reclaimed water, and/or priority level as established in the Agreement. The maximum rate available to the USER, pursuant to adverse conditions under Section 7 (b) will be twice the average daily flow rate of \_\_\_ MGD ( GPD), or \_\_\_ MGD (\_\_\_\_ GPD).

**Operation and Maintenance Practices:**

The USER will apply reclaimed water in accordance with all appropriate local, state, and federal rules and regulations.

Reclaimed water irrigation systems shall protect human health and the environment, which includes, but is not limited to, the following:

1. Appropriate warning signs shall be posted around the sites utilizing reclaimed water by the USER to designate the nature of the water and its non‑potability.

2. The USER will also take all reasonable precautions, including signs and labeling, to clearly identify reclaimed water systems to prevent inadvertent human consumption.

3. The USER shall ensure that no inter‑connections are made between the reclaimed water system and other water systems, which includes the installation of irrigation check valves on existing wells that are to remain connected to the irrigation system for reclaimed water.

4. A distance of 500 feet should be maintained between the periphery of the reclaimed water irrigation system application site and any existing or approved (but not yet constructed) shallow drinking water wells.

5. A distance of 1,000 feet shall be maintained between potable water wells and holding ponds which are incorporated into the irrigation system.

6. The USER shall give approval to the COUNTY to conduct soil borings and locate monitoring wells at the perimeter of the property in areas agreeable to the USER so as not to interfere with USER'S operations. These monitoring wells shall be installed and sampled at periodic intervals by the COUNTY at the COUNTY'S expense.

**Cost Allocation**

All costs for operating and maintaining the USER'S irrigation distribution system shall be exclusively paid by the USER.

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