

LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

BLUE SHEET NO: 20020126-UTL

**1. REQUESTED MOTION:**

**ACTION REQUESTED:**

- 1) Consider "Agreement for Cooperation for the Greater Pine Island Deep Injection Well" with the Greater Pine Island Water Association, Inc. (GPIWA) that defines and provides for the respective functions of the County and GPIWA for the development of a public-private venture for the design, permitting, construction, operation and use of a Class I Deep Injection Well. The parties will share equally in all costs of designing, permitting, completing and testing of the well;
- 2) Approve Budget Transfer of \$400,000 from Sewer Connection Fee Reserves to establish the "PIWWTP/GPIWA Deep Injection Well" project (207262) for FY 01/02, and amend FY01-02/05-06 CIP accordingly.

**WHY ACTION IS NECESSARY:**

To establish the responsibilities and funding obligations of both the County and the GPIWA, and create a new CIP project. These actions require approval by the BOCC.

**WHAT ACTION ACCOMPLISHES:**

Allows Lee County to work cooperatively with the GPIWA to complete this project that will provide long term disposal capabilities for both the effluent water generated by the County's Pine Island Wastewater Treatment Plant, and the concentrate stream from GPIWA's reverse osmosis water treatment plant.

2. DEPARTMENTAL CATEGORY: 10 - UTILITIES  
COMMISSION DISTRICT #: 4

CIOE

3. MEETING DATE: 02-26-2002

**4. AGENDA:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED: \_\_\_\_\_

**5. REQUIREMENT/PURPOSE:**

- (Specify)
- STATUTE
  - ORDINANCE
  - ADMIN. CODE
  - OTHER Agreement /Funds Transfer

**6. REQUESTOR OF INFORMATION:**

A. COMMISSIONER: \_\_\_\_\_  
 B. DEPARTMENT: Lee County - Public Works  
 C. DIVISION/SECTION: Utilities Division  
 BY: Rick Diaz, Utilities Director  
 DATE: 2/13/02

**7. BACKGROUND:**

On February 1, 2001, the County placed in operation the Regional Wastewater Treatment Facilities (Pine Island Wastewater Treatment Plant). The Plant was designed and constructed with a treatment capacity of 0.5 M.G.D. (million gallons per day) and could be expanded to 1.0 M.G. D. in the future. Due to the limited disposal capacity during the rainy

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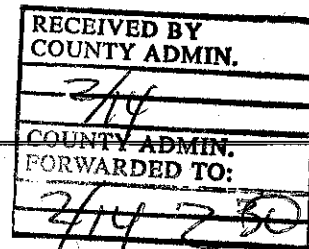
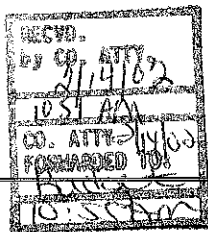
**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL**

(A) DEPARTMENT DIRECTOR	(B) PURCH. OR CONTRACTS	(C) HUMAN RESOURCES	(D) OTHER	(E) COUNTY ATTORNEY	(F) BUDGET SERVICES				(G) COUNTY MANAGER
					OA	OM	Risk	GC	
J. Lavender Date: 2-14-02	C. Logan Date: 2-14-02	N/A	B. Dearborn Date: 2/14/02	2/14/02	2-14-02	2/14/02	2/14	2-14-02	J. Lavender Date: 2-14-02

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER



season, the Plant disposal capacity was limited to 247,000 G.P.D. This limited disposal capacity does not allow the connection to the Regional Plant of all the existing or proposed developments requesting such services.

The Greater Pine Island Water Association (GPIWA) is proposing to expand its Reverse Osmosis Water Plant which requires the construction of a Class I Deep Injection Well (DIW) for the disposal of the brine produced by the Water Plant. The County's staff and the GPIWA have developed an interlocal agreement for the BOCC's consideration, where both parties will share the cost of construction and operation of said D.I.W. When the D.I.W. is complete and placed in operation, the Pine Island Wastewater Treatment Plant (P.I.W.W.T.P.) disposal capacity could be increased to its design capacity and will enable the connection of some existing developments or new developments to the Regional Wastewater Treatment Facility.

The projected construction cost for the D.I.W. is estimated to be approximately \$4.0 million dollars of which the County will be responsible for half of the cost. After receiving approval from both entities Boards, the staff from the G.P.I.W.A. will proceed with the selection of a Consultant to design and permit the proposed D.I.W. The initial allocation of \$400,000 for this project will enable the County to pay for its share of the initial design and permitting. Additional funds to cover the construction cost will be allocated in the next fiscal year CIP budget preparation.

The County will be responsible for the construction of the required pipeline that will convey the effluent produced at the P.I.W.W.T.P. to the D.I.W. site. The County's well capacity allocation will be capable of handling the projected future flows.

Funds will be made available in Account No.

20726248713.506540

(20-Capital Projects, 7262-PIWWTP/GPIWA Deep Injection Well, 48713-Sewer Connection Fees, 506540-Constr Improvements)

Attachments: 3 Originals of "Agreement for Cooperation"

**AGREEMENT FOR COOPERATION  
FOR THE  
GREATER PINE ISLAND INJECTION WELL**

THIS AGREEMENT is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2002 by and between **Lee County, Florida** ( the "County"), and **Greater Pine Island Water Association, Inc. ("GPIWA")**

WITNESS:

1. **PARTIES.**

- A. The County is a governmental entity, a Florida charter county and political subdivision of the State of Florida.
- B. GPIWA is a Florida private not-for-profit corporation, providing a water supply and distribution service to customers in the greater Pine Island area, Lee County, Florida.

2. **PURPOSE.** The purpose of this Agreement is to provide for a public-private venture for the design, permitting, construction (drilling), operation and use of one Class 1 Injection Well (the "Well") with an estimated maximum capacity of 4.0 million gallons per day (MGD).

3. **USE.**

- A. The Well will be used by GPIWA for disposal of brine and lawful byproducts of production of water to be used for drinking and irrigation by its customers in the greater Pine Island area.
- B. The Well will be used by the County for periodic injection of treated reclaimed water meeting Florida Department of Environmental Protection (FDEP) Standards from its operation of a wastewater utility.

4. **LOCATION.** The Well will be located on GPIWA property located at:  
9550 Stringfellow Road, St. James City, Florida 33956.  
STRAP NO. 34-44-22-00-00004.0010.

5. **OWNERSHIP/RESPONSIBILITY.**

- A. The Well will be designed, permitted, constructed (drilled & completed), owned and operated by GPIWA.

- B. GPIWA will be responsible for contracting for the design; for obtaining the necessary permits, contracting for the construction of the well, providing for the testing of the well and providing for the operation of the well when complete.
- C. GPIWA has the right to select and to enter into contracts with contractors. The County has the right to be involved in the process, and to provide concurrence in the process, to review the contracts and make recommendations to GPIWA concerning contract language and the selection of contractors. GPIWA will not use contractors that are debarred by the County. The County shall have the right to approve GPIWA's development of the well, such approval not to be unreasonably withheld.

6. PAYMENT.

- A. The parties will share equally in all costs of designing, permitting, completing and testing of the Well.
- B. The County will pay GPIWA 1/2 of the costs, fees and expenses for the design, permitting, construction and testing necessary for the completion of the Well. Payments will be made as work progresses, upon substantiated billing by invoice to the County, and paid in accordance with the County's Prompt Payment Policy.
- C. Additionally, the County will provide in-kind assistance to GPIWA as requested, and will have the right to be involved in all phases of design, permitting, construction and testing of the well.

7. RISK. The parties will share equally in the risk that the Well cannot be permitted, completed or used as anticipated.

8. WORK PLAN. Within 30 days after the Effective date of this Agreement, representatives of the parties will meet and develop a work plan, timeline and budget for the project. Upon approval, the County will then authorize GPIWA to proceed.

9. COUNTY PERMITS.

- A. GPIWA must follow all of the County's Land Development Codes and must follow the Development Order process. The County will treat the project as a County project. The administrative staff will assist GPIWA with the preparation and presentation of the applications for permits required by the County.
- B. The County will reimburse GPIWA for 1/2 of the fees for any permits required by the County.

10. RECLAIMED WATER DISPOSAL AGREEMENT.

- A. Before GPIWA begins the construction phase of the project, or borrows funds, the parties will enter into a Reclaimed Water Disposal Agreement, which will set forth the rights and responsibilities of the parties upon completion of the Well. A draft of a Reclaimed Water Disposal Agreement is attached hereto as Attachment "1". That Agreement is a long-term agreement for use of the Well by the County for treated effluent over the life (or agreed period) of the Well. Unless otherwise mutually agreed by the Parties, the terms of the Reclaimed Water Disposal Agreement shall be substantially as set forth in the draft Reclaimed Water Disposal Agreement contained in Attachment "1".
  - B. If the parties cannot agree on the terms of the Reclaimed Water Disposal Agreement, and GPIWA elects to discontinue pursuing the project, the County will pay 1/2 of the costs and liability for payment incurred by GPIWA to third parties under this Agreement, if any.
11. BORROWING. If GPIWA deems it necessary or advisable to borrow funds for any phase of the Well project, the County will provide reasonable assurances deemed necessary by the lender, that it is lawful for the County to give, so that the funds may be provided.

12. DISPUTE RESOLUTION.

- A. The parties acknowledge the importance of promptly and expeditiously resolving any disputes arising under this Agreement. In particular, GPIWA acknowledges that it shall not have the right to suspend performance of its obligations under this Agreement as a result of a dispute and the County acknowledges that it shall not have the right to suspend payments to the GPIWA as a result of disputes.
- B. Each party shall be obligated to continue such performance pending the resolution of the dispute under the procedures set forth in this Agreement.
- C. Each party shall give the other party written notice of the dispute which shall set forth the nature of the dispute, the facts giving rise to the dispute and, if the dispute involves a claim for money or damages, the amount in controversy. Such notice shall be given within 10 days after the occurrence of the event giving rise to the dispute or within 10 days after the aggrieved party first recognizes the condition giving rise to the dispute, whichever is later. Failure to provide such notice within a reasonable period of time, the 10-day period notwithstanding, shall constitute a waiver of all claims arising out of the dispute.
- D. Within five business days of notice of the dispute, the parties shall meet and negotiate in good faith with the aim of promptly resolving the dispute.

- E. If the parties are unable to resolve the dispute through negotiations, the parties agree to attempt in good faith to settle the dispute through a mediator appointed by the Chief Judge of the 20<sup>th</sup> Judicial Circuit, Florida, at the request of either party or both. The mediation, to the extent practicable, shall be held within 30 days of notice of the dispute.
- F. This alternative dispute resolution provision as contained in this Article 10 shall be a prerequisite to either party's right to resort to litigation.

13. ASSIGNMENT.

- A. No assignment or transfer of this Agreement, or any part, by either party, shall be valid without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- B. GPIWA may assign its rights under this Agreement to its Lender, if any. The County agrees to provide certain representations and/or consents required for such assignment, if requested by GPIWA, In all cases of potential assignment or transfer, the County shall have the Right of First Refusal to meet any offer. In the event of such assignment, the County will retain the same rights with respect to the Project as the County has under this Agreement with GPIWA.
- C. GPIWA shall require all of its Lenders to provide the County with notice of GPIWA's default under its agreement(s) with such Lenders.

14. NOTICES.

- A. Whenever it shall be necessary for the County or GPIWA to serve notice on the other party respecting this Agreement, such notice shall be served by fax notice, followed by personal delivery or delivery by Certified Mail, return receipt requested, addressed to:

Greater Pine Island Water Association, Inc.:

Attention, General Manager  
5281 Pine Island Road  
Bokeelia, FL 33922  
Phone: (941) 283-1071                      Fax: (941) 283-7792

Lee County:

Attention:, Director of Utilities for Lee County  
P.O. Box 398  
Ft. Myers, FL 33902

as the situation warrants, unless and until different addresses may be furnished in writing by either party to the other. Such notice shall be deemed to have been served on the date of personal delivery or 72 hours after the same has been deposited in the United States Post Office by Certified Mail, return receipt requested. This procedure shall be valid and sufficient service of notice for all purposes other than the institution of legal proceedings.

- B. Except as the County may specify in writing, GPIWA shall have no authority, express or implied, to act on behalf of the County in any capacity whatsoever as an agent. GPIWA shall have no authority express or implied, pursuant to this Agreement, to bind the County to any obligation whatsoever unless a regulatory matter requires both parties to approve an agreement.
  - C. Except as GPIWA may specify in writing, the County shall have no authority, express or implied, to act on behalf of GPIWA in any capacity whatsoever as an agent. The County shall have no authority express or implied, pursuant to this Agreement, to bind GPIWA to any obligation whatsoever unless a regulatory matter requires both parties to approve an agreement.
- 15. **BINDING ON SUCCESSORS.** This Agreement shall be binding upon all successors, assigns, and legal representatives of the County and/or GPIWA.
  - 16. **SEVERABILITY.** Any provision of this Agreement which shall prove to be invalid, void or illegal, shall in no way affect, impair, or invalidate any other provisions hereof, and such remaining provisions shall remain in full force and effect.
  - 17. **ENTIRE AGREEMENT.** This Agreement contains all of the agreements of the parties hereto with respect to the matters covered or mentioned in this Agreement, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing signed by each of the parties hereto or their respective successors in interest.
  - 18. **VENUE.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Florida. Any legal proceeding involving a dispute between the parties which arises out of this Agreement shall be filed and heard only in the Lee County, Florida Circuit Court.
  - 19. **RIGHTS LIMITED.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons

other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over against any party to this Agreement.

20. TERMINATION. Notwithstanding anything to the contrary in this Agreement, this Agreement and the Reclaimed Water Agreement shall terminate without liability to GPIWA if:

GPIWA cannot secure acceptable financing for the Project.

GPIWA cannot secure the required permits on acceptable terms to design, construct, install, own, operate or maintain the Facilities.

GPIWA finds that its contractors are unable to provide satisfactory bonding and guarantees.

Based upon actual expenditures, total costs of the Facilities are likely to exceed and project bids/proposals, \$4.0 million.

21. EXECUTION. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall be deemed to constitute a single document.

GREATER PINE ISLAND WATER ASSOCIATION, INC.:

By: David R. Phyre  
Board President

LEE COUNTY , FLORIDA:

By: \_\_\_\_\_  
Chairman, Board of County Commissioners

ATTEST:

\_\_\_\_\_  
Charlie Green, Clerk of the Circuit Court

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Office of the Lee County Attorney

Approved as to form:

\_\_\_\_\_  
Robert D. Pritt, Attorney for  
Greater Pine Island Water Association, Inc.



**ATTACHMENT "1" TO AGREEMENT FOR COOPERATION  
FOR THE GREATER PINE ISLAND INJECTION WELL**

**RECLAIMED WATER DISPOSAL AGREEMENT**

THIS AGREEMENT is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2002, by and between Lee County, Florida ("the County") and Greater Pine Island Water Association, Inc. ("GPIWA"):

**ARTICLE 1  
DEFINITIONS**

- 1.1 "Agreement" means this contract, with all exhibits, as it may be amended from time to time, as provided in Section 18.10.
- 1.2 "Annual Operation and Maintenance Fee" means the fee, as described in Exhibit A, paid by the County to GPIWA as the County's share of the annual costs of operating and maintaining the Facilities.
- 1.3 "Applicable Legal Requirements" means all local, state and federal laws, rules, regulations, permits and agreements that are or may become applicable to the design, construction, operation and maintenance of the Project including, but not limited to, statutes, regulations, judicial decisions, formal administrative rulings, enforcement policies and procedures.
- 1.4 "Capital Charge" means that charge, as described in Exhibit A, paid by the County to GPIWA as the County's share of capital costs for construction of the Facilities.
- 1.5 "County" means Lee County, Florida, a charter county and political subdivision of the State of Florida.
- 1.6 "Completion" means the substantial completion of construction, testing and start-up of all Facilities and the securing of all necessary local, state, and federal permits or approvals so that the Facilities are capable of delivering Reclaimed Water Disposal services to the County as required by this Agreement.
- 1.7 "Contract Year" means a 12-month time period. The first Contract Year of the Initial Term shall begin with the In-Service Date and the last Contract Year shall end with the Termination Date. In the event the Parties extend this Agreement, the last Contract Year of the Initial Term shall end and the first Contract Year of the Renewal Term shall begin with the date of renewal.
- 1.8 "Decommissioning Fee" means the fee, as described in Exhibit A, paid by the County to GPIWA as the County's share of the costs of decommissioning the Facilities, when they are no longer needed or serviceable.
- 1.9 "Default" is defined in Article 9.

- 1.10. "Facilities" means all tangible components of the Project necessary to supply Reclaimed Water Disposal Service in accordance with the terms of this Agreement. "Facilities" includes the Point of Interconnection and all equipment from there to, and including, the injection well, plus the monitor well. The piping and pumping systems from the Point of Interconnection back to both GPIWA's and the County's treatment plants shall belong to GPIWA and the County respectively and shall be excluded from the Facilities.
- 1.11. "Force Majeure" is defined in Section 11.1.
- 1.12. "Initial Term" is defined in Section 7.1.
- 1.13. "GPIWA" is defined as Greater Pine Island Water Association, Inc., a not-for-profit Florida corporation, providing water supply and distribution services to customers in the greater Pine Island, Lee County, Florida area.
- 1.14. "In-Service Date" means the earliest date of either: (i) the date on which GPIWA actually commences the delivery of Reclaimed Water Disposal Services to the County as required by this Agreement or (ii) 30 days after GPIWA notifies the County of Completion.
- 1.15. "Person" means any individual, corporation, partnership, joint venture, association, joint stock company or unincorporated association, or any governmental unit or agency or political subdivision.
- 1.16. "Point of Interconnection" means the location where Reclaimed Water is transferred from the County Facilities to the GPIWA injection well disposal system, more specifically, the point where Reclaimed Water from the County and GPIWA are mixed together.
- 1.17. "Project" means all labor, materials, equipment, and services necessary to supply GPIWA with disposal for its concentrated stream from its reverse osmosis water treatment plant and the County with Reclaimed Water Disposal.
- 1.18. "Reclaimed Water" shall mean treated effluent flows from the wastewater treatment plants(s) owned by the County, as further defined in state laws and regulations.
- 1.19. "Reclaimed Water Disposal" means complying with, County, State, and Federal Reclaimed Water Disposal regulations at the Point of Interconnection, in accordance with Article 6.
- 1.20. "Repair and Replacement Charges" means the charges, as described in Exhibit A, paid by the County to GPIWA as the County's share of the costs of major repairs or replacements to the Facilities.
- 1.21. "Renewal Term" is defined in Section 7.2.1.
- 1.22. "Termination Date" means the last day of the Initial Term or, if the County has exercised its option to extend this Agreement under Section 7.2.1., the last day of the Renewal Term.

- 1.23. "Termination Fee" means the fee, as described in Exhibit A and in accordance with Section 9.4, paid by the County to GPIWA, or GPIWA to the County, in the event this Agreement is terminated.

## ARTICLE 2

### GENERAL DESCRIPTION OF THE PROJECT

- 2.1. GPIWA intends to provide long term disposal capabilities for both the Reclaimed Water generated by the County and for GPIWA's concentrate stream from its reverse osmosis water treatment plant, by means of deep well injection.
- 2.2. The purpose of this Agreement is to provide the County, at the Point of Interconnection, the maximum quantity of Reclaimed Water Disposal capacity as set forth in Section 6.1 for the duration of the Agreement. GPIWA will provide all expertise, labor, equipment, materials and supplies necessary to meet its contractual obligations. GPIWA will have complete responsibility for financing, designing, constructing, owning, insuring, operating, permitting and maintaining the Facilities. GPIWA will also dispose of its own concentrate stream, at the quantity set forth in Section 6.1, via the Project facilities.
- 2.3. Except for Facilities provided by the County under Article 3, GPIWA shall be the sole owner of all Facilities, holding legal title and all beneficial interest in them. Such interest shall include, without limitation, all risk of loss and potential for gain with respect to the Facilities. GPIWA shall have use, possession and control of all Facilities
- 2.4. The County agrees that its rights and obligations to utilize the Reclaimed Water Disposal services from GPIWA, as provided in this Agreement, are solely those on the terms set forth herein. Neither party to this Agreement dedicates any part of the Facilities or services provided to the public, and such service shall cease upon termination of this Agreement.

## ARTICLE 3

### FACILITIES PROVIDED BY THE COUNTY

- 3.1. The County shall be totally responsible for the operation, maintenance and all costs associated with the pumping, piping, and other equipment necessary to transmit its Reclaimed Water flow to the Point of Interconnection.

## ARTICLE 4

### FACILITIES PROVIDED BY GPIWA

- 4.1. GPIWA shall design, permit, construct, install, own, operate and maintain all Facilities, wherever located, necessary to meet the requirements of this Agreement including all equipment on the well side of the Point of Interconnection and including the Point of Interconnection itself. GPIWA will provide an easement on its property for all required County facilities up to the Point of Interconnection.

- 4.2. While GPIWA does not guarantee any specific In-Service Date, it does recognize that the County desires to have the In-Service Date as early as possible. Therefore, GPIWA will progress the Project as rapidly as practical, beginning with the effective date of this Agreement, subject to regulatory, permitting and other delays beyond its control and recognizing the need to control costs, but not exceeding 1 year.
- 4.3. GPIWA may contract with any qualified persons for all or any part of the design of the Facilities.
- 4.4. GPIWA may perform construction, construction management, installation or installation management services through its own employees, or through any qualified persons.
- 4.5. GPIWA may perform operation and maintenance services through its own employees, or through any qualified persons.

**ARTICLE 5**  
**PERMITS AND APPROVALS**

- 5.1. Except to the extent specific permits are identified in Exhibit B as being the County's responsibility, GPIWA shall be responsible for identifying and obtaining all necessary permits and approvals from each agency having jurisdiction over any aspect of the Project.
- 5.2. The County will provide all reasonable assistance, as requested by GPIWA, in expediting, obtaining and coordinating the necessary permits and approvals. However, this shall not relieve GPIWA of its primary responsibility for identifying and obtaining all such permits and approvals.

**ARTICLE 6**  
**PERFORMANCE SPECIFICATIONS**

- 6.1. Maximum Quantity of Reclaimed Water Disposal Capacity.
  - 6.1.1 GPIWA shall be capable of providing to the County the maximum Reclaimed Water Disposal capacity of **3.1** million gallons per day (MGD). In addition, GPIWA plans to utilize a capacity of up to **.9** MGD for disposal of the concentrate stream from its reverse osmosis water treatment plant. The disposal facilities shall be designed to handle both the County's and GPIWA's flows simultaneously (**4.0 MGD**). The disposal facilities may also be designed for a capacity in excess of **4.0 MGD** if GPIWA, at its sole discretion, deems that to be advisable for any reason, but it shall be no larger than **14" diameter (injection tube) or 5.9 MGD**, unless agreed to by the County in writing.
- 6.2. Composition of Reclaimed Water
  - 6.2.1. No materials, shall be introduced from the County's Reclaimed Water system into the Facilities, unless such products or materials comply with all the requirements of the permits obtained by GPIWA attached hereto as Exhibit B or as they may be

amended from time to time hereafter. If any state, county, or federal agency imposes more stringent discharge standards subsequent to the execution of this Agreement, GPIWA and the County shall be obligated to comply with such standards. If modification to the Facilities, operation/maintenance requirements, or other additional requirements are necessitated by any such changes, then GPIWA's compensation from the County shall be adjusted accordingly, including additional Capital Charges and/or Annual Operation and Maintenance Fees. The County's MIT every 3-5 years share of any additional costs shall be 50%.

### 6.3 GPIWA's Disposal Responsibilities

- 6.3.1. GPIWA shall accept Reclaimed Water at the Point of Interconnection, provided that the Reclaimed Water meets all the requirements set forth by the operating permit issued by the Florida Department of Environmental Protection (FDEP). Reclaimed Water Disposal shall be in accordance with all permits issued by regulatory agencies.
- 6.3.2. GPIWA shall be fully responsible for the disposal, in accordance with all Applicable Legal Requirements, of all products resulting from its own operations, including the construction and operation of the injection and monitoring well(s).

### 6.4 Downtime and Back-up Facilities

- 6.4.1. From time to time during the life of the injection and monitoring well(s), they will need to be taken out of service for regular and/or emergency maintenance and testing activities. GPIWA will attempt to keep such periods of time to a minimum and will work with the County in scheduling these activities to minimize disruption to the County operations. GPIWA will notify the County in writing at least 30 days prior to such actions in advance to coordinate a period of time convenient to both parties, unless they are of an emergency nature, in which case notice will be given as soon as possible. GPIWA shall not be responsible for any expenses and/or liabilities incurred by the County as a result of such downtimes.
- 6.4.2. GPIWA and the County recognize and agree that the deep injection well will be of particular importance to the County during storm events and seasonal high usage. GPIWA will employ every effort to make the well available for disposal of Reclaimed Water especially during such times and emergencies. The parties to this agreement will develop a plan and protocol for implementing this section.
- 6.4.3. GPIWA does not represent that it is providing a supplemental means of providing Reclaimed Water Disposal for the County, whether required for operational or regulatory purposes, beyond the single deep injection well and associated facilities described in Section 6.1 and elsewhere in this Agreement. If any other supplemental facilities are ever required for the County purposes, they shall be the sole responsibility of the County, including all associated expenses and/or liabilities. GPIWA will cooperate with the County should any such additional back-

up facilities be required and may, but is not required to, provide the land for construction of such back-up facilities.

**ARTICLE 7**  
**TERM OF AGREEMENT AND OPTION TO EXTEND**

7.1. **Initial Term**

7.1.1. The term of this Agreement shall commence on execution of this Agreement by both parties. This Agreement shall terminate at the end of the twentieth (20<sup>th</sup>) year after the In-Service Date.

7.2. **Renewal Term(s)**

7.2.1. Not later than 180 days prior to the Termination Date, the County may notify GPIWA in writing of its desire to extend this Agreement for an additional ten (10) years beyond the Termination Date (the "Renewal Term") and the Agreement may be extended by mutual agreement for an additional ten (10) year term.. Then, upon similar notification, the Agreement may be renewed for as many additional 10 year terms as may be agreed between the County and GPIWA at the time of such additional renewals.

7.2.2. If it is necessary to re-apply for any permits or other approvals, other than the routine renewal of existing permits, or to obtain any additional permits or approvals, as a condition to continued operation of the Facilities, GPIWA shall use its best efforts to identify all such permits and requirements and advise the County of such requirements, together with GPIWA's estimate of the cost of securing all necessary permits and approvals. If additional costs are incurred, then GPIWA's reimbursement from the County shall be adjusted, including additional Capital Charges and/or Annual Operation and Maintenance Fees. The County's share of any additional costs shall be 50%.

7.2.3. In the event the Parties extend this Agreement, GPIWA's compensation shall be adjusted, as/if necessary for changed conditions, by increasing/decreasing the appropriate charges/fees. The County's share of any additional costs shall be 50%.

**ARTICLE 8**  
**RECLAIMED WATER DISPOSAL SERVICE PURCHASES AND BILLING**  
**PROCEDURES**

8.1. **Reclaimed Water Disposal Capacity**

8.1.1. Each Contract Year, GPIWA shall deliver and the County shall utilize the capacity to dispose of its excess Reclaimed Water flow, up to the capacity as described in Section 6.1

8.2. **Billing Procedures**

- 8.2.1. The County will pay in advance for the first year, upon receiving an invoice. For subsequent years, an invoice shall be submitted yearly by GPIWA not earlier than 28 days before the end of the previous Contract Year and not later than the tenth day of the following Contract Year, and the County shall pay in accordance with the County's Prompt Payment policy.

**ARTICLE 9**  
**DEFAULTS AND TERMINATION**

9.1. Default by GPIWA

9.1.1 A "Default" shall take place upon the occurrence of the event set forth in Section 9.1.2 of this Agreement, unless such occurrence is the result of the County's negligent acts or omissions or a Force Majeure event. (see Article 11). If a Default occurs and if GPIWA does not cure the Default in accordance with Section 9.1.3 of this Agreement, the County shall, to the extent permitted by applicable law, have the right to enforce any of the remedies described in Section 9.1.4 of this Agreement.

9.1.2. The occurrence of the following shall constitute a GPIWA default for purposes of this Agreement:

GPIWA's failure to provide the Reclaimed Water Disposal Services as required by this Agreement, as defined in Section 8.1.1.

9.1.3. The County shall give written notice to GPIWA of any Default, providing the reasons for or evidence substantiating such Default. GPIWA shall have 60 days from such notice to cure such Default. If the Default is not substantially cured at the expiration of the 60-day period (unless the nature of the Default is such that more than 60 days are reasonably required for its cure and GPIWA shall have diligently commenced such cure within such 60-day period and thereafter diligently prosecutes the same to completion) the County may exercise any of the remedies set forth in Section 9.1.4.

9.1.4 If GPIWA does not cure its Default as set forth in Section 9.1.3 of this Agreement, the County may, but shall not be obligated to:

9.1.4.1. Require GPIWA to retain the services of another person reasonably acceptable to the County who shall satisfy the obligations of GPIWA until such time as GPIWA cures the Default;

9.1.4.2. If GPIWA is unable to obtain the services of another Person pursuant to Section 9.1.4.1, the County may retain the services of another person who shall satisfy the obligations of GPIWA until such time as GPIWA cures the Default;

9.1.4.3. Terminate this Agreement in accordance with Section 9.4.1 of this Agreement.

9.1.5. GPIWA shall not be liable to the County by reason of any default under this Agreement for any indirect, incidental or consequential damages.

## 9.2 Default by the County

9.2.1 A "Default" by the County shall take place upon the occurrence of any one of the events set forth in Section 9.2.2 of this Agreement. If a Default occurs and if the County does not cure the Default in accordance with Section 9.2.3 of this Agreement, GPIWA shall, to the extent permitted by applicable law, have the right to enforce any of the remedies described in Section 9.2.4 of this Agreement.

9.2.2. The occurrence of any of the following shall constitute an event of the County's default for purposes of this Agreement:

9.2.2.1. The failure to make timely payment of any money agreed to in this Agreement;

9.2.2.2. Delivery of Reclaimed Water to the Point of Interconnection that does not meet the quality standards of all permits for such disposal.

9.2.3. GPIWA shall give written notice to the County of any such Default, providing the reasons for or evidence substantiating such Default. The County shall have 60 days from such notice to cure such Default. If the Default is not substantially cured at the expiration of the 60-day period (unless the nature of the Default is such that more than 60 days are reasonably required for its cure and the County shall have diligently commenced such cure within such 60-day period and thereafter diligently prosecutes the same to completion) GPIWA may exercise any of the remedies set forth in Section 9.2.4.

9.2.4. In the event the County does not cure its Default as set forth in Section 9.2.3 of this Agreement, GPIWA may, but shall not be obligated to:

9.2.4.1. Suspend the use by the County of Reclaimed Water Disposal Service;

9.2.4.2. Terminate this Agreement in accordance with Section 9.4.1 of this Agreement.

## 9.3. Indirect, Incidental or Consequential Damages Resulting from Defaults

9.3.1 The foregoing remedies in Sections 9.1 and 9.2 shall be in addition to and not in limitation of all remedies available at law or in equity. Neither the County nor GPIWA shall be liable to the other party by reason of any Default under this Agreement for any indirect, incidental or consequential damages.



## 9.4 Termination

### 9.4.1. Termination for Default

9.4.1.1 Either party to this Agreement may terminate this Agreement in the event of a material Default by the other party which has not been cured in accordance with Section 9.1.3 or 9.2.3. The termination of this Agreement due to a material Default shall not relieve the defaulting party from liability for such Default.

### 9.4.2. Termination for Convenience of the County

9.4.2.1. At any time, the County may terminate this Agreement, at its convenience and without cause, by giving GPIWA written notice of its intention to terminate the Agreement under this Section 9.4.2. Such termination shall be effective 180 days following such notice.

9.4.2.2. In the event of a termination under this Section 9.4.2:

9.4.2.2.1. GWPIA may cease all work on the Project, and

9.4.2.2.2. GIPWA shall be entitled to a Termination Fee in accordance with Exhibit A, attached.

9.4.2.3. Upon payment of the Termination Fee, the County shall have no further monetary obligations to GPIWA under this Agreement except for any Reclaimed Water Operation and Maintenance fees remaining due to GPIWA.

### 9.4.3. Termination by GPIWA

9.4.3.1. If, subsequent to the execution of this Agreement, the County legislates any Applicable Legal Requirement which adversely affects the Agreement, GPIWA shall be entitled to notify the County and request that good faith negotiations be initiated to seek an equitable adjustment to GPIWA's compensation. If an equitable adjustment is not successfully negotiated within three months of such notification, then GPIWA shall have the right, but not the obligation, to terminate this Agreement and treat the termination as a termination for convenience of the County pursuant to Section 9.4.2.

9.4.3.2. GPIWA shall have the right, but not the obligation, to terminate this Agreement, if any of the events herein below occur. Such termination shall not be a Default by GPIWA.

9.4.3.2.1. GPIWA determines that it will be unable to secure acceptable financing for the Project.

9.4.3.2.2. GPIWA determines that it will be unable to secure the required permits to design, construct, install, own, operate or maintain the Facilities.

9.4.3.2.3. GPIWA determines that its contractors are unable to provide satisfactory bonding and guarantees.

9.4.3.3. In the event of termination under this Section 9.4.3.2:

9.4.3.3.1. The County may pick up design, construction or operation work where it was left off.

9.4.3.3.2. The County shall be entitled to a termination fee in accordance with Exhibit A.

9.5. Equitable Adjustment.

9.5.1. In the event GPIWA is not in Default and in the further event: (i) GPIWA is unable to deliver the maximum quantity of Reclaimed Water Disposal Services to the County through no fault of GPIWA; (ii) the reasons for GPIWA's failure to deliver does not entitle GPIWA to any insurance compensation; and (iii) such failure to deliver has continued for at least six months, then the County and GPIWA shall negotiate in good faith to arrive at an equitable adjustment to GPIWA's compensation, for the period of inability to provide the service.

**ARTICLE 10**  
**DISPUTES**

10.1 The parties to this Agreement acknowledge the importance of promptly and expeditiously resolving any disputes arising under this Agreement in accordance with the provisions of this Article. In particular, GPIWA acknowledges that it shall not have the right to suspend performance of its obligations under this Agreement as a result of a dispute and the County acknowledges that it shall not have the right to suspend payments to the GPIWA as a result of disputes. Each party shall be obligated to continue such performance pending the resolution of the dispute under the procedures set forth in this Article.

10.2. In the event of any dispute or claim (hereinafter "dispute") arising out of this Agreement, the County and GPIWA shall give the other party written notice of the dispute which shall set forth the nature of the dispute, the facts giving rise to the dispute and, if the dispute involves a claim for money or damages, the amount in controversy. Such notice shall be given within 10 days after the occurrence of the event giving rise to the dispute or within 10 days after the aggrieved party first recognizes the condition giving rise to the dispute, whichever is later. Failure to provide such notice within such time shall not constitute a waiver, but the failure to provide such notice within a reasonable period of time, the 10-

day period notwithstanding, shall constitute a waiver of all claims arising out of the dispute.

- 10.3. Within five (5) business days of notice of the dispute, the parties shall meet and negotiate in good faith with the aim of promptly resolving the dispute.
- 10.4. If the parties are unable to resolve the dispute through the negotiations referred to in Section 10.3, the parties hereby agree to attempt in good faith to settle the dispute through a mediator appointed by the Chief Judge of the 20<sup>th</sup> Judicial Circuit, Florida, at the request of either party or both. The mediation, to the extent practicable, shall be held within 30 days of notice of the dispute under Section 10.2.
- 10.5. The alternative dispute resolution provisions contained in this Article 10 shall be prerequisites to either party's right to resort to litigation.

#### **ARTICLE 11** **FORCE MAJEURE**

- 11.1. "Force Majeure" as used herein means causes beyond the reasonable control of and without the fault or negligence of the party claiming Force Majeure including, but not limited to, acts of God, sudden and unanticipated actions of the elements, labor disputes, terrorism, vandalism, actions by federal and state agencies, and actions of legislative, judicial or regulatory agencies which conflict with the terms of this Agreement or otherwise prohibit, substantially impair hereunder or substantially increase the cost of any party's performance hereunder.
- 11.2. If either party is rendered wholly or partially unable to perform its obligations under this Agreement because of Force Majeure, that party shall be excused from such performance provided that:
  - 11.2.1. The non-performing party provides the other party with written notice describing the Force Majeure circumstances within five days after the occurrence of such event, or after the consequences of such event become known to the non-performing party, whichever is later;
  - 11.2.2. The suspension of performance is of no greater scope and of no longer duration than required by the Force Majeure circumstance;
  - 11.2.3. The non-performing party immediately undertakes reasonable and prudent efforts to remedy its inability to perform as a result of the particular event; and
  - 11.2.4. The non-performing party resumes performance of its obligations under this Agreement and provides the other party with written notice of such resumption as soon as the Force Majeure circumstances are resolved or eliminated.

**ARTICLE 12**  
**WATER SAMPLING AND AUDITS**

- 12.1. GPIWA shall have the right to sample and test the County's Reclaimed Water supply, at GPIWA's expense, at any reasonable time. The sample point shall be located at or near the Point of Interconnection. However, any such sampling or testing shall not excuse the County's compliance with this Agreement. GPIWA shall provide the County with a copy of the results of all such sampling or testing.
- 12.2. Throughout the duration of this Agreement, GPIWA shall maintain auditable records pertaining to its performance of this Agreement. Upon reasonable notice, GPIWA shall make such records available to the County pursuant to the County's request for inspection. The records shall verify the quantity, quality and delivery of Reclaimed Water under the terms of this Agreement.
- 12.3. GPIWA shall notify the County and all applicable parties promptly in the event GPIWA determines that the performance specifications set forth in Article 6 are not met.

**ARTICLE 13**  
**COMPLIANCE WITH LAWS**

- 13.1. GPIWA shall comply with all Applicable Legal Requirements, laws, ordinances, rules, regulations, and lawful orders of public authorities, including but not limited to, laws relating to environmental regulations, business and/or building permits and licenses, and all other regulations governing GPIWA's operations in connection with the Project. The County acknowledges the broad scope of the Applicable Legal Requirements with respect to the Project and agrees that a non-material failure to comply promptly therewith will not be deemed to be a Default.
- 13.2. At the County's request, and upon reasonable notice, GPIWA shall provide the County with evidence reflecting its compliance with any or all such laws and vice versa with regard to Reclaimed Water treatment.

**ARTICLE 14**  
**COMPENSATION AND PAYMENT**

- 14.1. As full compensation for the performance of its obligations as required by this Agreement, including the delivery of Reclaimed Water Disposal Services, GPIWA shall receive from the County fees and other compensation as provided for in Exhibit A of this Agreement, attached.

**ARTICLE 15**  
**GPIWA's ADDITIONAL OBLIGATIONS, REPRESENTATIONS AND WARRANTIES**

- 15.1. In addition to each obligation, representation and warranty set forth in other portions of this Agreement, GPIWA represents and warrants the following:

- 15.1.1. GPIWA is capable of designing, permitting and constructing, and is willing to design, permit and construct, either on its own behalf or through qualified contractors and subcontractors, the Facilities described in this Agreement. GPIWA further warrants that the Facilities will be capable of satisfying requirements as set forth in this Agreement.
- 15.1.2. GPIWA is capable of operating and maintaining the Facilities, and that it is willing to operate and maintain the Facilities, either on its own behalf or through qualified contractors or subcontractors, in satisfaction of the requirements as set forth in this Agreement.
- 15.1.3. GPIWA is a utility, duly organized and validly existing under the laws of the State of Florida, and is authorized to do business in the State of Florida. GPIWA further warrants that it has full power and authority to carry on its business as previously and presently conducted, and to enter into and perform this Agreement. True and complete copies of the corporate agreements, amended to date, shall be delivered to the County upon the County's reasonable request.
- 15.1.4. GPIWA warrants that any balance sheets, income statements and other financial data relative to the Project provided to the County at any time are true and complete in all material respects, are in accordance with their books and records, present fairly the financial position of GPIWA with respect to the Project at the date indicated, and have been prepared in accordance with generally accepted accounting principles.
- 15.1.5. GPIWA has reviewed all relevant documentation attached hereto and all related information provided to it by or on behalf of the County, and is fully apprised of the contents of such documentation.
- 15.1.6. GPIWA acknowledges that it owns the Project Site where Facilities are to be located.
- 15.1.7. There is no material claim, litigation, proceeding, or governmental investigation pending, or to the knowledge of GPIWA, threatened against GPIWA which could adversely affect the ability of either party to fulfill its obligations under this Agreement. GPIWA is not subject to any judgment, order, writ, injunction, or decree of any court or governmental agency which conflicts with this Agreement, or which could adversely affect or otherwise limit the ability of GPIWA to fulfill its obligations under Agreement.
- 15.1.8. The present and anticipated future obligations and commitments of GPIWA do not conflict with this Agreement and do not adversely affect the ability of either party to fulfill its obligations under this Agreement.
- 15.1.9. The execution and delivery of this Agreement on behalf of GPIWA and the consummation of the transactions contemplated hereby have been fully

authorized and approved by all requisite corporate action of GPIWA. No approval or consent of, or notice to or filing with, any person not a party to this Agreement, or any governmental agency, is necessary to authorize the execution or delivery of this Agreement by GPIWA.

- 15.1.10. GPIWA shall pay all property (real or personal), consumer, use and other taxes for the Facilities constructed by GPIWA which are legally enacted when expenses for the work are incurred.
- 15.1.11. In the event that the Project fails to comply with any construction permits or operating permits, or in the event that GPIWA otherwise materially breaches its warranties to the County, GPIWA shall, to the extent directly caused by such breach, be responsible for and shall pay:
  - 15.1.11.1. Any and all fines levied against the County or GPIWA by any governmental agency;
  - 15.1.11.2. Any and all reasonable costs, expenses or liabilities incurred by the County to ensure compliance with any such construction or operating permits;
  - 15.1.11.3. Any other damages of any kind relating to the construction or operation of the Facilities whether to the County or to any third party or to any property owned by the County or any third party; and
  - 15.1.11.4. All reasonable costs and expenses and reasonable attorneys' fees incurred by the County to defend or dispute any such fine, damages, or liability.
- 15.1.12. The County shall have the right, but not the obligation, after consultation with GPIWA concerning the nature of the alleged breach, to advance a sum of money for any such fines, costs, expenses, liabilities, or other damages, on behalf of GPIWA. In the event the County chooses to advance such sums and GPIWA does not dispute such fines, costs, expenses, liabilities, or other damages, it shall be entitled upon demand to reimbursement from GPIWA or may, upon 10 days written notice, deduct such sums from amounts due or to become due to GPIWA.

**ARTICLE 16**  
**THE COUNTY'S ADDITIONAL OBLIGATIONS**  
**AND REPRESENTATIONS**

- 16.1 In addition to each obligation and representation set forth in other portions of this Agreement, the County represents the following:

- 16.1.1. That it is a County, operating under a county charter, and a political subdivision of the State of Florida; validly existing, and in good standing under the laws of the State of Florida, and that it has the authority to enter into and perform this Agreement.
- 16.1.2. That the funds which are to be used to pay GPIWA fees (Exhibit A) are or will be available.
- 16.1.3. The execution, delivery, and performance of this Agreement by the County: (i) do not and will not require the consent, waiver, approval, license, designation or authorization of, or declaration with, any person or public or private authority (except those consents, waivers, approvals, licenses, designations and authorizations obtained prior to execution of this Agreement); (ii) do not and will not with or without the giving of notice or the passage of time or both, violate or conflict with or result in a breach or termination of any provision of, or constitute a default under, or accelerate or permit the acceleration of the performance required by the terms of, or otherwise give rise to any liability or obligation under, any indenture, license, permit or any other agreement or instrument or any order, judgment, decree, statute, regulation or any other restriction of any kind or description to which the County is a party or by which the County may be bound.
- 16.1.4. The County shall not discharge any toxic or hazardous substances, as defined by regulatory agency rules, into the Reclaimed Water that would cause a violation of permits issued to GPIWA with regard to the Facilities.
- 16.1.5. In the event of such discharge, or in the event that the County otherwise materially breaches its warranties to GPIWA, the County shall, to the extent directly caused by such breach, be responsible for and shall pay:
  - 16.1.5.1. Any and all fines levied against the County or GPIWA by any governmental agency;
  - 16.1.5.2. Any and all reasonable costs, expenses or liabilities incurred by GPIWA to ensure compliance with any such construction or operating permits;
  - 16.1.5.3. Any other damages of any kind relating to the construction or operation of the Facilities whether to GPIWA or to any third party or to any property owned by the GPIWA or any third party; and
  - 16.1.5.4. All reasonable costs and expenses and reasonable attorneys' fees incurred by GPIWA to defend or dispute any such fine, damages, or liability.

- 16.1.6. The County shall be responsible for any applicable sales or use taxes on any and all payments by the County related to this Project.

**ARTICLE 17**  
**ASSIGNMENT AND HYPOTHECATION**

17.1. Generally

- 17.1.1 No assignment or transfer of this Agreement, or any part thereof, by either party, shall be valid without the prior written consent of the other party, which consent shall not be unreasonably withheld. In all cases of potential assignment or transfer, each party shall have the Right of First Refusal to meet any offer.

17.2. Assignment To and Liability of Lenders

- 17.2.1. Lender shall mean that entity(s), if any, loaning funds to GPIWA for purposes of executing this Project.
- 17.2.2. GPIWA may assign its rights under this Agreement to its Lender, if any, and the County agrees to the extent lawfully allowable to enter into an agreement with such Lender. In all cases of potential assignment or transfer, the County shall have the Right of First Refusal to meet any offer. In the event of such assignment, the County will retain the same rights with respect to the Project as the County has under this Agreement with GPIWA.
- 17.2.3. GPIWA shall require all of its Lenders to provide the County with notice of GPIWA's default under its agreement(s) with such Lenders.
- 17.2.4. Except as provided herein, the County shall look only to GPIWA to satisfy all obligations of GPIWA hereunder unless, in the event of a default by GPIWA under any agreement between Lender and GPIWA, Lender has taken possession of all Facilities and is operating the Project. Upon taking actual possession of the Facilities and operation of the Project, the Lender shall be liable to the County for damages resulting from a breach thereafter of this Agreement. No Lender shall have any obligation to satisfy any obligation or indebtedness of GPIWA to the County whatsoever arising prior to such Lender's taking actual possession of the Facilities and operating the Project pursuant to this Agreement.
- 17.2.5. The County shall deliver to any Lender of record all notices required to be delivered to GPIWA hereunder and will notify Lender by registered or certified mail of any default under this Agreement. This Agreement shall not terminate or be terminated by the County for default if, within 30 days after service of notice of default on Lender, Lender shall have either:



17.2.5.1. Cured the breach if it can be cured by payment or expenditure of money; or

17.2.5.2. If Lender does not elect to cure by the payment or expenditure of money, or if the breach cannot be cured, causing the initiation of foreclosure proceedings or other proceedings to give Lender possession of the Facilities, the County shall perform and comply with all other covenants and conditions of this Agreement until the Facilities are released or reconveyed from the effect of Lender's interest.

**ARTICLE 18**  
**MISCELLANEOUS PROVISIONS**

18.1. Whenever it shall be necessary for the County or GPIWA to serve notice on the other party respecting this Agreement, such notice shall be served by fax notice, followed by personal delivery or delivery by Certified Mail, return receipt requested, addressed to:

Greater Pine Island Water Association, Inc.:

Greater Pine Island Water Association, Inc.

Attention: General Manager

Phone: (941) 283-1071

Fax: (941) 283-7792

Lee County:

Department of Public Works

Attention: Director of Utilities

Phone: (941)479- 8181/479-8581

Fax: (941) 479-8176

as the situation warrants, unless and until different addresses may be furnished in writing by either party to the other. Such notice shall be deemed to have been served on the date of personal delivery or 72 hours after the same has been deposited in the United States Post Office by Certified Mail, return receipt requested. This procedure shall be valid and sufficient service of notice for all purposes other than the institution of legal proceedings.

18.2. Any failure at any time by either party to enforce any provision of this Agreement shall not constitute a waiver of such provision or prejudice the right of either party to enforce such provision at any subsequent time.

18.3. Except as the County may specify in writing, GPIWA shall have no authority, express or implied, to act on behalf of the County in any capacity whatsoever as an agent. GPIWA shall have no authority express or implied, pursuant to this Agreement, to bind the County to any obligation whatsoever unless a regulatory matter requires both parties to approve an agreement.

- 18.4. Except as GPIWA may specify in writing, the County shall have no authority, express or implied, to act on behalf of GPIWA in any capacity whatsoever as an agent. The County shall have no authority express or implied, pursuant to this Agreement, to bind GPIWA to any obligation whatsoever unless a regulatory matter requires both parties to approve an agreement.
- 18.5. This Agreement shall be binding upon all successors, assigns, and legal representatives of the County and/or GPIWA.
- 18.6. Except as otherwise provided elsewhere herein, this Agreement and all rights hereunder are intended for the sole benefit of the parties hereto and shall not imply or create any rights on the part of, or obligations to, any other entity or individual not a party to this Agreement.
- 18.7. The Section headings contained in this Agreement are for convenience and reference only, and are not intended to, and shall not define, govern, limit, modify or in any manner affect the scope, meaning, or intent of any provisions of this Agreement.
- 18.8. Whenever in this Agreement the context so requires, the masculine gender includes the feminine and/or neuter, and the neuter gender includes the masculine and/or feminine and the singular includes the plural and the plural includes the singular.
- 18.9. Any provision of this Agreement which shall prove to be invalid, void or illegal by a court of competent jurisdiction, shall in no way affect, impair, or invalidate any other provisions hereof, and such remaining provisions shall remain in full force and effect.
- 18.10. This Agreement contains all of the agreements of the parties hereto with respect to the matters covered or mentioned in this Agreement, and no prior agreement or understanding whether written or oral pertaining to any such matter shall be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing signed by each of the parties hereto or their respective successors in interest.
- 18.11. This Agreement shall be construed and interpreted in accordance with the laws of the State of Florida. Any legal proceeding involving a dispute between the parties which arises out of this Agreement shall be filed and heard only in the Lee County, Florida Circuit Court.
- 18.12. The County and GPIWA each acknowledges that it is represented by counsel in the negotiation and execution of this Agreement. Both GPIWA and the County shall be deemed to have drafted this Agreement for purposes of resolving ambiguities in this Agreement.
- 18.13. Terms capitalized in this Agreement shall have the meaning given to them in this Agreement.

18.14. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over against any party to this Agreement.

18.15. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall be deemed to constitute a single document.

EXECUTED as of the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

SEAL

**GREATER PINE ISLAND WATER  
ASSOCIATION, INC.:**

By: \_\_\_\_\_  
Board President

\_\_\_\_\_  
Witness

**LEE COUNTY, FLORIDA:**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Chairman, Board of County Commissioners

Attest: Charlie Green, Clerk of Circuit Court

By: \_\_\_\_\_  
Deputy Clerk

**COUNTY SEAL**

Approved as to form & legality

\_\_\_\_\_  
Office of the County Attorney

**EXHIBIT A**  
**(To Reclaimed Water Disposal Agreement)**

**FEES TO BE PAID BY THE COUNTY TO GPIWA**

**A.1 Capital Charge**

The proposed injection well has a design disposal capacity of 4.0 million gallons per day (MGD) at 10 feet per second injection rate. This well will cost approximately \$4.0 million to construct. This cost estimate includes engineering, permitting, site preparation, mitigation, monitoring wells, construction, contingencies and all other costs incidental to such a project. The only costs this estimate does not include are land cost (which GPIWA will contribute to the project) and the cost of staff time by County and GPIWA personnel to administer and implement this project.

Pursuant to the Agreement for Cooperation, the parties will share these costs equally. The County will commit to payment of its share at the time GPIWA must commit to payment.

**A.2 Annual Operation and Maintenance Fee**

The County shall pay to GPIWA an annual injection well operation and maintenance (O&M) fee. This fee represents the County's pro rata share of the standard costs of operating and maintaining the well, including such costs as personnel, routine maintenance, testing (including annual tests) chemicals, utilities, insurance, reporting and permitting. The Mechanical Integrity Testing (MIT) costs shall be shared equally. The O&M fees do not include the County's share of extraordinary or major repair and replacement costs (see A.3).

The first annual O&M fee will be \$8,000. The first annual O&M fee will be due on the In Service Date, and will represent an advance O&M payment for the year beginning on that date.

Subsequent annual O&M fee payments will be made on the first day of each Contract Year, and will also represent an advance payment for the year beginning on the payment due date. The initial O&M fee payment will be adjusted every year by the Consumer Price Index for All Urban Consumers-Southeast Region (CPI-U) for the 12 month period preceding GPIWA's notice to the County of payment due. GPIWA will notify the County of the required payment at least 30 days in advance of the due date.

**A.3 Repair and Replacement Charges**

In the event that it is determined by both parties that the well is in need of major repair or replacement, such as tube replacement, the County will pay GPIWA for 50% of the total cost of such repairs or replacements. Major repairs shall be defined as any single repair costing over \$500.

#### **A.4 Termination Fees**

In the event that the County terminates this agreement prior to the receipt of all necessary permits for this Project, the County will reimburse GPIWA for all Project-related costs incurred or irrevocably committed up to the date of termination. The County is not responsible for any subsequent costs of the Project if GPIWA should decide to complete the construction.

In the event that the County terminates this Agreement after all necessary permits are received, but prior to completion of the Project and before the final capital charge payment is paid by the County (see Section A. 1), the County shall continue to pay all capital charges referenced in Section A.1 up to and including the final balance payment, so long as GPIWA completes construction of the Project as designed. If, upon County termination under this scenario, GPIWA decides not to complete the Project, the County shall pay GPIWA for all of the costs incurred up to the date of termination in the construction of the Project, as well as all of the costs associated with the stopping of construction and demobilization of the facilities in place.

In the event that the County terminates this Agreement after the completion of the Project and after the final capital charge is paid by the County (see Section A.1, Payment No. 5), the County shall forfeit all claims to any previously due and paid capital charges and annual O&M fees,

In the event that the GPIWA terminates this Agreement prior to completion of the Project and before the final capital charge payment is paid by the County (see Section A.1), GPIWA shall reimburse the County for all the capital charge payments made by the County to GPIWA up to the date of such termination.

In the event that GPIWA terminates this Agreement after the completion of the Project and after the final capital charge is paid by the County (see Section A.1), GPIWA shall allow the County to continue to utilize the Facilities for the remaining term of this Agreement, with no additional capital payment. The County shall be responsible for 100% of the O&M expenses and Repair and Replacement Charges for the remainder of the Agreement term.

#### **A.5 Decommissioning Fee**

The County shall pay to GPIWA a Decommissioning Fee in the event the Facilities are no longer needed or serviceable and have to be decommissioned. The Decommissioning Fee shall be equal to 50% of the total cost of decommissioning.

**EXHIBIT B**  
**(To Reclaimed Water Disposal Agreement)**

**PERMITS TO BE OBTAINED BY GPIWA AND/OR THE COUNTY.**

**B.1 Permits by GPIWA:**

- FDEP Class 1 Injection Well Construction and Testing Permits
- Lee County Development Permit
- Lee County Well Permit(s)
- Miscellaneous County building permits for associated facilities
- SFWMD (FDEP) Environmental Resource Dredge and Fill Permit
- Any required Federal Permits

**B.2 Permits by the County:**

Any and all permits associated with transporting reclaimed water from the County's wastewater treatment plant(s) to the Point of Interconnection.

**B.3 Other Permits:**

Any other permits (in addition to those above in sections B.1 and B.2) shall be the responsibility of GPIWA, in accordance with Article 5, except that any associated with the facilities provided by the County (as defined in Article 3) shall be the County's responsibility.