

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20030485

1. REQUESTED MOTION:

ACTION REQUESTED: 1. Conduct a public hearing pursuant to Section 125.3401, F.S., to consider the adoption of a Resolution of Authorization for the County's proposed purchase of the Gateway Services Community Development District's ("GSD") wastewater facilities and associated lands located within the Gateway Development, Lee County, Florida. 2. Approve and authorize the Chairman to execute Purchase and Sale Agreements with GSD for the County's purchase of its wastewater infrastructure lying within the Gateway Development. 3. Consider for approval and authorize the Chairman's execution of Agreements with GSD for the County's sale of wastewater treatment services and potable water services to GSD. 4. Authorize the Chairman or the Vice-Chairman and County staff and consultants to perform all additional authorized, necessary actions, and execute all required documents consistent with the Board's directions for the purchase of, and closing on, the GSD wastewater infrastructure and associated lands within the Gateway Development.

WHY ACTION IS NECESSARY: Board of County Commissioners' approvals are required for the County's purchase of a portion of a unit of another local government's wastewater utility system, pursuant to General Law.

WHAT ACTION ACCOMPLISHES: Provides the appropriate forum for the necessary, required approvals and authorizations for the County to continue with the process for the closing on the purchase of the wastewater treatment infrastructure and associated lands owned by GSD within the Gateway Development.

2. DEPARTMENTAL CATEGORY:

COMMISSION DISTRICT # 5 **5:00 #6**

3. MEETING DATE:

05-13-2003

4. AGENDA:

CONSENT

ADMINISTRATIVE

APPEALS

PUBLIC

WALK ON

TIME REQUIRED:
30 minutes

5. REQUIREMENT/PURPOSE:
(Specify)

STATUTE §125.3401, F.S.

ORDINANCE

ADMIN. CODE

OTHER

6. REQUESTOR OF INFORMATION:

A. COMMISSIONER

B. DEPARTMENT County Attorney

C. DIVISION General Services

BY: David M. Owen
Chief Assistant County Attorney

7. BACKGROUND:

(BACKGROUND - NEXT PAGE)

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	4/28/03	OA	OM	RISK	GC	
					4/28/03	4/29/03	5/29/03	5/10/03	4-29-03

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

RECEIVED BY
COUNTY ADMIN. **RK**
4-28-03
4:50
COUNTY ADMIN.
FORWARDED TO: **DS**
5/1/03

ALL INFO
FORWARDED
TO CO. ADMIN.
3:40 PM

BACKGROUND:

- August, 1998 - As the result of becoming aware of the City of Fort Myers' intent to acquire the GSD Wastewater Treatment System, the County transmitted a Letter of Interest to GSD and obtained Board approval to begin negotiations with GSD for such potential acquisition.
- September, 1998 to October, 1999 - GSD conducted an RFP for the sale of its wastewater treatment facilities with the City of Fort Myers and the County responding as Proposers.
- November, 1999 - The City of Fort Myers and the County combined their efforts with respect to the acquisition, and submitted a joint City / County Proposal for the proposed purchase, which was accepted by GSD.
- January, 2000 to February, 2002 - Negotiations are conducted among the Parties and documents are "rough-drafted" for the proposed purchase and sale of the GSD Wastewater Treatment System.
- March, 2002 - The GSD Board approves the "deal points" with respect to the County's acquisition of the GSD Wastewater Treatment System (the City of Fort Myers and GSD resolved other service territorial issues. As the result, the City is no longer a part of the acquisition, but will purchase certain treatment capacity (up to 1 m. gpd) from the County for its annexed areas of the Gateway Development).
- April, 2002 to April, 2003 - Documents for the purchase and sale of the Wastewater Treatment System and Sale of Wholesale Potable Water and Wastewater Treatment Services to GSD by the County are finalized and prepared for public hearings to be conducted by both GSD and Lee County pursuant to Chapter 190, F.S., and Chapter 125, F.S., respectively, prior to the closing on the sale.

The appraised purchase price for the GSD Wastewater Treatment Facilities is \$4,858,000.00, consisting of \$1,734,000.00 for the land, and \$3,124,000.00 for the infrastructure, equipment and materials.

The Service Agreements provide for the County's Wholesale sale of Potable Water and Wastewater Treatment Services to GSD at initial negotiated rates with a "ramp up" provision in each to the County's then-established wholesale water and sewer rates (now currently Lee County Resolution No. 02-07-44).

The "wrap around" Agreement provides for the County and GSD to interact on a rolling five-year basis in order to plan for and develop the necessary plant capacity in order to service GSD customers as they are added.

Additionally, the acquired GSD facilities will serve County wastewater customers east of I-75, north and south of Daniels Parkway, to include the new Airport and associated businesses and developments in the vicinity.

Request the Board approve all documents for execution by the Chairman or Vice Chairman prior to closing as appropriate, which is anticipated to be in mid-June, 2003, and authorize staff to conduct all activities necessary to close on the purchase / sale.

All applicable responses to the requirements of Section 125.3401, F.S., are addressed in Composite Exhibit D to the Resolution.

LEE COUNTY
NOTICE OF INTENT TO ENACT A COUNTY RESOLUTION

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that on Tuesday, the 13th day of May, 2003 at 5:00 o'clock, p.m., in the County Commissioners' Meeting Room, Old Lee County Courthouse, 2120 Main Street, Fort Myers, Florida, the Board of County Commissioners of Lee County, Florida, will consider the enactment of a County Resolution pursuant to Chapter 125, Florida Statutes. The title of the proposed County Resolution is as follows:

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, RELATING TO THE COUNTY'S PURCHASE OF THE GATEWAY SERVICES COMMUNITY DEVELOPMENT DISTRICT'S ("GSD") WASTEWATER TREATMENT FACILITIES INFRASTRUCTURE AND ASSOCIATED REAL PROPERTY LYING WITHIN THE GATEWAY DEVELOPMENT, FROM GSD; PROVIDING FOR CERTAIN FINDINGS BY THE BOARD OF COUNTY COMMISSIONERS CONSISTENT WITH THE REQUIREMENTS OF SECTION 125.3401, FLORIDA STATUTES; PROVIDING FOR ADDING THE GSD WASTEWATER TREATMENT FACILITIES AND ASSOCIATED LANDS LYING WITHIN THE GATEWAY DEVELOPMENT INTO THE LEE COUNTY UTILITIES SYSTEM UPON THE CLOSING OF SUCH SALE; PROVIDING FOR AN EFFECTIVE DATE.

1. Copies of this Notice and the proposed Resolution are on file in the Minutes Office of the Clerk of Courts of Lee County. The public may inspect or copy the Resolution during regular business hours at the Office of Public Resources. The Minutes Office and Public Resources are located in the Courthouse Administration Building, 2115 Second Street, Fort Myers, Florida. Public Resources is located on the first floor and the Minutes Office is located on the second floor of the Courthouse Administration Building.
2. Interested parties may appear at the meeting in person or through counsel, and be heard with respect to the adoption of the proposed Resolution.

3. Anyone wishing to appeal the decision(s) made by the Board with respect to any matter considered at this meeting, will need a record of the proceedings for such appeal, and may need a verbatim record, to include all testimony and evidence upon which the appeal is to be based.

4. The Resolution shall take effect immediately upon its adoption by the Board of County Commissioners at the public hearing.

5. If you have a disability that will require special assistance or accommodations for your attendance at the public hearing, please call the Lee County Division of Public Resources at 335-2269 for information.

PLEASE GOVERN YOURSELF ACCORDINGLY.

The text of this Notice is in conformance with Section 125.66, Florida Statutes (2002), and other relevant sections of Florida law.

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Charlie Green, Ex-Officio Clerk
to the Board of County Commissioners
of Lee County, Florida

APPROVED AS TO FORM:

By:  _____
Office of the County Attorney

Ad Size: 2 x 5

Publishing Dates: 4/30/03 & 5/6/03

LEE COUNTY RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, RELATING TO THE COUNTY'S PURCHASE OF THE GATEWAY SERVICES COMMUNITY DEVELOPMENT DISTRICT'S ("GSD") WASTEWATER TREATMENT FACILITIES INFRASTRUCTURE AND ASSOCIATED REAL PROPERTY LYING WITHIN THE GATEWAY DEVELOPMENT, FROM GSD; PROVIDING FOR CERTAIN FINDINGS BY THE BOARD OF COUNTY COMMISSIONERS CONSISTENT WITH THE REQUIREMENTS OF SECTION 125.3401, FLORIDA STATUTES; PROVIDING FOR ADDING THE GSD WASTEWATER TREATMENT FACILITIES AND ASSOCIATED LANDS LYING WITHIN THE GATEWAY DEVELOPMENT INTO THE LEE COUNTY UTILITIES SYSTEM UPON THE CLOSING OF SUCH SALE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners is the governing body in and for Lee County, a political subdivision and charter county of the State of Florida; and,

WHEREAS, the Board of County Commissioners is authorized by Florida law to acquire or sell utilities pursuant to Section 125.01 and Section 125.3401, Florida Statutes; and,

WHEREAS, the Gateway Services Community Development District's ("GSD") Wastewater Treatment infrastructure, associated real property and facilities lying within the Gateway Development may be considered or interpreted as a "utility" as contemplated by Section 125.01 and Section 125.3401, F.S.; and,

WHEREAS, the Board of County Commissioners now desires to purchase, and GSD now desires to sell, GSD's wastewater treatment infrastructure, associated real

property and facilities lying within the Gateway Development, Lee County, Florida ("The Property") from GSD, for its subsequent incorporation into the Lee County Utilities System pursuant to the County's authority under Sections 125.01 and 125.3401, F.S.; and,

WHEREAS, the Board of County Commissioners has made certain findings as outlined by the requirements of Section 125.3401, F.S., for the County's purchase of The Property; and,

WHEREAS, the Board of County Commissioners hereby finds that the purchase of The Property, is: 1. consistent with the considerations as outlined in Section 125.3401, F.S., 2. authorized pursuant to Section 125.01, F.S., 3. serves a public purpose, 4. is in the public's interest, 5. and is to the public's benefit.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, that:

1. The above recitals are hereby adopted by the Board of County Commissioners and incorporated herein as if set out at length in this section.
2. The Board of County Commissioners hereby finds that, consistent with the requirements as set out in Section 125.3401, F.S. (Exhibit "A", hereto) as presented and represented by the Lee County Public Works Department, Lee County Division of Utilities and consultants in a public hearing this date (filed briefing documents, Composite Exhibit "B" hereto), and the County's powers under Chapter 125, F.S., the purchase of The Property serves a public purpose, is in the public's interest, is to the public's benefit, and accordingly, is hereby approved and authorized.

3. Upon the closing of the sale of The Property, said Property shall be incorporated into the Lee County Utilities (LCU) System, and become subject to the ownership and jurisdiction of the County, including the application of County rates, rules and regulations and operations from that date forward as they may be structured or implemented, and amended and/or revised by the County from time to time.
4. The Chairman is hereby authorized to execute any and all documents related to the County's purchase of The Property on behalf of the Board of County Commissioners, and Lee County staff is hereby authorized to perform any and all other lawful acts necessary and attendant to the closing of such sale.
5. This Resolution shall take effect immediately upon its adoption by the Board of County Commissioners.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and, being put to a vote, the vote was as follows:

DOUGLAS ST. CERNY _____
BOB JANES _____
RAY JUDAH _____
ANDREW COY _____
JOHN ALBION _____

DULY PASSED AND ADOPTED this ___ day of _____, 2002.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of the County Attorney

tions issued by such entity to any public agency as provided in s. 163.01(3)(b) whether or not such agency is a member of the entity. Such entity may have as members, in addition to counties, other public agencies as described in s. 163.01(3)(b) and may lend the proceeds of obligations to such public agencies for purposes of financing or refinancing capital projects or working capital if such agencies are otherwise authorized to incur debt.

History.—s. 3, ch. 96-216.

✓ **125.3401 Purchase, sale, or privatization of water, sewer, or wastewater reuse utility by county.**—No county may purchase or sell a water, sewer, or wastewater reuse utility that provides service to the public for compensation, or enter into a wastewater facility privatization contract for a wastewater facility, until the governing body of the county has held a public hearing on the purchase, sale, or wastewater facility privatization contract and made a determination that the purchase, sale, or wastewater facility privatization contract is in the public interest. In determining if the purchase, sale, or wastewater facility privatization contract is in the public interest, the county shall consider, at a minimum, the following:

(1) The most recent available income and expense statement for the utility;

(2) The most recent available balance sheet for the utility, listing assets and liabilities and clearly showing the amount of contributions-in-aid-of-construction and the accumulated depreciation thereon;

(3) A statement of the existing rate base of the utility for regulatory purposes;

(4) The physical condition of the utility facilities being purchased, sold, or subject to a wastewater facility privatization contract;

(5) The reasonableness of the purchase, sales, or wastewater facility privatization contract price and terms;

(6) The impacts of the purchase, sale, or wastewater facility privatization contract on utility customers, both positive and negative;

(7)(a) Any additional investment required and the ability and willingness of the purchaser, or the private firm under a wastewater facility privatization contract, to make that investment, whether the purchaser is the county or the entity purchasing the utility from the county;

(b) In the case of a wastewater facility privatization contract, the terms and conditions on which the private firm will provide capital investment and financing or a combination thereof for contemplated capital replacements, additions, expansions, and repairs. The county shall give significant weight to this criteria.

(8) The alternatives to the purchase, sale, or wastewater facility privatization contract, and the potential impact on utility customers if the purchase, sale, or wastewater facility privatization contract is not made; and

(9)(a) The ability of the purchaser or the private firm under a wastewater facility privatization contract to provide and maintain high-quality and cost-effective utility service, whether the purchaser is the county or the entity purchasing the utility from the county.

(b) In the case of a wastewater facility privatization contract, the county shall give significant weight to the technical expertise and experience of the private firm in carrying out the obligations specified in the wastewater facility privatization contract.

(10) All moneys paid by a private firm to a county pursuant to a wastewater facility privatization contract shall be used for the purpose of reducing or offsetting property taxes, wastewater service rates, or debt reduction or making infrastructure improvements or capital asset expenditures or other public purpose; provided, however, nothing herein shall preclude the county from using all or part of the moneys for the purpose of the county's qualification for relief from the repayment of federal grant awards associated with the wastewater system as may be required by federal law or regulation.

The county shall prepare a statement showing that the purchase, sale, or wastewater facility privatization contract is in the public interest, including a summary of the purchaser's or private firm's experience in water, sewer, and wastewater reuse utility operation and a showing of financial ability to provide the service, whether the purchaser or private firm is the county or the entity purchasing the utility from the county.

History.—s. 1, ch. 84-84; s. 1, ch. 93-51; s. 6, ch. 96-202.

125.35 County authorized to sell real and personal property and to lease real property.—

(1)(a) The board of county commissioners is expressly authorized to sell and convey any real or personal property, and to lease real property, belonging to the county, whenever the board determines that it is to the best interest of the county to do so, to the highest and best bidder for the particular use the board deems to be the highest and best, for such length of term and such conditions as the governing body may in its discretion determine.

(b) Notwithstanding the provisions of paragraph (a), the board of county commissioners is expressly authorized to:

1. Negotiate the lease of an airport or seaport facility;

2. Modify or extend an existing lease of real property for an additional term not to exceed 25 years, where the improved value of the lease has an appraised value in excess of \$20 million; or

3. Lease a professional sports franchise facility financed by revenues received pursuant to s. 125.0104 or s. 212.20;

under such terms and conditions as negotiated by the board.

(c) No sale of any real property shall be made unless notice thereof is published once a week for at least 2 weeks in some newspaper of general circulation published in the county, calling for bids for the purchase of the real estate so advertised to be sold. In the case of a sale, the bid of the highest bidder complying with the terms and conditions set forth in such notice shall be accepted, unless the board of county commissioners rejects all bids because they are too low. The board of county commissioners may require a deposit to be



WOODWARD, PIRES & LOMBARDO, P.A.

Attorneys - At - Law

April 22, 2003

LEE COUNTY ATTORNEY
03 APR 22 PM 2:49

CRAIG R. WOODWARD ●
MARK J. WOODWARD
ANTHONY P. PIRES, JR. ■
J. CHRISTOPHER LOMBARDO
STEVEN V. BLOUNT

CARRIE E. LADEMAN
CYNTHIA J. HUBBARD

BURT L. SAUNDERS
ELIZABETH J. VAN ARSDALE ▲
OF COUNSEL

● (Board Certified Real Estate Attorney)

■ (Board Certified City, County and Local Government Attorney)

▲ (Certified Circuit Civil Mediator)

▲ (Certified Family Law Mediator)

▲ (Also Admitted in Iowa)

David Owen, Chief Assistant County Attorney **Via Hand Delivery**
Lee County Attorneys Office **& Facsimile 335-2606**
2115 Second Street - 6th Floor
Fort Myers, FL 33901

Re: Gateway Services Community Development District

Dear David:

Enclosed please find one copy each of the following documents:

1. Gateway Services Community Development District Resolution 2003-5;
2. Purchase and Sale Agreement for the Gateway Services Community Development District (GSD) Wastewater System Facilities, Site and Associated Lands; and
3. Acquisition and Utility Service Provision Agreement.

Please advise if it is acceptable to deliver to you tomorrow one set of each with Exhibits.

Very truly yours,
WOODWARD, PIRES & LOMBARDO, P.A.

Anthony P. Pires, Jr.

APP/alr
enc.

3200 Tamiami Trail N.
Suite 200
Naples, FL 34103
TEL (239) 649-6555
FAX (239) 649-7342

www.wpl-legal.com

RESOLUTION NO. 2003- 5

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE GATEWAY SERVICES COMMUNITY DEVELOPMENT DISTRICT, RELATING TO THE SALE OF THE GATEWAY SERVICES COMMUNITY DEVELOPMENT DISTRICT'S ("GSD") WASTEWATER TREATMENT FACILITIES INFRASTRUCTURE AND ASSOCIATED REAL PROPERTY LYING WITHIN THE GATEWAY DEVELOPMENT, TO LEE COUNTY; PROVIDING FOR CERTAIN FINDINGS BY THE BOARD OF SUPERVISORS CONSISTENT WITH THE REQUIREMENTS OF SECTION 190.0125, F.S.; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of Supervisors is the governing body in and for the Gateway Services Community Development District, a special purpose unit of local government established pursuant to Chapter 190, Florida Statutes; and,

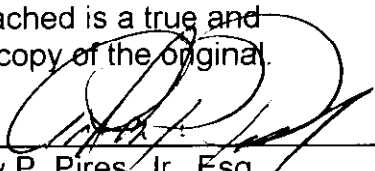
WHEREAS, the Board of Supervisors is authorized by Florida law to acquire or sell utilities pursuant to Chapter 190, Florida Statutes; and,

WHEREAS, the District's Wastewater Treatment infrastructure, associated real property and facilities lying within the Gateway Development may be considered or interpreted as a "utility" as contemplated by Section 190.0125, F.S.; and,

WHEREAS, the Board of County Commissioners of Lee County desires to purchase, and the District now desires to sell, District's wastewater treatment infrastructure, associated real property and facilities lying within the Gateway Development, Lee County, Florida ("The Property"), for its subsequent incorporation into the Lee County Utilities System pursuant to the County's authority under Sections 125.01 and 125.3401,

The attached is a true and correct copy of the original.

1



Anthony P. Pires, Jr., Esq.

F.S.; and,

WHEREAS, the Board of Supervisors has made certain findings as outlined by the requirements of Chapter 190, F.S., for the District's sale of The Property; and,

WHEREAS, the Board of Supervisors hereby finds that the sale of The Property, is:
1. consistent with the considerations as outlined in Section 190.0125, F.S., 2. authorized pursuant to Section 190, F.S., 3. serves a public purpose, 4. is in the public's interest, 5. and is to the public's benefit.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE GATEWAY SERVICES COMMUNITY DEVELOPMENT DISTRICT, that:

1. The above recitals are hereby adopted by the Board of Supervisors and incorporated herein as if set out at length in this section.
2. The Board of Supervisors hereby finds that, consistent with the requirements as set out in Section 190.0125, F.S. (Exhibit "A", hereto) as presented and represented by the District Manager and consultants in a public hearing on March 24, 2003 and April 14, 2003 (filed briefing documents, Composite Exhibit "B" hereto), and the District's powers under Chapter 190, F.S., the sale of The Property serves a public purpose, is in the public's interest, is to the public's benefit, and accordingly, is hereby approved and authorized.
3. The Chairman is hereby authorized to execute any and all documents related to the District's sale of The Property on behalf of the Board of Supervisors, and District staff is hereby authorized to perform any and all other lawful acts necessary and attendant to the closing of such sale.

4. This Resolution shall take effect immediately upon its adoption by the Board of Supervisors.

PASSED AND ADOPTED this 14th day of April, 2003.

Attest:



Name: Robin Martin
Title: Secretary

**BOARD OF SUPERVISORS OF THE
GATEWAY SERVICES DISTRICT**

By: 

Printed Name: R. Lee Menzies
Title: Chairman

**PURCHASE AND SALE AGREEMENT FOR THE
GATEWAY SERVICES COMMUNITY DEVELOPMENT DISTRICT (GSD)
WASTEWATER SYSTEM
FACILITIES, SITE AND ASSOCIATED LANDS**

THIS AGREEMENT for the purchase and sale of certain real property interests and improvements, is made on this ___ day of _____, 2003, by and between **LEE COUNTY**, a political subdivision of the State of Florida ("Buyer" or "County") and **GATEWAY SERVICES COMMUNITY DEVELOPMENT DISTRICT**, a Chapter 190, Florida Statutes, Special Services District ("Seller" or "District"), collectively, the "Parties" hereto.

WHEREAS, the Parties wish to enter into a Purchase and Sale Agreement for the Buyer's purchase of the Seller's real property interests and certain improvements to real property consisting of wastewater system infrastructure, real property in fee, easements, treatment facility site and associated lands commonly known as the Gateway Services Community Development District (GSD) Wastewater Treatment Plant and Site ("Facility") located within Lee County and as more particularly described on the attached Exhibit "A"; and,

WHEREAS, Buyer has adopted Resolution Number 2003-____ making certain findings as required pursuant to the provisions of Section 125.3401, Florida Statutes; and,

The attached is a true and correct copy of the original.



Anthony P. Pires, Jr., Esq.

WHEREAS, Seller has adopted Resolution Number 2003- 5 making certain findings as required pursuant to the provisions of Section 190.0125, Florida Statutes; and,

WHEREAS, the sale of the Facility to the Buyer serves a public purpose, and is to the public's benefit; and,

WHEREAS, the District and the County agree that the Facility site is zoned and suitable for the expansion of the wastewater treatment facility to a maximum of 6 million gallons per day (MGD) capacity, expressed on a maximum consecutive three (3) month average daily flow basis.

NOW THEREFORE, and in consideration of the above, Ten Dollars (\$10.00), other good and valuable consideration hereinafter recited, and the mutual promises as herein made, the sufficiency of which is acknowledged by the Parties, the Parties hereby agree as follows:

1. The Seller agrees to sell, and the Buyer agrees to purchase, with conveyance to be by Warranty Deed, the Facility, located within Section 8, Township 45S, Range 26E, Lee County, Florida, and as more particularly described in Composite Exhibit "A" attached hereto.

2. In addition, from the date of this Agreement through September 30, 2013 the Seller has the option to sell, and the Buyer agrees to buy upon being offered by Seller, all of Seller's water and wastewater utility assets and improvements (including water distribution system, wastewater collection system and reuse water distribution

system, buildings and associated lands), commonly known as the Gateway Services Community Development District (GSD) Water System and Sewer System ("Systems"), located within the unincorporated portion of GSD, as of the date of this Agreement, in Sections 5, 6, 7,8, 18 and 19, Township 45S, Range 26E, Lee County, Florida, and as more particularly described in Composite Exhibit "B". Upon being offered the Systems, the Buyer shall purchase the Systems at a purchase price calculated in accordance with the Debt Capacity Formula described in composite Exhibit "I", along with the terms and conditions of this Agreement outlined below with the conveyance to occur by Bill of Sale. The Seller is under no obligation to exercise this option, but shall provide a minimum of twelve (12) months written notice to the Buyer prior to exercising this option.

3. The Parties agree to coordinate the date of closing of the sale of the Facility so as to coordinate the closing with the refinancing of the existing bonds of Seller as described on the attached Exhibit "C ", but in no event no later than June 28, 2003, at which time of closing, the Buyer agrees to pay to the Seller, the principal sum of \$4,858,000.00 (Four Million Eight Hundred Fifty-Eight Thousand Dollars) as the complete and full purchase price for the acquisition of the Facility. Payment of the above stated purchase price less any adjustments, deposits or earnest money payments shall be by County warrant to be paid at closing. Buyer shall pay all recording costs associated with the recording of documents necessary to close the transaction, and Buyer shall pay all documentary stamp taxes on the Warranty Deed.

Buyer and Seller shall pay the allocated portion of closing costs outlined on the attached Schedule 1. Within ten (10) business days from the date of the execution of this Agreement by Buyer, the Buyer shall deliver to an Escrow Agent agreed upon by the Parties, an earnest money deposit of five percent (5%) of the purchase price in the amount of \$242,900.00. An additional earnest money deposit of \$242,900.00 shall be delivered to Escrow Agent within five (5) calendar days of receipt of the title commitment. These sums shall be held by the Escrow Agent in an interest-bearing trust account, as the Buyer's earnest money deposit for the purchase of the Facility. In the event that the sale of the Facility as contemplated by this Agreement is closed in accordance with the terms and conditions hereof, the Escrow Agent shall apply the earnest money deposit and any interest thereon to the purchase price due on the date of closing. In the event the Buyer defaults under this Agreement or fails to close within 15 days from the established closing date as set out above for any reason other than a default by the Seller or a catastrophic event beyond the reasonable control of the Buyer, the Escrow Agent shall release the earnest money to the Seller as actual damages for the Buyer's failure to close, and the Parties shall have no further obligation to one another under this Agreement. In the event the Seller fails to close within 15 days from the established closing date as set out above for any reason, to include any failure to deliver good and marketable title to the real property, the Escrow Agent shall release the earnest money to the Buyer and the Parties shall have no further obligation to one another under this Agreement.

4. Within twenty (20) days from the execution hereof, the Seller shall obtain at the Buyer's expense, a Title Commitment for the Facility's real property described in Exhibit "A", herein, and at closing, provide a Title Insurance Owner's Policy in the amount of \$4,858,000.00, from a title company acceptable to the Buyer, with a copy being provided to Seller. Such title commitment shall be accompanied by a copy of all documents which constitute exceptions to the title commitment. Such commitment shall also show title to be good and marketable with legal access, subject only to real estate taxes for the current year, zoning and use restrictions imposed by governmental authority, and restrictions and other easements (recorded or unrecorded) common to the area, which restrictions and easements are listed as Permitted Exceptions on the attached Exhibit "D".

5. A. Upon the closing of the sale of the Facility hereunder, the Buyer will become solely responsible for the ownership, operations and maintenance of the Facility and will use the Facility only as a wastewater treatment system, utilizing BACT for odor control. In furtherance thereof, the Seller will cause to be transferred to the Buyer on the closing date [as described in the Acquisition And Utility Service Provision Agreement of even date hereof], all permits for the operation of the Facility, all records (including electronic files) and keys, and those easements for the Facility held by the Seller as described on the attached Exhibit "E".

B. At closing, Buyer shall execute, grant and deliver to Seller such

necessary easements as determined by Seller in its discretion, including but not limited to ingress and egress, drainage and utility service easements to provide Seller with unencumbered legal access to and from the approximately 2 acre parcel described on the attached Exhibit "A-2" and all such other easements, documents and instruments necessary to provide Seller with unencumbered legal access, and such easements as necessary to operate Seller's offices and operations on said 2 acre parcel, to provide drainage for said parcel and to provide utility (i.e. water, sewer, telephone, irrigation water, electric, cable television) service to and from the parcel described on the attached Exhibit "A-2", as well as the ability to use, operate and maintain the storage tanks, wells and pumps depicted on the survey attached hereto as Exhibit "F" and Exhibit "G-2".

C. At closing, Seller and Buyer shall enter into a temporary license agreement wherein the Seller will authorize the Buyer's continued use of the real property denoted and depicted on the attached Exhibit "G", which currently includes the Seller's maintenance trailers. The license shall provide that the Seller shall have the exclusive use of the referenced property for a term of not less than two (2) years. Seller shall pay Buyer a fee of \$10.00 for the term; which license may be terminated by the Seller at any time prior to the end of the term and with said license agreement to be in the form and with the substance as outlined in the attached Exhibit "H".

D. At closing, Seller and Buyer shall enter into a lease agreement

wherein the Seller will lease the real property denoted and depicted on the attached Exhibit "G-2" for a storage tank for supplemental well water to be utilized by Seller for irrigation purposes. The lease shall provide that the Seller shall have the exclusive use of the referenced property and improvements for a term of not less than thirty (30) years; that Seller shall be responsible for routine maintenance, with Buyer being responsible for major maintenance, repairs and replacement. Seller shall pay Buyer rent not to exceed \$10.00 per year for each year of the term; which lease may be terminated by the Seller at any time prior to the end of the term and with said lease agreement to be in the form and with the substance as outlined in the attached Exhibit "H-2".

6. The Buyer has inspected the Facility and, except as is otherwise provided for herein, accepts the Facility in the condition it existed at the time of such inspection. The Parties agree that the Facility as sold by the Seller to the Buyer is being conveyed, and will be accepted by the Buyer, as is, in its condition existing at the time of the inspection referenced above herein, including the deficiencies identified in the inspection.

7. The Seller agrees to provide to the Buyer, all such legal rights and interest in any of Seller's easements for the placement and location of the Facility infrastructure as the Seller owns or holds at the time of closing, and as such are further described in Composite Exhibit "E", hereto.

8. After receipt of the documents referred to in paragraph 4, above, the Buyer

shall have twenty (20) days to examine the title and documents establishing legal access to the Facility. If title or legal access is found to be defective utilizing title standards established by major title insurance underwriters such as Chicago Title Insurance Company, the Buyer shall notify the Seller in writing of any such defects within ten (10) days from the delivery of the title commitment. The Seller shall make a prompt and diligent effort to correct any such defects. If the Seller fails to make such corrections within thirty (30) days after such notice, the Buyer may elect to either: a) accept the Facility in its existing condition with an appropriate reduction in the purchase price as may be agreed to by the Parties, or b) terminate this Agreement without further obligation and be entitled to the refund of its earnest money with the interest accrued thereon as if a default by the Seller had occurred.

9. Title to all wastewater infrastructure facilities in the Facility as outlined in Exhibit "A" of this Agreement together with the associated personalty, supplies and inventory directly associated with the operation of the Facility, including, but not limited to chemicals, spare parts and supplies at the Facility shall vest in the Buyer at closing, at which time the Buyer shall become liable for all operations and maintenance of the Facility and its associated infrastructure. Provided that the Buyer's anticipated expansion of the wastewater treatment facility is not materially adverse to the Seller's interests or the interests of the property owners and residents within Seller's boundaries, as determined by Seller; and with the recognition by Buyer that Seller's architectural approval is required [which approval will contain requirements for

landscaping, buffering, berming and odor and noise control using Best Available Control Technology, ("BACT")), of all buildings and facilities. Seller agrees to reasonably cooperate with Buyer in Buyer's permitting efforts to expand the wastewater treatment facility on the existing site up to the maximum zoned capacity of 6 MGD as previously defined.

10. To the extent provided for by law, in particular, Section 768.28, Florida Statutes, the limits of which shall neither be increased nor altered by this Agreement and which relate to the limits of the Buyer's liability, the Seller and the Buyer shall not hold the other liable as the result of the other party's operations and maintenance of the System as of the date of the closing of the purchase of the Facility. Except as to the acceptance by Buyer of the identified deficiencies, the Seller will remain liable for any and all liabilities associated with the Seller's ownership, construction, operation and maintenance of the Facility prior to the closing date of this sale.

11. A Phase I Environmental Assessment has been obtained by Buyer at Buyer's expense from an independent environmental consulting firm. In the event Buyer desires a Phase II assessment, then such Phase II assessment shall be completed not less than twenty (20) days prior to closing, and if performed shall be at the Buyer's expense. If the Phase II assessment determines and recommends that any remedial work be performed to bring the site into regulatory conformity, then the Seller, at its sole discretion shall either (1) cause such remedial work to be completed at its expense, or (2) elect to terminate this Agreement in which event, neither Party shall

have any further rights or obligations hereunder, and the Buyer shall be entitled to the refund of its earnest money with any interest accrued thereon, and payment by Seller of one half of the cost of the Phase II Environmental Assessment upon delivery to Seller of Buyer's copy of said assessment, as if a default by the Seller had occurred. All audits shall be certified to both the Buyer and the Seller, and copies shall be furnished to the Parties.

12. If the Seller exercises its option to sell the Systems, the rates of all customers in the Systems will be converted upon sale of the Systems to the Buyer to the then current system-wide retail County water and sewer rates and classifications, to be phased in over a three (3) year term and subsequently, adjusted from time to time through the County's rate hearing process as required to recover the County's Utility System costs.

13. The purchase price of the Systems will be calculated based on the Debt Capacity of the Systems with revenues and expenses based on the latest available twelve (12) month audited financial statements. The revenues will be adjusted based on the Lee County Utility rates at that time, and the expenses will be adjusted for any changes due to Lee County operations. The method of calculating the Debt Capacity is shown by the formula included in Exhibit "I" "Debt Capacity Formula". This formula includes an adjustment for any remaining allocated principal cost of the District's Committed Capacity in the wastewater treatment plant portion of the Facility, as Committed Capacity is defined in that certain Gateway Services Community

Development District Interlocal Agreement (Wholesale Wastewater Treatment and Reuse Water) described on the attached Exhibit "J".

14. This Agreement may be amended only upon the concurrence of the Parties; with such amendment(s) reduced to writing and adopted with the same formalities as this Agreement.

15. This Agreement shall be controlled and interpreted according to the laws and administrative rules of the State of Florida.

16. This Agreement is for the exclusive benefit of the Parties hereto, and as such conveys no rights, title or interest to any third parties claiming under same.

17. The Seller shall be charged for real estate taxes and personal property taxes (if applicable) up to, but not including, the date of closing.

18. The Buyer may order the Facility surveyed at the Buyer's expense. The Seller agrees to provide access to the Facility for such survey, if performed. If such survey shows a discrepancy in the size or dimensions of the Facility, or shows unauthorized encroachments onto the Facility property or that improvements located on the Facility property improperly encroach onto adjacent lands, or if the survey identifies violations of recorded covenants and/or covenants of this Agreement, upon notice to the Seller, the Buyer may elect to treat such discrepancies, violations and/or encroachments as a defect in the title, with the opportunity for Seller to cure as provided in Paragraph 8 above.

19. Time is of the essence for closing this transaction. The Buyer's and Seller's written acceptance of this offer shall constitute an Agreement for the purchase and sale of the Facility which shall bind the Parties, their successors and assigns.

20. The closing of this transaction shall be held at the office of the District's counsel at 3200 Tamiami Trail North, Suite 200, Naples, Florida 34103. The time and location of closing may be changed as required, by mutual agreement of the Parties.

21. The prevailing party in any litigation concerning this Agreement shall be entitled to recover reasonable attorneys' fees and costs.

22. The Seller warrants that there are no parties in possession of the Facility other than the Seller, unless otherwise stated herein. The Seller agrees to delivery possession of the Facility to the Buyer at the time of closing unless otherwise stated herein.

23. Typewritten provisions inserted herein or attached hereto as addenda or exhibits and initialed by all Parties, and shall control over the other printed provisions of this Agreement.

24. Any special conditions shall be attached to this Agreement as Schedule 2 hereto, and be signed by the Parties to this Agreement.

WHEREFORE, the Parties have indicated their acceptance of the terms and conditions as outlined herein by the signatures of their respective, duly authorized representatives as indicated below.

ATTEST:

GATEWAY SERVICES COMMUNITY
DEVELOPMENT DISTRICT

BY: Robin Martin
SECRETARY

By: [Signature]
R. Lee Menzies
Its: Chairman

APPROVED AS TO FORM:

By: [Signature]
District Counsel

ATTEST: CHARLIE GREEN
CLERK OF COURT

LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman or Vice Chairman
Board of County Commissioners

APPROVED AS TO FORM:

By: _____
Office of the County Attorney

**EXHIBIT LIST
FOR
PURCHASE AND SALE AGREEMENT**

<u>EXHIBIT</u>	<u>DOCUMENT/ITEM</u>
A	Description of Wastewater Treatment Plant and Site [including legal description]
B	Description of Gateway Services Community Development District Water System and Sewer System
C	Description of Proposed Refinancing of Gateway Services Community Development District Bonds
D	List of Permitted Exceptions from Title Commitment
E	Permits for Facilities
F	Survey
G	Survey
H	Form of License Agreement
H-2	Form of Lease Agreement
I	Debt Capacity Formula
J	Wholesale Wastewater Agreement

ACQUISITION AND UTILITY SERVICE PROVISION AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2003 by and between Lee County, Florida (hereafter referred to as "County"), and the GATEWAY SERVICES COMMUNITY DEVELOPMENT DISTRICT, an independent community development district, operating under the provisions of Chapter 190, Florida Statutes (hereafter referred to as "District");

WITNESSETH:

WHEREAS, the territory of District (hereafter referred to as "District's Territory") is located entirely within Lee County, Florida, a legal description of District's Territory being attached hereto as Exhibit "A" and by this reference made a part hereof; and,

WHEREAS, a portion of the District's Territory is located within the unincorporated area of Lee County as of the date of this Agreement, said area being more particularly described on the attached Exhibit A-2, and also known and defined to be the District's Service Area hereunder, and,

WHEREAS, District is organized, in part, to provide water supply, treatment, storage, and distribution services and wastewater collection, treatment, and disposal service to the residents, property owners and its customers located in District's Territory; and,

WHEREAS, County owns and operates certain water supply, treatment, storage, transmission, and distribution facilities and wastewater collection, transmission,

The attached is a true and correct copy of the original.



Anthony P. Pires, Jr., Esq.

treatment, and disposal facilities, all located outside the District's Territory (hereafter referred to as "County's System"); and,

WHEREAS, District and County entered into that certain Interlocal Agreement dated September 7, 1987, (Lee County Contract C870910) [which agreement is simultaneously hereto being repealed and replaced by this Agreement] (hereafter referred to as the "Bulk Water Sale Agreement") pursuant to which the County has been providing potable water to the District for resale by the District to residents, users and properties ("District's Customers") located within the District's Service Area; and,

WHEREAS, County desires to acquire District's wastewater treatment plant; and its associated lands for the purpose of operating and expanding the wastewater treatment plant; and,

WHEREAS, County and District desire to enter into interlocal agreements for the County to provide wholesale water and wastewater service to District and District's Customers at fair, reasonable, nondiscriminatory, and equitable rates in District's Service Area and to anticipate and meet District's and District's customers water and wastewater service requirements in the future; and,

WHEREAS, the County has agreed to provide the District with wholesale potable water and wholesale wastewater service at fair, reasonable, nondiscriminatory, and equitable rates; and,

WHEREAS, District and the County recognize that it is crucial that this Agreement provide for:

- i. adequate assurances that the County has the capacity and ability to provide the wholesale potable water supply, treatment, storage, and transmission

capacity to the Delivery Point and, the wholesale wastewater transmission, treatment, and disposal capacity from the wastewater Point of Connection, and reuse water services as defined herein necessary to meet District's and District's Customers present and future needs; and,

ii. in the event the County cannot provide adequate assurances of the ability to meet District's and District's Customers demands for water and wastewater service, the ability for District to provide or obtain such services from other sources, to obtain specified relief, to provide such water and wastewater services itself, and for District to have such other appropriate remedies as described herein; and,

WHEREAS, District has provided to County its initial 5 Year Plan (at times also referred to as the "Five Year Plan") as described and referenced in the Wholesale Wastewater Treatment Agreement referenced in Paragraph 1D below; and,

WHEREAS, the County has adopted Resolution Number _____ making certain findings as required pursuant to the provisions of Section 125.3401, Florida Statutes; and,

WHEREAS, the District has adopted Resolution Number 2003 - 5 making certain findings as required pursuant to the provisions of Section 190.0125, Florida Statutes; and,

WHEREAS, by its execution of this Agreement the County represents and certifies that it has and will continue to have the capacity and ability to provide the wholesale potable water supply, treatment, storage, and transmission capacity and wholesale wastewater transmission, treatment, and disposal capacity and reuse water services within the District's Service Area necessary to meet District's and District's

Customer's present and future needs, including the needs indicated by the District's initial Five Year Plan;

NOW, THEREFORE, in consideration of the undertakings herein contained and assumed and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the District hereby covenant and agree as follows:

DEFINITIONS:

The following terms shall have the following meanings. All other terms not defined shall have their common and ordinary meaning.

WHOLESALE POTABLE WATER : Shall mean and refer to potable water provided to the District at the Point of Delivery and charged at rates reflecting the true and accurate actual cost(s) to the County, all as further defined in the Wholesale Potable Water Agreement as entered into by the parties hereto.

WHOLESALE WASTEWATER TREATMENT: Shall mean and refer to County's treatment and disposal of untreated wastewater provided by the District at the wastewater Point of Connection to the County as a utility and charged, at rates reflecting the cost(s) to the County of providing service based upon the cost determination provisions in the Wholesale Wastewater Agreement as entered into by the parties hereto.

GOVERNMENTAL STANDARDS: Shall mean and refer to existing and applicable standards and practices of the Florida Department of Environmental Protection, Florida Department of Health, Lee County Health Department, U.S. Environmental Protection Agency, South Florida Water Management District (hereafter referred to as "Water District"), all other governmental bodies having regulatory jurisdiction over water and wastewater services, and all applicable federal, state, and local laws, rules and regulations in connection with such matters, including but not limited to standards for water pressure and quality of service.

REUSE OR RECLAIMED WATER: Shall mean and refer to wastewater that has received the treatment established by applicable Governmental Standards as secondary treatment, filtration and high level disinfection prior to entering the reclaimed water system for public use.

1. COVENANT TO PURCHASE AND SELL, DESCRIPTION OF DISTRICT'S WASTEWATER TREATMENT FACILITY.

A. County shall buy from District, and District shall sell to County, the District's Wastewater Treatment Facility and site (as described on the attached Exhibit "B" and hereafter referred to as the "Facility") upon the terms, and subject to the conditions, set forth in this Agreement and in that certain Purchase and Sale Agreement For The Gateway Services Community Development District (GSD) Wastewater System Facilities, Site and Associated Lands, dated as of the date herewith, a which is incorporated herein by reference (the "Purchase and Sale Agreement"). The Facility shall only be utilized by the County solely for a wastewater treatment system and for no other purpose.

B. In addition, within a period of ten (10) years from the date of the closing of the sale of the Facility, the District shall have the unilateral option to require the County to purchase the District's Wastewater Collection and Transmission System and the potable and reuse water transmission and distribution lines (the District's "System", as described on the attached Exhibit "C") upon the terms, and subject to the conditions, set forth in this Agreement and in the Purchase and Sale Agreement.

C. Simultaneous with the closing of the sale and purchase of the Facility pursuant to the Purchase and Sale Agreement the District and the County will enter into the Gateway Services Community Development District Interlocal Agreement (Wholesale Potable Water Service), hereinafter referred to as the "Wholesale Potable

Water Agreement", in the form and content as the agreement attached hereto and made a part hereof as Exhibit "D".

D. Simultaneous with the closing of the sale and purchase of the Facility pursuant to the Purchase and Sale Agreement the District and the County will enter into the Gateway Services Community Development District Interlocal Agreement (Wholesale Wastewater Treatment and Reuse Water Service), hereinafter referred to as the "Wholesale Wastewater Agreement", in the form and content as the agreement attached hereto and made a part hereof as Exhibit "E".

2. Purchase Price.

A. As consideration for the purchase of the Facility, County shall pay to District, subject to the adjustments and prorations referenced in the Purchase and Sale Agreement, a total purchase price of Four Million Eight Hundred Fifty-Eight Thousand Dollars (\$4,858,000.00), allocated as \$3,124,000.00 for the wastewater treatment facility and \$1,734,000.00 for the agreed upon real property (the "site").

B. Upon the exercise by the District of its option to sell to the County the District's System as outlined in the Purchase and Sale Agreement, the County shall pay to the District the additional consideration as provided for in the Purchase and Sale Agreement.

3. County Provision of Utility Service.

After closing of the sale and purchase by the County of the Facility, County shall provide to and District shall be provided wholesale wastewater treatment and disposal service and reuse water in the quantities and at the service levels required by District in

accordance with the terms and conditions of the Wholesale Wastewater Agreement, and shall operate and maintain the Facility in a manner consistent with best management practices using Best Available Control Technology ("BACT") so that none of the operation or activities of the Facility are offensive to the Gateway community or constitute a nuisance. After closing of the sale and purchase by the County of the Facility, County shall provide to and District shall be provided potable water service in the quantities and at the service levels required by District in accordance with the terms and conditions of the Wholesale Potable Water Agreement. Except as otherwise provided herein District shall be provided all potable water for use within the District's Service Area from the County.

4. **Identity of County's Customer.** Notwithstanding County's actions or any other term or condition of this Agreement, (except paragraph 1B hereof) the Wholesale Potable Water Agreement, the Wholesale Wastewater Agreement, or the Purchase and Sale Agreement (hereinafter collectively referred to as the "Agreements"), the District is County's only customer in District's Service Area. The parties acknowledge and agree that the current and future residential, commercial, industrial, governmental, multidwelling, and other types of water, wastewater, and wastewater reuse service consumers located in District's Service Area are District's Customers (hereafter collectively referred to as "District Customers" and singularly as a "District Customer"). District Customers are not County's customers and County shall neither seek nor obtain any District Customers as County customers, nor shall County serve, on any basis, any persons or properties within the District's Service Area.

5. Points of Delivery and Connection

Points of delivery of potable water from the County to the District, shall be as per the Wholesale Potable Water Agreement.

The Point of Connection of wastewater from the District to the County shall be as per the Wholesale Wastewater Agreement.

The Point of Connection of reuse water from the County to the District shall be as per the Wholesale Wastewater Agreement.

6. Availability of Service Capacity.

A. The County represents and assures the District that it shall maintain and expand its Systems so that the County will furnish the quantity and quality of water and wastewater service required under this Agreement, the Wholesale Potable Water Agreement and the Wholesale Wastewater Agreement. The County shall provide such services with the same level of service and care as all other users and customers of its integrated, unified utility system.

B. The County will expand the Facility and plant as needed in order to serve the needs of the existing and future developments and uses within the District, in accordance with this Agreement and the Wholesale Wastewater Agreement. The County commits to the District that it will expand the Facility in the three phases outlined and described on the attached Exhibit "F", during the time frames outlined and described in said Exhibit "F".

7. Ownership of District's System.

After the closing of the sale of the Facility, the District shall continue to

Own, operate, repair and maintain all infrastructure, mains, lines, pipes, and other equipment of District's System, to include all District reuse water system components. The District shall operate and maintain District's System until and unless the District exercises the option in Paragraph 1B herein . District shall expand District's System within District's Service Area as it deems necessary and appropriate. All expansions of District's System by District shall remain the property of District. District shall retain the right to assess District Customers as necessary the appropriate fees, charges, and costs for installation, maintenance, operation, expansion of District's System and for debt service incurred in connection therewith.

8. Ownership of Facility. The Facility is as described on the attached Exhibit "G". County shall purchase and own the Facility. The Facility shall only be used as a wastewater treatment system. County shall operate and maintain the Facility in the manner provided herein and shall expand the Facility as necessary and appropriate and in accordance with the terms of the Agreements in order to provide the required service levels to District and District's Customers. Except as otherwise provided herein, all expansions of the Facility shall remain the property of County. County acknowledges that District has the right to require District approvals for expansion to the Facility, including but not limited to: architectural approval [which approval may contain requirements for landscaping, buffering, berming and odor and noise control using BACT], of all buildings and facilities to be constructed upon the Facility site, and all buildings and facilities to be constructed in District's Service Area, such approval not to be unreasonably withheld by the District. In the event County requests the construction of facilities in District's Service Area, such facilities may be constructed

only with District's prior written approval with such approval not to be unreasonably withheld by the District. County and District shall cooperate to allow construction of necessary infrastructure to connect the County's System to the Facility. County shall coordinate with the District requests for necessary easements or use of right-of-way for such connection of infrastructure between the County's System and the Facility, provided same is at no cost, expense or liability of the District. In the event County defaults, this Agreement expires or is otherwise terminated or concluded, ownership of all facilities constructed by or on behalf of County in District's Service Area shall be transferred to District and District shall pay County for such facilities in accordance with the procedures set forth in Paragraph 15.

9. Application of Rates and Charges.

County's rates, fees, and charges to District and District Customers, shall be fair, reasonable, non-discriminatory and equitable per County procedures, for its integrated, unified utility systems and as outlined in the Agreements.

The County shall be fair, reasonable, nondiscriminatory, just, equitable, and uniform in determining and enforcing classifications, categories, rates, fees, charges, rules and regulations in serving the District.

10. Annexation and Incorporation.

In the event that all or any portion of the property located within District's Service Area is incorporated or annexed into a municipality, this Agreement and the Agreements shall remain in effect and District shall have the right to assign some or all

of its rights and corresponding obligations under the Agreements to such other municipality.

11. Events of Default by County. The occurrence of any one or more of the following events shall constitute a default of the Agreements by County:

(a) The failure of County to take any action required by the Agreements or the taking of any action by County or the failure of County to refrain from taking any action contrary to the Agreements, but County shall have a ninety (90) day opportunity to cure pursuant to Paragraph 14 following County's receipt of written notice from District that District is of the opinion that County has acted contrary to the terms of the Agreements and specifying such contrary action;

(b) The inability or unwillingness of County to provide wholesale potable water service, wholesale wastewater treatment and disposal service, and *wholesale reuse water service, or any of such services, in accordance with the requirements of the Agreements;*

(c) The adoption or implementation of policies, ordinances, resolutions, or administrative practices that increase any of the water rates, fees, or charges, wastewater rates, fees, or reuse rates, fees or charges, to the District, or District Customers which are not in accordance with the terms of the Agreements including the County levying rates, fees or charges to the District or District Customers inconsistent with the Agreements or higher than the County approved rates, fees or charges as applied to other similarly classified County customers;

(d) Failure of County to provide potable water supply, treatment, storage, and transmission service or wastewater transmission, treatment, and disposal service, or reuse water distribution service, including but not limited to failure to comply with Governmental Standards, but County shall have a thirty (30) day opportunity to cure pursuant to Paragraph 14 following County's receipt of notice by District that County's service is not in conformance with what is required herein or by the Agreements;

(e) County's receipt of a notification by a governmental regulatory agency that all or any portion of County's System used to provide water service, wastewater service, or reuse water service, to the District or District Customers, is not in compliance with Governmental Standards, but County shall have a ninety (90) day opportunity to cure from the date of receipt pursuant to Paragraph 14;

(f) The denial, delay or postponement by the County of any necessary approvals, permits, certificates or the like to commence or complete building, approve occupancy or otherwise plan, permit, or develop property, for a District Customer or within the District's Service Area, due solely to an alleged lack of capacity by County or the alleged lack of compliance with Governmental Standards by County, but County shall have a forty-five (45) day opportunity to cure from the date of notification to County of such denial;

(g) the failure of the County to be in compliance with any term or provision of the Agreements and the failure of the County to cure said noncompliance within the applicable cure period provided in the Agreements.

(h) the failure of the County to timely construct and operate the expansion of the Facility as described on the attached Exhibit "F".

12. Additional Events of Default

The occurrence of any one or more of the following events by the County shall also constitute default of the Agreements:

(a) Failure of County to timely provide notice or the accompanying certifications that the County shall have the ability to provide the quantity and quality of wastewater treatment and disposal capacity and reuse service necessary to meet the present and future needs of District, including the needs indicated by the Five Year Plan in accordance with Governmental Standards, when the County either (i) owns and operates a wastewater treatment and disposal facility sufficient to meet the current and future needs of District, as set forth in the Five Year Plan, in accordance with Governmental Standards or (ii) has an approved, provably fundable plan to expand or improve, if necessary, County's wastewater treatment and disposal facility sufficient to meet the current and future needs of District, as set forth in the Five Year Plan, in accordance with Governmental Standards;

(b) District's receipt of notice from County that County cannot provide the quantity of wastewater treatment and disposal capacity and reuse service necessary to meet the current and future needs of District, as set forth in the Five Year Plan, in accordance with Governmental Standards and does not have an approved, funded plan to expand or improve County's wastewater treatment and disposal capacity or reuse service to meet the current and future needs of District, as set forth in the Five year plan, in accordance with Governmental Standards and in a timely fashion;

(c) Failure by County to commence design, permitting, or construction of additional facilities or to make improvements to existing facilities in accordance with the dates specified by County in County's certification of ability to provide either water or wastewater service, but County shall have a ninety (90) day opportunity to cure from the date such completion was to have occurred pursuant to Paragraph 14;

(d) Failure by County to commence design, permitting, or construction of additional or expanded facilities or to make improvements to existing facilities in accordance with the dates specified in Exhibit "F", but County shall have a ninety (90) day opportunity to cure from the date such completion was to have occurred pursuant to Paragraph 14.

13. Events of Default by District. The occurrence of any one or more of the following events shall constitute a default of this Agreement by District:

(a) District's failure to timely pay its bills for service provided by County, but District shall have a thirty (30) day opportunity to cure following written notice from County;

(b) District's failure to provide its Five Year Plan(s) on a timely basis, but District shall have a ninety (90) day opportunity to cure following written notice by County pursuant to Paragraph 14; and

(c) Failure of District to take any action required by the Agreements or the taking of any action by District or the failure of District to refrain from taking any action contrary to the Agreements, but District shall have a ninety (90) day opportunity to cure pursuant to Paragraph 14 following District's receipt of written notice from

County that County is of the opinion that District has acted contrary to the terms of the Agreements and specifying such contrary action.

14. Opportunity to Cure. If an event of default provides an opportunity to cure, the party which is not in default because of the event (hereafter referred to as "Non-defaulting Party") shall not exercise any remedy set forth herein during the stated period to cure, said opportunity to cure commencing upon receipt of written notice of default, (a ninety (90) day period except for the thirty (30) day periods as set forth in Paragraph 11(d) and 13(a) so as to allow the party in default any applicable opportunity to cure. If any event of default cannot be reasonably cured within any applicable cure period, then that cure period shall be extended to such time that a reasonable cure can be completed, provided that the Party in default takes all lawfully available steps to cure within the original cure period and also submits to the Non-defaulting Party an outline *as to how and when the cure shall be achieved and thereafter diligently pursues a cure.* The Party in default may change or alter the outline of the cure's solution provided the Non-defaulting Party and the party in default shall meet not less than annually to review the situation and to revise the outline and proposals for the cure as may be necessary to achieve the cure.

Upon the expiration of the period to cure, the Non-defaulting Party may, pursue any remedy as permitted herein regardless of any ongoing or future opportunity to cure provided to the party in default in the Agreements; provided, however, in the event that *County provides a notice of inability to provide water supply, treatment, storage, and transmission capacity or wastewater transmission, treatment, and disposal capacity, or both, as set forth in Paragraphs 11(b) and 12(b), and County provides District with a*

Notice within thirty (30) days of its prior Notice of inability that despite such Notice of inability it can provide such service within twelve months after the date such service is required pursuant to the most recent Five Year Plan, District shall have the right to determine whether to allow County to provide such service in accordance with County's subsequent Notice of ability to serve within the herein referenced twelve month period or whether to exercise District's remedies for that portion of service County cannot provide as set forth in its certification or other notification and all projected additional demand thereafter.

15. District's Remedies. In the event that the County is in default under this Agreement or any of the Agreements, District may immediately terminate this Agreement and all or any of the Agreements, and exercise, in any combination or sequence, any one or more of the remedies set forth as follows:

(a) District may require the County to perform in accordance with the Agreements as follows:

i. Require specific performance of obligations of the County by court order (whenever the term "court" is utilized herein, the term shall refer to the appropriate state court of competent jurisdiction in Lee County, Florida);

ii. Enjoin the County by court order from violating its obligations pursuant to this Agreement or any of the Agreements; or

iii. Require the County to perform its obligations pursuant to this Agreement or any of the Agreements by court ordered extraordinary writ.

The County agrees that in the event litigation is initiated by the District under this Agreement or any of the Agreements, that it consents to and will not object to or contest

any motions, requests or pleadings by the District to expedite any or all proceedings in said litigation, including, but not limited to: the setting of hearings for consideration of motions; discovery proceedings; setting hearing dates for requests or motions by the District for the appointment of a receiver or receivers; or the setting of trial date(s).

(b) District may pursue monetary damages from the County due to the *Default excluding special and consequential damages.*

(c) District or a new service provider may (i) provide water, wastewater and reuse water service, or any or all of such services(s) for the portion of the services required to be provided by the County under this Agreement that are in *Default* as determined by District ; and (ii) pursue, obtain and acquire any governmental authority or permit required to provide water and wastewater service, or either, then not being provided.

(d) In the event District prevails in its efforts to obtain any of the remedies it has available, it may require the County to pay its attorneys' fees and costs and in the event the County prevails in its defense of such efforts, the County may require District to pay its attorneys' fees and costs incurred in its defense.

(e) District may (i) accept a reduced quantity of service which County determines it can provide for a shorter period of time than provided for in this Agreement and (ii) recover from County all revenue charges previously paid for which service is not then being provided regardless of any applicable opportunity to cure;

(f) District may require County to provide a prescribed level of service available to the District on a permanent basis to the extent to which County certified its

current and future ability to provide service to District in connection with the last Five Year Plan certified by County;

(g) District may require the County to provide service on a temporary basis for up to two (2) years from (i) the date of District's receipt of County's notice of inability to provide service or lack of an approved, funded plan or, (ii) in the event County fails to provide the notice or accompanying certification, the expiration of one hundred twenty (120) days following the submittal of the uncertified Five Year Plan. County shall provide such service sufficient to meet the current and future needs of District, to the extent to which County certified its current and future ability to provide service to District in connection with the last Five Year Plan certified by County. Such service shall be subject to the terms of the Agreements with respect to the setting and levying of rates, fees and charges;

(h) District may pursue and has the right to obtain some or all of the required service not then being provided by County from sources other than County, including, but not limited to municipalities, counties, or private utility providers and County agrees that it shall not contest, object to, litigate over, interfere with, or hinder such efforts. Specifically, County shall be precluded from raising any claim, that District may not legally provide service either directly or indirectly through sources other than County, and County waives and forgoes any claim that District is within County's wastewater or water service areas as defined by any statute, ordinance, rule, land use plan, comprehensive plan, or any other governmental agency;

(i) Notwithstanding the above provisions, if a default occurs at any time prior to the District exercising its option to sell the District's System to County per Paragraph

1b herein, District may undertake the planning, designing, permitting, construction and operation of its own wastewater collection, transmission, treatment, and disposal facilities, and water withdrawal, treatment, transmission and distribution system, including but not limited to necessary permits and approvals, treatment plants, and other related appurtenances, whether located inside or outside of District's Service Area, for the purpose of providing the necessary water service, wastewater service, or both to District's Service Area not being provided service by the County. County agrees that it shall not contest, object to, interfere with, or hinder such efforts;

(j) District or a new service provider may acquire any governmental authority or permit required to provide such necessary water and wastewater service, or either, not then being provided by the County.

(k) The parties recognize and agree that failure to construct facilities or otherwise plan, design, or provide facilities to meet District's Five Year Plan or failure to provide water or wastewater service otherwise in compliance with the terms of the Agreements, may result in irreparable injuries to District that may not be adequately redressed by a remedy at law. As such, County expressly waives any defense of an adequate remedy at law to any action brought by District to enforce, with reasonable notice to County through either specific performance, injunctive relief, or extraordinary writ, County's obligation to construct facilities to meet District's Five Year Plans and accompanying certifications or County's obligation to provide water and wastewater service otherwise in compliance with the terms of the Agreements. County hereby consents to the expedition of any legal proceedings instituted by District seeking to

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compel performance of County's obligations. In the event District institutes litigation seeking such equitable or extraordinary relief, District shall be entitled, to petition for the appointment of a Receiver or Trustee to oversee County's performance of its obligations as set forth herein.

Any Receiver or Trustee shall not have any relationship or affiliation, past or present, with any of the parties to this Agreement and shall be granted all power and authority necessary to compel performance pursuant to the Agreements and may exercise all actions necessary to carry out its duties as granted by the Court in its order appointing such receiver or trustee. Any sums expended by District to acquire any other necessary site(s) and/or to construct facilities to provide services required by County's failure to provide service required by this Agreement, plus the actual interest expense incurred by District in connection with such funds, shall be recoverable by District from County upon the entry of an appropriate favorable final order by a court of competent jurisdiction. County will cooperate with District in obtaining any and all necessary permits for such construction, or siting of such additional facilities, or in connecting such facilities with County's existing facilities and in otherwise correcting County's default.

In the event District institutes litigation against County in accordance with the Agreements, and a final order is entered by the Trial Court in favor of District and County appeals such an order, County hereby agrees to waive its right to an automatic stay of the final order, as provided pursuant to Fla. R. App. P. 9.310(b)(2), upon the following terms and conditions: a.) The parties shall immediately satisfy the terms of the

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appealed final order. Construction, planning, design or other necessary action shall be performed in accordance with the procedures set forth therein and under the supervision of the Court or the Court-appointed receiver. Such construction, planning, design or other action shall be undertaken without any prejudice to or waiver of County's right to proceed with its appeal; b.) In the event the final order is affirmed and it is determined that the construction, planning or design of additional facilities were required or that any other acts undertaken at District's directive were necessary or otherwise proper, then County shall be responsible for payment for all acts so affirmed by the Court; c.) If, in the event the order is reversed or it is determined that County was not in breach of the Agreements or obligated to construct additional facilities or otherwise take the action undertaken by District or the Receiver, then County shall only be responsible for the costs of that portion of the additional facilities or other activity, if any, which the Court determines County was obligated to perform, with any additional costs being paid by District (hereafter referred to as the "Excess Costs"). Such Excess Costs shall be repaid by County to District at such time as such excess additional facilities are required or used by County in order to meet any future District Five Year Plan.

District may, either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights granted hereunder and may enforce and compel the performance of all duties required by this part to be performed by County, including the fixing, charging, and collection of rates, fees, and charges for the use of services furnished thereby.

In the event the County fail or refuse to promptly and fully perform any of its obligations with respect to the setting of rates, fees, and charges to be levied and imposed, District shall be entitled to perform a cost of service study, and County shall cooperate in District's preparation of such a study, to determine County's cost of providing service to District, so as to determine the rates, fees and charges by County for service. District shall have the opportunity to present the cost of service study and any other documentation, data, analysis, witnesses or opinions to County in its rate-setting deliberations or any other forum or deliberation wherein County undertakes to set, fix or revise rates, fees and charges to be collected by County from the customers of its system, to include the District, for provision of service and County shall consider the cost of service study and all other documentation and positions put forth by District and any other customers of the County's system in reaching its decision. District shall further have the right to question, cross-examine and elicit testimony from County and/or its agents with respect to any presentation or documentation made to County as to the setting, fixing or revising of such rates, fees and charges.

16. County's Remedies.

In the event the County determine that District is in default of the Agreements, the County may exercise any one or more of the following remedies:

(a) the County may require District to perform in accordance with the Agreements as follows:

i. Require specific performance of obligations of District by court order;

ii. Enjoin District by court order from violating its obligations pursuant to the Agreements; or

iii. Require District to perform its obligations pursuant to the Agreements by court ordered extraordinary writ.

(b) In the event the County prevail in its efforts to obtain any of the above remedies, they may require District to pay their attorneys' fees and costs and in the event District prevails in its defense of such efforts, District may require the County to pay its attorneys' fees and costs incurred in its defense.

17. **Notices.** All notices shall be in writing and delivered by either hand delivery, overnight delivery or certified mail, return receipt requested, addressed to County, and District as follows:

To County: County Manager, Lee County
P O Box 398
Ft. Myers, FL 33902

With copies to: County Attorney, Lee County
P O Box 398
Ft. Myers, FL 33902

To District: James P. Ward, District Manager
G. L. Moyer and Associates
210 N. University Drive
Coral Springs, Florida 33071

With copies to: Anthony P. Pires, Jr.
Woodward, Pires & Lombardo, P.A.
3200 North Tamiami Trail, Suite 200
Naples, Florida 34103

or at such other place and to such other persons as may be hereafter designated in writing. Such notices shall be deemed given whether it has been accepted by the addressees or refused by the addressee.

18. Modification. No change or modification of this Agreement shall be valid or binding upon the parties hereto, nor shall any waiver of any term or condition hereof be deemed a waiver of such term or condition in the future, unless such change, modification, or waiver be in writing signed by the parties hereto.

19. No Waiver. No waiver of any breach of or default under any term, condition, or provision of this Agreement shall be deemed a waiver of such term, condition, or provision or of any subsequent breach or default of any kind. No delay or omission to exercise any right or power accruing upon any breach or default shall impair such right or power or be construed to be a waiver of any such breach or default or an acquiescence therein.

20. Term of This Agreement. This Agreement shall commence on the date that it is fully executed by the parties and shall terminate on September 30, 2033. Provided however, and notwithstanding the foregoing, this Agreement shall be automatically extended for successive thirty (30) year terms, concurrent with the extended terms of the Wholesale Potable Water Agreement or the Wholesale Wastewater Agreement, upon the extension of said agreements. Provided further however that this Agreement shall terminate at an earlier date upon failure of the parties hereto to close the purchase and sale of the Facility under the Purchase and Sale Agreement.

21. **Renewal of this Agreement.** This Agreement may also be extended or renewed by mutual consent of the Parties.

In the event this Agreement is not renewed, District and County each reserve their respective claims as to service area and rights as provider of water and wastewater service within their claimed service areas.

22. **Severability.** In the event that a court of competent jurisdiction at any time determines that a particular provision or provisions of this Agreement are invalid, void, or otherwise unenforceable, such provision or provisions shall be severable from the remainder of this Agreement and the remaining provisions shall be upheld and enforced except as provided herein. If the Agreement, in toto, or those provisions with respect to then or future rates is deemed unenforceable, then the parties are released from all future obligations under the Agreement; provided, however, that District and County each reserve their respective claims as to service area and rights as provider of water and wastewater service within their claimed service areas except as provided herein with respect to challenges initiated by District or County.

In the event the City of Fort Myers initiates a legal challenge to the enforceability of the Agreements, or provisions with respect to structure and calculation of the rates and charges, or otherwise takes the position that the Agreements or the provisions with respect to structure and calculation of rates and charges is or are unenforceable, then the County shall be precluded from claiming that District or District Customers are within the County's service area for purposes of providing water service, wastewater service, or both. In the event that District or any third party, excluding any customer of the County, initiates a legal challenge to the enforceability of the Agreements or the

provisions with respect to the structure and calculation of rates and charges, and a court of competent jurisdiction determines that the Agreements, in toto, or provisions as to rates and charges are unenforceable, the County and District may reassert and maintain its claims as to service area and rights as provider of water and wastewater service within its claimed service areas. In any event, the Agreements shall not be considered a presumption that District is within the County's service area or that District is not within the County's service area.

23. Alternate Non-Potable Water Source. District and District Customers may construct or use wells, ponds, lakes, or other sources of water for the purposes of obtaining non-potable water for construction, irrigation, or fire protection. However, District shall be responsible for acceptance and proper disposal of all reuse water it receives from the Facility through its reuse system. The County shall not charge the District for the use of such reuse water in accordance with the terms of the Wholesale Wastewater Agreement.

24. Transition.

At the closing, County and District will take the following actions concurrently:

(a) District and County shall, at least three (3) business days prior to closing read the District master meter with County to establish a starting number for billing purposes.

(b) Each party shall deliver to the other such other reasonable

documents and take such other reasonable actions as necessary to effectuate the terms of the Agreement.

25. Miscellaneous.

(a) Except as to the agreements referenced on the attached Exhibit "H" this Agreement supersedes all previous agreements or representations either oral or written heretofore in effect between and among District and the County and made with respect to matters contained herein, and when duly executed constitutes the complete agreement between District and the County regarding these matters.

(b) The provisions of the Agreements shall not be construed as establishing a precedent in connection with the amount of fees, charges, contributions, or other payments to be made by any other customer of the County.

(c) Notwithstanding any provision of this Agreement to the contrary, this Agreement does not and shall not preclude the County or District from appearing publicly before the other's respective governing body to discuss any aspect of this Agreement or either party's performance thereunder, or to present any proposals relating thereto.

(d) The headings used in the paragraphs of this Agreement are solely for the convenience of the parties, and the parties agree that they shall be so construed in the construction of this Agreement.

(e) The signature of the persons to this Agreement shall be deemed an official representation that he or she has the power and authority to bind any person, corporation, partnership, or governmental agency for which he or she purports to act.

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(f) This Agreement was made and executed in Lee County, Florida, and shall be interpreted, construed, and enforced in accordance with the laws of the State of Florida.

(g) Whenever the context permits, singular shall include plural and one gender shall include both.

(h) This Agreement shall inure to the benefit of and be binding upon the respective representatives, successors, and lawful assigns of the parties hereto.

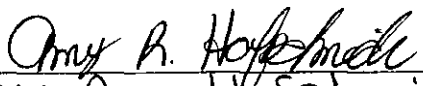
(i) This Agreement and the exhibits attached hereto have been negotiated at arm's length by the County and District, and the parties mutually agree that for the purpose of construing the terms of this Agreement, or said exhibits, neither party shall be deemed responsible for the authorship thereof.

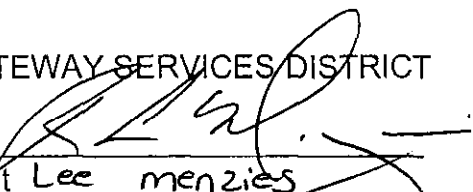
ATTEST
Charlie Green, Clerk of Courts

LEE COUNTY, FLORIDA

By: _____
Print: _____

By: _____
Print: _____

ATTEST

Print Amy Hofschneider

GATEWAY SERVICES DISTRICT
By: 
Print Lee menzies
Chairman, Board of Supervisors

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

OFFICE OF THE COUNTY ATTORNEY

BY: _____
COUNTY ATTORNEY



DISTRICT COUNSEL

EXHIBIT LIST

ACQUISITION AND UTILITY SERVICE PROVISION AGREEMENT

<u>EXHIBIT</u>	<u>DOCUMENT/ITEM</u>
A	Legal Description of District
A-2	Unincorporated Portion of District
B	Purchase and Sale Agreement for the Gateway Services Community Development District Wastewater System
C	<i>Description of District's Wastewater Collection and Transmission System</i>
D	Wholesale Potable Water Agreement
E	Wholesale Wastewater Agreement
F	Phased Expansion Plan
G	<i>Description of Wastewater Treatment Facility and Site</i>
H	List of Agreements Not Superseded