

**FIRST AMENDMENT TO THE
GATEWAY SERVICES COMMUNITY DEVELOPMENT DISTRICT
INTERLOCAL AGREEMENT WHOLESAL POTABLE WATER**

THIS FIRST AMENDMENT TO THE GATEWAY SERVICES COMMUNITY DEVELOPMENT DISTRICT INTERLOCAL AGREEMENT Wholesale Potable Water Service ("First Amendment") is made and entered into this 19 day of October, 2023, by and between the Gateway Services Community Development District, a special purpose unit of local government established pursuant to Chapter 190, F.S. acting through and by its Board of Supervisors (hereinafter referred to as "District") and Lee County, a political subdivision of the State of Florida (hereinafter referred to as "County").

WHEREAS, on May 13, 2003, the District and the County entered into that certain Acquisition and Utility Service Provision Agreement (the "Acquisition Agreement"); and

WHEREAS, thereafter the District and the County entered into that certain Gateway Services Community Development District Interlocal Agreement - Wholesale Potable Water Service dated July 11, 2003 (the "Wholesale Potable Water Agreement"); and

WHEREAS, the Acquisition Agreement and the Wholesale Potable Water Agreement, in pertinent part, describe, define and identify the District's Service Area, the District's Territory and the District's Customers; and

WHEREAS, the District has been requested by the Florida Governmental Utility Authority ("FGUA") to supply potable water to FGUA, for two (2) calendar years from commencement of service, which may be extended upon the County and the District approving an extension by further amendment to the Wholesale Potable Water Agreement, in order for FGUA to be able to supplement its potable water service to the FGUA Lehigh Acres customers; and

WHEREAS, the service area of FGUA lies outside of the District's Service Area and the District's Territory as such are described, defined and identified in the Acquisition Agreement and the Wholesale Potable Water Agreement; and

WHEREAS, while continuing to fulfill its obligations to the District under the Wholesale Potable Water Agreement, the County has potable water capacity to temporarily assist the District's resale of the County's potable water to FGUA, contingent on the County's available capacity to meet its own customer base needs and contingent upon the County's available capacity to fulfill its obligations to the District under the Wholesale Potable Water Agreement; and

WHEREAS, FGUA was established by that certain Amended and Restated Interlocal Agreement Relating to Establishment of the Florida Governmental Utility Authority dated as of 10/19/23, and as amended; and

WHEREAS, County is a Member of FGUA; and

WHEREAS, the District and County agree that the Acquisition Agreement and the Wholesale Potable Water Agreement be amended to provide the District with the ability to supply potable water, received by the District from County, to FGUA on a temporary bulk purchase basis.

NOW THEREFORE, in consideration of the premises, the covenants, provisions, terms and conditions set forth herein, the District and the County agree as follows:

1. The above recitations are true and correct and are incorporated herein in full.
2. The Wholesale Potable Water Agreement is hereby amended as follows:
 - A. The attached **Exhibit A-1** to this First Amendment is substituted in place of the Exhibit A-1 attached to the Wholesale Potable Water Agreement, and the attached **Exhibit A-1** to this First Amendment is incorporated into and made a part of the Wholesale Potable Water Agreement and defines, depicts and describes the boundaries of the District's Territory as of the Effective Date of this First Amendment.
 - B. The attached **Exhibit A-2** to this First Amendment is substituted in place of the Exhibit A-2 attached to the Wholesale Potable Water Agreement, and the attached **Exhibit A-2** to this First Amendment is incorporated into and made a part of the Wholesale Potable Water Agreement and defines, depicts and describes the boundaries of the District's Service Area as of the Effective Date of this First Amendment.
 - C. Section 1.2 of the Wholesale Potable Water Agreement is amended by renumbering it as Section 1.2.A.
 - D. Article I of the Wholesale Potable Water Service Interlocal Agreement is amended by adding and inserting the following as Section 1.2.B:

The County agrees and consents to the District entering into an interlocal agreement with FGUA that provides for the following terms and conditions:

- i. The District selling bulk potable water to FGUA at rates, fees and charges established by the District for an average maximum amount of half a million gallons per day (MGD) for two (2) calendar years from commencement of service, which may be extended upon the County and the District approving an extension by further amendment to this Agreement.
- ii. The District providing a connection and tap-in for FGUA in the District's Service Area depicted and described on the attached **Exhibit A-2** to this First Amendment. The connection and tap-in for FGUA in the District's Service Area will have the ability to provide for bi-directional flows.

- iii. The connection and tap-in for FGUA in the District's Service Area will be to the District's 16-inch potable water transmission line, at the location detailed and depicted on the attached **Exhibit "C-1"** (the "FGUA Point of Delivery"), with a master meter and flow valves of a type compatible with the District's potable water distribution system and approved by the County.
- iv. The potable water distributed and sold to FGUA by the District shall not be and cannot be sold or distributed by FGUA to any properties or customers other than those in the area depicted on the attached **Exhibit "C-2"** (the "FGUA Distribution Area"). The District shall provide monthly meter readings to the County from the master meter located at the FGUA Point of Delivery.
- v. The District shall notify the County of all flushing activity within the FGUA Distribution Area and provide a monthly report of daily flushing amounts and reason the flushing occurred.
- vi. The County reserves the right to close the interconnect to the FGUA service area at any time should the quantity of potable water supplied to the District become endangered or jeopardizes the pressures and/or customer demands from the County's distribution system. Except in the case of an emergency, the County shall give the District and FGUA not less than 72 hours' notice before turning the meter off and closing the interconnect valve.
- vii. Upon the happening of any of the events listed in Section 2.3 of the Wholesale Potable Water Agreement, and after complying with the notice requirements in Section 2.3, the County may proportionately require the reduction or cessation of bulk water deliveries to FGUA under this Agreement.
- viii. In the event of a District water quality issue requiring notice to all users, the District shall notify FGUA and the District's Customer. The District's agreement with FGUA will require that FGUA will verify that their customers have been notified and supplement the District notice if needed.
- ix. Neither this Agreement nor any of the rights, interests, or obligations created hereunder may be assigned, sold, or otherwise transferred in whole or in part by either Party without the prior written consent of the other Party.
- x. Upon the completion of the connection and the installation of said master meter in the District's Service Area, FGUA shall be deemed a District Customer and a District User.

E. Section 2.1 of the Wholesale Potable Water Agreement is amended and restated as follows:

2.1 The County hereby represents to the District that it has and will continue to have the ability the ability to provide the District and District's Users with sufficient potable water of the quality and quantity required by Article 1 of this Agreement for the District's Service Area and for the FGUA Distribution Area depicted on the attached Exhibit C-2.

3. All other terms, provisions and conditions of the Wholesale Potable Water Agreement not specifically amended hereby shall remain in full force and effect.

4. This First Amendment shall become effective upon the execution by both parties.

IN WITNESS WHEREOF, the parties hereunto have executed this First Amendment to the Interlocal Wholesale Potable Water Agreement by their proper officials, duly authorized to do so on the dates specified below.

GATEWAY SERVICES COMMUNITY DEVELOPMENT DISTRICT

BOARD OF COUNTY COMMISSIONERS LEE COUNTY, FLORIDA

By: Flavia Walsh
Flavia Walsh, Chair
Dated: 10/19/2023

By: _____
Brian Hamman, Chairman
Dated: _____

ATTEST:
[Signature]
Secretary/Asst Secy.

ATTEST:

Clerk/Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THEIR RESPECTIVE CLIENTS:
[Signature]
DISTRICT COUNSEL

OFFICE OF THE COUNTY ATTORNEY