

**CITY OF SANIBEL
RESOLUTION 25-053**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA, APPROVING A SECOND AMENDMENT TO THE RECLAIMED WATER DISPOSAL AGREEMENT BETWEEN THE CITY OF SANIBEL (CITY) AND ISLAND WATER ASSOCIATION, INC. (IWA) EXTENDING THE AGREEMENT FOR AN ADDITIONAL TEN-YEAR TERM; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City and IWA entered into an Agreement on September 30, 1998, relating to the disposal of reclaimed water via Resolution 98-188; and

WHEREAS, the initial term of the Agreement was fifteen (15) years and permits the City to extend the agreement for additional ten-year terms; and

WHEREAS, on April 7, 2015, the City renewed the Agreement with IWA for an additional 10-year term; and

WHEREAS, Section 7.2.1 of the Agreement provides for extensions by additional ten-year terms; and

WHEREAS, the City has notified IWA of its intent to renew the Agreement for an additional ten-year term and IWA is supportive of the extension, as proposed.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA:

SECTION 1. The recitals above are true and correct and made a part hereof.

SECTION 2. The Second Amendment to the Reclaimed Water Disposal Agreement between the City and IWA, attached hereto as Exhibit A of this Resolution, is hereby approved, extending the Agreement an additional ten-year term and authorizing the City Manager to execute the agreement on behalf of the City.

SECTION 3. This resolution will take effect immediately upon adoption, with the Second Amendment to the Reclaimed Water Disposal Agreement being retroactive to April 7, 2025.

PASSED IN OPEN AND REGULAR SESSION OF THE CITY COUNCIL OF THE CITY OF SANIBEL, FLORIDA THIS 8TH DAY OF SEPTEMBER 2025.

Attest:

Scotty Lynn Kelly, City Clerk

Mike Miller, Mayor

Approved as to form and legality:

John D. Agnew, City Attorney

Date filed with City Clerk: _____

Vote of Council Members:

Miller	_____
Smith	_____
DeBruce	_____
Henshaw	_____
Johnson	_____

EXHIBIT A OF RESOLUTION**Second Amendment to Reclaimed Water Disposal Agreement**

THIS SECOND AMENDMENT is made and entered into this ____ day of _____, _____, by and between The City of Sanibel ("City"), and The Island Water Association ("IWA").

WITNESSETH:

Whereas, the City and IWA entered into a Reclaimed Water Disposal Agreement on September 30, 1998 (the "Agreement"); and

Whereas, the parties to the Agreement have performed thereunder, and continue to perform thereunder in accordance with the terms of the Agreement; and

Whereas, pursuant to the Agreement, the initial term of the Agreement was fifteen (15) years, attached hereto as Exhibit B of this Second Amendment; and

Whereas, pursuant to the Agreement, the initial term was extended ten (10) years in 2015, attached hereto as Exhibit C of this Second Amendment; and

Whereas, the Agreement permits the City to extend the Agreement for additional ten-year terms; and

Whereas, the City has notified IWA of its intent to renew the agreement for an additional ten-year term.

NOW, THEREFORE, for and in consideration of the promises and performances contemplated hereunder and of the mutual agreements hereinafter set forth, the parties agree as follows:

1. Recitals Incorporated. The Parties agree that the above recitals are integral to this second amendment, and they are incorporated by reference herein.
2. Agreement Incorporated. The Reclaimed Water Disposal Agreement dated September 20, 1998, is attached hereto and incorporated by reference herein. The parties agree, acknowledge and confirm that such Reclaimed Water Disposal Agreement is and has been operative and in effect through the date of execution of this Amendment to Reclaimed Water Disposal Agreement and all terms and conditions of such Reclaimed Water Disposal Agreement are approved and ratified as amended herein.
3. Extension. Pursuant to the provision of Section 7.2 of the Agreement, the City has the option to extend the Agreement for an additional ten (10) year period beyond the Termination Date. By execution of this Second Amendment, the City acknowledges that it has notified IWA of its intention to extend the Agreement, and that upon the execution of this Second Amendment, the Agreement shall be extended for an additional ten (10) year period, from April 7, 2025, expiring April 7, 2035.
4. Waiver. The failure of either party to insist on in any one or more instances on strict performance of the Agreement or this Agreement provisions or to exercise or enforce any right remedy or obligation under the Agreement or this Amendment, shall not be construed as a waiver or a relinquishment or for the performance or exercise but the

right, remedy or obligation shall continue in full force in effect.

5. Headings. The headings of various articles herein contained are intended for ease of reference only, and are not to be construed as evidence of the intent as to the content thereof

6. Counterparts. This Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original instrument, and said counterparts shall constitute but one and the same instrument which may be sufficiently evidenced by one counterpart. Facsimile copies of executed documents or executed documents sent as a PDF attachment to an email transmission, shall be deemed originals for all purposes.

7. Parole Agreements. This Second Amendment constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, understandings, writings and agreements, whether oral or written, with respect to the subject matter herein.

8. Amendment of Section A.2. Section A.2 of the Agreement is hereby amended and restated in its entirety as set forth in Exhibit A attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

(SEAL)

CITY OF SANIBEL

ATTEST:

BY: _____
Dana Souza, City Manager

Scotty Lynn Kelly, City Clerk

In the presence of:

For the Island Water Association

_____ BY: _____

_____ It's: _____

_____ Dated: _____

EXHIBIT A OF SECOND AMENDMENT

Amended Section A.2 Annual Operation and Maintenance Fee & Five-Year MIT and Permit Renewal Adjustment

The City shall pay to IWA an annual injection well operation and maintenance (O&M) fee, representing the City's share (28.57%) of standard costs associated with operating and maintaining the well. These costs include, but are not limited to, personnel, routine maintenance, testing (including annual tests and the five-year Mechanical Integrity Test [MIT]), chemicals, utilities, insurance, reporting, and permitting. The annual fee does not include the City's share of major repair or replacement costs.

In Fiscal Year 2025 (the City's FY), the annual O&M fee was \$13,156.45, calculated using the Consumer Price Index for All Urban Consumers (CPI-U) from the original fee of \$7,000 established in 1998. Future payments shall be made upon the City's receipt of IWA's invoice, which shall occur on or about the first day of April for each Contract Year and shall represent advance payment for the year beginning on that date. The fee will continue to be adjusted annually based on the CPI-U for the 12-month period preceding IWA's notice to the City of payment due.

At the completion of each five-year Mechanical Integrity Test (MIT) cycle, IWA shall calculate the total actual costs incurred for the five-year permit renewal, including engineering, application, permitting, and contractor expenses. If the City's 28.57% share of these costs exceeds the cumulative amount paid by the City through its O&M fee contributions over the preceding five-year period, the difference shall be added as a one-time adjustment to the following year's CPI-U adjusted O&M fee. This additional amount shall not be included in the base used to calculate future CPI-U adjustments. To avoid de minimis charges, this adjustment will only be applied if the difference exceeds \$1,000. IWA shall make all supporting cost calculations and documentation available to the City upon request.

EXHIBIT B OF SECOND AMENDMENT

RECLAIMED WATER DISPOSAL AGREEMENT

(9/1/98)

THIS AGREEMENT is entered into as of the 30th day of September, 1998, by and between The City of Sanibel, ("City") and The Island Water Association, Inc. ("IWA"):

ARTICLE 1

DEFINITIONS

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

Excerpt
① \$1,050,000 Initial Capital Charge
② \$7,000 + CPI O&M fees yearly
③ 15 yr. Term

④ IWA Owns the facility -
⑤ City does not get any refunds for early
CITY OF SANIBEL
CONTRACT NO. 98-09-12
Cancelled

includes the Point of Interconnection and all equipment from there to, and including, the injection well, plus the monitor well. The piping and pumping systems from the Point of Interconnection back to both IWA's and the City's treatment plants shall belong to IWA and the City respectively and shall be excluded from the Facilities.

- 1.11. "Force Majeure" is defined in Section 11.1.
- 1.12. "Initial Term" is defined in Section 7.1.
- 1.13. "IWA" is defined as The Island Water Association, Inc., a not-for-profit Florida corporation.
- 1.14. "In-Service Date" means the earliest date of either: (i) the date on which IWA actually commences the delivery of Reclaimed Water Disposal Services to the City as required by this Agreement or (ii) 30 days after the IWA notifies City of Completion.
- 1.15. "Person" means any individual, corporation, partnership, joint venture, association, joint stock company or unincorporated association, or any governmental unit or agency or political subdivision.
- 1.16. "Point of Interconnection" means the location where Reclaimed Water is transferred from City Facilities to the IWA injection well disposal system, more specifically, the point where Reclaimed Water from the City and IWA are mixed together.
- 1.17. "Project" means all labor, materials, equipment, and services necessary to supply City with Reclaimed Water Disposal.
- 1.18. "Reclaimed Water" shall mean treated effluent flows from the wastewater treatment plants(s) owned by the City of Sanibel.
- 1.19. "Reclaimed Water Disposal" means complying with City, County, State, and Federal Reclaimed Water Disposal regulations at the Point of Interconnection, in accordance with Article 6.
- 1.20. "Repair and Replacement Charges" means the charges, as described in Exhibit A, paid by the City to IWA as the City's share of the costs of major repairs or replacements to the Facilities.
- 1.21. "Renewal Term" is defined in Section 7.2.1.
- 1.22. "Termination Date" means the last day of the Initial Term or, if the City has exercised its option to extend this Agreement under Section 7.2.1., the last day of the Renewal Term.
- 1.23. "Termination Fee" means the fee, as described in Exhibit A and in accordance with Section 9.4, paid by the City to IWA, or IWA to the City, in the event this Agreement is terminated.

ARTICLE 2**GENERAL DESCRIPTION OF THE PROJECT**

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

ARTICLE 3**FACILITIES PROVIDED BY CITY**

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

ARTICLE 4**FACILITIES PROVIDED BY IWA**

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

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

ARTICLE 5

PERMITS AND APPROVALS

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

ARTICLE 6

PERFORMANCE SPECIFICATIONS

- 6.1. Maximum Quantity of Reclaimed Water Disposal Capacity
 - 6.1.1 IWA shall be capable of providing to City the maximum Reclaimed Water Disposal capacity of 2.5 MGD. In addition, IWA plans to utilize a capacity of up to 1.6MGD for disposal of the concentrate stream from its reverse osmosis water treatment plant. The disposal facilities shall be designed to handle both the City's and IWA's flows simultaneously (4.1MGD). The disposal facilities may also be designed for a capacity in excess of 4.1 MGD if IWA, at its sole discretion, deems that to be advisable for any reason, but it shall be no larger than 14" diameter (injection tube) or 5.9 MGD, unless agreed by the City in writing.
- 6.2. Composition of Reclaimed Water
 - 6.2.1. No materials, shall be introduced from the City's Reclaimed Water system into the Facilities, unless such products or materials comply with all the requirements

of the permits obtained by IWA attached hereto as Exhibit B or as they may be amended from time to time hereafter. If any state, county, or federal agency imposes more stringent discharge standards subsequent to the execution of this Agreement, IWA and City shall be obligated to comply with such standards. If modification to the Facilities, operation/maintenance requirements, or other additional requirements are necessitated by any such changes, then IWA's compensation from the City shall be adjusted accordingly, including additional Capital Charges and/or Annual Operation and Maintenance Fees. The City's share of any additional costs shall be 28.57%.

6.3 Island Water Association disposal responsibilities.

- 6.3.1. IWA shall accept Reclaimed Water at the Point of Interconnection, provided that the Reclaimed Water does not contain hazardous or toxic substances that render it unacceptable for deep well disposal under the provisions of the operating permit(s). Reclaimed Water Disposal shall be in accordance with all Applicable Legal Requirements.
- 6.3.2. IWA shall be fully responsible for the disposal, in accordance with all Applicable Legal Requirements, of all products resulting from its own operations, including the construction and operation of the injection and monitoring well(s).

6.4 Downtime and Back-up Facilities

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

- 6.4.4 Island Water Association agrees to allow the City to purchase potable water as a back-up or make-up supply, when, and if, adequate Reclaimed Water is not available for the City's reuse system. The interconnect for any such supply shall conform to all applicable rules and regulations regarding interconnections between potable and non-potable water supplies.

ARTICLE 7

TERM OF AGREEMENT AND OPTION TO EXTEND

7.1. Initial Term

- 7.1.1. The term of this Agreement shall commence on execution of this Agreement by both parties. Subject to City's option to extend, this Agreement shall terminate on the fifteenth (15th) anniversary of the In-Service Date.

7.2. City's Option to Extend

- 7.2.1. Not later than 180 days prior to the Termination Date, City shall notify IWA in writing of its desire to exercise its option to extend this Agreement for an additional ten (10) years beyond the Termination Date (the "Renewal Term") and then, upon similar notification, for as many additional 10 year terms as may be agreed between the City and IWA at the time of such additional renewals.
- 7.2.2. If it is necessary to re-apply for any permits or other approvals, other than the routine renewal of existing permits, or to obtain any additional permits or approvals, as a condition to continued operation of the Facilities, IWA shall use their best efforts to identify all such permits and requirements and advise City of such requirements, together with IWA's estimate of the cost of securing all necessary permits and approvals. If additional costs are incurred, then IWA's compensation from the City shall be adjusted, including additional Capital Charges and/or Annual Operation and Maintenance Fees. The City's share of any additional costs shall be 28.57%.
- 7.2.3. In the event City elects to exercise its option to extend this Agreement, IWA's compensation shall be adjusted, as/if necessary for changed conditions, by increasing/decreasing the appropriate charges/fees. The City's share of any additional costs shall be 28.57%.

ARTICLE 8

RECLAIMED WATER DISPOSAL SERVICE PURCHASES AND BILLING PROCEDURES

8.1. Reclaimed Water Disposal Capacity

- 8.1.1. Each Contract Year, IWA shall deliver and the City shall purchase the capacity to dispose of its excess Reclaimed Water flow, up to the capacity as described in Section 6.1

8.2. Billing Procedures

- 8.2.1. An invoice in the form provided in Exhibit C shall be submitted yearly by IWA not earlier than 28 days before the end of the previous Contract Year and not later than the tenth day of the following Contract Year, and will provide for payment in accordance with the City's Prompt Payment Act (Sanibel Code Sec. 2.10).

ARTICLE 9

DEFAULTS AND TERMINATION

9.1. Default by IWA

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

IWA's failure to provide the Reclaimed Water Disposal Services as required by this Agreement, as defined in Section 8.1.1.
- 9.1.3. City shall give written notice to IWA of any Default, providing the reasons for or evidence substantiating such Default. IWA shall have 15 days from such notice to cure such Default. If the Default is not substantially cured at the expiration of the 15-day period (unless the nature of the Default is such that more than 15 days are reasonably required for its cure and IWA shall have diligently commenced such cure within such 15-day period and thereafter diligently prosecutes the same to completion) City may exercise any of the remedies set forth in Section 9.1.4.
- 9.1.4. If IWA does not cure its Default as set forth in Section 9.1.3 of this Agreement, City may, but shall not be obligated to:
 - 9.1.4.1. Require IWA to retain the services of another Person reasonably acceptable to City who shall satisfy the obligations of IWA until such time as IWA cures the Default;

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

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

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

9.2. Default by City

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

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

9.2.2.1. The failure to make timely payment in accordance with this Agreement;

9.2.2.2. Delivery of Reclaimed Water to the Point of Interconnection that does not meet the quality standards of all the permits in Exhibit B.

9.2.3. IWA shall give written notice to City of any such Default, providing the reasons for or evidence substantiating such Default. City shall have 15 days from such notice to cure such Default. If the Default is not substantially cured at the expiration of the 15-day period (unless the nature of the Default is such that more than 15 days are reasonably required for its cure and City shall have diligently commenced such cure within such 15-day period and thereafter diligently prosecutes the same to completion) IWA may exercise any of the remedies set forth in Section 9.2.4.

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

9.2.4.1. Suspend the delivery of Reclaimed Water Disposal Service;

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

9.3. Indirect, Incidental or Consequential Damages Resulting from Defaults

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

9.4. Termination

9.4.1. Termination for Default

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

9.4.2. Termination for Convenience of City

- 9.4.2.1. At any time, City may terminate this Agreement, at its convenience and without cause, by giving IWA written notice of its intention to terminate the Agreement under this Section 9.4.2. Such termination shall be effective 180 days following such notice.
- 9.4.2.2. In the event of a termination under this Section 9.4.2:
- 9.4.2.2.1. IWA may cease all work on the Project, and
- 9.4.2.2.2. IWA shall be entitled to a Termination Fee in accordance with Exhibit A.
- 9.4.2.3. Upon payment of the Termination Fee, City shall have no further monetary obligations to IWA under this Agreement except for any Reclaimed Water Operation and Maintenance fees remaining due to IWA.

9.4.3. Termination by IWA

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

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

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

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

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

9.4.3.3 In the event of termination under this Section 9.4.3.2:

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

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

9.5 Equitable Adjustment.

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

ARTICLE 10

DISPUTES

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

10.2. In the event of any dispute or claim (hereinafter "dispute") arising out of this Agreement, City and IWA shall give the other party written notice of the dispute which shall set forth the nature of the dispute, the facts giving rise to the dispute and, if the dispute involves a claim for money or damages, the amount in controversy. Such notice shall be given within 10 days after the occurrence of the event giving rise to the dispute or within 10

days after the aggrieved party first recognizes the condition giving rise to the dispute, whichever is later. Failure to provide such notice within a reasonable period of time, the 10-day period notwithstanding, shall constitute a waiver of all claims arising out of the dispute.

- 10.3. Within five business days of notice of the dispute, the parties shall meet and negotiate in good faith with the aim of promptly resolving the dispute.
- 10.4. If the parties are unable to resolve the dispute through the negotiations referred to in Section 10.3, the parties hereby agree to attempt in good faith to settle the dispute by a mediator appointed by the Chief Judge of the 20th Judicial Circuit, Florida, at the request of either party or both. The mediation, to the extent practicable, shall be held within 30 days of notice of the dispute under Section 10.2.
- 10.5. If the dispute is not settled through mediation, it shall be submitted to arbitration under the Florida Arbitration Code. Either party, or both, shall request the Chief Judge of the Twentieth Judicial Circuit, Florida, to appoint an arbitrator, who shall hear and resolve the dispute expeditiously.
- 10.6. The alternative dispute resolution provisions contained in this Article 10 shall be prerequisites to either party's right to resort to litigation.

ARTICLE 11

FORCE MAJEURE

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

- 11.2.3. the non-performing party immediately undertakes reasonable and prudent efforts to remedy its inability to perform as a result of the particular event; and
- 11.2.4. the non-performing party resumes performance of its obligations under this Agreement and provides the other party with written notice of such resumption as soon as the Force Majeure circumstances are resolved or eliminated.

ARTICLE 12

WATER SAMPLING AND AUDITS

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

ARTICLE 13

COMPLIANCE WITH LAWS

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

ARTICLE 14

COMPENSATION AND PAYMENT

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

ARTICLE 15

IWA's ADDITIONAL OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

- 15.1. In addition to each obligation, representation and warranty set forth in other portions of this Agreement, IWA represents and warrants the following:
 - 15.1.1. IWA is capable of designing and constructing, and is willing to design and construct, either on its own behalf or through qualified contractors and subcontractors, the Facilities described in this Agreement. IWA further warrants that the Facilities will be capable of satisfying requirements as set forth in this Agreement.
 - 15.1.2. IWA is capable of operating and maintaining the Facilities, and that it is willing to operate and maintain the Facilities, either on its own behalf or through qualified contractors or subcontractors, in satisfaction of the requirements as set forth in this Agreement.
 - 15.1.3. IWA is a utility, duly organized and validly existing under the laws of the State of Florida, and is authorized to do business in the State of Florida. IWA further warrants that it has full power and authority to carry on its business as previously and presently conducted, and to enter into and perform this Agreement. True and complete copies of the corporate agreements, amended to date, shall be delivered to City upon City's reasonable request.
 - 15.1.4. IWA warrants that any balance sheets, income statements and other financial data relative to the Project provided to City at any time are true and complete in all material respects, are in accordance with their books and records, present fairly the financial position of IWA with respect to the Project at the date indicated, and have been prepared in accordance with generally accepted accounting principles.
 - 15.1.5. IWA has reviewed all relevant documentation attached hereto and all related information provided to it by or on behalf of the City, and is fully apprised of the contents of such documentation.
 - 15.1.6. IWA acknowledges that it owns the Project Site where Facilities are to be located.

- 15.1.7. There is no material claim, litigation, proceeding, or governmental investigation pending, or to the knowledge of IWA, threatened against IWA which could adversely affect the ability of either party to fulfill its obligations under this Agreement. IWA is not subject to any judgment, order, writ, injunction, or decree of any court or governmental agency which conflicts with this Agreement, or which could adversely affect or otherwise limit the ability of IWA to fulfill its obligations under Agreement.
- 15.1.8. The present and anticipated future obligations and commitments of IWA do not conflict with this Agreement and do not adversely affect the ability of either party to fulfill its obligations under this Agreement.
- 15.1.9. The execution and delivery of this Agreement on behalf of IWA and the consummation of the transactions contemplated hereby have been fully authorized and approved by all requisite corporate action of IWA. No approval or consent of, or notice to or filing with, any person not a party to this Agreement, or any governmental agency, is necessary to authorize the execution or delivery of this Agreement by IWA.
- 15.1.10. IWA shall pay all property (real or personal), sales, consumer, use and other taxes for the Facilities constructed by IWA which are legally enacted when expenses for the work are incurred.
- 15.1.11. In the event that the Project fails to comply with any construction permits or operating permits, or in the event that IWA otherwise materially breaches its warranties to City, IWA shall, to the extent directly caused by such breach, be responsible for and shall pay:
- 15.1.11.1. any and all fines levied against the City or IWA by any governmental agency;
 - 15.1.11.2. any and all reasonable costs, expenses or liabilities incurred by the City to ensure compliance with any such construction or operating permits;
 - 15.1.11.3. any other damages of any kind relating to the construction or operation of the Facilities whether to the City or to any third party or to any property owned by the City or any third party; and
 - 15.1.11.4. all reasonable costs and expenses and reasonable attorneys' fees incurred by the City to defend or dispute any such fine, damages, or liability.
- 15.1.12. The City shall have the right, but not the obligation, after consultation with IWA concerning the nature of the alleged breach, to advance a sum of money for any such fines, costs, expenses, liabilities, or other damages, on behalf of IWA. In the event the City chooses to advance such sums and IWA does not dispute such fines, costs, expenses, liabilities, or other damages, it shall be

entitled upon demand to reimbursement from IWA or may, upon 10 days written notice, deduct such sums from amounts due or to become due to IWA.

ARTICLE 16

CITY'S ADDITIONAL OBLIGATIONS AND REPRESENTATIONS

- 16.1 In addition to each obligation and representation set forth in other portions of this Agreement, City represents the following:
- 16.1.1. That it is a City, a municipal corporation in the State of Florida, validly existing, and in good standing under the laws of the State of Florida, and that it has the authority to enter into and perform this Agreement.
 - 16.1.2. That the funds which are to be used to pay IWA fees (Exhibit A) are or will be available.
 - 16.1.3. The execution, delivery, and performance of this Agreement by City: (i) do not and will not require the consent, waiver, approval, license, designation or authorization of, or declaration with, any person or public or private authority (except those consents, waivers, approvals, licenses, designations and authorizations obtained prior to execution of this Agreement); (ii) do not and will not with or without the giving of notice or the passage of time or both, violate or conflict with or result in a breach or termination of any provision of, or constitute a default under, or accelerate or permit the acceleration of the performance required by the terms of, or otherwise give rise to any liability or obligation under, any indenture, license, permit or any other agreement or instrument or any order, judgment, decree, statute, regulation or any other restriction of any kind or description to which the City is a party or by which the City may be bound.
 - 16.1.4. The City shall not discharge any toxic or hazardous substance into the Reclaimed Water that would cause a violation of permits issued to IWA with regards to the Facilities.
 - 16.1.5. City shall be responsible for any applicable sales or use taxes on any and all payments by the City related to this Project.

ARTICLE 17

ASSIGNMENT AND HYPOTHECATION

17.1. Generally

- 17.1.1 No assignment or transfer of this Agreement, or any part thereof, by either party, shall be valid without the prior written consent of the other party, which consent

shall not be unreasonably withheld. In all cases of potential assignment or transfer, the City shall have the Right of First Refusal to meet any offer.

17.2. Assignment To and Liability of Lenders

17.2.1. Lender shall mean that entity(s), if any, loaning funds to IWA for purposes of executing this Project.

17.2.2. IWA may assign its rights under this Agreement to its Lender, if any, and the City agrees to the extent reasonable to enter into an agreement with such Lender. In all cases of potential assignment or transfer, the City shall have the Right of First Refusal to meet any offer. In the event of such assignment, City will retain the same rights with respect to the Project as City has under this Agreement with IWA.

17.2.3. IWA shall require all of its Lenders to provide the City with notice of IWA's default under its agreement(s) with such Lenders.

17.2.4. Except as provided herein, City shall look only to IWA to satisfy all obligations of IWA hereunder unless, in the event of a default by IWA under any agreement between Lender and IWA, Lender has taken possession of all Facilities and is operating the Project. Upon taking actual possession of the Facilities and operation of the Project, the Lender shall be liable to City for damages resulting from a breach thereafter of this Agreement. No Lender shall have any obligation to satisfy any obligation or indebtedness of IWA to City whatsoever arising prior to such Lender's taking actual possession of the Facilities and operating the Project pursuant to this Agreement.

17.2.5. City shall deliver to any Lender of record all notices required to be delivered to IWA hereunder and will notify Lender by registered or certified mail of any default under this Agreement. This Agreement shall not terminate or be terminated by City for default if, within 30 days after service of notice of default on Lender, Lender shall have either:

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

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

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ARTICLE 18

MISCELLANEOUS PROVISIONS

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

The Island Water Association, Inc.:

The Island Water Association, Inc.
Attention: General Manager
3651 Sanibel-Captiva Road
Sanibel, Florida 33957

Phone: (941) 472-1502
Fax: (941) 472-1505

City of Sanibel:

City of Sanibel
Attention: City Manager
800 Dunlop Road
Sanibel, FL 33957

Phone: (941) 472-3700
Fax: (941) 472-3065

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

- 18.2. Any failure at any time by either party to enforce any provision of this Agreement shall not constitute a waiver of such provision or prejudice the right of either party to enforce such provision at any subsequent time.
- 18.3. Except as the City may specify in writing, IWA shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent. IWA shall have no authority express or implied, pursuant to this Agreement, to bind the City to any obligation whatsoever unless a regulatory matter requires both parties to approve an agreement.
- 18.4. Except as IWA may specify in writing, the City shall have no authority, express or implied, to act on behalf of IWA in any capacity whatsoever as an agent. The City shall have no authority express or implied, pursuant to this Agreement, to bind IWA to any

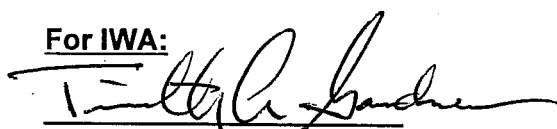
obligation whatsoever unless a regulatory matter requires both parties to approve an agreement.

- 18.5. This Agreement shall be binding upon all successors, assigns, and legal representatives of the City and/or IWA.
- 18.6. Except as otherwise provided elsewhere herein, this Agreement and all rights hereunder are intended for the sole benefit of the parties hereto and shall not imply or create any rights on the part of, or obligations to, any other entity or individual not a party to this Agreement.
- 18.7. The Section headings contained in this Agreement are for convenience and reference only, and are not intended to, and shall not define, govern, limit, modify or in any manner affect the scope, meaning, or intent of any provisions of this Agreement.
- 18.8. Whenever in this Agreement the context so requires, the masculine gender includes the feminine and/or neuter, and the neuter gender includes the masculine and/or feminine and the singular includes the plural and the plural includes the singular.
- 18.9. Any provision of this Agreement which shall prove to be invalid, void or illegal, shall in no way affect, impair, or invalidate any other provisions hereof, and such remaining provisions shall remain in full force and effect.
- 18.10. This Agreement contains all of the agreements of the parties hereto with respect to the matters covered or mentioned in this Agreement, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing signed by each of the parties hereto or their respective successors in interest.
- 18.11. This Agreement shall be construed and interpreted in accordance with the laws of the State of Florida. Any legal proceeding involving a dispute between the parties which arises out of this Agreement shall be filed and heard only in the Lee County, Florida Circuit Court.
- 18.12. The City and IWA each acknowledges that it is represented by counsel in the negotiation and execution of this Agreement. Both IWA and the City shall be deemed to have drafted this Agreement for purposes of resolving ambiguities in this Agreement.
- 18.13. Terms capitalized in this Agreement shall have the meaning given to them in this Agreement.
- 18.14. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over against any party to this Agreement.

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

EXECUTED as of the 30th day of September, 1998

For IWA:

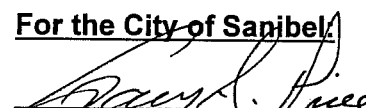

Signature

TIMOTHY A GARDNER
Name (Printed/Typed)

PRESIDENT
Title

9-30-98
Date Signed

For the City of Sanibel:


Signature

GARY A. PRICE
Name (Printed/Typed)

CITY MANAGER
Title

SEP 15 1998
Date Signed

EXHIBITS

EXHIBIT A **FEES TO BE PAID BY THE CITY TO IWA**

A.1 Capital Charge

The proposed 14" injection well has a design disposal capacity of 5.95 million gallons per day (MGD) at 10 feet per second injection rate. This well will cost approximately \$4.0 million to construct. This cost estimate includes engineering, permitting, site preparation, mitigation, monitoring wells, construction, contingencies and all other costs incidental to such a project. The only costs this estimate does not include are land cost (which IWA will contribute to the project) and the cost of staff time by City and IWA personnel to administer and implement this project.

It is estimated by the City that at the build-out conditions of the Sanibel Sewer System (SSS) as projected in the City's Wastewater Master Plan, the City will require 1.7 MGD of wet-weather Reclaimed Water Disposal capacity, based on the average day in the maximum month. 1.7 MGD represents 28.57% of the total capacity of the proposed well. The City shall, therefore, pay to IWA 28.57% of the cost to construct the proposed well, excluding land cost and the cost of staff time by City and IWA personnel to administer and implement this project. Using the above construction cost estimate of \$4.0 million, the City's 28.57% share would be \$1,142,800. The City's final balance due payment will be determined at project completion based upon 28.57% of the actual project construction costs, excluding land cost and the cost of staff time by City and IWA personnel to administer and implement this project.

The City's Capital Charge payment to IWA will be made as follows:

CITY CAPITAL CHARGE PAYMENT SCHEDULE		
Payment No.	Amount (\$)	Timing
1	\$50,000	Effective Date of this Agreement
2	\$250,000	Drilling begun on Injection Well
3	\$250,000	Final Injection Well casing (tubing) installed and cemented
4	\$250,000	Final Monitor Well casing installed and cemented
5	Final Balance	In-Service Date

A.2 Annual Operation and Maintenance Fee

The City shall pay to IWA an annual injection well operation and maintenance (O&M) fee. This fee represents the City's share of the standard costs of operating and maintaining the well, including such costs as personnel, routine maintenance, testing (including annual tests and the 5-year MIT) chemicals, utilities, insurance, reporting and permitting. The O&M fees do not include the City's share of major repair and replacement costs (see A.3).

The first annual O&M fee will be \$7,000. The first annual O&M fee will be due on the In Service Date, and will represent an advance O&M payment for the year beginning on that date.

Subsequent annual O&M fee payments will be made on the first day of each Contract Year, and will also represent an advance payment for the year beginning on the payment due date. The initial \$7,000 O&M fee payment will be adjusted every year by the Consumer Price Index for All Urban Consumers (CPI-U) for the 12 month period preceding IWA's notice to the City of payment due. IWA will notify the City of the required payment at least 30 days in advance of the due date.

A.3 Repair and Replacement Charges

In the event that it is determined by both parties that the well is in need of major repair or replacement, such as tube replacement, the City will pay IWA for 28.57% of the total cost of such repairs or replacements. Major repairs shall be defined as any single repair costing over \$5,000.

A.4 Termination Fees

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

In the event that the City terminates this Agreement after all necessary permits are received, but prior to completion of the Project and before the final balance due capital charge payment is paid by the City (see Section A.1, Payment No. 5), the City shall continue to pay all capital charges referenced in Section A.1 up to and including the final balance payment, so long as IWA completes construction of the Project as designed. If, upon City termination under this scenario, IWA decides not to complete the Project, the City shall pay IWA for all of the costs incurred up to the date of termination in the construction of the Project, as well as all of the costs associated with the stopping of construction and demobilization of the facilities in place.

In the event that the City terminates this Agreement after the completion of the Project and after the final balance due capital charge is paid by the City (see Section A.1, Payment No. 5), the City shall forfeit all claims to any previously due and paid capital charges and annual O&M fees, plus the City shall pay IWA for all remaining years of O&M fees due under the term of this Agreement, including applicable inflation increases.

In the event that the IWA terminates this Agreement prior to completion of the Project and before the final balance due capital charge payment is paid by the City (see

Section A.1, Payment No. 5), IWA shall reimburse the City for all the capital charge payments made by the City to IWA up to the date of such termination.

In the event that IWA terminates this Agreement after the completion of the Project and after the final balance due capital charge is paid by the City (see Section A.1, Payment No. 5), IWA shall allow the City to continue to utilize the Facilities for the remaining term of this Agreement, with no additional capital payment. The City shall be responsible for 100% of the O&M expenses and Repair and Replacement Charges for the remainder of the Agreement term.

A.5 Decommissioning Fee

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

EXHIBIT B
PERMITS TO BE OBTAINED BY IWA AND/OR THE CITY.

B.1 Permits by IWA:

- FDEP Class One Test/Injection Well Construction and Testing Permit
- City of Sanibel Development Permit**
- City of Sanibel Well Permit(s)**
- City of Sanibel Utility Permit**
- Miscellaneous City of Sanibel building permits for associated facilities**
- SFWMD (FDEP) Environmental Resource Federal Dredge and Fill Permit

** May not be necessary if project becomes "City Exempt."

B.2 Permits by the City:

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

B.3 Other Permits

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

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EXHIBIT C
PRO FORMA INVOICE

**THE ISLAND WATER
ASSOCIATION, INC.**

INVOICE

3651 Sanibel-Captiva Road
Sanibel, FL 33957
941-472-1502 Fax 941-472-1505

INVOICE NO:
DATE:

TO:

Attn:

SALESPERSON	P.O. NUMBER	DATE SHIPPED	SHIPPED VIA	F.O.B. POINT	TERMS
					Net 30

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT

TOTAL

Make all checks payable to: The Island Water Association, Inc.
If you have any questions concerning this invoice, call: William E. Isler 941-472-2113 ext. 113

EXHIBIT C OF SECOND AMENDMENT

15-025

Amendment to Reclaimed Water Disposal Agreement

THIS AMENDMENT is made and entered into this 7th day of April, 2015, by and between The City of Sanibel ("City"), and The Island Water Association ("IWA").

WITNESSETH:

Whereas, the City and IWA entered into a Reclaimed Water Disposal Agreement on September 30, 1998 (the "Agreement"); and

Whereas, the parties to the Agreement have performed thereunder, and continue to perform thereunder in accordance with the terms of the Agreement; and

Whereas, pursuant to the Agreement, the initial term of the Agreement was fifteen (15) years; and

Whereas, the Agreement permits the City to extend the Agreement for additional ten (10) year terms; and

Whereas, the City has notified IWA of its intention to renew the agreement for an additional ten (10) year term,

NOW, THEREFORE, for and in consideration of the promises and performances contemplated hereunder and of the mutual agreements hereinafter set forth, the parties agree as follows:

1. Recitals Incorporated. The Parties agree that the above recitals are integral to this amendment, and they are incorporated by reference herein.

2. Agreement Incorporated. The Reclaimed Water Disposal Agreement dated September 20, 1998, is attached hereto and incorporated by reference herein. The parties agree, acknowledge and confirm that such Reclaimed Water Disposal Agreement is and has been operative and in effect through the date of execution of this Amendment to Reclaimed Water Disposal Agreement and all terms and conditions of such Reclaimed Water Disposal Agreement are approved and ratified as amended herein.

3. Extension. Pursuant to the provision of Section 7.2 of the Agreement, the City has the option to extend the Agreement for an additional ten (10) year period beyond the Termination Date. By execution of this Amendment, the City acknowledges that it has notified IWA of its intention to extend the Agreement, and that upon the execution of this Amendment, the Agreement shall be extended for an additional ten (10) year period, expiring ten years from the date of the execution of this Amendment.

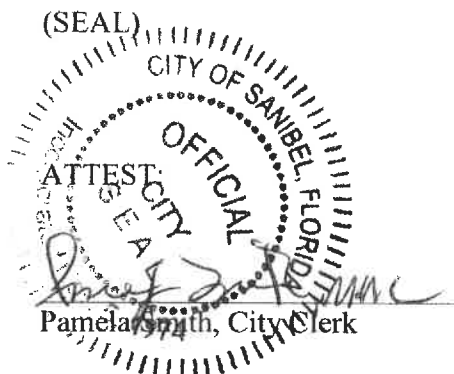
4. Waiver. The failure of either party to insist on in any one or more instances on strict performance of the Agreement or this Agreement provisions or to exercise or enforce any right remedy or obligation under the Agreement or this Amendment, shall not be construed as a waiver or a relinquishment or for the performance or exercise but the right, remedy or obligation shall continue in full force in effect.

5. Headings. The headings of various articles herein contained are intended for ease of reference only, and are not to be construed as evidence of the intent as to the content thereof.

6. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original instrument, and said counterparts shall constitute but one and the same instrument which may be sufficiently evidenced by one counterpart. Facsimile copies of executed documents or executed documents sent as a PDF attachment to an e-mail transmission, shall be deemed originals for all purposes.

7. Parole Agreements. This Amendment constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, understandings, writings and agreements, whether oral or written, with respect to the subject matter herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.



CITY OF SANIBEL

BY:

Judith A. Zimomra, City Manager

APPROVED AS TO FORM:

Kenneth B. Cuyler, City Attorney

Date

3/30/15

In the presence of:

Karen M. Warrick
Karen M. Warrick

Kathleen M. Harris
Kathleen M. Harris

For the Island Water Association:

Donna F. Ouseley
By: Donna F. Ouseley
Its: GOVERN MANAGER

Dated: 4/10/2015