

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: July 10, 2007 Consent [X] Regular []
Public Hearing []
Submitted By: Water Utilities Department
Submitted For: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: A) approve the Standard Form Agreement for Emergency Generator Purchase, Operation, and Maintenance - Full Payment version; B) approve the Standard Form Agreement for Emergency Generator Purchase, Operation, and Maintenance - Installment version; and C) authorize the County Administrator or his designee to enter into both versions of the Agreements.

Summary: On March 14, 2006 the Board authorized the County Administrator or his designee to enter into agreements with various homeowner's associations for emergency generator purchase, operation, and maintenance for wastewater pump stations within residential communities. To date a total of twenty communities have entered into agreements with the County. Some property owners have expressed an interest in purchasing the emergency generator(s) in two installments instead of one payment, as required in the original version of the agreement. This agreement revises the payment terms and stipulates penalties if the second installment is not received within one year of the effective date of the agreement. Such standard generator agreements are recommended to be approved by the County Administrator or his designee. The Department recommends this revised agreement be incorporated into Chapter 3 of its Uniform Policy and Procedure Manual (UPAP). Any generator agreement requiring special conditions not specifically authorized in the UPAP, shall require approval by the Board of County Commissioners. In addition, the Department has made minor changes to the original version of the agreement and is requesting board approval of that standard form agreement as well.

County-Wide

(MJ)

Background and Justification: The Department is responsible for the health, safety and welfare of the residents during hurricanes and other emergencies. Palm Beach County Water Utilities Department owns and operates numerous wastewater stations throughout its service area. In order to provide improved service, thereby reducing the occurrence of wastewater backups, the Department has entered into agreements with property owners/homeowners associations to purchase new emergency generators to be transferred to the County who will in turn operate the generator at lift stations within the community. Some property owners have now expressed an interest in purchasing an emergency generator to be used at lift stations located within their community in two installments, in lieu of one payment. The Department, in conjunction with the County Attorney's office, has revised the standard agreement that could be universally used for any homeowner's association. The first installment of payment is due prior to or on the effective date of the agreement. Additionally, the property owner may incur penalties in the event the second installment is not received within one year of the agreement effective date. The association would agree to transfer ownership of the purchased emergency generators to the County. The Department would agree to operate and maintain the generators at lift stations located within their community during emergencies. The agreement requires the association to indemnify, release and hold the County harmless for any liability or damages arising under the agreement.

Attachments:

- 1. Location Map
- 2. One (1) Standard Form Agreement -Installment Version
- 3. One (1) Standard Form Agreement - Full Payment Version

Recommended By: Lisa J. Pua 06/11/07
Department Director Date
Approved By: Sharon O'Byrne 6/12/07
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	20010	2011
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No.: Fund _____ Dept _____ Unit _____ Object _____

Is Item Included in Current Budget? Yes No

Reporting Category N/A

B. Recommended Sources of Funds/Summary of Fiscal Impact:

This Agreement has no fiscal impact.

C. Department Fiscal Review: *J. Suter*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

<p><u><i>[Signature]</i></u> 6-6-07 OFMB actv 6-5-07 CN 6/4/07 MD 6/5/07</p>	<p><u><i>[Signature]</i></u> 6/8/07 Contract Development and Control</p>
--	--

B. Legal Sufficiency:

[Signature] 6/12/07
Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.



Palm Beach County
Water Utilities
Department
Service Area (SA) and
Major Facilities

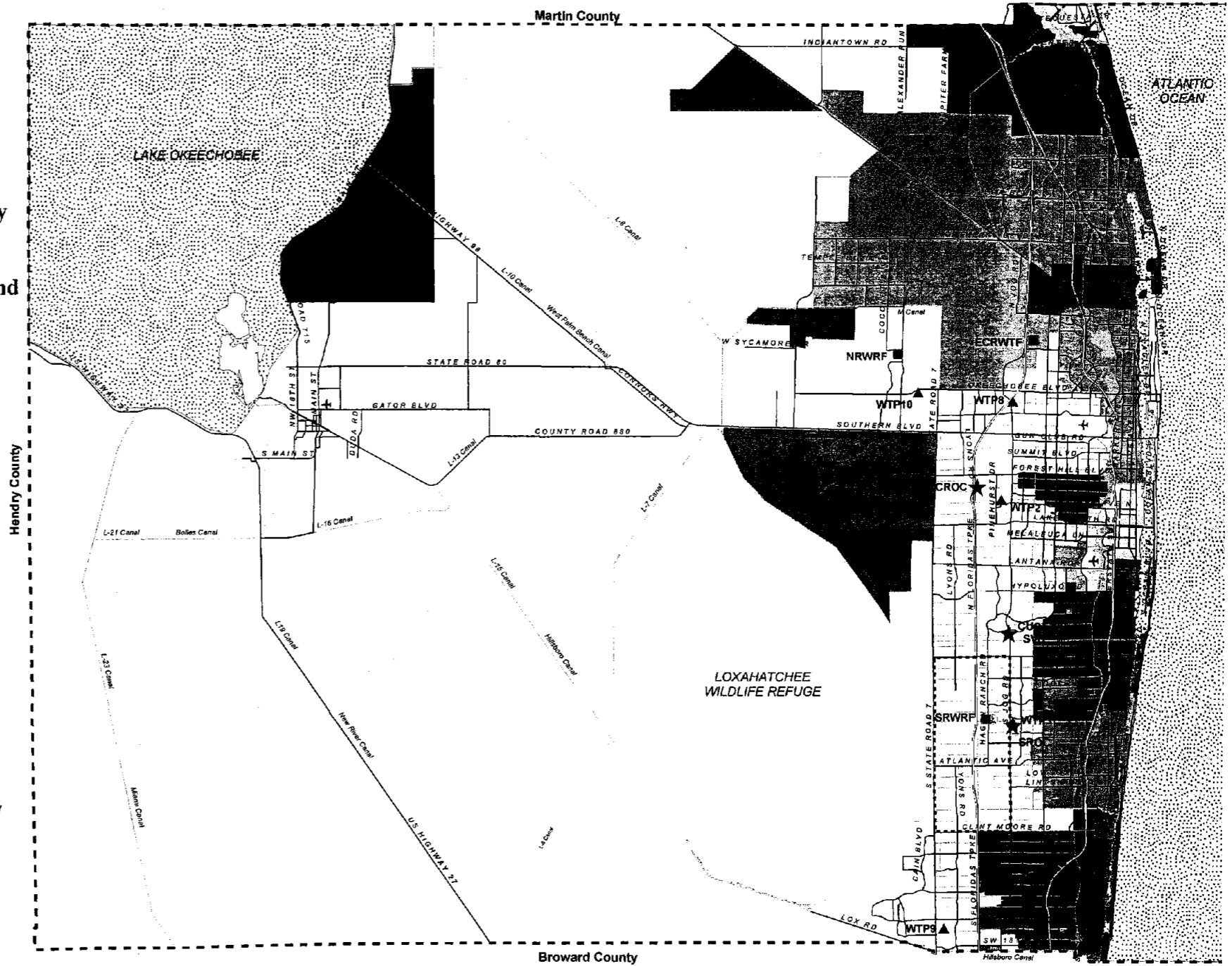
Attachment 1

Legend

- P.B.C.W.U.D. SA
- Mandatory Reclaimed SA
- - - Palm Beach County Limits
- ★ Administration
- Water Reclamation Facility
- ▲ Water Treatment Facility
- ☉ Wetlands



NOT TO SCALE



**AGREEMENT FOR EMERGENCY GENERATOR PURCHASE, OPERATION, AND
MAINTENANCE BETWEEN PALM BEACH COUNTY
AND _____**

THIS AGREEMENT made and entered into this _____ day of _____, 200_, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida (hereinafter "County"), whose address is c/o Palm Beach County Water Utilities Department, P.O. Box 16097, West Palm Beach, Florida, 33416-6097, and _____ (hereinafter "Property Owner"), whose operating address is _____, _____, Fl, _____.

WITNESSETH

WHEREAS, County is responsible for the health, safety and welfare of its residents during hurricanes and other civil emergencies;

WHEREAS, the County Water Utilities Department (PBCWUD) provides water and wastewater utility service to Property Owner's residents;

WHEREAS, PBCWUD owns and operates one or more wastewater lift stations within Property Owner's property;

WHEREAS, power outages that occur during hurricanes and other emergencies require that PBCWUD operate a system of emergency generators at wastewater lift stations in order that wastewater not back up into streets, swales and the homes of residents; and

WHEREAS, Property Owner has requested additional generators be placed at lift stations within Property Owner's property, and agrees to be responsible for the total costs of procuring such additional generators; and

WHEREAS, the County agrees that it will own and operate the generators purchased under this Agreement at lift stations within Property Owner's property during emergencies and in accordance with this Agreement.

NOW, THEREFORE, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, County and Property Owner hereby covenant and agree as follows:

1. The foregoing statements are true and correct.
2. This Agreement shall become effective upon approval by both parties. The Effective Date of this Agreement shall be the date the Agreement is ratified by the Palm Beach County Board of County Commissioners or their designee. This Agreement shall commence on the Effective Date and run for a period of ten years. This Agreement may be terminated by either party immediately upon written notice to the other party.
3. Property Owner hereby requests that ___ additional generator(s) be placed at lift stations within Property Owner's property. Payment shall be made by the Property Owner in two installments. Payment of the first installment of _____ is due prior to or on the Effective Date of this Agreement. Following the receipt of the first installment from Property Owner, County shall procure said emergency generator(s) for use at lift station(s) located within Property Owner's property (said lift station(s) hereinafter referred to as the "Facilities") under the conditions set forth in this Agreement. A listing of the Facilities is attached hereto and incorporated herein as Exhibit "A". Payment of the second installment of _____ shall be made to County within one (1) year of the Effective Date of this Agreement. Failure of Property Owner to make payment of the second installment in a timely manner shall result in the Property Owner forfeiting any rights they have under this Agreement. Should Property Owner fail to pay the second installment in a timely manner, County may utilize the generator(s) covered under this Agreement in any manner it chooses, including removal of the generator from Property Owner's property. In addition, should Property Owner fail to pay the second installment in a timely manner, County shall not refund

Property Owner the payment made by Property Owner in the first installment.

- 3.1 The emergency generator shall be a portable emergency generator meeting the specifications for portable emergency generators incorporated in the latest revision of the Uniform Policies and Procedures Manual (UPAP).
- 3.2 County shall locate the emergency generator at the Facilities prior to the start of hurricane season and retain it there during the hurricane season, unless it requires maintenance which cannot be reasonably performed at the site. For purposes of this Agreement, "hurricane season" shall mean June 1 until November 30 of each year.
- 3.3 County shall operate the emergency generator(s) at the Facilities using available personnel to minimize the potential for wastewater overflows during the duration of the emergency. For purposes of this Agreement, an emergency is defined as any event causing an extended power outage in which failure to provide generator power to the Facilities will result in wastewater backup from the Facilities.
- 3.4 County shall be responsible for maintenance of the emergency generator(s).
- 3.5 Under extreme emergencies, the County may relocate the emergency generator upon the direction of the Director of Water Utilities Department, with prior notice to Property Owner. Such action shall only occur if the Facilities are not threatened by the emergency. This section shall not apply if Property Owner fails to provide payment of the second installment in a timely manner, in which case the rights of the Property Owner under this Agreement shall be forfeited.
- 3.6 This Agreement provides Property Owner certain rights as to the use of the generator during its useful life cycle. However, County shall retain title to the generator at all times.

4. In the event that the performance of this Agreement by either party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of either party, including, but not limited to: Acts of God or of the public enemy, war, national emergency, allocation of or other governmental restrictions upon the use or availability of labor or materials, fuel shortages, rationing, civil insurrection, riot, disorder or demonstration, terrorism, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe or water plant failures and water main breaks, neither party shall be liable for such non-performance.

5. Property Owner acknowledges that a number of outside conditions may affect the County's performance under this Agreement, and that this Agreement in no way guarantees that there will never be a wastewater backup from the Facilities. County agrees that it will use its very best efforts to avoid a wastewater backup from the Facilities.

6. Property Owner agrees to indemnify, release, and hold forever harmless, County, its agents, employees, and elected officers against any claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees at all levels, arising out of this Agreement. The provisions of this paragraph shall survive termination or expiration of this Agreement.

7. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter.

8. The failure of either party to insist on the strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that said party may have for any subsequent breach, default, or non-performance, and said party's right to insist on strict performance of this Agreement shall

not be affected by any previous waiver of course or dealing.

9. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, then the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

10. All notices provided for herein shall be in writing and transmitted by mail or by courier, and, if to County, shall be mailed or delivered to County at:

Palm Beach County Water Utilities Department
P.O. Box 16097
West Palm Beach, Florida, 33416-6097
Attn: Department Director

and if to Property Owner, shall be mailed or delivered at:

Name
Address
Address
Attn:

11. This Agreement may only be amended, modified, changed, supplemented or discharged by an instrument in writing signed by the parties hereto.

12. County and Property Owner agree that this Agreement and any Exhibits hereto set forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties.

13. This Agreement is not assignable.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, County and Property Owner have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

As to County:

WITNESS

PALM BEACH COUNTY

Witness Name

By: _____
Director of Water Utilities

Signature

Witness Name

Signature

As to Property Owner:

WITNESS

PROPERTY OWNER

Signature

By: _____

Print Name

Title: _____

(Seal)

Signature

Print Name

NOTARY CERTIFICATE

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____ and _____ who is/are personally known to me or who has produced _____ as identification.

My Commission Expires:

Notary Signature

Typed, Printed or Stamped Name of Notary

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

WATER UTILITIES DEPARTMENT
APPROVAL

By: _____
County Attorney

By: _____
Director, Finance and Administration
PBC Water Utilities Department

AGREEMENT FOR EMERGENCY GENERATOR PURCHASE, OPERATION, AND MAINTENANCE BETWEEN PALM BEACH COUNTY AND _____

THIS AGREEMENT made and entered into this _____ day of _____, 200_, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida (hereinafter "County"), whose address is c/o Palm Beach County Water Utilities Department, P.O. Box 16097, West Palm Beach, Florida, 33416-6097, and _____ (hereinafter "Property Owner"), whose operating address is _____, _____, Fl, _____.

WITNESSETH

WHEREAS, County is responsible for the health, safety and welfare of its residents during hurricanes and other civil emergencies;

WHEREAS, the County Water Utilities Department (PBCWUD) provides water and wastewater utility service to Property Owner's residents;

WHEREAS, PBCWUD owns and operates one or more wastewater lift stations within Property Owner's property;

WHEREAS, power outages that occur during hurricanes and other emergencies require that PBCWUD operate a system of emergency generators at wastewater lift stations in order that wastewater not back up into streets, swales and the homes of residents; and

WHEREAS, Property Owner has requested additional generators be placed at lift stations within Property Owner's property, and agrees to be responsible for the total costs of procuring such additional generators; and

WHEREAS, the County agrees that it will own and operate the generators purchased under this Agreement at lift stations within Property Owner's property during emergencies and in accordance with this Agreement.

NOW, THEREFORE, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, County and Property Owner hereby covenant and agree as follows:

1. The foregoing statements are true and correct.
2. This Agreement shall become effective upon approval by both parties. The Effective Date of this Agreement shall be the date the Agreement is ratified by the Palm Beach County Board of County Commissioners or their designee. This Agreement shall commence on the Effective Date and run for a period of ten years. This Agreement may be terminated by either party immediately upon written notice to the other party.
3. Prior to or on the Effective Date of this Agreement, Property Owner shall provide full payment to the County for all additional emergency generators Property Owner is requesting to be placed within their property. Following the receipt of said payment from Property Owner, County shall procure said emergency generator(s) for use at lift station(s) located within Property Owner's property (said lift station(s) hereinafter referred to as the "Facilities") under the conditions set forth in this Agreement. A listing of the Facilities is attached hereto and incorporated herein as Exhibit "A".
 - 3.1 The emergency generator shall be a portable emergency generator meeting the specifications for portable emergency generators incorporated in the latest revision of the Uniform Policies and Procedures Manual (UPAP).
 - 3.2 County shall locate the emergency generator at the Facilities prior to the start of hurricane season and retain it there during the hurricane season, unless it requires maintenance which cannot be reasonably performed at the

site. For purposes of this Agreement, "hurricane season" shall mean June 1 until November 30 of each year.

3.3 County shall operate the emergency generator(s) at the Facilities using available personnel to minimize the potential for wastewater overflows during the duration of the emergency. For purposes of this Agreement, an emergency is defined as any event causing an extended power outage in which failure to provide generator power to the Facilities will result in wastewater backup from the Facilities.

3.4 County shall be responsible for maintenance of the emergency generator(s).

3.5 Under extreme emergencies, the County may relocate the emergency generator upon the direction of the Director of Water Utilities Department, with prior notice to Property Owner. Such action shall only occur if the Facilities are not threatened by the emergency.

3.6 This Agreement provides Property Owner certain rights as to the use of the generator during its useful life cycle. However, County shall retain title to the generator at all times.

4. In the event that the performance of this Agreement by either party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of either party, including, but not limited to: Acts of God or of the public enemy, war, national emergency, allocation of or other governmental restrictions upon the use or availability of labor or materials, fuel shortages, rationing, civil insurrection, riot, disorder or demonstration, terrorism, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe or water plant failures and water main breaks, neither party shall be liable for such non-performance.

5. Property Owner acknowledges that a number of outside conditions may affect the County's performance under this Agreement, and that this Agreement in no way guarantees that there will never be a wastewater backup from the Facilities. County agrees that it will use its very best efforts to avoid a wastewater backup from the Facilities.

6. Property Owner agrees to indemnify, release, and hold forever harmless, County, its agents, employees, and elected officers against any claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees at all levels, arising out of this Agreement. The provisions of this paragraph shall survive termination or expiration of this Agreement.

7. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter.

8. The failure of either party to insist on the strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that said party may have for any subsequent breach, default, or non-performance, and said party's right to insist on strict performance of this Agreement shall not be affected by any previous waiver of course or dealing.

9. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, then the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

10. All notices provided for herein shall be in writing and transmitted by mail or by courier, and, if to County, shall be mailed or delivered to County at:

Palm Beach County Water Utilities Department
P.O. Box 16097
West Palm Beach, Florida, 33416-6097
Attn: Department Director

and if to Property Owner, shall be mailed or delivered at:

Name
Address
Address
Attn:

11. This Agreement may only be amended, modified, changed, supplemented or discharged by an instrument in writing signed by the parties hereto.

12. County and Property Owner agree that this Agreement and any Exhibits hereto set forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties.

13. This Agreement is not assignable.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, County and Property Owner have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

As to County:

WITNESS

PALM BEACH COUNTY

Witness Name

By: _____
Director of Water Utilities

Signature

Witness Name

Signature

As to Property Owner:

WITNESS

PROPERTY OWNER

Signature

By: _____

Print Name

Title: _____

(Seal)

Signature

Print Name

NOTARY CERTIFICATE

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____ and _____ who is/are personally known to me or who has produced _____ as identification.

My Commission Expires:

Notary Signature

Typed, Printed or Stamped Name of Notary

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

**WATER UTILITIES DEPARTMENT
APPROVAL**

By: _____
County Attorney

By: _____
Director, Finance and Administration
PBC Water Utilities Department