

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: March 11, 2008

Consent []

Regular []

Public Hearing [X]

Submitted By: Water Utilities Department

Submitted For: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: (A) adopt a Resolution accepting as the County's statement under Section 125.3401, Florida Statutes, the public interest statement determining that the purchase of the water and wastewater system of the Indian Trail Improvement District (District) is in the public interest; and (B) approve the Palm Beach County/Indian Trail Improvement District Potable Water, Reclaimed Water, and Wastewater Interlocal Agreement (Agreement); and (C) authorize the County Attorney's Office to dismiss all of its counterclaims and interest in that certain case brought in the Circuit Court for Palm Beach County, Case No. 50 2005 CA 000965XXXX, and titled "*Indian Trail Improvement District, etc. v. Palm Beach County*"; and (D) authorize the Chairperson to execute any and all documents necessary to carry out the closing of the purchase of the District's water, wastewater, and reclaimed water system.

Summary: The Water Utilities Department has been working diligently to negotiate interlocal agreements with water and wastewater service providers in the western communities. This Agreement is the fifth such agreement brought to the Board and its adoption achieves the Board's goal. This Agreement permanently resolves the ongoing service area disputes between the District and the County. The County shall be the District's exclusive provider of bulk and retail potable water, reclaimed water, and wastewater service. The County agrees to compensate the District in the amount of \$6,175,000 for utility assets, current and future customers, stabilization of certain roadways, and to settle ongoing litigation. The County will pay an additional \$2,215,800 to terminate the existing bulk service agreement between the District and the City of West Palm Beach. The District shall control the special assessment program within the Acreage area of the District's boundaries, including the design and construction of utility infrastructure in accordance with County standards and permitting, and, following construction, will convey such infrastructure to the County. The County will allocate \$500,000 to provide financial support for up to 10% of the total costs for future assessment projects within the Acreage area. Those residents wishing to connect to County utility service shall then pay applicable connection fees to the County. The District may also choose to permit the County to conduct special assessments within the Acreage area of the District's boundaries. Other considerations afforded the County under this Agreement include: 1) the reasonable provision by District of vehicles and staff to move emergency generators throughout the legislative boundaries of the District during emergencies; 2) the reasonable
(Continued on Page 3) District 6 (MJ)

Background and Policy Issues: The County and District have been in disagreement as to the utility service provider rights between the two entities. This new Agreement will benefit existing and future District and County utility customers by ensuring the most efficient delivery of public utility services. The new Agreement also addresses issues related to the purchase of the District's utility system, bulk service, regional water, wastewater and reclaimed water infrastructure, and County utilities located within the District easements. The new Agreement contains specific enforcement provisions intended to prevent future disagreements.

Attachments:

1. Original Resolution with Attached Public Interest Statement
2. Two (2) Original Agreements
3. Location Map

Recommended By:

Department Director

3/4/08

Date

Approved By:

Assistant County Administrator

3/10/08

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	<u>\$8,390,800</u>	<u>0</u>	<u>0</u>	<u>\$500,000</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>\$8,390,800</u>	<u>0</u>	<u>0</u>	<u>\$500,000</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: 4011 Dept: 721 Unit: W006 Object: 6502

Is Item Included in Current Budget? Yes ☒ No
Reporting Category N/A

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

Within 30 days of executing this Agreement, the County will compensate the District \$6,175,000 for direct purchase of exclusive service area rights and utility assets, and full compensation related to roadway restorations and utility easements. An additional \$500,000 will be available as financial support for future assessment projects. The per-project benefit will be determined and awarded following completion of each individual project.

The District will assign the County an existing Interlocal Agreement with the City of West Palm Beach. Provisions of this agreement include compensation to the City in the amount of \$2,215,800 for water system capacity charges and for construction and use of the pipeline constructed along the City's M-Canal.

C. Department Fiscal Review: Selma M. West

III. REVIEW COMMENTS

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

April White 3.7.08
OFMB
3/10/08
03/06
VO
03/06

Jim J. Jacoby 3/17/08
Contract Development and Control
3/17/08
At the time of CD&C

B. Legal Sufficiency:

W. L. W. 3/10/08
Assistant County Attorney

Review, the Draft Agreement
did not contain the
Exhibits referenced
therein.

C. Other Department Review:

Department Director

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

(Continued from Page 1)

Summary: provision of a laydown yard; 3) assignment of the right to utilize current and future utility easements for construction, operation, maintenance, and replacement of potable water, wastewater, and reclaimed water pipelines. Further, The District agrees to dismiss all claims and interests against the County and the County agrees to dismiss all claims and interests against the District in the circuit court case initiated against the County related to the Utility Element of the Comprehensive Plan (Case No. 50 2005 CA 000965XXXX.) The District further agrees to provide a written disclaimer of interest in the eminent domain case brought by the County for acquisition of utility easements (Case No. 50 2006 CA 004834XXXXMB). This Agreement is compatible with the County's agreement with Seacoast Utilities (R2005-1769), City of West Palm Beach (R2005-2445), and the Village of Royal Palm Beach Franchise Agreement (R2004-1802, as amended by R 2006-0411). The District will assign the District's existing interlocal agreement and Pipeline Lease with the City of West Palm Beach with respect to the pipeline constructed along the City's M-Canal, and other interlocal and developer agreements.

RESOLUTION NO. R-2008-

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, ACCEPTING AS THE COUNTY'S STATEMENT UNDER SECTION 125.3401, FLORIDA STATUTES, THE PUBLIC INTEREST STATEMENT; DETERMINING THAT THE PURCHASE OF THE WATER, RECLAIMED WATER, AND WASTEWATER ASSETS OF THE INDIAN TRAIL IMPROVEMENT DISTRICT IS IN THE PUBLIC INTEREST.

WHEREAS, the County has the power to provide and regulate waste and wastewater collection and disposal, water supply, and conservation programs pursuant to Florida Statutes and other applicable law; and

WHEREAS, the County has the power to purchase, own, operate and maintain water, reclaimed water, and wastewater utilities pursuant to Chapter 125, Florida Statutes and other applicable law; and

WHEREAS, the Board of County Commissioners ("Board") has considered the feasibility of purchasing the water, reclaimed water, and wastewater utility assets of the Indian Trail Improvement District ("Utility System"). In so doing, the Board has employed consultants and utilized staff to advise and make recommendations, in the form of a Public Interest Statement and other information, to the Board with respect to the purchase of the Utility System; and

WHEREAS, the Board has held a Public Hearing and received public comment on the purchase of the Utility System pursuant to Chapter 125.3401, Florida Statutes and has determined that the purchase of the Utility System is in the public interest.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

SECTION I: That the Public Interest Statement which is attached hereto and incorporated herein as Exhibit "A", and which includes a summary of the County's experience in water, wastewater and wastewater reuse utility operation and a showing of the County's financial ability to provide such service, is acknowledged and accepted into the record as the County's statement, as required by Section 125.3401, Florida Statutes.

SECTION II: That the purchase, ownership, maintenance and operation of the Utility System is in the public interest and necessary and desirable to maintain and improve the quality of public water supply and sanitary wastewater utility service provided to the residents who live, work, or visit within the County and the businesses that operate within the County. In determining that the purchase of the Utility System is in the public interest, the Board considered information that included, but was not limited to, the following (if applicable):

- (1) The most recent available income and expense statement for the utility;
- (2) The most recent available balance sheet for the utility, listing assets and liabilities and clearly showing the amount of contributions-in-aid-of-construction and the accumulated depreciation thereon;
- (3) A statement of the existing rate base of the utility for regulatory purposes;
- (4) The physical condition of the utility facilities being purchased;
- (5) The reasonableness of the purchase price and terms;
- (6) The impacts of the purchase on utility customers, both positive and negative;
- (7) Any additional investment required and the ability and willingness of the County to make that investment;
- (8) The alternatives to the purchase and the potential impact on utility customers if the purchase is not made; and
- (9) The ability of the County to provide and maintain high-quality and cost-effective utility service.

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

Commissioner Addie L. Greene, Chairperson	-
Commissioner Jeff Koons, Vice Chair	-
Commissioner Karen T. Marcus	-
Commissioner Robert J. Kanjian	-
Commissioner Mary McCarty	-
Commissioner Burt Aaronson	-
Commissioner Jess R. Santamaria	-

The Chair thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2008

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK, CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By:  _____
Assistant County Attorney

EXHIBIT “A”

PALM BEACH COUNTY, FLORIDA

**ACQUISITION OF
WATER AND WASTEWATER ASSETS
AND
RESOLUTION OF RELATED MATTERS**

FROM AND WITH

**THE INDIAN TRAIL IMPROVEMENT
DISTRICT**

**Public Interest Statement Pursuant to Section
125.3401, Florida Statutes**

Public Hearing Held On March 11, 2008

Public Interest Statement

The Board of County Commissioners has decided to enter into the Palm Beach County/Indian Trail Improvement District Potable Water, Reclaimed Water and Wastewater Utilities Interlocal Agreement, pursuant to which the County will acquire the Indian Trail Improvement District's ("District") potable water distribution and sanitary wastewater collection system and related easements and utility service rights ("Utility System") and resolve other issues between the County and District. This document is the County's public interest statement with respect to the transaction. Significant points of the transaction are as follows:

- The County will pay to the District \$318,380 in consideration for the District conveying to the County the Utility System;
- The County will assume the District's obligations under various agreements with the City of West Palm Beach, Seminole Improvement District, and other entities;
- The County will pay to the District \$1,400,000 in consideration of the cost to stabilize certain roadways, which is necessitated by the County having installed certain utility infrastructure;
- The County will pay to the District \$1,300,000 in settlement of various pending litigation;
- The County will pay to the District \$3,156,620 in consideration of the District's permanent and irrevocable relinquishment of the right to provide retail or wholesale utility service within the Utility Service Area, whether to existing or potential future customers;
- The closing will occur on or before April 30, 2008.

In reaching the decision to enter into the Agreement and acquire the Utility System, the County has considered, at a minimum, the following matters and makes the associated statements with respect to the following matters:

1. THE MOST RECENT AVAILABLE INCOME AND EXPENSE STATEMENT FOR DISTRICT WITH RESPECT TO THE UTILITY SYSTEM.

Attached as **Composite Attachment "1"** are the unaudited (i) Statement of Revenues, Expenses, and Changes in Fund Assets; and (ii) Statement of Cash Flows of the District with respect to the Utility System for the year ended September 30, 2006. These statements are the most recent available.

2. THE MOST RECENT AVAILABLE BALANCE SHEET FOR THE DISTRICT WITH RESPECT TO THE UTILITY SYSTEM, WHICH LISTS THE ASSETS AND LIABILITIES AND CLEARLY SHOWS THE AMOUNT OF CONTRIBUTIONS-IN-AID-OF-CONSTRUCTION AND ACCUMULATED DEPRECIATION THEREON.

Attached as **Attachment "2"** is the unaudited Statement of Net Assets of the District with respect to the Utility System for the year ended September 30, 2006. Contributions-in-aid-of-construction are not shown in these statements since this system is not subject to the jurisdiction of the Florida Public Service Commission.

3. A STATEMENT OF THE EXISTING RATE BASE OF THE DISTRICT'S UTILITY SYSTEM FOR REGULATORY PURPOSES.

There is no "existing rate base" for the Utility System because the District is not subject to the jurisdiction of the Florida Public Service Commission. The term "rate base," as referenced in Section 125.3401(3), Florida Statutes (2007), applies only to private, investor-owned utilities that are subject to the jurisdiction of the Florida Public Service Commission.

4. THE PHYSICAL CONDITION OF THE DISTRICT'S UTILITY SYSTEM BEING PURCHASED.

According to the September 2004 Water and Sewer Master Plan prepared for the District by Craig A. Smith & Associates ("Master Plan"), the Utility System consists primarily of pipe, casings, fittings, valves, meters, and a lift station, all of which had an original cost of \$4,664,201. In light of the age and materials used in the construction of the District's Utility System, its physical condition is considered good, which means the Utility System is in good operating condition, may or may not have been modified or repaired, and is capable of being used at or near its fully specified utilization. The Palm Beach County Water Utilities Department ("PBCWUD") has inspected the two lift stations owned or operated by the ITID and found them to be operational and in good condition.

5. THE REASONABLENESS OF THE PURCHASE OF THE DISTRICT'S UTILITY SYSTEM, IN BOTH PRICE AND TERMS.

The purchase price of \$318,380 for the Utility System is based upon the District's cost for the Utility System (excluding contributions-in-aid-of-construction), as depreciated, which is a recognized method of valuation; therefore, it is considered reasonable. The cost for the District's relinquishment of its permanent and irrevocable right to provide retail or wholesale utility service within the Utility Service Area, whether to existing or potential future customers, is based upon an analysis involving the capitalized projected net revenues from existing and expected future customers and analyzing those revenues in terms of their bonding capacity. This is a recognized method of valuing present and future customers; therefore, it is considered reasonable.

The remaining terms of the Agreement with respect to the purchase of the Utility System are consistent with those involving the sale of water and wastewater systems between other governmental entities; therefore, they are considered reasonable.

6. THE IMPACT OF THE PURCHASE ON UTILITY CUSTOMERS, BOTH POSITIVE AND NEGATIVE.

The impact on the District's customers that will result from the County's acquisition of the District's Utility System is expected to be positive. According to the Master Plan, "it is in the best interest of ITID to urgently explore and/or negotiate an agreement with Palm Beach County as an outside provider of water and wastewater to ITID to meet ITID residents['] needs and goals." The Agreement satisfies the Master Plan's admonition.

According to the Master Plan, "[c]urrently all residents of ITID are on individual wells and home owned treatment systems." The Master Plan identifies an advantage of a central water system as "reliability and fire protection." The ITID's residential water customers will receive reliable service and fire protection, as a result of the County providing potable water service. The Master Plan notes that "[p]rivate well owners are particularly vulnerable to drinking water contamination." In fact, the Master Plan states, "Most people recognize the higher quality of water from [a public water system] in comparison to a typical [home water treatment system]." Moreover, the Master Plan notes that current residents may continue to use their wells for irrigation purposes if ultimately connected to the County's water system, which will reduce demand on the County's system.

The Master Plan further notes that the District has a small number of commercial water and sewer customers, which include a shopping center, schools, parks and the District's offices. Because the District does not have treatment facilities, the water providers are the City of West Palm Beach and the Seminole Improvement District, while the sewer treatment provider is the City of West Palm Beach. Upon the County's acquisition of the Utility System, a transition will occur through which the District's customers will become users of the County's facilities. It is an improvement to have all customers receiving both water and sewer service from the same provider.

The County's operation and maintenance of the District's Utility System will also result in a larger customer base; therefore, it is

expected that administrative expenses per customer will be less, and certain economies of scale may be achieved.

The PBCWUD expects that the long-term cost to operate the Utility System will be equal to or less than the amount that the District is now incurring; therefore, there will be no negative impact on the customers of the system. In fact, the Master Plan's discussion of a utility budget states that "[t]he operational costs are based upon [the District] obtaining water from [] Palm Beach County [] and reselling these commodities to its customers within ITID's boundaries." By eliminating the cost of "the middleman", it is expected that the cost to provide service to the ITID's customers will be reduced, which may result in savings to the customers.

With respect to sewer treatment service, the Master Plan notes that it is not contemplated that the ITID will provide such service due to the high cost of providing such service. In fact, "[c]onstruction of wastewater collection, treatment and disposal facilities would not be feasible..." according to the Master Plan. The County is in a position and has the ability to provide such service.

The interconnection of the Utility System with the County's facilities will also serve to satisfy the South Florida Water Management District's vision of the regionalization of such systems.

7. ANY ADDITIONAL INVESTMENT REQUIRED BY THE COUNTY AND THE ABILITY AND WILLINGNESS OF THE COUNTY TO MAKE THAT INVESTMENT.

Certain capital expenditures may be required upon the County's acquisition of the District's Utility System, including the cost of interconnecting the Utility System with the County's facilities. Also, the District's billing system will need to be integrated into the County's system. The County has the financial resources necessary to make the required investments.

8. THE ALTERNATIVE(S), IF ANY, TO THE PURCHASE OF THE DISTRICT'S UTILITY SYSTEM AND THE POTENTIAL IMPACT ON UTILITY CUSTOMERS IF THE PURCHASE OF

THE DISTRICT'S UTILITY SYSTEM IS NOT MADE BY THE COUNTY.

Alternatives to the County's purchase of the District's Utility System are (i) for the District to continue ownership and operation of the Utility System, subject to all of the existing agreements with the various bulk (wholesale) service providers; or (ii) build its own facilities. As recognized in the Master Plan, water service provided by the County is a recommended course of action. To that end, also as recognized in the Master plan, customers will receive better water quality through a public water system. The Master Plan also cites the prohibitive cost for the District to construct and operate wastewater collection and treatment facilities. The County has the ability to provide sewer collection, treatment and disposal service and having a common provider of potable water and sewer service is a desirable goal.

Moreover, acquisition of the District's Utility System serves to further satisfy the County's objective to negotiate favorable interlocal agreements with water and wastewater service providers in the western communities and consolidate such facilities under the County's ownership and operation.

9. THE ABILITY OF THE COUNTY TO PROVIDE AND MAINTAIN HIGH-QUALITY AND COST-EFFECTIVE UTILITY SERVICE.

The PBCWUD employs a professional operations and maintenance staff, which provides high quality and cost effective service in accordance with applicable standards and practices. The PBCWUD also employs full time personnel with various certifications to operate its water, wastewater and reuse systems. The Palm Beach County Water Utilities Director and other staff are professional engineers and the department has access to other engineering, legal and financial services.

The County's experience in water and wastewater utility operation is extensive. The PBCWUD provides water and wastewater service to approximately 216,000 dwelling units. The County's utility service area encompasses almost 1,200 square miles of the rapidly

developing, primarily unincorporated area of Palm Beach County. PBCWUD is responsible for operating five water treatment plants with a total permitted treatment capacity of 97.88 mgd and two wastewater treatment plants with a combined capacity of 37.20 mgd. The PBCWUD also currently owns 19.50 mgd of capacity in the East Central Regional Wastewater Treatment Plant operated by the City of West Palm Beach. In addition, PBCWUD personnel operate water pumping stations, water storage facilities, wellfields, and lift stations. PBCWUD currently has 518 full-time budgeted employees, who are experienced in administration, operations, and maintenance of these systems. The County has the financial ability to provide water and wastewater service to the customers within ITID's territorial limits. As of September 30, 2007, the County's total utility assets were \$1,113,184,000 with \$349,562,000 in accumulated depreciation and \$99,639,000 of construction in progress (CIP). The County's total fixed capital asset value less depreciation plus CIP was \$863,261,000.

10. **THAT ALL MONEYS PAID BY A PRIVATE FIRM TO THE COUNTY PURSUANT TO A WATER OR WASTEWATER PRIVATIZATION CONTRACT MUST BE USED FOR THE PURPOSE OF REDUCING OR OFFSETTING PROPERTY TAXES, UTILITY SERVICE RATES, OR DEBT REDUCTION OR MAKING INFRASTRUCTURE IMPROVEMENTS OR CAPITAL ASSET EXPENDITURES OR OTHER PUBLIC PURPOSES; PROVIDED, HOWEVER, NOTHING PRECLUDES THE COUNTY FROM USING ALL OR PART OF THE MONEYS FOR THE PURPOSE OF THE COUNTY'S QUALIFICATIONS FOR RELIEF FROM THE REPAYMENT OF FEDERAL GRANT AWARDS ASSOCIATED WITH THE UTILITY SYSTEM AS MAY BE REQUIRED BY FEDERAL LAW OR REGULATION.**

This statutory consideration is not applicable to this transaction.

FINDING OF PUBLIC INTEREST

Based upon the foregoing, the Board of County Commissioners of Palm Beach County hereby finds that the acquisition of the Indian Trail Improvement District's Utility System, as contemplated in the Palm Beach County/Indian Trail Improvement District Potable Water, Reclaimed Water and Wastewater Utilities Interlocal Agreement, is in the public interest.

LIST OF ATTACHMENTS

Attachment “A” – District’s Statement of Revenues, Expenses, and Changes in Fund Assets; and Statement of Cash Flows with respect to the Utility System

Attachment “B” – District’s Statement of Net Assets of the District with respect to the Utility System

ATTACHMENT "A"

INDIAN TRAIL IMPROVEMENT DISTRICT

Statement of Revenues, Expenses, and Changes in Fund Net Assets

Proprietary Fund

Year Ended September 30, 2006

	Water and Sewer
Operating revenues:	
Charges for services	\$ 151,633
Total operating revenues	151,633
Operating expenses:	
Water distribution	129,197
Sewer services	10,830
Professional fees	40,789
General and administrative	10,022
Depreciation and amortization	127,682
Total operating expenses	318,520
Loss from operations	(166,887)
Nonoperating revenues (expenses):	
Investment earnings	7,105 ✓
Interest expense	(101,107)
Total nonoperating revenues (expenses)	(94,002)
Change in net assets	(260,889)
Net assets, beginning of year, as restated	1,795,362
Net assets, end of year	\$ 1,534,473

See notes to basic financial statements.

INDIAN TRAIL IMPROVEMENT DISTRICT

Statement of Cash Flows

Proprietary Fund

Year Ended September 30, 2006

	Water and Sewer
Cash flows from operating activities:	
Change in net assets	\$ (260,889)
Adjustments to reconcile change in net assets to net cash used in operating activities:	
Depreciation	127,682
Amortization	18,615
(Increase) decrease in:	
Accounts receivable	(13,022)
Increase (decrease) in:	
Accounts payable	(11,229)
Due to other funds	65,355
Accrued interest	6,003
Net cash used in operating activities	(67,485)
Net decrease in cash and cash equivalents	(67,485)
Cash and cash equivalents, beginning of year	202,203
Cash and cash equivalents, end of year	\$ 134,718
Supplemental information:	
Interest paid on notes payable	\$ 95,107

See notes to basic financial statements.

INDIAN TRAIL IMPROVEMENT DISTRICT*Statement of Net Assets**Proprietary Fund**September 30, 2006*

	Water and Sewer
Assets	
Current assets:	
Receivables:	
Accounts, net of allowance for uncollectible amounts	\$ 66,894
Restricted assets:	
Cash and cash equivalents	116,103
Total current assets	182,997
Noncurrent assets:	
Property, plant and equipment (net of allowance for depreciation)	3,698,738
Total noncurrent assets	3,698,738
Total assets	3,881,735
Liabilities	
Current liabilities:	
Accounts payable and other current liabilities	30,953
Due to other funds	65,355
Accrued interest	64,804
Total current liabilities	161,112
Noncurrent liabilities:	
Reservation capacity liability	186,150
Note payable	2,000,000
Total noncurrent liabilities	2,186,150
Total liabilities	2,347,262
Net Assets	
Invested in capital assets, net of related debt	1,512,588
Unrestricted	21,885
Total net assets	\$ 1,534,473

See notes to basic financial statements.

**PALM BEACH COUNTY / INDIAN TRAIL IMPROVEMENT
DISTRICT POTABLE WATER, RECLAIMED WATER AND
WASTEWATER UTILITIES INTERLOCAL AGREEMENT**

THIS AGREEMENT is made and entered into this _____ day of _____, 2008 by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida (hereafter "County") and the **INDIAN TRAIL IMPROVEMENT DISTRICT**, a Florida Independent Special District created under the laws of the state of Florida (hereafter "ITID").

WITNESSETH:

WHEREAS, as provided by law and pursuant to Chapters 125 and 153, Florida Statutes, as well as the County's Comprehensive Plan, the County is authorized Countywide to provide potable water, reclaimed water and wastewater service ("Utility Service"), including service within the territorial boundaries of the ITID, depicted graphically in **Exhibit "A"** and as further described in **Exhibit "B"** (Collectively, Exhibit "A" and Exhibit "B" refer to the "ITID Utility Service Area"), and pursuant to such authority, presently furnishes Utility Service to retail and wholesale customers within Palm Beach County, Florida; and

WHEREAS, the ITID previously entered into an Interlocal Agreement for Bulk Water Service and System Interconnection with the City of West Palm Beach (See **Exhibit "C"** and hereafter referred to as "WPB AGREEMENT") on March 1, 2004, and on the same day entered into Lease Agreement with the City

of West Palm Beach (See **Exhibit “D”** and hereafter referred to as “LEASE”) for the lease of the related interconnect utility facilities; and

WHEREAS, the ITID previously entered into a Wastewater Interconnection Agreement with the City of West Palm Beach (See **Exhibit “E”** and hereafter referred to as “WPB WASTEWATER AGREEMENT”) on July 13, 1998; and

WHEREAS, the ITID previously entered into agreements with the Seminole Improvement District, dated February 23, 2001 and April 23, 2001 related to Potable Water Supply (See **Exhibit “F”**, the two agreements hereafter collectively referred to as “SEMINOLE AGREEMENT”); and

WHEREAS, the County and the ITID both recognize the desirability and the need to provide Utility Service in an orderly and cost efficient manner that avoids the duplication of utility infrastructure and service within the ITID Utility Service Area; and

WHEREAS, the County owns and operates regional Utility Service facilities and systems located within and without the ITID Utility Service Area, has sufficient capacity available in its Utility Service facilities and utility systems, and is capable of providing Utility Services on a perpetual basis within the ITID Utility Service Area; and

WHEREAS, the County now desires to purchase from the ITID all of its Utility Service infrastructure along with the bulk (said term to include wholesale Utility Service) and retail utility service authority, duty, and obligation to serve

retail and/or bulk Utility Service within the ITID Utility Service Area on a perpetual basis; and

WHEREAS, the ITID desires to grant to the County the exclusive bulk and retail utility service authority, duty, and obligation to serve retail and/or bulk Utility Service within the ITID Utility Service Area; and

WHEREAS, County agrees to sell bulk water within the ITID Utility Service Area only under certain limited conditions as set forth herein; and

WHEREAS, the ITID owns, holds, controls, uses, or possesses, for public utilities purposes, certain easements, rights of access, ingress and egress, permits, licenses, and rights-of-ways, and the ITID desires to assign to the County easement rights to provide Utility Service in order to effectuate this Agreement; and

WHEREAS, the ITID and the County agree that after the execution of this agreement by the County and the ITID, the County shall be the exclusive provider of Utility Service within the ITID Utility Service Area; and

WHEREAS, the ITID and the County intend to resolve other related issues between them pursuant to this agreement as more fully set forth below; and

WHEREAS, the County and the ITID both find this agreement to be, desirable and in furtherance of the public health, safety, welfare, and interest of the residents of both ITID and the County; and

WHEREAS, the County and the ITID recognize and acknowledge that to accomplish the purposes set forth above, they must enter into this agreement;

NOW THEREFORE, in consideration of the recitals, covenants, agreements and promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties covenant and agree as follows:

SECTION 1. RECITALS. The above recitals are true and correct, and form a material part of this agreement upon which the parties have relied.

SECTION 2. PURCHASE OF ITID POTABLE WATER AND WASTEWATER PIPELINES AND RELATED INFRASTRUCTURE AND CONVEYANCE OF ITID UTILITY SERVICE AREA RIGHTS TO THE COUNTY.

The County shall purchase all of ITID's existing Utility Service pipelines, and related infrastructure, situated within and without (if any) the ITID Utility Service Area, along with the assignment of all related and appurtenant utility easements and licenses for Utility Service for the lump sum amount of **\$318,380**, and the additional consideration set forth herein, below. Payment shall be made by the County to the ITID on or before April 30, 2008 (the "Closing Date"). In consideration for the foregoing payment, the ITID shall deliver to the County a Bill of Sale for all of its Utility Service pipelines, and related infrastructure, along with the assignment of all necessary utility easements and licenses for Utility Service, as-built drawings, and customer account information necessary to provide utility service.

The ITID also shall convey to the County all of the ITID's right to provide retail and bulk Utility Service within the ITID Utility Service Area utilizing the form conveyance documents as set forth on **Exhibit "G"**. In consideration therefore, the County shall assume the ITID's obligation, if any, to deliver retail and bulk

Utility Service to customers situated within the ITID Utility Service Area. Notwithstanding the above, the County agrees that it will not provide bulk Utility Service within the ITID Utility Service Area, except that the County may provide bulk Utility Service to a municipality within the ITID Utility Service Area. As of the Effective Date of this Agreement, the potable water, wastewater, and reclaimed water fees and rates for retail customers within the ITID Utility Service Area are as set forth in **Exhibit "H."** These fees and rates are subject to change in accordance with established rate-making procedures and approval by the Board of County Commissioners, including any periodic index adjustment of said rates and fees previously approved by the Board of County Commissioners. ITID reserves its right to challenge the surcharge levied by Palm Beach County upon monthly consumer utility bills within the Acreage for the benefit of the Village of Royal Palm Beach.

SECTION 3. ASSUMPTION OF EXISTING ITID UTILITY AGREEMENTS.

(a) WPB Agreement, Lease, and WPB Wastewater Agreement.

(1) The ITID shall assign all of ITID's rights and obligations under the WPB Agreement, the Lease, and the WPB Wastewater Agreement to the County, and shall take all reasonable steps necessary to obtain a consent to those assignments from the City of West Palm Beach. In support of what action or inaction the County deems in its best interest, the ITID shall take all reasonable action requested by the County with respect to the WPB Agreement, the Lease, and the WPB Wastewater Agreement provided that no such action shall require the expenditure of funds by the ITID. ITID makes no representation

to the County that the City of West Palm Beach will agree to consent to the assignment of ITID's rights and obligations under the WPB Agreement, the Lease, and the WPB Wastewater Agreement to the County; however, the ITID does represent and warrant to the County with respect to the WPB Agreement, the Lease, and the WPB Wastewater Agreement that (i) they are valid and enforceable in accordance with their terms; (ii) they have not been altered, modified, amended, terminated or renewed, (iii) to its knowledge, no terms or conditions have been waived; and (iv) to its knowledge and except as otherwise disclosed to the County, there are no defaults by the ITID and there exist no set of facts, conditions, or events that with the giving of notice would constitute a default by the ITID. It is the intention of the County and the ITID that, if WPB does not consent to these assignments, the ITID shall exercise, if requested by the County, the termination clauses found in Section 3.2 of the WPB Agreement and Section 3 of the WPB Wastewater Agreement.

(2) Pending WPB consent to the assignments of the WPB Agreement, the Lease, and the WPB Wastewater Agreement from the ITID to the County (and during the term of the WPB Agreement, Lease and WPB Wastewater Agreement in the event that the City of West Palm Beach does not consent to the assignment of the WPB Agreement, the Lease, and the WPB Wastewater Agreement), the County shall: (i) satisfy the outstanding financial obligation of the ITID to the City of West Palm Beach with respect to the pipeline constructed along the M-Canal; (ii) pay the City of West Palm Beach the payments due and owing from the ITID to the City of West Palm Beach under the

WPB Agreement and the Lease; and (iii) otherwise assume the ITID's rights and obligations under the WPB Agreement, the Lease and the WPB Wastewater Agreement, all of the foregoing as of the Closing Date. With respect to subparagraph (iii) in the preceding sentence, and notwithstanding that the ITID may remain as the signatory party-in-interest, the County shall have the sole decision-making authority with respect to the WPB Agreement, the Lease, and the WPB Wastewater Agreement and the ITID shall cooperate in all respects with the County's decisions and direction of authority with respect to the WPB Agreement, the Lease and the WPB Wastewater Agreement.

(b) **Seminole Agreement.**

(1) The ITID shall assign all of ITID's rights and obligations under the Seminole Agreement to the County and shall take all reasonable steps necessary to assist the County in obtaining a consent to the assignment from the Seminole Improvement District. Pending formal assignment of the Seminole Agreement from the ITID to the County, the ITID hereby irrevocably designates the County its agent to negotiate modifications to, payments under, and any other action to be taken or inaction not to be taken, without limitation, with respect to the Seminole Agreement, including any action necessary to terminate the Seminole Agreement, all as the County deems necessary and in the County's best interest. In support of what action or inaction the County deems in its best interest, the ITID shall take all reasonable action requested by the County with respect to the Seminole Agreement, provided that no such action shall require the expenditure of funds by the ITID.

(2) The ITID represents and warrants to the County with respect to the Seminole Agreement that: (i) it is valid and enforceable in accordance with its terms; (ii) it has not been altered, modified, amended, terminated or renewed; (iii) to its knowledge, no terms or conditions have been waived; and (iv) to its knowledge and except as otherwise disclosed to the County, there are no defaults by the ITID and there exist no set of facts, conditions, or events that with the giving of notice would constitute a default by the ITID.

(3) Pending assignment of the Seminole Agreement from the ITID to the County, the County shall: (i) satisfy the outstanding obligation of the ITID to the Seminole Improvement District; (ii) pay the Seminole Improvement District payments due and owing from the ITID to the Seminole Improvement District under the Seminole Agreement; and (iii) otherwise assume the ITID's rights and obligations under the Seminole Agreement, all of the foregoing as of the Closing Date. With respect to sub-paragraph (iii) in the preceding sentence, and notwithstanding that the ITID may remain as the signatory party-in-interest, the County shall have the sole decision-making authority with respect to the Seminole Agreement and the ITID shall cooperate in all respects with the County's decisions and direction of authority with respect to the Seminole Agreement.

(c) **Other Utility Agreements.**

(1) The ITID shall assign all of ITID's rights and obligations under all utility developer agreements and all other agreements related to the ITID utility system ("Other Utility Agreements") to the County, and shall take all

reasonable steps necessary to assist the County in obtaining a consent to the assignment from the proper parties, if necessary. The Other Utility Agreements are attached hereto and incorporated herein as **Exhibit "I."** Pending formal assignment of the Other Utility Agreements from the ITID to the County, the ITID hereby irrevocably designates the County its agent to negotiate modifications to, payments under, and any other action to be taken or action not to be taken, without limitation, with respect to the Other Utility Agreements, including any action necessary to terminate the Other Utility Agreements, all as the County deems necessary and in the County's best interest, provided that no such actions or inaction shall require or result in expenditure of funds by the ITID. In support of what action or inaction the County deems in its best interest, the ITID shall take all reasonable action requested by the County with respect to the Other Utility Agreements, provided that no such action shall require the expenditure of funds by the ITID.

(2) The ITID represents and warrants to the County with respect to the Other Utility Agreements that: (i) they are valid and enforceable in accordance with their terms; (ii) they have not been altered, modified, amended, terminated or renewed; (iii) to its knowledge, no terms or conditions have been waived; and (iv) to its knowledge and except as otherwise disclosed to the County, there are no defaults by the ITID and there exist no set of facts, conditions, or events that with the giving of notice would constitute a default by the ITID.

(3) Pending assignment of the Other Utility Agreements from the ITID to the County, the County shall: (i) satisfy the outstanding obligation of the ITID under the Other Utility Agreements; (ii) pay the payments due and owing from the ITID under the Other Utility Agreements; and (iii) otherwise assume the ITID's rights and obligations under the Other Utility Agreements, all of the foregoing as of the Closing Date. With respect to sub-paragraph (iii) in the preceding sentence, and notwithstanding that the ITID may remain as the signatory party-in-interest, the County shall have the sole decision-making authority with respect to the Other Utility Agreements and the ITID shall cooperate in all respects with the County's decisions and direction of authority with respect to the Other Utility Agreements.

(d) **Additional Documents.**

To the extent that the foregoing provisions of Section 2 and Section 3 above are not sufficient to implement this Agreement, the parties agree to execute any additional documents reasonably necessary to implement this intent.

SECTION 4. COST FOR STABILIZATION OF ROADWAYS. In recognition of the cost necessary to restore and stabilize certain roadways and drainage swales due to the installation of the County's existing utility infrastructure, the County shall pay to the ITID **\$1,400,000** on the Closing Date. The roadways for which the payment is to be made are Grapeview Boulevard, 140th Avenue North, 40th Street North, Mead Hill Road, and Hamlin Boulevard. In consideration for the payment of these monies from the County to the ITID, the ITID shall assume the sole responsibility for all work associated with the repair,

stabilization, design, permitting, drainage, construction, resurfacing, curbing, compaction, milling, striping, sodding, operation and maintenance of the above-referenced roads and the related culverts, swales and other structures (the "ITID Road Work"). The County shall assume the sole responsibility for all work associated with conforming the County's utility infrastructure to ITID Road Work (e.g., raising fire hydrants and manhole covers, adjusting valves and valve covers, etc.) (the "County Utility Work"). Subject to obtaining proper easements for fire hydrants, County shall install up to a maximum of twenty (20) fire hydrants, said hydrants to be connected to the County's existing infrastructure, as set forth in **Exhibit "J"**, which is attached hereto and incorporated herein. In performing or having performed the ITID Road Work, except for with respect to the County Utility Work, the ITID shall take all action reasonably necessary to protect and not damage the County's pipes and other infrastructure and if the ITID or its contractors or agents cause any damage to the County's pipes or other infrastructure, the ITID shall promptly and fully compensate the County for such damage, except where the facilities of the County are in violation of Chapter 556, Florida Statutes. In consideration of this payment to the ITID, the ITID shall release, to the extent permitted by law, indemnify, and forever hold the County harmless from any liability or damages related to the condition of these roadways as of the Effective Date of this Agreement.

SECTION 5. SETTLEMENT OF PENDING ACTIONS.

(a) Within ten (10) days after the Effective Date of this Agreement, ITID shall dismiss with prejudice, all of its claims and interest in that certain case brought in the Circuit Court for Palm Beach County, Case No. 50 2005 CA 000965XXXX, and titled "*Indian Trail Improvement District, etc. v. Palm Beach County*", said case being consolidated with Case No. 50 2004 CA 012091XXXX, and titled "*City of West Palm Beach, a municipal corporation; Seminole Improvement District, an independent special district; and Callery-Judge Grove, L.P., a Florida limited partnership, Plaintiffs, v. Palm Beach County, Defendant*" and any appeal thereof. Each party agrees to waive any claim against the other party for costs and attorneys' fees arising out the above referenced action.

(b) Within ten (10) days after the Effective Date of this Agreement, County shall dismiss with prejudice, all of its counterclaims and interest in that certain case brought in the Circuit Court for Palm Beach County, Case No. 50 2005 CA 000965XXXX, and titled "*Indian Trail Improvement District, etc. v. Palm Beach County*", said case being consolidated with Case No. 50 2004 CA 012091XXXX, and titled "*City of West Palm Beach, a municipal corporation; Seminole Improvement District, an independent special district; and Callery-Judge Grove, L.P., a Florida limited partnership, Plaintiffs, v. Palm Beach County, Defendant*" and any appeal thereof. Each party agrees to waive any claim against the other party for costs and attorneys' fees arising out the above referenced action.

(c) Within ten (10) days after the Effective Date of this Agreement, ITID shall provide to the County a written waiver of interest in that certain case brought in the Circuit Court for Palm Beach County, Case No. 50 2006 CA 004834XXXXMB, and titled "*Palm Beach County v. Jon and Ilene Klasfeld et. al*" and waive any appeal thereof, and file with the court a written waiver of attorneys fees and costs incurred therein, or related in any way to this case. Further, it is understood by the parties hereto that by virtue of this Agreement, the County is not required to make the statutory deposit as set forth in Sections 74.051 and 74.061, Florida Statutes (2007) in order to obtain use, title, and possession to the easements that are the subject of this lawsuit.

(d) Moreover, this agreement is intended to settle all claims that the ITID may have against the County that are in any way related to: the County providing bulk or retail Utility Service within the ITID Utility Service Area, including service area disputes; the County's construction of Utility Service pipelines within the ITID boundaries; any alleged trespass on real property interests of the ITID, including easements; any issues related to Policy 3.1-c to the Future Land Use Element of the County's Comprehensive Plan; and any issues related to the County's condemnation of property for utility easement purposes. (Collectively, the specifically identified actions in paragraphs 5(a), 5(b) and 5(c) above, as well as those claims set forth in this paragraph 5(d), and all claims that could have been brought are hereafter referred to as the "Litigation").

(e) Within ten (10) days after the Effective Date of this Agreement, the ITID shall execute the Release attached to this agreement, which is identified as

Exhibit "K", and the County shall execute the Release attached to this agreement, which is identified as **Exhibit "L"**.

(f) In consideration for the foregoing, the County shall pay to the ITID **\$1,300,000** on or before the Closing Date.

SECTION 6. COMPENSATION FOR FUTURE CONNECTIONS.

(a) In consideration for the ITID's forbearance in the exercise of its right to provide retail or wholesale Utility Service within the ITID Utility Service Area, whether to existing or potential future customers, the County shall pay to the ITID **\$3,156,620** on the Closing Date ("Future Customer Consideration"). The County agrees that it shall not require mandatory hook-up to its Utility Service facilities for existing residents and businesses within the ITID Utility Service Area. However, the following shall not be considered to be County-mandated mandatory hook-ups to Utility Service for existing residents or businesses for purposes of this Section:

(i) any special assessment levied on existing residents or businesses within the ITID Utility Service Area;

(ii) any requirement of an agency, including, but not limited to, the Palm Beach County Health Department or the Florida Department of Environmental Protection, requiring hook-up to Utility Service for existing residents or businesses; or

(iii) any requirement for mandatory hook-up to Utility Service under the County's Comprehensive Plan necessitated by a change in use or intensity of use by existing residents or businesses.

(b) The County further agrees that it shall apply its County Utility system-wide Uniform Policies and Procedures Manual in a uniform and non-discriminatory manner as applied to all other County existing and future utility customers.

(c) In consideration for the County's payment to the ITID of the Future Customer Consideration, and the ITID's relinquishment of the right to provide retail or wholesale Utility Service within the ITID Utility Service Area, the ITID and County shall provide the following services or other benefits to or for the benefit of the County and ITID:

(i) It is the intention of the parties that the construction of Utility Service infrastructure within the developed portion of the ITID Utility Service Area more commonly known as the Acreage M-1 Service Area and the M-2 Basin Service Area (hereinafter referred to as the "Acreage")(depictions of each which are attached hereto as **Exhibits "M-1"** and **"M-2"** and incorporated herein) be conducted at the lowest possible costs for residents. Therefore, the ITID shall have the option of undertaking special assessment projects within the Acreage, or requesting that the County perform special assessment projects within the Acreage, or requesting that the parties undertake special assessment projects within the Acreage jointly. Regardless of the party undertaking the assessment

project, The ITID shall have the authority to determine under what circumstances special assessment projects within the Acreage shall be initiated

(ii) If ITID conducts a special assessment and builds Utility Service Infrastructure in accordance with this Agreement, the County agrees to provide Utility Service. The typical County utility line connection is shown in Exhibit M-3 attached hereto. When ITID requests Utility Service for a specific ITID street, the County, at County expense, shall tap into a County Transmission line and extend the connection to the appropriate ITID or County right of way as depicted in **Exhibit "M-3"**. When the County extends said utility line the County shall provide and install a tapping tee and valve, fittings, fire hydrant valve and plug. ITID shall at ITID expense extend the distribution line from the County's plug to the individual Utility Service customers. Said extension shall be subject to the provisions set forth below.

(iii) Where the ITID so chooses to undertake special assessment projects, the ITID shall perform all the necessary and legally required actions to assess the parties included in the assessment. The ITID shall be responsible for all costs of the infrastructure, including but not limited to design, permitting, and construction costs. The ITID shall be responsible for planning, obtaining approval of residents to be assessed, developing assessment rolls, collection of assessments, obtaining of easements, designing, permitting (including WUD Plan Approval) and construction of each assessment project (including contract administration and inspections.) In addition, upon completion of construction, ITID shall be responsible for preparing certifications and obtaining clearances

from permitting agencies having jurisdiction. ITID will provide the County with copies of all permits, easements, regulatory agency clearance letters, shop drawings, O&M manuals and record drawings in accordance with County standards. The County shall be responsible for reviewing and approving project plans and specifications prior to construction and monitoring the installation and pressure tests of the water mains and appurtenances during construction for conformance to the approved plans. Upon completion of construction, acceptance by Palm Beach County and transfer of ownership, the County will own, operate and maintain the constructed water mains. In addition, the County will be responsible for connecting the ITID constructed water mains to the existing County potable water system, installing water meters and billing customers for potable water service. Following completion of any special assessment project undertaken by the ITID, the ITID will convey to the County, by bill of sale or other document acceptable to the County, all Utility Service infrastructure constructed under the assessment, along with the accompanying utility easements for the infrastructure. Any residents included in the assessment wishing to connect to County Utility Service will then be required to pay all applicable service initiation fees to the County.

(iv) The ITID shall use reasonable efforts to make available to the County vehicles and staff members, as needed, to move generators throughout the ITID Utility Service Area during emergency events, including, but not limited to hurricanes.

(v) The ITID shall use reasonable efforts to provide field staff to properly communicate field conditions within the ITID Utility Service Area to the County's communication personnel during emergency situations, as reasonably requested by the County.

(vi) If and when available, the ITID shall provide the County with access to a lay-down yard for storage of Utility Service equipment, no larger than one acre, to be used by the County within the ITID Utility Service Area, provided the primary purpose of such lay down yard is for Utility Service purposes within the Acreage.

(vii) The ITID shall assign to the County: (1) easements for all current Utility Service infrastructure constructed, installed and maintained by the County within any streets, rights of way, easements, or other property owned by ITID or in which the ITID holds a property interest, and (2) all easements under which the ITID has the authority to construct and install public utilities, within any streets, rights of way, easements, or other property owned by ITID or in which the ITID holds a property interest. A copy of a Partial Assignment of Easements is attached hereto and incorporated herein as "**Exhibit "N."**" The ITID shall execute and deliver **Exhibit "N"** to the County within ten (10) days after the Effective Date of this Agreement. It is the intention of the ITID that the easement rights being assigned to County under this Agreement and in **Exhibit "N"**, are for the County, its successors and assigns, to provide Utility Service within and without the ITID Utility Service Area, in perpetuity. The ITID shall retain the ownership of all easement rights except the rights for Utility Service which are

being assigned to the County under this Agreement and in **Exhibit "N."** County shall not locate wells within any easement assigned to County under this Agreement without the consent of ITID.

(viii) With respect to the County's need to install Utility Infrastructure in rights-of-ways, roads, easements, or other interests in property that the ITID may acquire in the future, the ITID irrevocably agrees to grant, assign, or otherwise transfer to the County, in the future, easements for Utility Service in such property interests and shall execute without further cost to the County such easements or other documents the County may require in the future for the purpose of installing Utility Service infrastructure.

(ix) The County shall comply with the permitting requirements set forth below prior to the construction or installation of any new Utility Service infrastructure within the easement area. The ITID acknowledges that all Utility Service pipelines and appurtenances of the County currently located within any streets, rights of way, easements, or other property owned by the ITID or in which the ITID holds a property interest or in which the ITID requires a permit be issued are hereby deemed permitted by the ITID. The County-owned pipelines and appurtenances covered by this permit include, but are not limited to, the pipeline segments shown on the document attached hereto and incorporated herein as **Exhibit "O."** County shall provide as-builts for the pipelines shown in **Exhibit "O"**. This Agreement shall act as ITID's permanent, irrevocable permit for all such pipelines and appurtenances existing as of the Effective Date of this Agreement. Any future construction or installation of pipelines and related

appurtenances of County within any streets, rights of way, easements, or other property owned by the ITID or in which ITID holds a property interest shall be subject to the County applying for and securing a permit from the ITID in accordance with the reasonable permitting requirements of ITID. In the event that the ITID does not have reasonable, standard permitting requirements in place at the time of application for a permit by the County, including, but not limited to, substantive standards and guidelines for the consideration of permit applications, and reasonable time frames for denying, granting, or granting the permit with conditions, then the parties agree that the default permitting requirements shall be those requirements imposed by the County Engineering and Public Works Department for utility construction within County rights-of-ways. The ITID shall not unreasonably withhold permits for or delay the permitting of County projects in the future. The parties agree that a failure of the ITID to deny a permit, grant a permit, or grant a permit with conditions within sixty (60) days of receipt of a complete application package for a for permit shall be considered unreasonable, and the permit deemed granted. . Upon receipt of an incomplete application package from the County, the ITID shall, within fifteen (15) days of receipt of said package, provide the County, in writing, the reasons why the application package is incomplete, and an explanation as to what is required to complete the application package.

(d) As further compensation for the settlement of existing claims between the ITID and the County, County agrees to provide the following financial support to assessment programs within the Acreage. County shall be

responsible for ten percent (10%) of the total costs for individual assessment projects of existing, developed land within the Acreage. The County's maximum collective financial responsibility under this paragraph shall not exceed \$500,000. This paragraph shall apply to assessment projects conducted by both the ITID and the County. The determination of the County's financial responsibility for each eligible assessment project shall be determined following completion of said assessment project and preparation of a final cost summary of the assessment project.

SECTION 7. TERRITORIAL AGREEMENT. This agreement permanently resolves all Utility Service and territorial disputes between the ITID and the County with respect to whether the ITID or the County is to be the retail or bulk Utility Service provider to customers within the ITID Utility Service Area. As of the Effective Date of this Agreement, the County is to be the exclusive provider of those services.

As of the Effective Date of this Agreement, the ITID shall not provide, or offer to provide, retail and/or bulk Utility Service of any kind within the ITID Utility Service Area or in any portion of incorporated or unincorporated Palm Beach County on either a temporary or permanent basis. In addition, the ITID shall not operate, lease, purchase or start a retail and/or bulk Utility Service utility of any kind within the ITID Utility Service Area or any portion of incorporated or unincorporated Palm Beach County on either a temporary or permanent basis. It is acknowledged by the parties that the County may decline to provide Utility Service to any individual or entity within the ITID Utility Service Area if said

individual or entity fails to comply with all requirements for the County to provide Utility Service (including but not limited to a failure to comply with all the requirements, standards, and/or provisions of this Agreement, the County's Uniform Policies and Procedures Manual, state statute, and/or water management district requirements), and in such case the denial of Utility Service by the County shall not be considered a "failure to provide Utility Service" under the terms of this Agreement.

County shall not utilize bulk potable water purchased or accepted from other utilities to provide potable water service within the ITID Utility Service Area, except that this provision shall not apply to the geographic areas depicted in **Exhibit "P"**. Nothing in the foregoing shall prohibit the County from utilizing bulk potable water purchased or accepted from the Seminole Improvement District to provide potable water service within the ITID Utility Service Area, in accordance with the terms of the Seminole Agreement, as set forth in **Exhibit "F"**, which is being assigned from ITID to the County in this Agreement. This provision shall not apply during situations in which the County's continued provision of potable water service is dependant upon utilization of bulk potable water purchased or accepted from other utilities.

SECTION 8. ANNEXATION/MUNICIPAL INCORPORATIONS LAWS.

This agreement shall not be construed or interpreted to contract away any rights and authority under the Municipal Annexation or Contraction Act, Chapter 171, Florida Statutes, as amended from time to time nor shall anything herein be construed to contract away the County's right to challenge any annexation in

accordance with law. In the event of future annexations or municipal incorporations of any portion of the ITID Utility Service Area, the ITID agrees that the County retains the exclusive right to provide retail and/or bulk Utility Service within the ITID Utility Service Area.

SECTION 9. COOPERATION ON EASEMENTS AND RIGHTS-OF-WAY.

The ITID shall assign to the County all of its existing private Utility Service easements (if any). The ITID shall provide the County with permitted access to road and canal rights-of-way to facilitate the ownership, construction, operation and maintenance of all Utility Service facilities owned or to be owned by the County within the ITID Utility Service Area, provided such access does not obstruct the ITID road and canal or drainage rights-of-way nor compromise the primary purpose of the ITID to operate and maintain its road and canal or drainage rights-of-way. If deemed necessary by the County, the ITID shall assign and convey to the County a right to use the M-Canal right-of-way for the purpose of constructing, owning or maintaining Utility Service infrastructure. The County shall install its Utility Service Infrastructure in a manner that does not compromise the ability of the ITID to properly and effectively use its roads, drainage easements, or rights-of-way, and the County shall fully restore all impacted roadways and landscaping to ITID standards after construction and maintenance activities. In consideration of the above rights, the County shall release, to the extent permitted by law, indemnify, and forever hold the ITID harmless from any liability or damages related to the County's utilization of the ITID roads and canal rights-of-way.

SECTION 10. THIRD PARTY BENEFICIARIES. This agreement is solely for the benefit of the signing parties, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a party hereto.

SECTION 11. ASSIGNMENT. This agreement shall be binding on the parties hereto and their representatives and successors. Neither party may assign this Agreement or the rights and obligations created hereunder to any other party without the prior written consent of the other party.

SECTION 12. INDEMNIFICATION. Neither party hereto waives sovereign immunity except that consistent with all applicable law, including, but not limited to Chapter 768, Florida Statutes, the parties shall indemnify and hold each other harmless for the negligent acts of itself, its officers, agents, and employees with respect to the actions to be taken pursuant to this agreement, but only to the extent permitted by law. The ITID shall protect, indemnify and hold the County harmless for all claims for professional fees incurred by the ITID during the Litigation, including, but not limited to, legal fees, legal costs, expert witness fees, surveying/surveyor fees, and appraisal fees (collectively, "Professional Fees"). Except as expressly provided otherwise in this Agreement, each party shall be responsible for its own Professional Fees arising out of or related to this Agreement.

SECTION 13. DEFAULT. Either party to this agreement, in the event of or act of default by the other, shall have all remedies available to it under the laws of the state of Florida including but not limited to injunction to prevent

default or specific performance to enforce this agreement. The rights of the parties shall be considered cumulative and shall not be waived now or in the future by the exercise of any rights and remedies provided under the terms of this agreement and authorized by law.

Each of the parties hereto shall give the other party written notice of any defaults hereunder and shall allow the defaulting party thirty (30) days from the date of receipt to cure such defaults, and shall otherwise comply with any state law related to resolving disputes between local governments.

SECTION 14. NOTICES. Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered when (1) received by a party via express, overnight, receipted mail (such as Federal Express), (2) hand delivered to the official hereinafter designated, or (3) received by a party via United States mail, postage prepaid, certified mail, return receipt requested, addressed to a party at the address set forth opposite the party's name below, or at such other address as the party's name below, or at such other address as the party shall have specified by written notice to the other party delivered in accordance herewith.

COUNTY:	Palm Beach County Water Utilities Department Attn: Department Director 8100 Forest Hill Boulevard West Palm Beach, FL 33416
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With a copy to:	Palm Beach County Attorney 301 N. Olive Ave., Suite 601 West Palm Beach, FL 33401
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ITID: Indian Trail Improvement District
Attn: District Administrator
13476 - 61st Street North
Royal Palm Beach, FL 33412

With a copy to : Charles F. Schoech, Esq.
Caldwell & Pacetti
324 Royal Palm Way, Ste. 300
Palm Beach, FL 33480

SECTION 15. SEVERABILITY. If any part of this agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of the agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can continue to be effected. To that end, this agreement is declared severable.

SECTION 16. RECORDATION. An executed copy of this agreement and the Exhibits attached hereto shall be recorded in the Public Records of Palm Beach County at the expense of the parties, such expense to be shared equally.

SECTION 17. TIME OF THE ESSENCE. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this agreement.

SECTION 18. APPLICABLE LAW. This agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the state of Florida. Venue for all legal action related to the enforcement of this agreement shall be 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.

SECTION 19. ENTIRE AGREEMENT. This document constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this agreement.

SECTION 20. DISCLAIMER OF SECURITY. Notwithstanding any other provisions of this agreement, the ITID and the County expressly acknowledge that they have no pledge of or lien upon any real property, personal property, or any existing or future revenue source of the other as security for any amounts of money payable by the other under this agreement.

SECTION 21. EFFECTIVE DATE. This Agreement shall become effective upon approval by both parties after conducting the hearings, respectively, contemplated by Sections 125.3401 and 189.423, Florida Statutes. ITID shall conduct the necessary hearing under Section 189.423, Florida Statutes, and approve this agreement prior to the County conducting the hearing required under Section 125.3401, Florida Statutes, and approving this agreement. The Effective Date of this agreement shall be the date the agreement is approved by the Palm Beach County Board of County Commissioners and filed with the Clerk of the County Court pursuant to 163.01(11), Florida Statutes (the "Effective Date").

SECTION 22. FORCE MAJEURE. 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, 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 or wastewater plant failures or reclaimed water plant failures or pipeline breaks, neither party shall be liable to the other party for such non-performance.

SECTION 23. WAIVER. The failure of either party to insist on the strict performance of any of the agreements, terms, covenants and conditions set forth herein shall not be deemed a waiver of any rights or remedies that such party may have for any subsequent breach, default, or non-performance, and such party's right to insist on strict performance of this agreement shall not be affected by any previous waiver of course or dealing.

SECTION 24. AMENDMENTS AND MODIFICATIONS. This agreement may only be amended, modified, changed, supplemented or discharged by an instrument in writing signed by the parties hereto.

SECTION 25. NO TRANSFER OF POWERS. Nothing contained in this Agreement shall be construed to constitute a transfer of powers in any way whatsoever. The County and ITID Agree that this Agreement is a contract regarding the provision of Utility Service within the ITID Utility Service Area. If the County fails to provide Utility Service within the Utility Service Area, ITID reserves the right to provide Utility Service. The governing bodies for the County and the ITID shall each maintain all legislative authority with regard to their respective political subdivision or territorial boundaries. All of the privileges and immunities

from liability; exemption from laws, ordinances, and rules; and pensions and relief, disability, workers compensation and other benefits that apply to the activity of officers, agents or employees of any public agency or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, or employees extra-territorially under the provisions of this Agreement

SECTION 26. RECORDS. The County and the ITID shall each maintain adequate records pursuant to this agreement for at least the minimum period required by Chapter 119, Florida Statutes, or four (4) years, or final resolution of matters resulting from any litigation or claim, whichever period is longer. Both parties to this agreement reserve the right, upon reasonable request and during normal business hours, to have access to such books, records, and documents as required in this section for the purpose of inspection.

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IN WITNESS WHEREOF, the parties hereto have hereunder executed this agreement on the date and year first above written.

Executed by **INDIAN TRAIL IMPROVEMENT DISTRICT** this
7th day of MARCH, 2008

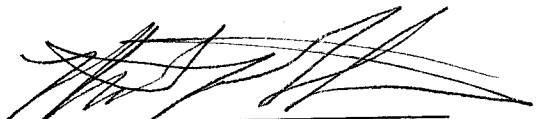
ATTEST:

**INDIAN TRAIL IMPROVEMENT
DISTRICT**, an Independent Special
District of the State of Florida



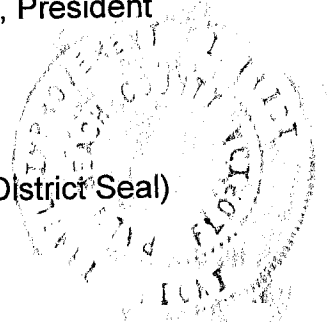
Secretary

BY:



, President

(District Seal)



Executed by **PALM BEACH COUNTY** this _____ day of _____, 2008

ATTEST:
SHARON R. BOCK, CLERK AND
COMPTROLLER

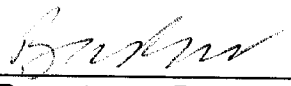
**PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY
COMMISSIONERS**

By: _____,
Deputy Clerk

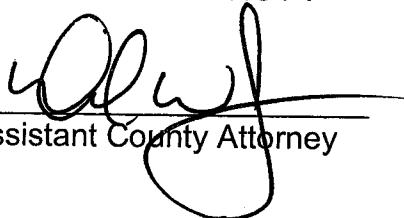
BY: _____
Addie L. Greene, Chairperson

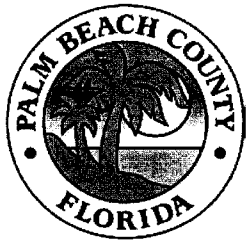
SEAL

APPROVED AS TO TERMS AND
CONDITIONS

By: 
Department Director

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY :

By: 
Assistant County Attorney



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

Attachment 3

- Legend**
- P.B.C.W.U.D. SA
 - MANDATORY RECLAIMED SA
 - - - - COUNTY LIMITS
 - ★ Administration
 - Water Reclamation Plant
 - ▲ Water Treatment Plant
 - Wetlands



NOT TO SCALE

