

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date:	October 7, 2008	Consent <input checked="" type="checkbox"/>	Regular <input type="checkbox"/>
		Public Hearing <input type="checkbox"/>	
Submitted By:	Water Utilities Department		
Submitted For:	Water Utilities Department		

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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: **A) approve** the Standard Reclaimed Water Service Agreement – Lake Discharge Irrigation System; **B) authorize** the County Administrator or his designee to enter into the Agreement; and **C) incorporate** the Agreement into Chapter 3 of the Department’s Uniform Policies and Procedures Manual.


Summary: The recent expansion of the Palm Beach County Water Utilities Department’s (Department) reclaimed water system provides the opportunity for existing communities either to connect their irrigation systems directly to the Department’s reclaimed water mains or to install infrastructure to convey reclaimed water into a community’s lakes for subsequent irrigation through the community’s irrigation system. On November 20, 2007, the Board approved the use of a Standard Reclaimed Water Service Agreement – Lake Discharge Irrigation System (Agreement) and the incorporation of the Agreement into the Department’s Uniform Policies and Procedures Manual (UPAP). The Department has determined that certain modifications to the previous version of the Agreement are required. The modifications include a requirement that the communities monitor and report lake levels, as well as obtain Department approval of any modifications to the irrigation and lake level control systems. The Department recommends incorporating the Agreement into Chapter 3 of UPAP. The Agreement will also be utilized for new developments utilizing a lake discharge irrigation system. Any Reclaimed Water Service Agreement requiring special conditions not specifically authorized in the UPAP shall require approval by the Board of County Commissioners. District 1,2,3,5,6 (MJ)

Background and Justification: The Palm Beach County Water Utilities Department is dedicated to promoting economically and technically feasible technologies for water conservation. One component of this effort is irrigation utilizing reclaimed water from the Department’s water reclamation facilities. Reclaimed water systems offer significant advantages to consumers and the environment by reducing the demand on potable water resources and by offering consumers an alternative to reducing irrigation frequency during times of drought.

Attachments:

1. One (1) Standard Reclaimed Water Service Agreement – Lake Discharge Irrigation System

Recommended By:  9/15/08
 Department Director Date

Approved By:  9/30/08
 Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
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 item has no fiscal impact.

C. Department Fiscal Review: Selma M West

III. REVIEW COMMENTS

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

<u> atwillhite 9.23.08 </u> OFMB 9/23/08	<u> [Signature] 9/23/08 </u> Contract Development and Control 9/23/08
9/22 9/12/08	

B. Legal Sufficiency:

 [Signature] 9/25/08
Assistant County Attorney

C. Other Department Review:

Department Director

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

**RECLAIMED WATER SERVICE AGREEMENT – LAKE DISCHARGE IRRIGATION
SYSTEM**

THIS AGREEMENT ("Agreement") made and entered into this _____ day of _____, 200__, by and between **PALM BEACH COUNTY**, a subdivision of the State of Florida (hereinafter referred to as "Utility"), and _____, a _____ (hereinafter referred to as "Manager").

WHEREAS, Manager either owns the property set forth in **Exhibit "A"** which is attached hereto and incorporated herein (hereinafter referred to as "Property"), or has been granted the authority to control and/or maintain an Irrigation System on the Property; and

WHEREAS, Manager has the authority to enter into this Agreement; and

WHEREAS, Manager desires to allow the County to discharge Reclaimed Water into On-Site Stormwater Retention Ponds for irrigation purposes; and

WHEREAS, upon the conditions set forth herein, Utility will own and maintain the Reclaimed Water facilities up to the Point of Service and Manager will own and/or maintain the Irrigation System on the Property from the Point of Service; and

WHEREAS, Manager shall use Reclaimed Water for landscape irrigation purposes only; and

WHEREAS, to encourage and facilitate conservation of water resources, the parties desire to enter into this Agreement.

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

1. The foregoing statements are true and correct.
2. The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:
 - (a) "UPAP" – the Uniform Policies and Procedures Manual of the Palm Beach County Water Utilities Department as adopted and amended from time to time by the Palm Beach County Board of County Commissioners. Except to the extent inconsistent herewith, said document controls the terms of this Agreement.
 - (b) "Service" – the readiness and ability on the part of Utility to furnish Reclaimed Water to the Property.
 - (c) "Point(s) of Service" – the point where the Reclaimed Water exits the Utility System and is discharged into the lake(s).
 - (d) "Lake Discharge Irrigation System" – an Irrigation System in which the Reclaimed Water supplied by Utility is discharged under controlled conditions into On-Site Stormwater Retention Ponds.
 - (e) "Required Utility Facilities" – Reclaimed Water facilities which are required to be constructed to connect the Utility System with the Irrigation System.

- (f) "Utility System" – The Reclaimed Water facilities owned and operated by Utility. The Utility System shall include the Required Utility Facilities following conveyance of same by Manager to Utility.
- (g) "Service Initiation" – the date Reclaimed Water is supplied by Utility for its intended use by Manager.
- (h) "Reclaimed Water" – water that: (i) has received at least secondary treatment and high level disinfection; (ii) complies with all regulatory standards, including, without limitation, those set forth in F.A.C. Section 62-610, and (iii) is reused after flowing out of a wastewater treatment facility.
- (i) "Irrigation System" - a network of pipes, pumping facilities, storage facilities, sprinkler heads, On-Site Stormwater Retention Ponds, and appurtenances on Manager's side of the Point of Service designed for landscape irrigation purposes. While certain components of the Irrigation System may not be owned by Manager, said components are still considered part of the Irrigation System for purposes of this Agreement.
- (j) "On-Site Stormwater Retention Ponds" – a body or bodies of water designed to collect, store and/or convey stormwater.

3. Manager shall submit to Utility engineering plans and specifications prepared and sealed by a professional engineer registered in the State of Florida showing the Required Utility Facilities. Utility will advise Manager's engineer of any sizing requirements as mandated by the UPAP. All such plans and specifications, including hard copy and electronic media, submitted to Utility shall be subject to the approval of Utility and shall conform to Utility's standards as set forth in the UPAP, and no construction shall commence until Utility has approved such plans and specifications in writing. After approval, Manager shall construct, at Manager's expense, the Required Utility Facilities, as shown on the plans and specifications. Fees, as set forth in the UPAP, shall be levied to cover the cost of the plan review and inspection.

During the installation of the Required Utility Facilities, Utility may from time to time inspect such installation to determine compliance with the plans and specifications, adequacy of the quality of the installation, and further, shall be entitled to perform standard tests for pressure, infiltration, line and grade, and all other normal engineering tests to determine that the Required Utility Facilities have been installed in accordance with the approved plans and specifications and the UPAP. Inspection by Utility shall in no way relieve Manager of its responsibility to install the facilities in accordance with the approved plans and specifications and the UPAP. Complete as-built plans, including hard copy and electronic media, shall be submitted to Utility upon completion of construction of the Required Utility Facilities.

Utility hereby agrees to accept ownership of the Required Utility Facilities upon completion of installation of same. Manager hereby agrees to transfer to Utility title to all Required Utility Facilities installed by Manager's contractor up to the Point of Service, pursuant to the provisions of this Agreement. Such conveyance is to take effect without further action upon the acceptance by Utility of said installation. As further evidence of said transfer of title, upon the completion of the installation and prior to the rendering of Service by Utility, Manager shall convey to Utility, in a form supplied by Utility, the Required Utility Facilities as constructed by Manager and approved by Utility, along with the required Cost Documentation and Owner's No Lien Affidavit.

Prior to Service Initiation, Manager shall convey to Utility an easement for the purpose of constructing, maintaining, repairing, replacing, and operating, as necessary and appropriate, the Required Utility Facilities and for ingress and egress for the foregoing purposes. If all or a portion of the easement area is not owned by Manager, then Manager shall be responsible for acquiring an easement(s) from the property owner(s) to Utility for the purpose of constructing, maintaining, repairing, replacing, and operating, as necessary and appropriate, the Required Utility Facilities and for ingress and egress for the foregoing purposes. All conveyance of easements or rights-of-way shall be

accompanied by a paid title policy for the benefit of Utility in a minimum amount of \$50.00 per linear foot of any granted utility easement (based on the length of the centerline of the easement). Said title policy shall confirm the grantor's right to convey such easements or rights-of-way, and further, evidencing Utility's right to the continuous enjoyment of such easements or rights-of-way for those purposes set forth in this Agreement. Utility's acceptance of the Required Utility Facilities installed by Manager shall be in accordance with the provisions as set forth in the UPAP. All installations by Manager or its contractor that are conveyed to Utility shall be warranted by Manager or its contractor for one year from the date of Service Initiation. All Required Utility Facilities shall be located within an easement if not located within platted or dedicated public rights-of-way. The utility easements referenced above shall be recorded in the Palm Beach County Public Records.

4. Utility's performance under this Agreement is specifically contingent upon Utility's acquisition of a National Pollutant Discharge Elimination System (NPDES) permit from Florida Department of Environmental Protection (FDEP) for discharge into On-Site Stormwater Retention Ponds. Utility does not guarantee that the NPDES permit will be issued, and any costs incurred by Manager prior to Utility's acquisition of the NPDES permit shall be at Manager's own risk. Manager shall also provide Utility with evidence from the governing drainage district that discharge of Reclaimed Water into On-Site Stormwater Retention Ponds is permitted. Manager shall comply with all permit conditions set forth in the NPDES permit. Manager shall be responsible for the design, construction, modification and operation of the Irrigation System, and shall be responsible for ensuring that the Irrigation System is designed, constructed, modified and operated in accordance with rules and regulations of the Health Department, the FDEP, the UPAP, the Palm Beach County Reclaimed Water Ordinance, and any other entity with jurisdiction over usage of Reclaimed Water. Prior to Service Initiation, Manager shall provide Utility a written confirmation of notice to all property owners that Reclaimed Water will be utilized in the Irrigation System. Manager shall hold harmless, indemnify, and release Utility from and against all liabilities, damages, penalties, claims, costs and expenses, including attorney's fees at all levels, which may be imposed upon or asserted against Utility as a result of or in any way connected to the operation of the Irrigation System, except where said liabilities, damages, penalties, claims, costs and expenses are the result of the negligent or intentional acts or omissions of Utility. Upon the accomplishment of all the prerequisites contained in this Agreement to be performed by Manager, Utility covenants and agrees that it will allow the connection of the Irrigation System to the Utility System (which will include any Required Utility Facilities) in accordance with the terms and intent of this Agreement.

5. Manager hereby requests and Utility agrees to provide to Manager via a Lake Discharge System a maximum annual flow of _____ million gallons of Reclaimed Water subject to a maximum monthly flow of _____ million gallons. Utility does not guarantee a continuous availability of Reclaimed Water at the Point of Service. The flow amounts are subject to any usage/withdrawal restrictions imposed by the South Florida Water Management District, FDEP, or any other authority with jurisdiction over water use on the Property. Utility may modify and vary the flow rate of Reclaimed Water at the Point of Service while maintaining the maximum monthly flow rate during those months in which such flow is needed. Manager shall install an automatic float-controlled shut-off valve assembly at each point of discharge of Reclaimed Water into On-Site Stormwater Retention Ponds. The float elevation shall be in accordance with permit conditions set by FDEP and shall automatically shut off the flow of Reclaimed Water in order to avoid violations of said permit conditions. Manager shall be solely responsible for complying with all permit conditions related to float elevations.

6. Any modifications to the Irrigation System must be approved by Utility. Any change or modification to the level control system for On-Site Stormwater Retention Ponds including overflow weirs/bleeders must be approved in advance by Utility. Manager shall provide a report to Utility, consisting of a log of daily readings of each lake system's water level; in a form acceptable to Utility and shall include an electronic version (MS Excel format) on a monthly basis, submitted no later than the 15th of the following month.

7. Manager shall be responsible for payment of any and all applicable fees and charges required under UPAP for Reclaimed Water Service. The timely payment by Manager of all fees and charges in accordance with the terms set forth herein shall be considered essential to the continued performance by Utility of all terms and conditions of this Agreement.

8. Manager shall provide Utility evidence satisfactory to Utility that Manager has the authority to enter into this Agreement.

9. Notwithstanding any provision in this Agreement, Utility may establish, revise, modify, and enforce rules, regulations, and fees covering the provision of Reclaimed Water Service to the Property. Such rules, regulations, and fees are subject to the approval of the Palm Beach County Board of County Commissioners. Such rules, regulations, and fees shall be reasonable and subject to regulation as may be provided by law or contract. Fees charged to Manager or customers located upon the Property shall be identical to fees charged for the same classification or service in the particular service area. All rules, regulations and fees as set forth in the UPAP, shall be binding upon Manager, upon any other entity holding by, through or under Manager, and upon any customer of the Reclaimed Water Service provided to the Property by Utility

10. Manager shall not have the right to, and shall not, connect to the Utility System until approval for such connection has been granted by Utility. The parties hereto further agree that the expense of construction, operation, and maintenance of all improvements beyond the Point of Service shall be the sole cost and expense of Manager or other than Utility. In addition, Manager agrees to comply with all rules and regulations of the UPAP, Department of Health, DEP, and/or any other authority with jurisdiction over water use on the Property. The Reclaimed Water provided under this Agreement shall be used for landscape irrigation purposes only and solely on the Property shown in **Exhibit "A"**.

11. Any conveyance, transfer or assignment of this Agreement by Manager must be approved in advance by Utility.

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

And if to Utility, shall be mailed or delivered at:

Palm Beach County Water Utilities Department
Contract Management Section
P. O. Box 16097
West Palm Beach, FL 33416-6097

13. This Agreement shall supersede, null and void all previous agreements or representations, either verbal or written, heretofore in effect between Manager and Utility, made with respect to the matter contained herein, and when duly executed, constitutes the entire agreement between Manager and Utility.

14. No additions, alterations, or variations of terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alternations, variations or waiver are expressed in writing and duly signed by the parties hereto.

15. This Agreement shall be governed by the laws of the State of Florida and shall become effective upon execution by the parties hereto. The venue for actions arising out of this Agreement is in Palm Beach County, Florida.

16. Utility shall have the right to terminate Reclaimed Water Service in the event of non-compliance by the Manager with any of the conditions of this Agreement.

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IN WITNESS WHEREOF, Property Owner and Utility 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.

WITNESSES:

PALM BEACH COUNTY

Signature

By: _____
County Administrator or Designee

Typed or Printed Name

Signature

Typed or Printed Name

WITNESSES:

PROPERTY OWNER:

Signature

By: _____
Signature

Typed or Printed Name

Typed or Printed Name

Signature

Title

Typed or Printed Name

{ Corporate
Seal }

NOTARY CERTIFICATE

STATE OF _____
COUNTY OF _____

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

My Commission Expires: _____

Signature of Notary

Typed, Printed, or Stamped Name of Notary

Notary Public
Serial Number _____

WATER UTILITIES DEPARTMENT APPROVAL

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

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
County Attorney

**EXHIBIT "A"
LEGAL DESCRIPTION**

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