

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date: May 05, 2009 Consent [X] Regular []
Public Hearing []
Submitted By: Water Utilities Department
Submitted For: Water Utilities Department
=====

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an Indemnity Agreement with the City of Greenacres.

Summary: The City of Greenacres agrees to indemnify County and hold the County harmless from and against any and all liability related to the encroachment of site lighting in an easement containing a County owned force main. District 2 (MJ)

Background and justification: During construction of a pedestrian pathway with lighting, it was determined that the poles and lights were encroaching within an easement containing a Palm Beach County Water Utilities force main. The Board has delegated the authority to sign standard Indemnity Agreements to the Director of Water Utilities. The Indemnity Agreement with the City of Greenacres required the addition of non-standard wording addressing the limitation of indemnification as set forth by Florida Statutes Section 768.28.

Attachments:

1. Two (2) original Indemnity Agreements with Exhibit "A" (Legal Description) and Exhibit "B" (Sight Lighting Plan)
2. Location Map
3. One (1) original certification of the adoption of Resolution No. 2009-12 by the City of Greenacres authorizing entering into an indemnity agreement with Palm Beach County Water Utilities Department.

Recommended By:  4/24/09
Department Director Date

Approved By:  4/29/09
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.: N/A

Is Item Included in Current Budget? Yes ___ No

Reporting Category N/A

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

N/A

C. Department Fiscal Review: Debra M West

III. REVIEW COMMENTS

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

Jim Dul 4/29/09
 OFMB
 4/28/09
 TM 4/28
 CN 4/27/09

Jim J. Sawert 4/29/09
 Contract Development and Control

B. Legal Sufficiency:

WOCW 4/29/09
 Assistant County Attorney

C. Other Department Review:

 Department Director

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

ATTACHMENT "1"

Prepared by and return to:
Palm Beach County Water Utilities Department
P.O. Box 16097
West Palm Beach, Florida 33416-6097

INDEMNITY AGREEMENT
(Encroachment)

THIS INDEMNITY AGREEMENT made and entered into this _____ day of _____, 20____, by and between THE CITY OF GREENACRES (hereinafter referred to as "Owner") whose address is 5800 MELALEUCA LANE, GA, FL 32463 and Palm Beach County, (hereinafter referred to as "County"), whose address is c/o Palm Beach County Water Utilities Department, P. O. Box 16097, West Palm Beach, Florida 33416-6097.

WITNESSETH

WHEREAS, Owner holds title to a certain parcel of real property more particularly described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

(hereinafter referred to as the "Property"); and

WHEREAS, the Property is encumbered by a certain utility easement (hereinafter referred to as the "Easement"), such Easement being for the benefit of County and other utilities; and

WHEREAS, Owner desires to install SITE LIGHTING within a portion of the Easement (hereinafter referred to as "encroachment").

NOW THEREFORE, for and in consideration of the covenants set forth herein, Owner hereby agrees as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference.
2. County hereby consents to the installation by Owner of the encroachment within the Easement, subject to the terms herein.
3. In consideration of County's consent to the installation of the encroachment within the Easement, Owner shall immediately remove said encroachment upon the request of County or, in the event that County determines, in its sole and exclusive discretion that it is necessary or desirable to construct, maintain, repair, remove or replace any facilities of County's property (including but not limited to transmission lines, valves, pumps, meters, and appurtenances) located under, over, or upon the Easement, and such work requires the removal, repair, replacement and/or relocation of the encroachment or the relocation of County's facilities in whole or in part, such removal, repair, replacement and/or relocation shall be done by County or its assigns and any and all expenses or damages incurred as a result of the removal of said encroachment shall be at the sole cost and expense of the Owner.
4. A. Owner, its successor, heirs and/or assigns, hereby agrees to indemnify and hold County harmless from and against any and all liabilities, damages, penalties, claims, costs and expenses whatsoever, including attorneys' fees at all levels, which may be imposed upon or asserted against County as a result of or in any way connected to the encroachment within the Easement or its removal or any occurrence upon said encroachment.

B. Nothing herein is intended to waive Owner's rights, privileges and immunities as set forth in Section 768.28, Florida Statutes. Moreover, Owner's duty to indemnify under Subsection 4.A shall not exceed the monetary limits set forth in Section 768.28, Florida Statutes. In the event that Owner sells, transfers or otherwise conveys ownership of the Property to an entity which is not subject to the

provisions of Section 768.28, the limitation of indemnification set forth in this subsection 4.B shall not apply to said entity .

5. This Indemnity Agreement shall be binding upon the Owner, its heirs, successors, legal representatives and assigns. This Agreement will run with the land and shall be recorded in the Public Records of Palm Beach County, Florida.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, County and City 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.

ATTEST:

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

By: _____
Deputy Clerk

By: _____
John F. Koons, Chairman

(SEAL)

**APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND
CONDITIONS**

By: _____
County Attorney

By: _____
Director of Water Utilities

ATTEST:

CITY OF GREENACRES, FLORIDA

By: _____
Clerk **SONDRA K. HILL, CITY CLERK**

By: _____
SAMUEL J. FERRERI, MAYOR

(SEAL)

**APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY**

By: _____
City Attorney - **PAMELA S. TERRANOVA**

RECORDED
2008
MAY 15



DESCRIPTION:

THE NORTH 15.00 FEET OF THE 25.00 FOOT PLATTED ROAD RIGHT-OF-WAY LYING SOUTH AND ADJACENT TO TRACTS 37, 38 AND THE EASTERLY PORTION OF TRACT 36, BLOCK 21, THE PALM BEACH FARMS CO. PLAT NO. 3 ACCORDING TO THE PLAT THEREOF AS RECORDED IN BOOK 2, PAGES 45, THROUGH 54 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA. BOUNDED ON THE WEST BY THE EAST RIGHT-OF-WAY LINE OF PINEHURST DRIVE AND BOUNDED ON THE EAST BY THE SOUTHERLY EXTENSION OF THE WEST TRACT LINE OF TRACT 39 OF SAID BLOCK 21.

BEING A PORTION OF THE LAKE WORTH DRAINAGE DISTRICT LATERAL 10 CANAL AS CONVEYED IN OFFICIAL RECORD BOOK 1585, PAGE 505, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY FLORIDA.

SAID PARCEL BEING THE SAME PARCEL CONVEYED TO PALM BEACH COUNTY FROM LAKE WORTH DRAINAGE DISTRICT BY QUIT-CLAIM DEED RECORDED IN OFFICIAL RECORDS BOOK 16080, AT PAGE 0327, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

SAID LAND SITUATE WITHIN PALM BEACH COUNTY, FLORIDA.

NOTES:

- 1.) THIS SKETCH AND LEGAL DESCRIPTION DOES NOT REPRESENT A FIELD BOUNDARY SURVEY ("THIS IS NOT A SURVEY").
- 2.) NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND RAISED EMBOSSED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
- 3.) NO SEARCH OF THE PUBLIC RECORDS HAS BEEN MADE BY THE SIGNING SURVEYOR.
- 4.) LAND LINE SECTIONAL TIE IN INFORMATION SHOWN HEREON IS BASED ON PALM BEACH COUNTY SURVEY DEPARTMENT SECTIONAL DATA.
- 5.) BEARINGS SHOWN HEREON ARE BASED ON THE WEST LINE OF TRACT 39, BLOCK 21, PALM BEACH FARMS COMPANY PLAT NO. (PLAT BOOK 2, PAGES 45-54) HAVING AN ASSUMED BEARING OF S00°53'25"E.

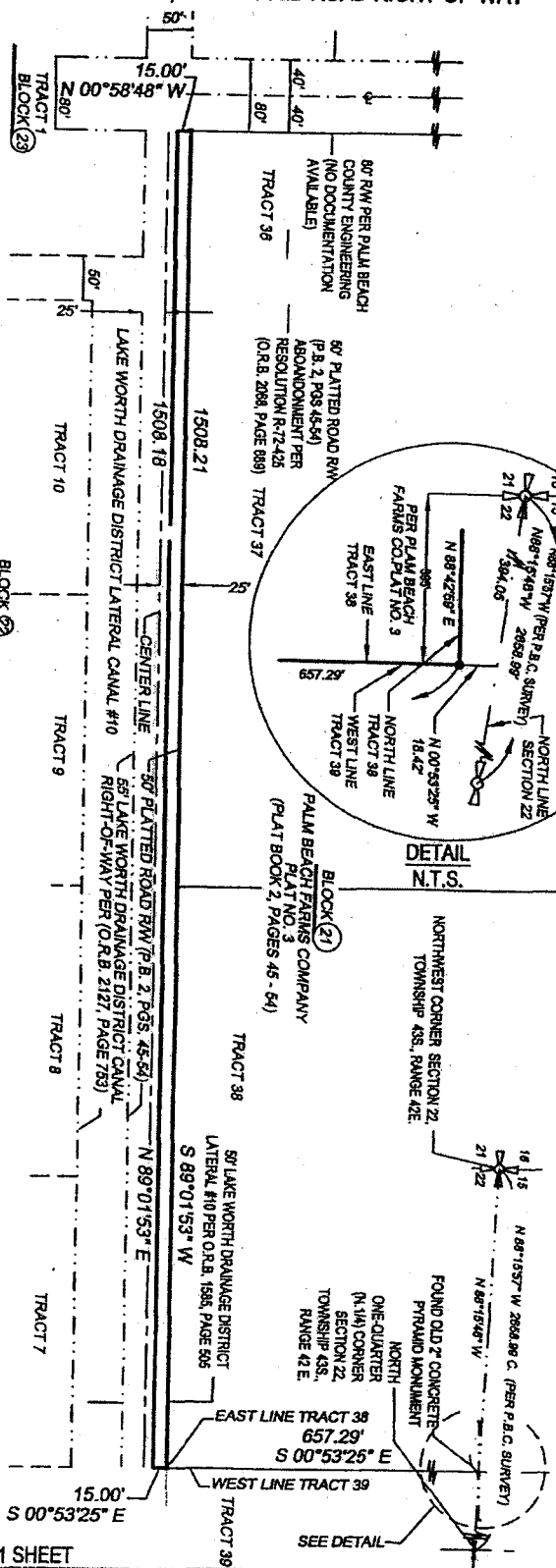
HELLER-WEAVER AND SHEREMETA, INC.
 FLORIDA STATE LB. 3449

DANIEL C. LAAK
 PROFESSIONAL SURVEYOR AND MAPPER
 FLORIDA STATE REG. NO. 5118

DATED JANUARY 5, 2004
 REVISED: FEBRUARY 2, 2004
 REVISED: DEC. 9, 2004 PER COUNTY COMMENTS
 REVISED: JULY 27, 2005 PER COUNTY COMMENTS
 REVISED: 9-14-05 SECTIONAL TIE IN DATA

LEGEND:

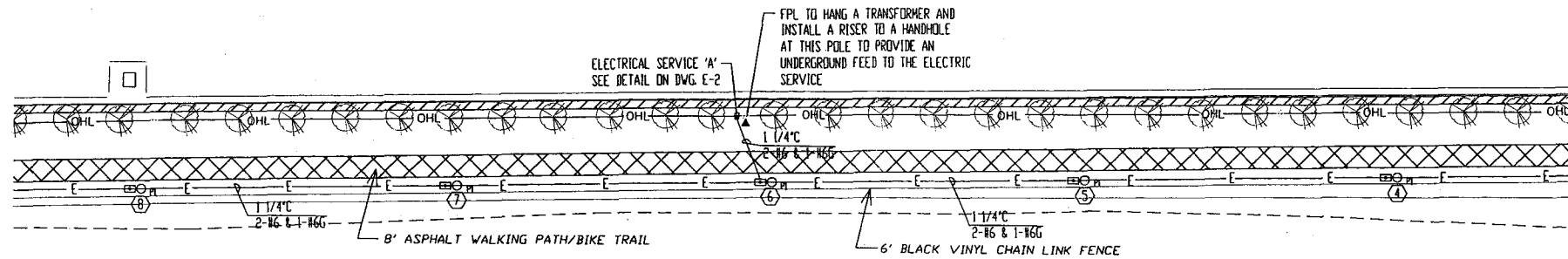
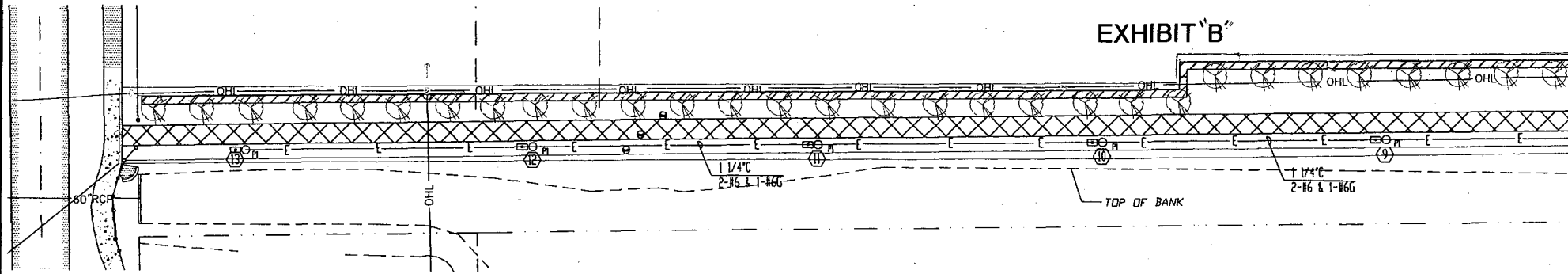
- H.W.S. = HELLER WEAVER & SHEREMETA INC.
- PB. = PLAT BOOK
- PG. = PAGE
- (C.) = CALCULATED
- P.B.C. = PALM BEACH COUNTY



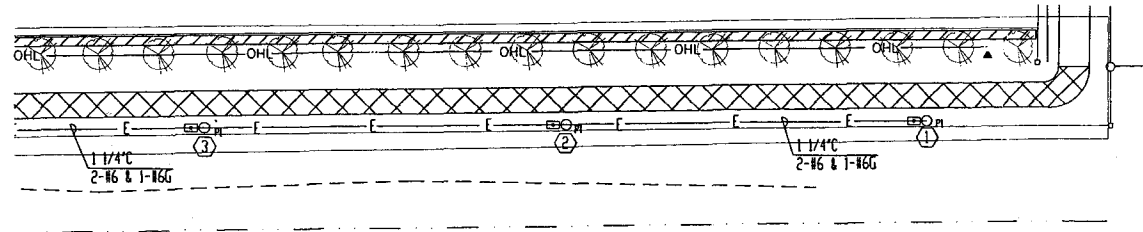
Heller - Weaver and Sheremeta, inc.
 Engineers ... Surveyors ... Planners

310 S.E. 1st Street, Suite 4
 Delray Beach, Florida 33483
 (561) 243-8700 - Phone
 (561) 243-8777 - Fax

SITE LIGHTING EXHIBIT 'B'

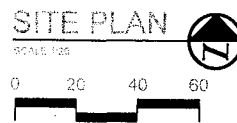


55' LAKE WORTH DRAINAGE DISTRICT CANAL R/W



LEGEND

- EXISTING FPL POLE
- EXISTING FPL POLE AND TRANSFORMER
- EXISTING FPL OVERHEAD WIRING
- |— PROPOSED UNDERGROUND CONDUIT AND WIRING
- PROPOSED ELECTRICAL PULL BOX
- 150V HPS SPALLING FIXTURE ON 15' CONCRETE POLE



840 US Hwy 1, SUITE 320
NORTH PALM BEACH, FL. 33408
CA 785
TEL: (561) 827-882
FAX: (561) 827-871



City of Greenacres
5800 Melaleuca Lane
Greenacres, Florida 33463

DATE	DESCRIPTION

LIBERTY PARK ELEMENTARY
SCHOOL SIDEWALK
ELECTRICAL SITE PLAN
PROJECT No. 41937-1-58-01
Greenacres, Florida

DATE: 05/15/02
NAME: D. J. JARVIS, P.E.
Florida Electrical Engineer
No. 49002

DRAWING
E-1

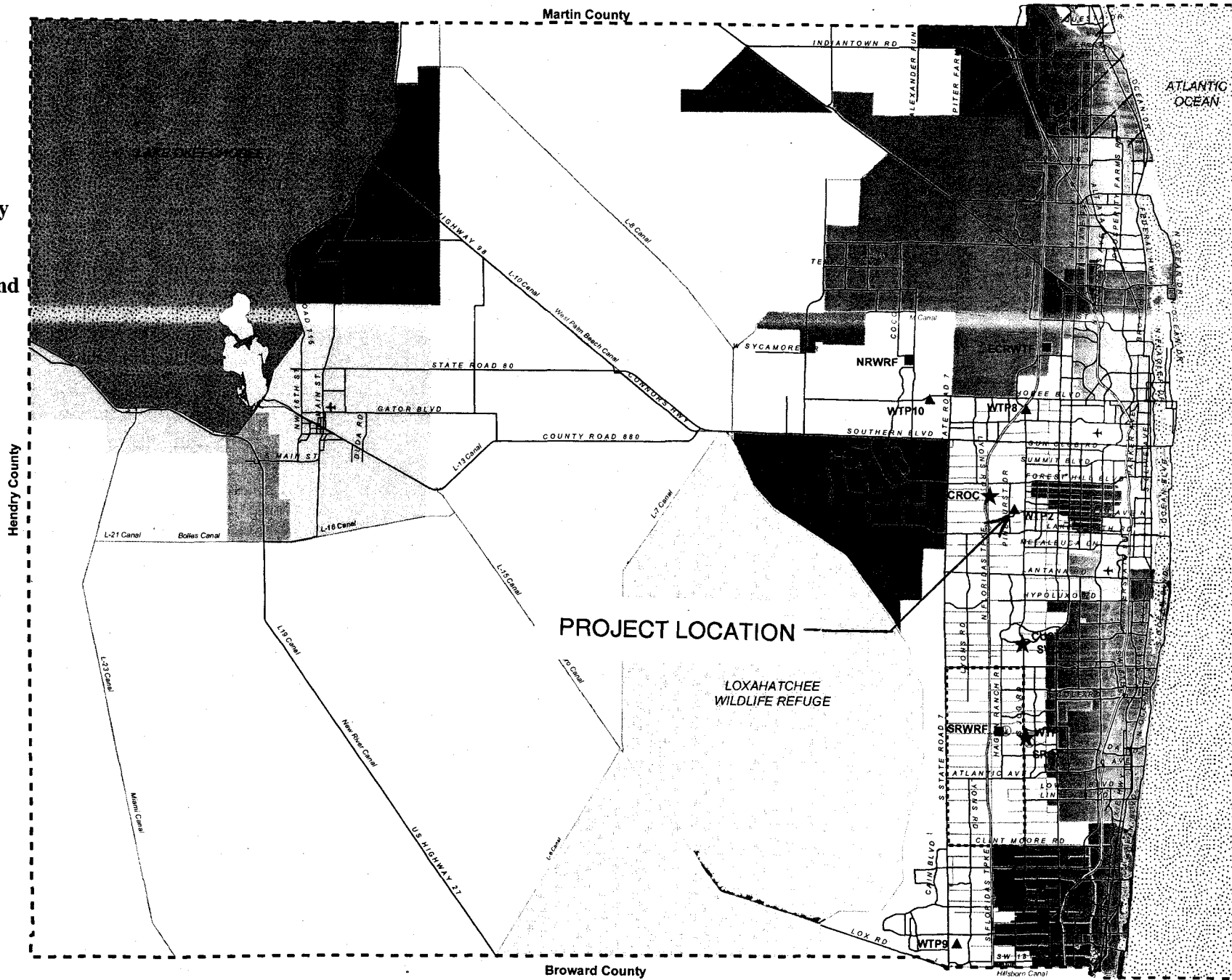
ATTACHMENT 2



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

Legend

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





City of Greenacres

5800 Melaleuca Lane • Greenacres • Florida • 33463-3515
Ph: 561-642-2017 • Fax: 561-642-2004 • Email: cm@ci.greenacres.fl.us

Samuel J. Ferreri
Mayor

Wadie Atallah
City Manager

OFFICE OF THE CITY CLERK

CERTIFICATION

STATE OF FLORIDA

COUNTY OF PALM BEACH

**I. SONDRA K. HILL, THE UNDERSIGNED AUTHORITY, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
EXACT, AND CORRECT COPY OF EXECUTED RESOLUTION
NO. 2009-12 THAT WAS ADOPTED BY THE CITY COUNCIL
AT THE MEETING OF MARCH 2, 2009.**

**WITNESS BY MY HAND AND OFFICIAL CORPORATE
SEAL, THIS 4TH DAY OF MARCH, 2009.**

CITY OF GREENACRES, FLORIDA

Sondra K. Hill
**SONDRA K. HILL, MMC
CITY CLERK**

SEAL



Richard C. Radcliffe
Councilman • District I

Peter A. Noble
Councilman • District II

Charles E. Shaw
Councilman • District III

Doris A. Fouts
Councilwoman • District IV

Norman W. Rose
Councilman • District V

RESOLUTION NO. 2009-12

A RESOLUTION ADOPTED BY THE CITY COUNCIL OF THE CITY OF GREENACRES, FLORIDA, AUTHORIZING THE EXECUTION OF AN INDEMNITY AGREEMENT BETWEEN THE CITY OF GREENACRES AND THE PALM BEACH COUNTY WATER UTILITIES DEPARTMENT ATTACHED HERETO AS ATTACHMENT "1" FOR THE PATHWAY BETWEEN LIBERTY PARK ELEMENTARY SCHOOL AND PINEHURST DRIVE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on December 19, 2005 the City of Greenacres agreed, through Resolution 2005-56, to release the easement recorded in ORB. 6396 on PG. 742 in return for the conveyance by Palm Beach County to Greenacres of certain strips of property adjacent to Water Treatment Plant No. 2; and

WHEREAS, on November 6, 2006 the City of Greenacres accepted, through Resolution 2006-41, the conveyance by the County to the City of 0.52 acres located south of Water Treatment Plant No. 2 and 0.30 acres located east of Water Treatment Plant No. 2 as contemplated in Resolution 2005-56; and

WHEREAS, the County reserved an easement across the parcels for, among other things, water and sewer lines; and

WHEREAS, on November 12, 2008 the City completed construction of a new pedestrian pathway on the 0.52 acre strip of land on the south side of Water Treatment Plant No. 2, previously accepted through Resolution 2006-41; and

WHEREAS, the new pedestrian pathway included poles and lights installed adjacent to the Palm Beach County Water Utilities Department's sanitary sewer force main; and

WHEREAS, the Water Utilities Department allowed the installation of the poles and lights subject to completion of an Indemnity Agreement between the City of Greenacres and the Water Utilities Department; and

WHEREAS, the provisions of this Resolution will benefit the health, safety and welfare of the citizens of Greenacres.

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

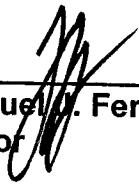
Section 1. The City of Greenacres hereby consents to the Indemnity Agreement with the Palm Beach County Water Utilities Department attached hereto as Attachment "1".

Section 2. The appropriate City Officials are hereby directed to take all steps necessary to effectuate this Resolution.

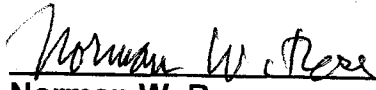
Section 3. This resolution shall be effective upon its adoption.

RESOLVED AND ADOPTED this 2nd of March 2009.

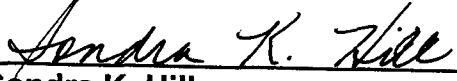
Voted



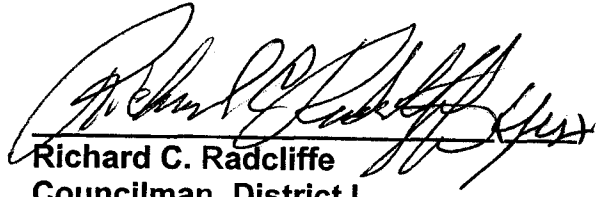
Samuel W. Ferreri
Mayor

 (YES)

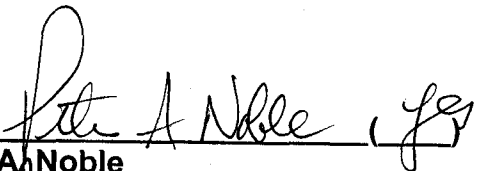
Norman W. Rose
Deputy Mayor

Attest:


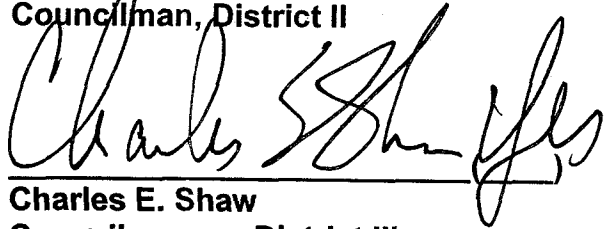
Sondra K. Hill
City Clerk

 (YES)

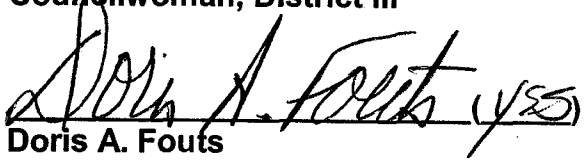
Richard C. Radcliffe
Councilman, District I

 (YES)

Peter A. Noble
Councilman, District II



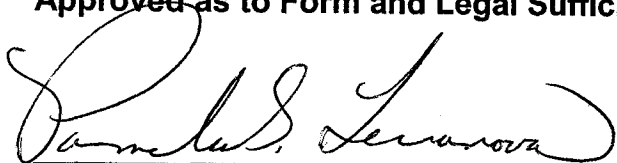
Charles E. Shaw
Councilwoman, District III

 (YES)

Doris A. Fouts
Councilman, District IV



Approved as to Form and Legal Sufficiency



Pamela S. Terranova
City Attorney