

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date:	July 20, 2010	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 revised Standard Indemnity Agreement; which modifies the Agreement to permit the indemnitor to claim title to the property through alternative methods; **B) authorize** the County Administrator or designee to enter into the Indemnity Agreement and; **C) incorporate** the Indemnity Agreement into Chapter 3 of the Department's Uniform Policies and Procedures Manual (UPAP).

Summary: A Standard Indemnity Agreement to facilitate the transfer and use of capacity reservation and associated Guaranteed Revenue Credit is currently included in Chapter 3 of the Department's Uniform Policies and Procedures Manual. This form is used in cases where a Standard Assignment is not available. The Indemnity Agreement has been modified to address alternate transfers of property, including transfers via foreclosure proceedings. Countywide (MJ)

Background and Justification: The Department's UPAP contains an Indemnity Agreement form that is utilized in most instances to facilitate the transfer of Development Agreement guaranteed revenue credits and to indemnify the County from any liabilities, damages, penalties, claims, costs and expenses associated with this action. A revision to the language has been made to facilitate the transfer to include alternate transfers of property, including transfers via foreclosure proceedings, where an assignment is not applicable or available.

Attachment:

1. Strikethrough/Underline Version of Indemnity Agreement
2. Clean Version of Indemnity Agreement

Recommended By:		<u>7/8/2010</u>
	Department Director	Date
Approved By:		<u>7/15/10</u>
	Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
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> <i>see below</i>	<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:

☒ No Fiscal Impact

C. Department Fiscal Review: *Silvia M. West*

III. REVIEW COMMENTS

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

Agreement to guard against any liabilities, damages and additional expenses.

[Signature] 7/13/2010
OFMB *at* 7/13/10 *2:10*

[Signature] 7/13/10
Contract Development and Control

B. Legal Sufficiency:

[Signature] 7/14/10
Assistant County Attorney

C. Other Department Review:

Department Director

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

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT made and entered into this _____ day of _____, 20____, by and between _____ (hereinafter referred to as "Indemnitor") whose address is _____, 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, Indemnitor holds title to a certain parcel of land property more particularly described as follows:

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

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

WHEREAS, a Potable Water & Wastewater Development Agreement for the Property was entered into on _____ (Resolution number), (hereinafter referred to as "Agreement"); and

WHEREAS, ~~the property owner~~ Indemnitor has not been assigned the Agreement nor any of the water or wastewater ERC capacity associated with the Agreement ~~as identified in the Agreement~~ sold the Property to Indemnitor on _____; and

~~WHEREAS, the property owner failed to assign the Agreement to Indemnitor; and~~

WHEREAS, all or portions of the potable water and wastewater ERC capacity provided for in the Agreement have not been used on the Property; and

WHEREAS, Indemnitor wishes to use the unused ERCs provided in the Agreement; and

WHEREAS, Indemnitor wishes to indemnify the County in as set forth herein.

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

1. The foregoing recitals are true and correct and are incorporated herein by reference.
2. Indemnitor may use _____ potable water ERCs and _____ wastewater ERCs which were reserved in the Agreement and have not been used on the Property, in accordance with the terms and conditions of the Agreement.
3. Indemnitor, its successor, heirs and/or assigns, hereby agrees to indemnify, release and hold County harmless from and against any and all liabilities, damages, penalties, claims, costs, and expenses whatsoever, including attorney's fees at all levels, which may be imposed upon or asserted against County as a result of or in any way connected to County approving and accepting Indemnitor to use the unused ERCs from the Agreement.
4. This Indemnification Agreement shall not extend the term of the Agreement, and this Indemnification Agreement shall survive the termination of the Agreement.
5. This Indemnity Agreement shall be binding upon Indemnitor, 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 remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the parties have caused this Indemnification Agreement to be executed on the day and year first written above.

WITNESSES:

PALM BEACH COUNTY

Witness Signature

By: _____
County Administrator or Designee

Typed or Printed Name

Witness Signature

Typed or Printed Name

WITNESSES:

INDEMNITOR:

Witness Signature

By: _____
Signature

Typed or Printed Name

Title

Witness Signature

Typed or Printed Name

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.

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

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WITNESSETH

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

WHEREAS, a Potable Water & Wastewater Development Agreement for the Property was entered into on _____ (Resolution number), (hereinafter referred to as "Agreement"); and

WHEREAS, Indemnitor has not been assigned the Agreement nor any of the water or wastewater ERC capacity associated with the Agreement; and

WHEREAS, all or portions of the potable water and wastewater ERC capacity provided for in the Agreement have not been used on the Property; and

WHEREAS, Indemnitor wishes to use the unused ERCs provided in the Agreement; and

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1. The foregoing recitals are true and correct and are incorporated herein by reference.
2. Indemnitor may use _____ potable water ERCs and _____ wastewater ERCs which were reserved in the Agreement and have not been used on the Property, in accordance with the terms and conditions of the Agreement.
3. Indemnitor, its successor, heirs and/or assigns, hereby agrees to indemnify, release and hold County harmless from and against any and all liabilities, damages, penalties, claims, costs, and expenses whatsoever, including attorney's fees at all levels, which may be imposed upon or asserted against County as a result of or in any way connected to County approving and accepting Indemnitor to use the unused ERCs from the Agreement.
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PALM BEACH COUNTY

Witness Signature

By: _____
County Administrator or Designee

Typed or Printed Name

Witness Signature

Typed or Printed Name

WITNESSES:

INDEMNITOR:

Witness Signature

By: _____
Signature

Typed or Printed Name

Title

Witness Signature

Typed or Printed Name

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.

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