Agenda Item #3K-5

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

Meeting Date:

October 19, 2010

Consent [X]

Public Hearing []

Regular []

Submitted By: Submitted For:

Water Utilities Department Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an Indemnification Agreement (Agreement) with Bethesda Healthcare System.

Summary: Bethesda Healthcare System, Inc., (Bethesda) is in the process of building a general acute care hospital at the northeast corner of State Road 7 and Boynton Beach Boulevard. In order to service the hospital, Bethesda is required to construct certain water main and wastewater main extensions within Florida Department of Transportation (FDOT) right-of-ways. Following completion of construction, ownership of the mains will be transferred to the County. Even though construction will be performed by Bethesda and its contractors, FDOT requires that the construction permits be issued in the County's name. Under the terms of the Agreement, Bethesda agrees to indemnify and hold the County harmless against any costs, losses or claims that might arise out of or are attributable to any and all acts and omissions by Bethesda or its contractors arising as a result of the construction. (WUD Project No. 09-515 & 09-563) District 5 (MJ)

Background and Justification: The Department's UPAP includes an Indemnity Agreement related exclusively to encroachments of installed improvements in utility easements. However, the proposed Indemnity Agreement for Permits is needed to obtain a Utility Construction Permit from the Florida Department of Transportation and indemnify the County as the FDOT "Permittee" during the construction of the utility facilities by Bethesda's contractor.

Attachments:

A) Location Map

B) One (1) Original Indemnification Agreement with Bethesda Healthcare System Inc.

Recommended By:

Départment Director

Date

Approved By:

Assistant County Administrator

Date

10-7-10

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures External Revenues Program Income (County) In-Kind Match County	0 0 0 0	<u>0</u> <u>0</u> <u>0</u> <u>0</u>	0 0 0	<u>0</u> <u>0</u> <u>0</u> <u>0</u>	<u>0</u> <u>0</u> <u>0</u> <u>0</u>
NET FISCAL IMPACT	<u>و</u> 🐼 ک	$\frac{\overline{0}}{\underline{0}}$	<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>
Is Item Included in Current B	udget?	Yes	_ No		
Reporting Category					

Ь.	Recommended Sources of Funds/Summary of Fiscal impact:			
4	No Fiscal Impact			
C.	Department Fiscal Review:			
III. REVIEW COMMENTS				

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

OF MB OF THE	0/5/10	Contract Development and Control
Legal Sufficiency:	2.1.	This item complies with current of County policies.

Assistant County Attorney

C. Other Department Review:

B.

C. Other Department Review:

Department Director

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



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

Attachment 1

Legend

P.B.C.W.U.D. SA

Mandatory Reclaimed SA

- - · Palm Beach County Limits

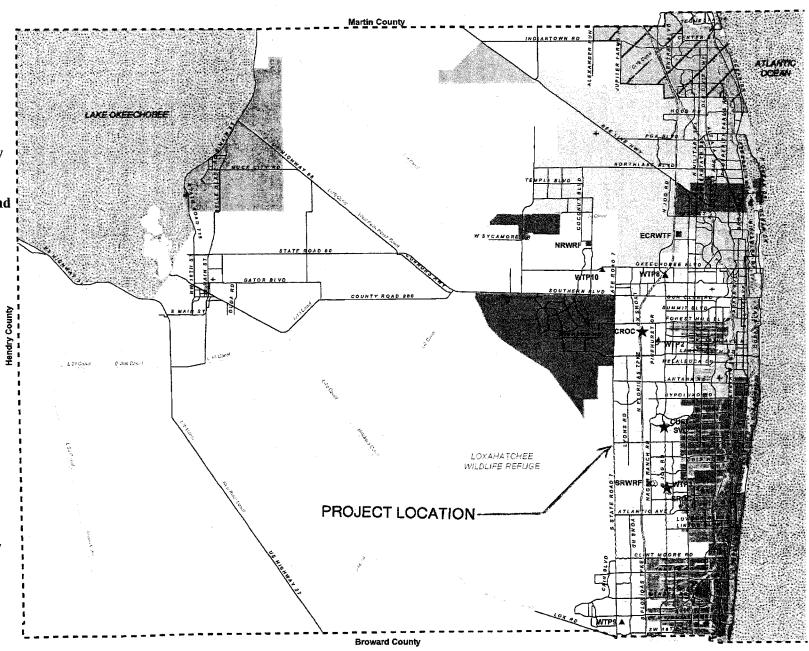
Administration

₩ Water Reclaimation Facility

▲ Water Treatment Facility

🗼 Wetlands





INDEMNIFICATION AGREEMENT

[BHS - PBC]

This Indemnification Agreement ("Agreement") is made and entered into this 19th day of October, 2010, by and between BETHESDA HEALTHCARE SYSTEM, INC., a Florida not-for-profit corporation ("BHS") and PALM BEACH COUNTY, a subdivision of the State of Florida ("PBC").

WHEREAS, BHS is in the process of building a general acute care hospital at the northeast corner of SR-7 and Boynton Beach Boulevard in Palm Beach County, Florida; and

WHEREAS, in order to service the hospital it is necessary to construct a water main extension within the SR-7 right of way from one thousand feet (1,000') north of Boynton Beach Boulevard (SR-804) to the Boynton Canal (PBC Water Utilities Department Project No. 09-515) and a water main and wastewater force main extension within and/or along the SR-804 right of way beginning at the intersection of SR-804 and Lyons Road and running westerly for a distance of approximately 3500' (PBC Water Utilities Department Project No. 09-563) (collectively, the "Utility Facilities"); and

WHEREAS, the FDOT will issue permits in the name of the PB C Water Utilities Department ("Utility Permits"), as the Permitee, and PBC is concerned about the potential liability that it might incur until the utility construction is completed and title to those Utility Facilities are transferred to and have been accepted by PBC; and

WHEREAS, PBC requires as a condition of entering into the Utility Permits that BHS provide this Agreement; and

WHEREAS, BHS and PBC desire to set forth their understandings regarding potential liabilities imposed against PBC, arising as a result of entering into the Utility Permits.

NOW, THEREFORE, for and in consideration exchanged between the parties, the adequacy of which shall not be disputed by the parties, the parties agree as follows:

- 1. **RECITALS.** The recitals above are true and correct and are incorporated herein by reference.
- 2. <u>ACKNOWLEDGMENT</u>. BHS acknowledges that it will initially be the owner of the Utility Facilities and will be totally responsible for compliance with the FDOT rules and regulations and any other applicable laws, rules and regulations during the construction phase and until the Utility Facilities are accepted by PBC.
- 3. <u>INDEMNIFICATION.</u> BHS, therefore, agrees to indemnify and hold PBC harmless from and against any and all costs, losses, claims, demands and liabilities, including reasonable attorneys fees and costs (at both a trial and appellate level), which

might arise out of or relate to or are attributable to any and all acts and omissions by BHS or its contractors arising as a result of the construction of the Utility Facilities, including but not limited to, the failure of BHS or its contractors to comply with the rules and regulations of the FDOT or its demands in connection with the work contemplated by the Utility Permits. If a demand is made on PBC for any such liability or obligation or PBC otherwise incurs any loss or expense as a result of the activities described herein, BHS shall forthwith upon demand reimburse PBC for all expenses incurred as a result thereof. In the event a claim shall arise for indemnification hereunder, PBC shall send to BHS a written notice ("Indemnity Notice") promptly after PBC has actual knowledge of the facts constituting the basis for such claim. Any Indemnity Notice shall state the amount of indemnification requested and all material facts constituting the basis for such claim. A copy of any documentation or other information which supports such claim shall be included with the Indemnity Notice. PBC shall, in its sole discretion, have the right to employ separate counsel in any such action and to participate in the defense thereof, and the reasonable fees and expenses of such counsel shall be paid by BHS. All such fees and expenses payable by BHS shall be paid from time to time as incurred, both in advance of and after the final disposition of such action or claim. All of the foregoing losses, damages, costs and expenses of PBC shall be payable by BHS upon demand by PBC. All amounts at any time due to PBC may, in PBC's sole discretion, be reduced or offset by other amounts payable to BHS by PBC. No failure to exercise any right of set-off hereunder shall prejudice or constitute a waiver of any other right or remedy PBC may have against BHS. This section shall survive the expiration or termination of this Agreement.

4. <u>TERMINATION</u>. Upon completion of the construction of the Utility Facilities by BHS and acceptance of the legal documents required by PBC (e.g. Bill of Sale, Construction Documentation, Affidavit of BHS and such other documents as might be required), this Agreement shall be terminated and PBC will provide to BHS a formal termination in a form acceptable to BHS.

5. MISCELLANEOUS PROVISIONS.

5.1 <u>Notice.</u> All notices, demands, requests, offers or responses permitted or required to be given under this Agreement shall be deemed sufficient if mailed by registered or certified mail, postage prepaid, addressed to the Party to be charged with notice, etc., at the following addresses:

PBC

Director

Palm Beach County Water Utilities

Department

8100 Forest Hill Boulevard

P.O. Box 16097

West Palm Beach, FL 33416

With a copy to:

County Attorney

301 N. Olive Ave., Suite 601 West Palm Beach, FL 33401

BHS

Bethesda Healthcare System, Inc. 2815 S. Seacrest Boulevard Boynton Beach, FL 33435

Attention: Robert B. Hill, President

With a copy to:

Joel T. Strawn

Strawn, Monaghan & Metzger, P.A.

54 NE Fourth Avenue Delray Beach, FL 33483

Any party hereto may change the address to which notices shall be sent by written notice of such new or changed address given to the other party.

- 5.2 Florida Law and Venue. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida. If any action, suit or proceeding is instituted as a result of any matter or thing affecting this Agreement, the parties hereby designate Palm Beach County, West Palm Beach, Florida, as the proper jurisdiction and the venue in which same is to be instituted.
- 5.3 <u>Headings</u>. The Paragraph headings contained herein are for reference purposes only and shall not in any way affect the meaning and interpretation of this Agreement.
- 5.4 <u>Binding Effect.</u> This Agreement shall be legally binding upon and shall operate for the benefit of the parties hereto, their respective heirs, personal and legal representatives, transferees, successors and assigns.
- 5.5 Entire Agreement. This Agreement contains the entire agreement of the parties hereto with respect to the subject matter addressed herein, and all prior understandings and agreements, whether written or oral, between and among the parties hereto relating to the subject matter of this Agreement are merged in this Agreement. Each party specifically acknowledges, represents and warrants that they have not been induced to sign this Agreement by any belief that the other will waive or modify the provisions of this Agreement in the future.
- 5.6 **Severability.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions

- hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 5.7 <u>Counterparts.</u> This Agreement may be signed and executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one agreement.

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IN WITNESS WHEREOF, this Agreement is entered into and is effective on the date first indicated above.

WITNESSES:	BETHESDA HEALTHCARE SYSTEM,
Signed, sealed and delivered	INC.
in the presence of: Witness Signature	Robert B. Will
Rober Sup in	Signature Robert B Hill
Print Name	Print Name
Witness Signature	President/CRO
Volne Smith Print Name	
i ilitiname	
•	(SEAL)
NOTARY CER	TIFICATE
STATE OF FLORIDA COUNTY OF PALM BEACH	
AUGUST , 2010 by P	owledged before me this 25m day of and
has produced as identifica	who is/are <u>personally known</u> to me or who tion.
My Commission Expires:	
Notary Signature	CARMELA RINCON MY COMMISSION # DD 937158 EXPIRES: November 1, 2013 Bonded Thru Notary Public Underwriters
Typed, Printed or Stamped Name of No.	

ACCEPTANCE

the Utility Permits as a Permitee, this	day of, 2010.
ATTEST:	PALM BEACH COUNTY, FLORIDA BY ITS BOARD OF COMMISSIONERS
Clerk & Comptroller (or Deputy Clerk)	By:
APPROVED AS TO FORM AND LEGAL SUFFICIENCY	APPROVED AS TO TERMS AND CONDITIONS
By: County Attorney	By: Department Director or Designee

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