PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM SUMMARY

Meeting Date:

October 19, 2010

Consent [X]

Public Hearing []

Regular []

Submitted By:

Water Utilities Department

Submitted For: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: A) approve a Standard Indemnity Agreement for Permits; **B) authorize** the County Administrator or designee to enter into the Standard Indemnity Agreement for Permits; and **C) approve** incorporation of the Standard Indemnity Agreement for Permits into Chapter 3 of the Department's Uniform Policies and Procedures (UPAP).

Summary: A developer initiating and funding a utility construction project may require utility permits from agencies who identify the County as the "Permittee". Even though construction will be performed by the developer and its contractors, the permitting agency requires that the construction permits be issued in the County's name. Under the terms of the Agreement, the developer 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 the developer or its contractors arising as a result of the construction. The Standard Indemnity Agreement for Permits, will be utilized in future situations where the County is required to pull permits for construction within right-of ways where construction is to be performed by parties other than the County and its contractors. Following completion of construction, ownership of the utility facility will be transferred to the County. <u>District 5</u> (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 applies to cases where a permitting agency lists the County as the "Permittee" during the construction of utility facilities even when the construction of these facilities is not performed by the County.

Attachments:

A) Location Map

B) Standard Indemnification Agreement for Permits

Recommended By:

Department Director

Date

Approved By:

Assistant County Administrato

Date

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	<u>0</u> <u>0</u> <u>0</u>	<u>0</u> <u>0</u> <u>0</u>	<u>O</u> <u>O</u> <u>O</u>	<u>0</u> <u>0</u> <u>0</u>	<u>0</u> <u>0</u> <u>0</u>
NET FISCAL IMPACT	*	<u>o</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>
Is Item Included in Current Bu	ıdget?	Yes	_ No _		
	_				

Reporting Category

В.	Recommended Sources	of Funds/Summary	of Fiscal Impact:
----	---------------------	------------------	-------------------

X	No	Fiscal	Impact
1			

C. Department Fiscal Review:	Delira Movest
------------------------------	---------------

III. REVIEW COMMENTS

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

OFMB Contract Development and Co

B. Legal Sufficiency:

Assistant County Attorney

C. Other Department Review:

Department Director

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

Department

Legend

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

---- Mandatory Reclaimed SA

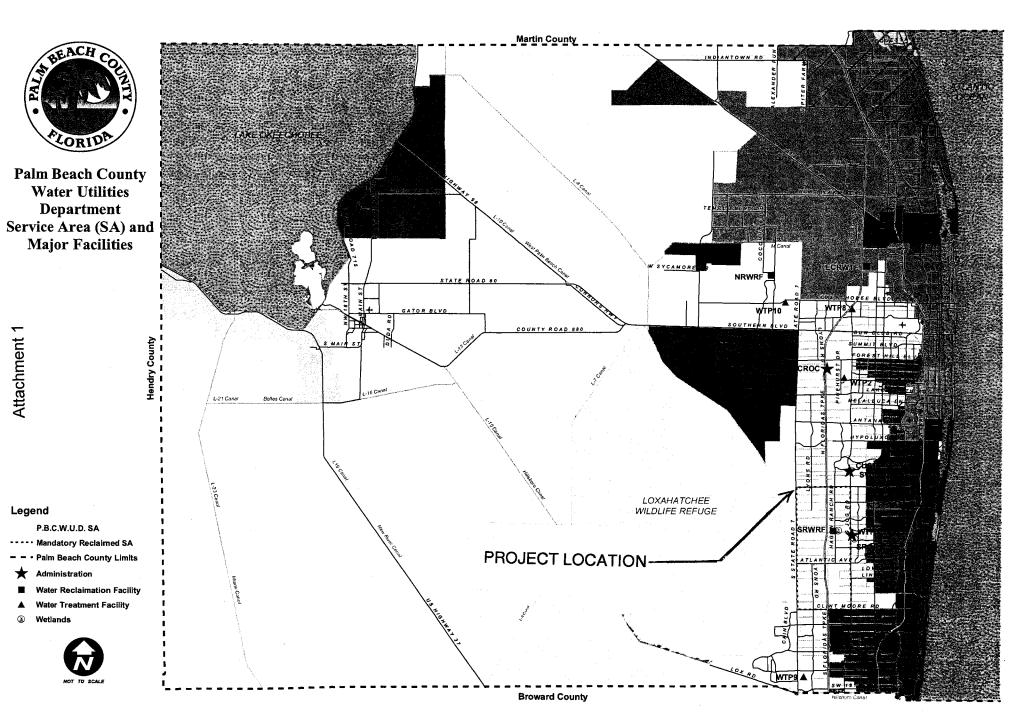
- - Palm Beach County Limits

Administration

■ Water Reclaimation Facility

▲ Water Treatment Facility





INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("Agreement") is made and entered into this _____

day of, by and between
, a (hereinafter referred to as "Indemnitor") and Palm Beach County, a political subdivision of the State of Florida ("County").
WHEREAS, In order to provide water/wastewater/reclaimed water service to a certain parcel of property, Indemnitor is required to construct and install("Utility Facilities") (WUD Project No); and
WHEREAS, the will issue a permit(s) ("Utility Permit(s)") in the name of the County Water Utilities Department as the Permittee, and County is concerned about the potential liability that it might incur until the construction of the Utility Facilities is completed and title to those Utility Facilities is transferred to and has been accepted by County; and
WHEREAS, County requires as a condition of entering into the Utility Permits that Indemnitor enter into this Agreement; and
WHEREAS, Indemnitor and County desire to set forth their understandings regarding potential liabilities imposed against the County, arising as a result of entering into the Utility Permit(s).
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. ACKNOWLEDGMENT. Indemnitor acknowledges that it will initially be the owner of the Utility Facilities and will be totally responsible for compliance with the Utility Permit(s) and any other applicable laws, rules and regulations during the construction phase of the Utility Facilities and until such time the Utility Facilities are formally transferred to and accepted by PBC.
3. <u>INDEMNIFICATION.</u> Indemnitor, therefore, agrees to indemnify and hold County 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 Indemnitor or its contractors arising as a result of the construction of the Utility Facilities, including but not limited to, the failure of Indemnitor or its contractors to comply with the rules and regulations of the or its demands in connection with the work contemplated by the Utility Permits.

If a demand is made on County for any such liability or obligation or County otherwise incurs any loss or expense as a result of the activities described herein, Indemnitor shall forthwith upon demand reimburse County for all expenses incurred as a result thereof. County 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 Indemnitor. All such fees and expenses payable by Indemnitor 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 County shall be payable by Indemnitor upon demand by County. All amounts at any time due to County may, in County's sole discretion, be reduced or offset by other amounts payable to Indemnitor by County. No failure to exercise any right of set-off hereunder shall prejudice or constitute a waiver of any other right or remedy County may have against Indemnitor. This section shall survive the expiration or termination of this Agreement.

4. MISCELLANEOUS PROVISIONS.

4.1 <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
INDEMNITOR:	
With a copy to:	

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.

- 4.2 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.
- 4.3 <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.
- 4.4 **Binding Effect.** 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.
- 4.5 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.
- 4.6 **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.
- 4.7 <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.
- 4.8 <u>Inspector General.</u> Pursuant to Ordinance No. 2009-049, as amended, Palm Beach County's Officer of Inspector General is authorized to review past, present and proposed County contracts, transactions, accounts, and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with PBC, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud.

INDEMNITOR:	
WITNESSES: Signed, sealed and delivered in the presence of:	OWNER:
Witness Signature	Signature
Print Name	Print Name
Witness Signature	Title
Print Name	Company Name
	(SEAL)
NOTA STATE OF FLORIDA COUNTY OF PALM BEACH	RY CERTIFICATE
	s acknowledged before me this day of and
, 20 by	_
has produced as i	and who is/are personally known to me or who
has produced as i	and who is/are personally known to me or who
, 20 by	and who is/are personally known to me or who

ACCEPTANCE

	is, day of,,
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:	By: