

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: April 5, 2011 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 receive and file: The following three (3) documents:

- A) Standard Development Agreement with Bethesda Healthcare System, Inc.; SDA# 05-01107-000 (District 5)(MJ)
- B) Standard Indemnity Agreement with Woodwind 2007 LLC; WUD Project No. 09-552 (District 2)(SF)
- C) a Contract with All Webb's Enterprises, Inc. in the amount of \$18,100 for All Webb's Enterprises, Inc. to perform mechanical integrity testing of a Class 1 Deep Injection Well IW-1 at the Lake Region Water Treatment Plant and abandonment of two (2) pad monitoring wells located at the City of Belle Glade Wastewater Treatment Plant.

Summary: In accordance with County PPM CW-0-051, all delegated contracts, agreements and grants must be submitted by the initiating Department as a receive and file agenda item. The attached Standard Development Agreement, Contracts and Indemnity Agreements have been fully executed on behalf of the Board of County Commissioners (Board) by the County Administrator/Director/Deputy Director of the Water Utilities Department in accordance with Resolutions R93-1619, R96-0228, and R2003-0539 and are now being submitted to the Board to receive and file. **Original documents can be viewed in Minutes.** District 6 (JM)

Background and Justification: Water Utilities Department's Uniform Policies and Procedures require Standard Development Agreements to obtain concurrency for water and/or wastewater service. The terms and conditions for Standard Development Agreements are outlined in the Water Utilities Department's Uniform Policies and Procedures Manual. The Board of County Commissioners delegated the authority to execute various types of Standard Development Agreements, and related documents including Standard Indemnity Agreements to the Department Director including potable water and wastewater agreements (R93-1619); reclaimed water agreements (R96-0228); and additional conditions for potable water, wastewater, and reclaimed water agreements (R2003-0539). On February 11, 2011 the Director of the Water Utilities Department approved a contract with All Webb's Enterprises, Inc. to perform mechanical integrity tests for Deep Injection Wells which are required by the Florida Department of Environmental Protection at five (5) year intervals. The deadline for the mechanical integrity testing at the Lake Region Water Treatment Plant Deep Injection Well (IW-1) is May 11, 2011. All Webb's Enterprises, Inc. is a local Palm Beach County Company.

The Agreements attached have been executed on behalf of the Board by the County Administrator/Director/Deputy Director of the Water Utilities Department in accordance with the authority delegated by the Board, and are now being submitted to the Board to receive and file.

Attachments:

- 1. Two (2) Original Standard Development Agreements SDA #05-01107-000
- 2. One (1) Indemnity Agreement
- 3. Two (2) Original Contracts

Recommended By:  3/2/2011
Department Director Date

Approved By:  
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures	<u>\$18,100.00</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>
Operating Expenses	<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>\$18,100.00</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 4001 Dept 720 Unit 3GUA Object 4615 \$17,050.00
 Fund 4001 Dept 720 Unit 4GUA Object 4615 \$ 1,050.00

Is Item Included in Current Budget? Yes X No

Reporting Category N/A

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

One time capital expenditure from the user fees and balances brought forward.

C. Department Fiscal Review: Delra m mist

III. REVIEW COMMENTS

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

[Signature] 3/7/11
 OFMB
 3/7/11
 3/15/11

[Signature] 3/8/11
 Contract Development and Control
 E. Jones 3/8/11

B. Legal sufficiency:

[Signature] 3/16/11
 Assistant County Attorney

C. Other Department Review:

 Department Director

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



POTABLE WATER AND WASTEWATER

CFN 20110041532
OR BK 24345 PG 1544
RECORDED 02/03/2011 10:17:22
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 1544 - 1552; (9pgs)

CHARGE #1023 RETURN VIA WILL CALL #133
ATTN: CRAIG WILLIAMS, CONTRACT MANAGEMENT,
PBC WATER UTILITIES DEPT,
8100 FOREST HILL BLVD, WPB, FL 33413

SDA # 05-01107-000

STANDARD POTABLE WATER AND WASTEWATER DEVELOPMENT AGREEMENT
(SDA)

THIS AGREEMENT made and entered into this 20th day of JANUARY, 2011,
by and between PALM BEACH COUNTY, a subdivision of the State of Florida, hereinafter
referred to as "Utility", and BETHESDA HEALTHCARE SYSTEM, INC, hereinafter referred to
as "Property Owner."

WITNESSETH

WHEREAS, Property Owner owns property located in Palm Beach County, Florida, and as
more fully described in Exhibit "A", attached hereto and made a part hereof and hereinafter referred
to as "Property", whereupon Property Owner has or is about to develop the Property by erecting
thereon residential or non-residential improvements; and

WHEREAS, Property Owner desires to construct potable water and wastewater facilities
hereinafter referred to as "facilities"; and

WHEREAS, upon the conditions set forth herein, Utility desires to accept ownership of the
completed potable water and wastewater facilities for operation and maintenance purposes; and

WHEREAS, Property Owner understands that this contract for service in no way entitles
Property Owner to densities which are greater than those allowed under the density provisions of the
Comprehensive Plan of Palm Beach County, or to densities or development rights as may otherwise
be limited by the Board of County Commissioners; and

WHEREAS, in the interest of public health and to encourage the use of central water and
wastewater facilities, Utility desires to enter into this Agreement.

NOW THEREFORE, for and in consideration of these premises, the mutual undertakings and
agreements herein contained and assumed, Property Owner 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 may be amended from time to time, which is incorporated herein by
reference;
 - (b) "Service" - the readiness and ability on the part of Utility to furnish potable water to and to
collect wastewater from the property;
 - (c) "Point of Service" - generally, the point where the pipes or meters of Utility are connected
with pipes of Property Owner as further defined in Chapter 1 of the UPAP;
 - (d) "Equivalent Residential Connection (ERC)" - a system capacity equivalency unit which
corresponds to the peak demand of the 5/8" x 3/4" meter sub-category of the single-family
residential category of Customer usage. This system capacity equivalency unit is utilized to
establish the system demand for various sized connections for the purpose of assessing fees;
 - (e) "Mandatory Agreement Payment (MAP)" - twelve months of Guaranteed Revenue Fees
plus applicable Franchise Fees payable to Utility upon submission of an SDA or renewal
agreement for each ERC (or ERIC) represented in the Agreement;

Attachment # /

POTABLE WATER AND WASTEWATER

- (f) "Service Initiation" - the date a potable water meter or wastewater connection is requested;
 - (g) "Guaranteed Revenue Fee" - the fee designed to recover the carrying costs of system capacity which has been or is being constructed in anticipation of future service requests. Carrying costs include fixed operating and renewal and replacement expenses necessary to maintain excess system capacity for future use. Guaranteed Revenue does not recover variable operating expenses;
 - (h) "Total Accrued Amount (TAA)" - At the time of Service Initiation for each ERC, a TAA equal to sixty months of Guaranteed Revenue Fees plus applicable Franchise Fees at the then current rate minus the MAP paid per each ERC shall be due and payable for such ERC. The TAA for each ERC will be determined at the time of Service Initiation;
 - (i) "Standard Development Renewal Agreement (SDRA)" - an agreement between Utility and Property Owner extending the capacity reservation for unused ERCs/ERICs in a Standard Development Agreement for an additional five (5) years; and
 - (j) "Franchise Fee" - A percentage surcharge applied to all of the Utility's fees for Customers within portions of the Utility's Service Area with said fees collected by Utility and distributed to another governmental entity.
3. Property Owner hereby grants and gives to Utility the exclusive right and privilege to construct, own, maintain, operate and expand the potable water and wastewater facilities in, under, upon, over and across the present and future streets, roads, easements, reserved utility sites and public places as provided and dedicated to public use in the record plats, or as provided for in agreement, dedications or grants made otherwise and independent of said record plats. Utility covenants that it will use due diligence in ascertaining all easement locations; however, should Utility install any of its facilities outside a dedicated easement area, Property Owner covenants and agrees that Utility will not be required to move or relocate any facilities lying outside a dedicated easement area as long as the facilities do not interfere with the then or proposed use of the area in which the facilities have been installed. Property Owner hereby further agrees that the foregoing grants include the necessary rights of ingress and egress to any part of the Property which Utility requests for the maintenance, operation or expansion of the potable water and wastewater facilities; that in the event Utility is required or desires to install any of its potable water and wastewater facilities in lands within the Property lying outside the streets and easement areas described above, then Property Owner shall grant to Utility, without cost or expense to Utility, the necessary easement or easements for such installation; provided, all such installations by Utility shall be made in such a manner as not to interfere with the then primary use of such Property. Property Owner shall obtain written approval from Utility prior to installing any structure or object, including, but not limited to, fences, gates, signs, trees or poles, within an easement area. In consideration of Utility's consent to an encroachment, Property Owner shall agree to indemnify and hold Utility harmless 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 an encroachment approved by Utility. In the event Utility determines that it is necessary to construct, maintain, repair, remove, or replace any of its facilities located under, over or upon an easement, Property Owner shall immediately remove the encroachment from the easement upon the request of Utility at Property Owner's sole cost and expense. If Property Owner fails to remove the encroachment, Utility shall have the right to remove the encroachment from the easement. Property Owner shall pay all costs related to removing the encroachment from the easement incurred by Utility.

Property Owner, as further consideration of this Agreement, and in order to effectuate the foregoing grants to Utility, hereby places the following covenant, as a covenant running with the land, upon the Property and thereby subjecting it to a reservation, condition, limitation or restriction in favor of Utility, as follows:

Utility, or its successors, has the sole and exclusive right to provide all potable water and wastewater facilities and services to the Property described in **Exhibit "A"** and in addition to any property to which potable water and wastewater service is actually rendered by Utility. All occupants of any residence or non-residential improvement erected or located on the Property and all subsequent or future owners or purchasers of the Property, or any portion thereof, shall exclusively receive their potable water and wastewater service from the aforesaid Utility and shall pay for the

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same and shall abide by the terms and intent of this Agreement, and the UPAP, for as long as the aforesaid Utility provides such services to the property. Further, all occupants of any residence or non-residential improvement erected or located on the Property and all subsequent or future owners or purchasers of the property, or any portion thereof, agree, by occupying any premises on the Property or by recording any deed of conveyance with respect to the Property, that they will not construct or otherwise make available or use potable water and wastewater service from any source other than that provided by Utility.

Any water well or water source used solely for the purpose of supplying irrigation for the Property is excluded from this restriction unless the Property is required to utilize reclaimed water in accordance with the Palm Beach County Reclaimed Water Ordinance.

Further, in order to give an additional and supplementary notice to all the future Property Owners of any of the Property of the rights of Utility to provide the Property with potable water and wastewater facilities and services, Property Owner hereby covenants and agrees to have the above restrictive covenant or its equivalent included in the general subdivision restrictions and to place the same of record in the Public Records of Palm Beach County, Florida.

4. Upon the continued accomplishment of all the prerequisites contained in this Agreement to be performed by Property Owner, Utility covenants and agrees that it will allow the connection of the potable water distribution and wastewater collection facilities installed by Property Owner to the potable water and wastewater facilities of Utility in accordance with the terms and intent of this Agreement. Such connection shall be in accordance with rules, and regulations of the Health Department, the UPAP, and other governmental agencies having jurisdiction over the water supply and wastewater collection and disposal operation of Utility.
5. Property Owner is required to pay Guaranteed Revenue Fees plus applicable Franchise Fees in order to support investment in plant facilities, as well as the fixed costs of maintaining such facilities and the unused capacity it represents. Therefore, Property Owner agrees to pay in accordance with the UPAP:

- (a) a MAP per each ERC for the requested capacity upon submission of this Agreement; and
- (b) a TAA per each ERC for the requested capacity upon Service Initiation.

Utility has advised Property Owner that construction of additional potable water and wastewater facilities will be completed in phases designed to coincide with the need for service to Property Owner and other Property Owners in the service area. Utility should not be expected to provide service to connections in excess of those reserved as evidenced by proper payment of Guaranteed Revenue.

The MAP required upon submission of this Potable Water and Wastewater Agreement is:

Potable Water:	\$182.23 per ERC x	<u>16.25</u>	ERCs =	<u>\$2,961.24</u>
Wastewater:	\$255.78 per ERC x	<u>16.25</u>	ERCs =	<u>\$4,156.43</u>
			Franchise Fee	<u>\$0.00</u>
			TOTAL	<u><u>\$7,117.67</u></u>

Upon receipt of the MAP, Utility agrees to reserve 16.25 ERCs of Potable Water and Wastewater system capacity for Property Owner until **January 31, 2016**, which term may be extended in accordance with the UPAP, as may be amended from time to time, and upon payment of applicable fees. Property Owner acknowledges and agrees Utility shall not refund or reimburse the MAP upon expiration.

Property Owner acknowledges that it is the sole responsibility of Property Owner to provide payment of a new MAP at the then current fees thirty (30) days before the expiration of the original five-year term. Should multiple assignments exist for this Agreement, each assignee must submit the appropriate MAP for any unconnected ERCs related to the assignee's ERCs. Should Property Owner or assignee fail to submit a new MAP payment for their respective

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unconnected ERCs, Property Owner acknowledges and agrees that Utility may unilaterally execute a document evidencing termination and partial release of this Agreement except for the rights, duties, or obligations as set forth in Paragraphs 3, 4, 8, 9, 10, 13, and 14 of this Agreement and record the document in the public records of Palm Beach County, Florida.

At the time of Service Initiation, the applicable ERCs will be deducted from said reservation. Upon approval of Utility, the total number of ERCs may be increased up to 10% of the original reservation or by ten (10) ERCs, whichever is greater, by an amendment to this Agreement. The MAP required for the amendment shall be paid at the rate applicable to the original Agreement. Any amendments to the SDA shall be binding upon both Utility and Property Owner and subject to all applicable rules and regulations of Utility; however, any amendments will not extend the original five (5) year term of the Agreement. Any adjustment which is greater than that specified herein requires a new Agreement to be signed. Upon written notice to Utility, said ERCs may be adjusted downward however, no refund or credit will be given by Utility to Property Owner for said downward adjustment.

6. Property Owner hereby agrees to construct and to transfer ownership and control up to the Point of Service to Utility, at no cost, the on-site and off-site potable water distribution, and wastewater collection systems referred to herein. Upon acceptance of said facilities, Utility hereby agrees to accept ownership of the potable water and wastewater facilities for operation and maintenance purposes. Property Owner shall cause to be prepared engineering plans and specifications prepared by and sealed by a professional engineer registered in the State of Florida, showing the on-site and off-site potable water distribution and wastewater collection systems for the Property. Utility will advise Property Owner's engineer of any sizing requirements as mandated by the UPAP. Such detailed plans may be limited to a phase of the Property, and subsequent phases may be furnished from time to time. However, each such phase shall conform to a master plan for the development of the Property and such master plan shall be submitted to Utility concurrent with or prior to submission of plans for the first phase. All such plans and specifications, including hard copy and electronic media, submitted to Utility's engineer 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, Property Owner shall cause to be constructed, at Property Owner's expense, the potable water distribution, and wastewater collection systems as shown on the plans and specifications. Fees, as set forth in the UPAP, shall be levied by Utility to cover the cost of plan review and inspection. Property Owner shall also be required to pay Guaranteed Revenue Fees, Connection Fees, Installation Fees, and other fees as set forth in the UPAP.

During the construction of the potable water distribution and wastewater collection systems by Property Owner, 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 system has been installed in accordance with the approved plans and specifications and the UPAP. Inspection by Utility shall in no way relieve Property Owner of his 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 when utilized, shall be submitted to Utility upon completion of construction.

Property Owner hereby agrees to transfer to Utility title to all potable water distribution and wastewater collection systems installed by Property Owner's contractor pursuant to the provisions of this Agreement. Such conveyance is to take effect without further action upon the acceptance by Utility of the 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, Property Owner shall convey to Utility by Bill of Sale in a form supplied by Utility the complete on-site and off-site potable water distribution and wastewater collection system as constructed by Property Owner and approved by Utility, along with the required Cost Documentation and Property Owner's No Lien Affidavit. Subsequent to construction of the facilities and prior to receiving a meter(s) from Utility, Property Owner shall convey to Utility all easements and/or rights-of-way covering areas in which potable water and wastewater lines are installed by a recordable document in a form supplied by Utility. 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:

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- \$50.00 per linear foot of any granted utility easement (based on the centerline of the easement); and
- \$150,000 for a Utility-owned wastewater lift station (if not constructed within an existing utility easement).

Said title policy shall confirm the Grantor's rights 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. The use of easement(s) granted by Property Owner may be used by other utilities as long as such is approved by Utility. Utility's acceptance of the potable water distribution and wastewater collection system installed by Property Owner shall be in accordance with the provisions as set forth in the UPAP. All installations by Property Owner or its contractor shall be warranted for one year (or five years in the case of lift station pumps and motor assemblies) from date of Final DEP Certification. Mortgagees holding liens on such properties shall be required to release such liens, subordinate their position, or join in the granting of the easements or rights-of-way. All potable water distribution and wastewater collection facilities shall be located within an easement if not located within platted or dedicated rights-of-way.

Property Owner hereby agrees to pay to Utility Guaranteed Revenue Fees, Connection Fees, Service Installation Fees, Franchise Fees, and any other applicable fees as set forth in the UPAP at the then current rate.

The timely payment by Property Owner of all fees in accordance with the terms set forth herein shall be considered essential to the continued performance by Utility of the terms and conditions of this Agreement. The construction and transfer of ownership of the potable water distribution and wastewater collection system does not and will not result in Utility waiving or offsetting any of its fees, rules or regulations. Property Owner shall not have any present or future right, title, claim, or interest in and to the potable water and wastewater facilities transferred to or owned by Utility.

7. Upon submission of this Agreement, Property Owner, at his expense, agrees to furnish Utility with a copy of the recorded Warranty Deed for the purpose of establishing ownership of the Property. Any mortgagee or lien holder having an interest in the Property shall be required to execute a Consent and Joinder of Mortgagee/Lienholder as supplied by Utility. Property Owner must submit either a title policy or a letter from an attorney licensed to do business in Florida confirming that there is no mortgage or lien on the Property. The title policy or letter must be issued within thirty (30) days of submittal of the SDA.
8. Property Owner agrees with Utility that all potable water and wastewater facilities conveyed to Utility for use in connection with providing potable water and wastewater service to the Property, shall at all times remain in the complete and exclusive ownership of Utility, and any entity owning any part of the Property or any residence or building constructed or located thereon, shall not have the right, title, claim or interest in and to such facilities, or any part of them, for any purpose. In addition, Utility shall have the exclusive right and privilege to provide potable water and wastewater services to the Property and to the occupants of each residence or building constructed thereon.
9. Notwithstanding any provision in this Agreement, Utility may establish, revise, modify, and enforce rules, regulations, and fees covering the provision of potable water and wastewater 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 Property Owner or Customers located upon the Property shall be identical to fees charged for the same classification of service in the particular service area. All rules, regulations and fees as set forth in the UPAP, shall be binding upon Property Owner, upon any other entity holding by, through or under Property Owner, and upon any Customer of the potable water and wastewater service provided to the Property by Utility. Said rules and regulations include, but are not limited to, Service Initiation, oversizing of facilities, use of previously oversized facilities or extension of facilities. Any fee or rate delinquent more than 120 days will automatically void this Standard Development Agreement.

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10. Property Owner or his assignee shall not have the right to and shall not connect to the potable water and wastewater facilities of Utility 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 Property Owner or other than Utility.
11. Property Owner acknowledges and agrees that the transfer or assignment of this Agreement upon the sale, conveyance, transfer or assignment of the Property, or any portion thereof, as described in Exhibit "A" of this Agreement by Property Owner shall only be performed in accordance with the provisions of UPAP. Property Owner further acknowledges and agrees that documenting the transfer or assignment of this Agreement in a form acceptable to Utility is the sole responsibility of Property Owner. Failure to provide documentation to Utility of an assignment or transfer within thirty (30) days after the sale, conveyance, transfer, or assignment of the Property, or any portion thereof, may result in the cancellation of the capacity reserved and/or loss of the Mandatory Agreement Payment identified herein.
12. All notices provided for herein shall be in writing and transmitted by mail or by courier and, if to Property Owner shall be mailed or delivered to Property Owner at:

2815 S. Seacrest Blvd., Boynton Beach, FL 33435

and if to Utility, shall be mailed to Palm Beach County Water Utilities Department Contract Management Section, P.O. Box 16097, West Palm Beach, FL 33416-6097.

13. The rights, privileges, obligations, and covenants of Property Owner and Utility shall survive the completion of the work of Property Owner with respect to completing the potable water and wastewater facilities and services to any phased area and to the Property as a whole.
14. Unless Property Owner is requesting additional capacity for the property described in Exhibit "A", this Agreement shall supersede, null and void, all previous agreements or representations, either verbal or written, heretofore in effect between Property Owner and Utility, made with respect to the matter herein contained, and when duly executed, constitutes the entire agreement between Property Owner and Utility. 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, alterations, variations or waiver are expressed in writing and duly signed by the parties hereto. 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.
15. **Inspector General.** 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 Palm Beach County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud.
16. Additional Conditions: None

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

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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:

Nancy M. May
Signature
NANCY M. MAY

Typed or Printed Name

Anna M. Daniels
Signature
ANNA M. DANIELS

Typed or Printed Name

PALM BEACH COUNTY

By: [Signature]
County Administrator or Designee

WITNESSES:

Yvonne Smith
Signature
Yvonne Smith

Typed or Printed Name

Gary Ritson
Signature
GARY RITSON

Typed or Printed Name

PROPERTY OWNER:

By: Robert B. Hill
Signature
Robert B. Hill
Typed or Printed Name
President & CEO
Title

{ Corporate Seal }

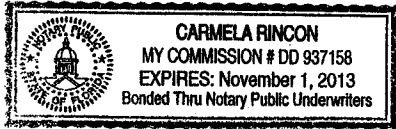
NOTARY CERTIFICATE

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 5th day of JANUARY 2011 by ROBERT B. HILL. He/she is personally known to me or has produced _____ as identification.

My Commission Expires: 11-1-2013

Carmela Rincon
Signature of Notary
CARMELA RINCON
Typed, Printed, or Stamped Name of Notary



Notary Public
Serial Number DD 937158

WATER UTILITIES DEPARTMENT APPROVAL

By: Debra M. Vest
Director of Finance and Administration
PBC Water Utilities Department

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: [Signature]
County Attorney

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**EXHIBIT "A"
LEGAL DESCRIPTION**

PARCEL ONE:

A PARCEL OF LAND LYING IN BLOCK 51 OF PALM BEACH FARMS COMPANY PLAT NO.3 AS SAID PLAT IS RECORDED IN PLAT BOOK 2 AT PAGES 45 THROUGH 54 INCLUSIVE OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: THE WEST 1/2 OF TRACT 98 AND ALL OF TRACT 99, SUBJECT TO THE LAKE WORTH DRAINAGE DISTRICT RIGHT-OF-WAY FOR CANAL E-1, IF ANY.

TOGETHER WITH TRACT 101, LESS THE SOUTH 230.0 FEET THEREOF AND LESS THE WEST 258.35 FEET OF SAID TRACT 101 LYING WEST OF THE FOLLOWING DESCRIBED LINE: COMMENCING AT THE NORTHWEST CORNER OF SAID TRACT 101; THENCE NORTH 89°04'52" EAST, ON AN ASSUMED BEARING, ALONG THE NORTH LINE OF TRACT 101, A DISTANCE OF 258.35 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 1°00'49" EAST, A DISTANCE OF 429.74 FEET TO AN INTERSECTION WITH A LINE 230.0 FEET NORTH OF, AS MEASURED AT RIGHT ANGLES, AND PARALLEL WITH THE SOUTH LINE OF TRACT 101, SAID INTERSECTION BEING THE POINT OF ENDING.

TOGETHER WITH THE WEST 1/2 OF TRACT 102, LESS THE SOUTH 91.0 FEET THEREOF AND LESS THE NORTH 200.0 FEET OF THE SOUTH 230.0 FEET OF THE WEST 24.34 FEET THEREOF.

ALL LYING AND BEING IN SAID BLOCK 51 OF PALM BEACH FARMS COMPANY PLAT NO.3.

PARCEL TWO:

THE EAST 1/2 OF TRACT 97 AND THE EAST 1/2 OF TRACT 102, BLOCK 51 OF THE PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGES 45 TO 54 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LESS THE SOUTH 91.0 FEET THEREOF.

PARCEL THREE:

TRACTS 96 AND 103, BLOCK 51, OF PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGES 45-54 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LESS THE SOUTH 91.0 FEET THEREOF.

PARCEL FOUR:

THE WEST 1/2 OF TRACT 97 AND THE EAST 1/2 OF TRACT 98, BLOCK 51, OF THE PALM BEACH FARMS COMPANY PLAT NO. 3, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGES 45 TO 54 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

PARCEL FIVE:

TRACT 100, LESS THE SOUTH 10 FEET THEREOF, BLOCK 51, THE PALM BEACH FARMS CO. PLAT NO.3, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 2, PAGES 45 TO 54, INCLUSIVE OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA;

LESS AND EXCEPT THE FOLLOWING DESCRIBED LAND, WHICH WAS VESTED IN THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION BY THE ORDER OF TAKING RECORDED IN OFFICIAL RECORDS BOOK 10684, PAGE 85, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA:

A PORTION OF TRACT 100, BLOCK 51, THE PALM BEACH FARMS CO. PLAT NO. 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 45 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING IN SECTIONS 19 AND 30, TOWNSHIP 45 SOUTH RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

POTABLE WATER AND WASTEWATER

COMMENCE AT A FOUND PALM BEACH COUNTY BRASS DISC IN CONCRETE MARKING THE SOUTHWEST CORNER OF SAID SECTION 19; THENCE NORTH 89°02' 01" EAST, A DISTANCE OF 1.308 METERS (4.29 FEET) TO A POINT ON THE BASELINE OF SURVEY FOR STATE ROAD 7 (U.S. 441) AS SHOWN ON THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MAP FOR SECTION 93210-2524; THENCE SOUTH 00°57'59" EAST ALONG SAID BASELINE OF SURVEY, A DISTANCE OF 44.080 METERS (144.62 FEET) TO A POINT ON THE BASELINE OF SURVEY FOR STATE ROAD 804 (BOYNTON BEACH BOULEVARD) AS SHOWN ON SAID MAP; THENCE NORTH 89°06'26" EAST ALONG SAID BASELINE OF SURVEY, A DISTANCE OF 24.281 METERS (79.66 FEET); THENCE NORTH 00°53'34" WEST AT A RIGHT ANGLE FROM THE LAST DESCRIBED COURSE, A DISTANCE OF 6.096 METERS (20.00 FEET) TO A POINT ON THE NORTHERLY EXISTING RIGHT OF WAY LINE FOR SAID STATE ROAD 804 (BOYNTON BEACH BOULEVARD) AND THE POINT OF BEGINNING; THENCE NORTH 00°57'53" WEST, A DISTANCE OF 67.056 METERS (220.00 FEET); THENCE NORTH 89°06'26" EAST, A DISTANCE OF 207.268 METERS (680.01 FEET) TO A POINT ON THE EAST LINE OF SAID TRACT 100; THENCE SOUTH 00°57'53" EAST ALONG SAID EAST LINE, A DISTANCE OF 67.056 METERS (220.00 FEET) TO A POINT ON THE NORTHERLY EXISTING RIGHT OF WAY LINE FOR SAID STATE ROAD 804 (BOYNTON BEACH BOULEVARD); THENCE SOUTH 89°06'26" WEST ALONG SAID NORTHERLY EXISTING RIGHT OF WAY LINE AND A LINE 6.096 METERS (20.00 FEET) NORTH OF AND PARALLEL WITH SAID BASELINE OF SURVEY, A DISTANCE OF 207.268 METERS (680.01 FEET) TO THE POINT OF BEGINNING.

SUBJECT TO RESERVATIONS, EASEMENTS AND RESTRICTIONS OF RECORD.

CONTAINING: **58.83 ACRES**, MORE OR LESS.

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INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("Agreement") is made and entered into this 3 day of January, 2011 by and between Woodwind 2007 LLC, a Florida Limited Liability Company (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 Jack and Bore water and sewer lines under State Road 7 ("Utility Facilities")(WUD Project No. 09-552); and

WHEREAS, the Florida Department of Transportation 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. **INDEMNIFICATION.** 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 Florida Department of Transportation or its demands in connection with the work contemplated by the Utility Permits. If a demand

PBC WATER UTILITIES

DEC 29 2010

ENGINEERING

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 **Notice.** 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: Woodward 2007 LLC
701 South Olive Avenue
Suite 104
West Palm Beach, FL 33401

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 **Headings.** 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 **Counterparts.** 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 indicated above.

INDEMNITOR:

WITNESSES:

Signed, sealed and delivered
in the presence of:

OWNER:

[Signature]
Witness Signature

SCOTT MORTON
Print Name

[Signature]
Witness Signature

MICHELE SUGDEN
Print Name

[Signature]
Signature

Michael Clarke
Print Name

Manager
Title

Woodwind 2007 LLC
Company Name

(SEAL)

NOTARY CERTIFICATE

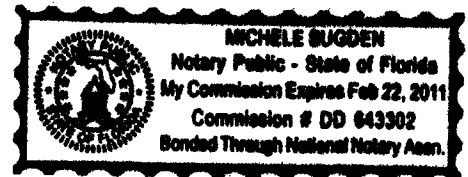
STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 28 day of
DECEMBER, 2010 by MICHAEL CLARKE and
who is/are personally known to me or who
has produced _____ as identification.

My Commission Expires: Feb 22, 2011

[Signature]
Notary Signature

MICHELE SUGDEN
Typed, Printed or Stamped Name of Notary



IN WITNESS WHEREOF, the Owner has executed this Agreement as of the date first above written.

WITNESSES:

OWNER:

Signed, sealed and delivered
in the presence of:

Witness Signature

Print Name

Witness Signature

Print Name

Print Name

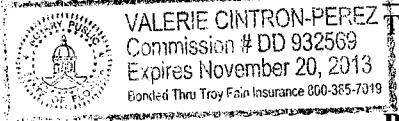
NOTARY CERTIFICATE

STATE OF _____
COUNTY OF _____

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

My Commission Expires: 11/20/2013

Valerie Cintron-Perez
Signature of Notary



Typed, Printed or Stamped Name of Notary

WITNESSES:

Signed in the presence of:

Adam Galicki
Witness

ADAM GALICKI
Print Name

Brian Shields
Witness Signature

Print Name

PALM BEACH COUNTY, FLORIDA, ON
BEHALF OF ITS BOARD OF COUNTY
COMMISSIONERS

By: *Greg Bevan*
County Administrator or Designee

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: *[Signature]*
County Attorney