

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: November 15, 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: executed Agreements received during the month of August 2011:

A) Indemnification Agreement with Groves Medical Plaza, LLC, a Florida Limited Liability Company (WUD # 07-004) District 6 (MJ); and

B) Indemnification Agreement with Colonial Lakes Apartments, LTD (WUD #11-523) District 2 (MJ).

**Summary:** In accordance with County PPM CW-0-051, all delegated contracts/agreements/grants/procurement items must be submitted by the initiating Department as a receive and file agenda item. The attached Standard Development Agreement 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.**

**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).

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. One (1) Original Indemnification Agreement with Groves Medical Plaza, LLC
2. One (1) Original Indemnification Agreement with Colonial Lakes Apartments, LTD

Recommended By: \_\_\_\_\_

Department Director

10/20/11

Date

Approved By: \_\_\_\_\_

Assistant County Administrator

11-8-11

Date

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
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: Delia M. West

## III. REVIEW COMMENTS

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

[Signature] 10/25/11  
OFMB  
10/24/11  
11/1/11

[Signature] 10/26/11  
Contract Development and Control

### B. Legal Sufficiency:

[Signature]  
Assistant County Attorney  
11/3/11

\* File contains documentation  
from notary related to  
notary signature.

### C. Other Department Review:

\_\_\_\_\_  
Department Director

## INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("Agreement") is made and entered into this 4<sup>th</sup> day of August, 2011 by and between Groves Medical Plaza, 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 20' of 10" DIP water main, 350' of 10" PVC forcemain, 155' of 4" PVC forcemain, 106' of 6" DIP forcemain including 130' of 14" steel casing for a jack and bore underneath SR 80 at the F Road intersection in Loxahatchee Groves ("Utility Facilities") (WUD Project No. 07-004); 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 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: Groves Medical Plaza, LLC  
c/o George W. Fowler Company, LLC  
7934 SE Country Estates Way  
Jupiter, FL 33458

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.
- 4.8 **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 PBC, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud.

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:

Caryn Hobbs  
Witness Signature

Caryn Hobbs  
Print Name

Kyle Stagle  
Witness Signature

Kyle Stagle  
Print Name

OWNER:

Douglas B. Porter  
Signature

Douglas B. Porter  
Print Name

Manager  
Title

Groves Medical Plaza, LLC  
by: George W. Fowler Company, LLC, Its Managing Member  
Company Name

(SEAL)

NC  
STATE OF ~~FLORIDA~~  
COUNTY OF ~~PALM BEACH~~

NOTARY CERTIFICATE

Avery  
The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of August, 2011 by \_\_\_\_\_ and \_\_\_\_\_ who is/are personally known to me or who has produced \_\_\_\_\_ as identification.

My Commission Expires:

Crystal D. Wise  
Notary Signature

Crystal D. Wise  
Typed, Printed or Stamped Name of Notary

MY COMMISSION EXPIRES 8-27-2012

**ACCEPTANCE**

COUNTY does hereby accept the foregoing Agreement as a condition of entering into the Utility Permits as a Permittee, this 23 day of September, 2011.

**WITNESSES:**

John Roberts  
Witness Signature

John Roberts  
Typed or Printed Name

Valerie Cintron-Perez  
Witness Signature

Valerie Cintron-Perez  
Typed or Printed Name

**PALM BEACH COUNTY**

By: Burt Ben  
County Administrator or Designee

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**WATER UTILITIES DEPARTMENT APPROVAL**

By: Delia M. West  
Director of Finance and Administration  
PBC Water Utilities Department

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

By: \_\_\_\_\_  
County Attorney

## INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("Agreement") is made and entered into this 15<sup>th</sup> day of August, 2011 by and between Colonial Lakes Apartments,, a LTD (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 sanitary forcemain and watermain ("Utility Facilities")(WUD Project No. 11-523); and

WHEREAS, the FDOT 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 FDOT 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 **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: Colonial Lakes Apartments, LTD  
477 South Rosemary Avenue  
West Palm Beach, FL 33401

With a copy to: Broad and Cassel  
7777 Glades Road  
Suite 300  
Boca Raton, FL 33434

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.
- 4.8 **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 PBC, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud.

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

INDEMNITOR:

COLONIAL LAKES APARTMENTS, LTD., a  
Florida limited partnership

WITNESSES:

Signed, sealed and delivered  
in the presence of:

Jesse Worpe  
Witness Signature

Jesse Worpe  
Print Name

Damon Kouz  
Witness Signature

DAMON KOUZ  
Print Name

By: Colonial Lakes Apartments GP, LLC,  
a Florida limited liability company, its  
general partner

By: TRG Member of FL I, LLC, a  
Florida limited liability  
company, its sole member

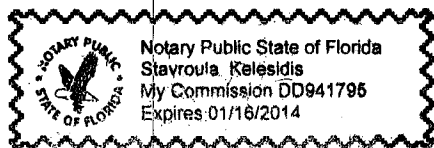
William T. Fabbri  
By: William T. Fabbri  
Executive Vice President

(SEAL)

NOTARY CERTIFICATE

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of August, 2011, by William T. Fabbri, as Executive Vice President of TRG Member of FL I, LLC, a Florida limited liability company, as sole member of Colonial Lakes Apartments GP, LLC, a Florida limited liability company, as general partner of Colonial Lakes Apartments, Ltd., a Florida limited partnership who is personally known to me or who has produced \_\_\_\_\_ as identification.



Stavroula Kelesidis  
Notary Signature

Stavroula Kelesidis  
Typed, Printed or Stamped Name of Notary

My Commission Expires: 1/16/2014

**ACCEPTANCE**

COUNTY does hereby accept the foregoing Agreement as a condition of entering into the Utility Permits as a Permittee, this 23 day of September, 2011.

**WITNESSES:**

John Roberts  
Witness Signature

John Roberts  
Typed or Printed Name

Valerie Cintron-Perez  
Witness Signature

Valerie Cintron-Perez  
Typed or Printed Name

**PALM BEACH COUNTY**

By: [Signature]  
County Administrator or Designee

**WATER UTILITIES DEPARTMENT APPROVAL**

By: Delura M West  
Director of Finance and Administration  
PBC Water Utilities Department

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

By: \_\_\_\_\_  
County Attorney