

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

| | | | |
|-----------------------|-----------------------------------|---------------------------|--------------------|
| Meeting Date: | January 24, 2012 | 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: an executed Indemnification Agreement with API Cameron Park, LLC, a Delaware Limited Liability Company received during the month of October 2011.

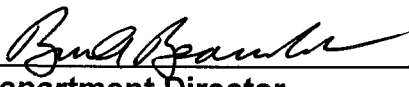

Summary: In accordance with County PPM CW-0-051, all delegated contracts/agreements/grants/procurement items must be submitted by the initiating Department as a receive and file agenda item. The attached Indemnity Agreement have been fully executed on behalf of the Board of County Commissioners (Board) 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. (WUD #11-542) District 5 (MJ) **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 API Cameron Park, LLC

| | | |
|-----------------|---|----------------|
| Recommended By: |  | <u>12/8/11</u> |
| | Department Director | Date |
| Approved By: |  | <u>1/5/12</u> |
| | Assistant County Administrator | 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: Debra M. West

III. REVIEW COMMENTS

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

[Signature] 12/24/11
OFMB
12/24/11

[Signature] 12/28/11
Contract Development and Control
12-28-11 B. Wheeler

B. Legal Sufficiency:

[Signature] 1/5/11
Assistant County Attorney

C. Other Department Review:

Department Director

INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("Agreement") is made and entered into this 31 day of OCTOBER 2011 by and between API Cameron Park, LLC a Delaware Limited Liability (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 a water main crossing of Atlantic Avenue at Sims Rd. ("Utility Facilities") (WUD Project No. 11-542); and

WHEREAS, the Florida D.O.T. 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 DOT 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: API Cameron Park LLC
C/O Archstone, ATTN: Legal
9200 E. Panorama Circle
Englewood, CO 80112

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.

ACCEPTANCE

COUNTY does hereby accept the foregoing Agreement as a condition of entering into the Utility Permits as a Permittee, this 31 day of OCTOBER, 2011.

WITNESSES

Adam Galicu
Witness Signature

ADAM GALICU
Typed or Printed Name

John Roberts
Witness Signature

John Roberts
Typed or Printed Name

PALM BEACH COUNTY

BY: *[Signature]*
County Administrator or Designee

WATER UTILITIES DEPARTMENT APPROVAL

By: *Debra Moxet*
Director of Finance and Administration
PBC Water Utilities Department

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: *[Signature]*
County Attorney