

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: **March 20, 2012** Consent Regular
Public Hearing

Department: **Water Utilities Department**

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: an executed Indemnity Agreement with Delray Beach Associates I, LLC, a Florida Limited Liability Company received during the month of December 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 has 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 is now being submitted to the Board to receive and file. District 5 (MJ) Original documents can be viewed in Minutes.

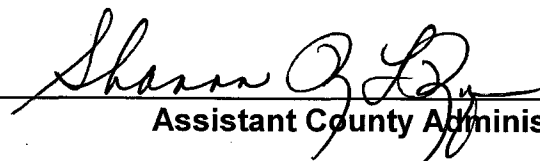
Background and Justification: Water Utilities Department's Uniform Policies and Procedures require Standard Development Agreements to obtain concurrency for water and/or wastewater service. The terms and conditions for Standard Development Agreements are outlined in the Water Utilities Department's Uniform 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 Indemnity Agreement with Delray Beach Associates I, LLC

Recommended By:  3/8/12
Department Director Date

Approved By:  3-9-12
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]
 OFMB
2/5/12 2/15/12

[Signature] 3/6/12
 Contract Development and Control

B. Legal Sufficiency:

[Signature] 3/7/12
 Assistant County Attorney

C. Other Department Review:

 Department Director

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

CFN 20120017661
OR BK 24959 PG 1821
RECORDED 01/17/2012 11:07:14
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 1821 - 1823; (3pgs)

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT made and entered into this 8th day of December, 2011, by and between **DELRAY BEACH ASSOCIATES I, LLC**, a Florida limited liability company (hereinafter referred to as "Indemnitor"), whose address is 1600 Sawgrass Corporate Parkway, Suite 400, Sunrise, Florida 33323, and Palm Beach County, (hereinafter referred to as "County"), whose address is c/o Palm Beach County Water Utilities Department, P. O. Box 16097, West Palm Beach, Florida 33416-6097.

WITNESSETH

WHEREAS, Indemnitor holds title to a certain parcel of real property more particularly described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

(hereinafter referred to as the "Property"); and

WHEREAS, a Potable Water & Wastewater Development Agreement for the Property was entered into on July 18, 2005 (SDA # 03-01020-001), (hereinafter referred to as "Agreement"); and

WHEREAS, all or portions of the potable water and wastewater ERC capacity provided for in the Agreement have not been used on the Property; and

WHEREAS, Indemnitor wishes to use the unused ERCs provided in the Agreement; and

WHEREAS, Indemnitor wishes to indemnify the County in as set forth herein.

NOW THEREFORE, for and in consideration of the covenants set forth herein, Indemnitor hereby agrees as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference.
2. Indemnitor may use 385.80 potable water ERCs and 385.80 wastewater ERCs which were reserved in the Agreement and have not been used on the Property, in accordance with the terms and conditions of the Agreement.
3. Indemnitor, its successor, heirs and/or assigns, hereby agrees to indemnify, release and hold County harmless from and against any and all liabilities, damages, penalties, claims, costs, and expenses whatsoever, including attorney's fees at all levels, which may be imposed upon or asserted against County as a result of or in any way connected to County approving and accepting Indemnitor to use the unused ERCs from the Agreement.
4. This Indemnification Agreement shall not extend the term of the Agreement, and this Indemnification Agreement shall survive the termination of the Agreement.
5. This Indemnity Agreement shall be binding upon Indemnitor, its heirs, successors, legal representatives and assigns. This Agreement will run with the land and shall be recorded in the Public Records of Palm Beach County, Florida.

(The remainder of this page intentionally left blank)

FROM SDA #: 03-01020-002
TO SDA #: 03-01020-003

IN WITNESS WHEREOF, the parties have caused this Indemnification Agreement to be executed on the day and year first written above.

WITNESSES:

Nancy M May
Witness Signature

NANCY M. MAY
Typed or Printed Name

Judy D. Provence
Witness Signature

Judy D. Provence
Typed or Printed Name

PALM BEACH COUNTY

By: [Signature]
County Administrator or Designee

WITNESSES:

[Signature]
Witness Signature

Clayton Ratliff
Typed or Printed Name

[Signature]
Witness Signature

Steven Helfman
Typed or Printed Name

INDEMNITOR:

DELRAY BEACH ASSOCIATES I, LLC,
a Florida limited liability company

By: [Signature]
Signature

Vice President
Title

N. Maria Menendez
Typed or Printed Name

{ Corporate
Seal }

NOTARY CERTIFICATE

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 8th day of December, 2011 by N. Maria Menendez, Vice President of DELRAY BEACH ASSOCIATES I, LLC, a Florida limited liability company, on behalf of the company. She is personally known to me or has produced _____ as identification.

[Signature]
Signature of Notary



Typed, Printed, or Stamped Name of Notary

Notary Public

Serial Number

WATER UTILITIES DEPARTMENT APPROVAL

By: [Signature]
Director of Finance and Administration
PBC Water Utilities Department

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: [Signature]
County Attorney

EXHIBIT A

Property Legal Description

A certain parcel of land lying in Section 17, Township 46 South, Range 42 East, Palm Beach County, Florida, said parcel also lying in Block 17, PALM BEACH FARMS COMPANY PLAT NO. 1, as recorded in Plat Book 2, Pages 26 through 28, of the Public Records of Palm Beach County, Florida, said Parcel being more particularly described as follows:

Commencing at the calculated West one-quarter (1/4) corner of aforesaid Section 17 as per the Palm Beach County Survey Department Sectional Breakdown of said Section 17; thence North 89° 27' 41" East, along the East West one quarter (1/4) Section line of Section 17, a distance of 166.54 feet to a point on the West line of Block 17; thence North 01° 03' 00" West, a distance of 7.91 feet to the Point of Beginning, being on the South line of Lake Worth Drainage District (LWDD) L-33 Canal as per Chancery Case 407 (Official Records Book 6495, Page 761), the North 35.64 feet of Tracts 73 through 80, Block 17; thence North 89° 01' 50" East, along the South line of said North 35.64 feet of Tracts 73 through 80, a distance of 2605.95 feet to a point on the West line of the East 40.00 feet of the Tracts 73, 88, 105 and 120, said line also being the Westerly Right of Way line of Starkey Road per Deed Book 716, Page 592, of the Public Records of Palm Beach County, Florida; thence South 01° 07' 06" East along said West Right of Way line, a distance of 2638.30 feet; thence South 44° 05' 28" West, a distance of 56.77 feet to a point on a line which lies 110.00 feet North of, and parallel to, the South line of the Southeast 1/4 of Section 17; thence South 89° 18' 02" West, along said parallel line, a distance of 182.45 feet to a point which lies 110.00 feet North of, and parallel to, the Southwest 1/4 of Section 17; thence North 89° 58' 59" West, along said parallel line, a distance of 1990.96 feet; thence North 00° 01' 01" East, a distance of 4.00 feet to a point on a line which lies 114.00 feet North of, and parallel to the Southwest 1/4 of Section 17; thence North 89° 58' 59" West, along said parallel line, a distance of 53.83 feet to a point on the West line of Tract 114, Block 17, aforesaid PALM BEACH FARMS COMPANY PLAT NO. 1; thence North 01° 01' 05" West, along said West Tract line, a distance of 440.36 feet to a point on the South line of the North 240.00 feet of said Tract 113, Block 17, PALM BEACH FARMS COMPANY PLAT NO. 1; thence South 89° 09' 51" West, along said South line of the North 240.00 feet of said Tract 113, a distance of 342.29 feet to a point on the centerline of a 30 foot wide platted road easement as shown on the aforementioned Plat of PALM BEACH FARMS COMPANY PLAT NO. 1, said line being the West line of said Block 17; thence along said Block line North 01° 03' 00" West, a distance of 2197.19 feet to the Point of Beginning.