

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

**Meeting Date:** August 13, 2013

**Consent** [X]  
**Public Hearing** []

**Regular** []

**Department:** Water Utilities Department

**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to receive and file: Two (2) executed Agreements received during the months of June and July 2013.

- A) Indemnification Agreement with DG Belle Glade, LLC (District 6); and
- B) Indemnification Agreement with Hazara Enterprises, Inc. (District 3)

**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 documents 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. Districts 3 and 6 (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 attached Agreements 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:**

- A) One (1) Original Indemnification Agreement with DG Belle Glade, LLC
- B) One (1) Original Indemnification Agreement with Hazara Enterprises, Inc.

Recommended By: \_\_\_\_\_  
Department Director

7/31/13  
Date

Approved By: \_\_\_\_\_  
Assistant County Administrator

8-5-13  
Date

**II, FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2013	2014	2015	2016	2017
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>
<b>NET FISCAL IMPACT</b>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<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 X

Reporting Category N/A

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

No Fiscal Impact

**C. Department Fiscal Review:** See memo

**III. REVIEW COMMENTS**

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

[Signature] 8/1/2013  
OFMB 28/11

[Signature] 8/1/13  
Contract Development and Control  
7-31/13 B. B. B.

**B. Legal Sufficiency:**

[Signature] 8/5/13  
Assistant County Attorney

**C. Other Department Review:**

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

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

**INDEMNIFICATION AGREEMENT**

This Indemnification Agreement ("Agreement") is made and entered into this 22<sup>ND</sup> day of JUNE, 2013 by and between DG BELLE GLADE, LLC, a limited liability corporation (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 one 6"x6" tapping sleeve with 6" gate valve and 3 LF of 6" water main ("Utility Facilities") (WUD Project No. 13-801); 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: **DG BELLE GLADE, LLC**  
**225 Water Street, Suite 1800**  
**Jacksonville, FL 32202**

With a copy to:

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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:

Sheena J. Markin  
Witness Signature

Sheila J. MacRae  
Print Name

[Signature]  
Witness Signature

JANE DIXON  
Print Name

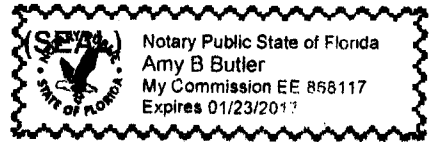
**OWNER:**

[Signature]  
Signature

G. Albertelli  
Print Name

Mgr Mgr.  
Title

DG BELLE GLADE, LLC  
Company Name



**NOTARY CERTIFICATE**

STATE OF FLORIDA  
COUNTY OF PALM BEACH Duval

The foregoing instrument was acknowledged before me this 17th day of June, 2013 by George Albertelli and [Signature] who is/are personally known to me or who has produced \_\_\_\_\_ as identification.

My Commission Expires:

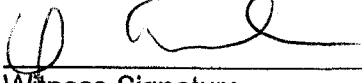
[Signature]  
Notary Signature

Amy B Butler  
Typed, Printed or Stamped Name of Notary


**ACCEPTANCE**

COUNTY does hereby accept the foregoing Agreement as a condition of entering into the Utility Permits as a Permittee, this 23 day of July, 2013

**WITNESSES:**

  
\_\_\_\_\_  
Witness Signature

Wendy E. Mundell  
Typed or Printed Name

  
\_\_\_\_\_  
Witness Signature


Valerie Cintron-Perez  
Typed or Printed Name

**PALM BEACH COUNTY**

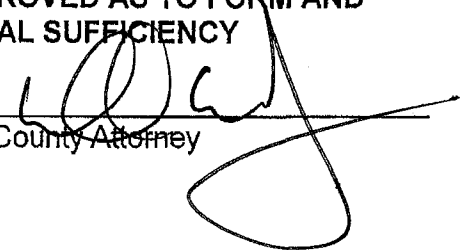
By:   
\_\_\_\_\_  
County Administrator or Designee

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**WATER UTILITIES DEPARTMENT APPROVAL**

By:   
\_\_\_\_\_  
Director of PBC Water Utilities Department

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

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

PBC WATER UTILITIES

JUN 20 2013

ENGINEERING

EXHIBIT "KK"

INDEMNIFICATION AGREEMENT

PBC WATER UTILITIES

JUN 20 2013

ENGINEERING

This Indemnification Agreement ("Agreement") is made and entered into this 1<sup>ST</sup> day of July, 2013 by and between Hazara Enterprises, Inc., a Florida Corporation (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 temporary 2" force main ("Utility Facilities") (WUD Project No. 13-542); 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 County.

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:

County: 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: Hazara Enterprises, Inc.  
Attn: Hassan Khan  
2981 Lake Worth Road  
Lake Worth, FL 33461

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.** Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421-2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Indemnitor, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and 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:

RAA  
Witness Signature

RICHARD A. ACKNER  
Print Name

Suzanne Schaeffer  
Witness Signature

Suzanne Schaeffer  
Print Name

**OWNER:**

Hassan Khan  
Signature

Hassan Khan  
Print Name

PRESIDENT  
Title

Hazara Enterprises, Inc.  
Company Name

(SEAL)

**NOTARY CERTIFICATE**

**STATE OF FLORIDA  
COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me this 18 day of JUNE, 2013 by HASSAN KHAN and \_\_\_\_\_ who is/are personally known to me or who has produced \_\_\_\_\_ as identification.

My Commission Expires:

Robbyn L Ackner  
Notary Signature

Typed, Printed or Stamped Name of Notary



**ACCEPTANCE**

COUNTY does hereby accept the foregoing Agreement as a condition of entering into the Utility Permits as a Permittee, this 01 day of JULY, 2013.

**WITNESSES:  
PALM BEACH COUNTY**

Adam Galicci  
Witness Signature  
Administrator or Designee

By: [Signature]  
County

ADAM GALICCI  
Typed or Printed Name

Becky L. Salinas  
Witness Signature

Becky L. SALINAS  
Typed or Printed Name

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**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