

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

Meeting Date:	June 23, 2015	Consent [X]	Regular []
Department:	Water Utilities Department	Public Hearings []	

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: **A)** a Temporary License Agreement with the Seminole Improvement District (District); and **B)** delegation of authority to the County Administrator, or his designee, to execute any and all documents necessary to carry out the closing of the Phase 2 transfer of facilities from the District to the County.

Summary: On April 18, 2006, the Board of County Commissioners (BCC) approved an Interlocal Agreement (R2006-0732) with the District relating to a number of water and wastewater issues, including the phased transfer of the responsibility for the provision of water and wastewater services to customers located outside of the District boundaries (Outside Customers) from the District to the County. The Agreement provides for the discontinuance of service to Outside Customers by the District to be conducted in two (2) phases. Phase 1 was completed in 2006 and required the District to cease the addition of any new Outside Customers. Phase 2 requires the District to completely cease service to all existing Outside Customers and to transfer all District-owned water and wastewater facilities located outside District boundaries to the County (with the exception of one pipeline to be retained by the District for future reclaimed water supply). With the initiation of Phase 2, the County is obligated to provide service to all Outside Customers in an expeditious manner. In order to provide water and wastewater services to Outside Customers in an expeditious manner, it is necessary for the County to temporarily utilize a segment of potable water pipeline owned by the District and located within the District's right-of-way (ROW). The Temporary License Agreement grants the County the necessary rights, and will expire once the County has made the necessary modifications to its own facilities to provide the service. While certain documents required for the transfer of facilities and customer accounts from the District to the County were previously approved by the BCC and/or provided by the District, staff recommends the delegation of authority in case any additional closing documents are necessary or if modifications to the existing closing documents are required. District 6 (MJ)

Background and Justification: The Interlocal Agreement (Agreement) approved by the BCC between the County and the District (R2006-0732) resolved service area disputes and outlined bulk utility service provisions. In order to achieve service to all Outside Customers, the County needs to temporarily utilize a segment of potable water pipeline owned by the District. The Temporary License Agreement will grant the County rights to utilize a segment of potable water pipeline owned by the District and located within the District's ROW until the County has completed its own facilities. Staff is also recommending the delegation of authority for any additional closing documents necessary or if modifications to the existing closing documents are required.

Attachment:

1. Three (3) Original Temporary License Agreement

Recommended By: Jim Stiles
Department Director

6-5-15
Date

Approved By: [Signature]
Assistant County Administrator

6/16/15
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	(\$134,880)	0	0	0	0
External Revenues	\$598,591	\$111,076	\$114,409	\$117,841	\$121,376
Operating Expenses	0	0	0	0	0
In-Kind Match County	0	0	0	0	0
NET FISCAL IMPACT	\$463,711	\$111,076	\$114,409	\$117,841	\$121,376
# ADDITIONAL FTE POSITIONS (Cumulative)	0	0	0	0	0

Budget Account No.: Fund 4011 Dept 721 Unit W035 Objt 6545 Cap expend
Budget Account No.: Fund 4000 Dept 720 Unit 4200 Rev Src 6992 Ext revenue

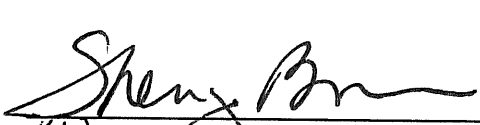
Is Item Included in Current Budget? Yes No Reporting Category N/A

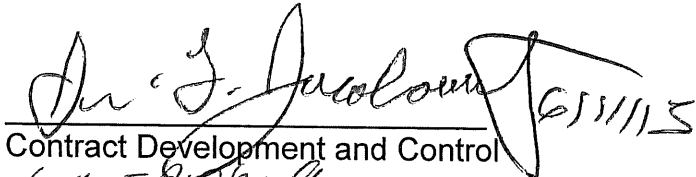
B. Recommended Sources of Funds/Summary of Fiscal Impact:
The expenditures from the agreement will be funded by Water Utility Department user fees. The revenues are Water Utility Department user fees which will help fund utility operations.

C. Department Fiscal Review: Selma Morrist

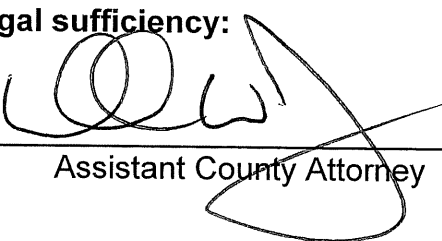
III. REVIEW COMMENTS

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



OFMB
6/8 6/9


Contract Development and Control
6-11-15 Dr. Jacobson

B. Legal sufficiency:


Assistant County Attorney
6/11/15

C. Other Department Review:


Department Director

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

TEMPORARY LICENSE AGREEMENT

THIS TEMPORARY LICENSE AGREEMENT, made and entered into this ____ day of _____ 2015, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "County" and the SEMINOLE IMPROVEMENT DISTRICT, hereinafter referred to as "District".

WITNESSETH:

WHEREAS, County and District entered into an Interlocal Agreement Regarding Sale of Bulk Water and Wastewater Service and Establishment of Water, Wastewater and Reclaimed Water Service Areas and Settling Certain Disputes and Lawsuits between the Parties dated April 18, 2006 (the "Interlocal Agreement"); and

WHEREAS, the Interlocal Agreement, in part, established certain rights and obligations relating to the provisions of bulk potable water and wastewater service provided to the District by the County; and

WHEREAS, the District has requested, and the County has agreed to provide, up to 100,000 gallons per day of bulk potable water and wastewater service with service commencing on July 7, 2015; and

WHEREAS, pursuant to the Interlocal Agreement, certain pipelines and customers located outside of the District boundaries will be transferred to the County, with the County becoming the retail potable water service provider to all District potable water customers located outside of the District ("Outside Customers"); and

WHEREAS, the District wishes to decommission its existing water plant and for the County to become the retail provider to the Outside Customers at the same time that the County begins providing bulk water service to the District; and

WHEREAS, it is necessary for the County to temporarily utilize certain pipelines and appurtenant facilities located within District boundaries and owned by the District (the "Facilities"), as well as the property on which the Facilities are located (the "License Area") in order to provide service to all of the Outside Customers in a timely manner; and

WHEREAS, District is willing to grant County a temporary license to use said Facilities and License Area for the purposes set forth herein.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth on the part of the County to be observed and performed, the District hereby grants the County a license to use the Facilities and License Area as hereinafter defined upon the following terms and conditions:

ARTICLE I GRANT OF LICENSE

The District hereby grants to the County a license to use the Facilities (as more fully described on **Exhibit "A"** attached hereto and incorporated herein) and to enter upon the License Area (as more fully described on **Exhibit "B"** attached hereto and incorporated herein) in order for the County to provide potable water service to the Outside Customers.

ARTICLE II TERM/COMMENCEMENT DATE

This Agreement shall commence on the Effective Date of this Agreement and the term of this Agreement shall continue until the termination of this Agreement pursuant to Article VII. The Effective Date shall be the date the later of the County or the District approves this Agreement.

ARTICLE III LICENSE FEE

There shall be no license fee.

ARTICLE IV CONDUCT OF BUSINESS AND USE OF LICENSE AREA BY COUNTY

Section 4.01 Use of License Area and Hours of Operation. County shall use the Facilities and License Area solely and exclusively for the provision of potable water service to the Outside Customers. County shall not use, permit or suffer the use of the License Area for any other business or purpose whatsoever. The use of the Facilities and License Area by County shall not interfere with District's use of the License Area.

Section 4.02 County's Work. County shall make no further improvements, alterations or additions to the Facilities or the License Area without the prior written consent of District. District agrees and acknowledges that any such work performed by County whether pursuant to this Section or otherwise, is performed and accomplished solely for the benefit and convenience of County, and not for the benefit of District, such work being nevertheless subject to each and every provision of this Agreement.

Section 4.03 Waste or Nuisance. County shall not commit or suffer to be committed any waste upon the License Area or Facilities or any nuisance or other act or thing which may result in damage or depreciation of value of the License Area or Facilities or which may affect District's interest in the License Area or Facilities, normal wear and tear excepted. County shall not store or dispose any contaminants including, but not limited to, hazardous or toxic substances, chemicals or other agents, including any petroleum products, used or produced in County's operations, on the License Area or in any manner not permitted by law. County will keep the access to the License Area clear of obstruction.

ARTICLE V REPAIRS AND MAINTENANCE OF LICENSE AREA

During the term of this Agreement the Facilities and the License Area shall be kept in good repair and condition by County. Upon expiration of this Agreement, County shall deliver the Facilities and License Area to District in good repair and condition as specified herein, normal wear and tear excepted.

ARTICLE VI INDEMNITY

District and County acknowledge the waiver of sovereign immunity for liability in tort contained in Florida Statutes Section 768.28, the State of Florida's partial waiver of sovereign immunity, and acknowledge that such statute permits actions at law to recover damages in tort for money damages up to the limits set forth in such statute for death, personal injury or damage to property caused by the negligent or wrongful acts or omissions of an employee acting within the scope of the employee's office or employment. District and County agree to be responsible for all such claims and damages, to the extent and limits provided in Florida Statutes Section 768.28, arising from the actions of their respective employees. The parties acknowledge that the foregoing shall not constitute an agreement by either party to indemnify the other, nor a waiver of sovereign immunity, nor a waiver of any defense the parties may have under such statute, nor as consent to be sued by third parties.

ARTICLE VII TERMINATION OF LICENSE

The County and District acknowledge and agree that the Facilities and License Area covered by this Agreement are necessary for the County to provide potable water service to the Outside Customers and that the license granted hereunder shall not terminate, expire, or be revoked until such time that the County has sufficient replacement pipelines and appurtenant facilities to provide potable water service to the Outside Customers. District and County shall mutually determine an expiration date for this Agreement.

ARTICLE VIII MISCELLANEOUS

Section 8.01 Entire Agreement. This Agreement and any Exhibits attached hereto and forming a part thereof as if fully set forth herein, constitute all agreements, conditions and understandings between County and County concerning the Facilities and the License Area. All representations, either oral or written, shall be deemed to be merged into this Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Agreement shall be binding upon County or County unless reduced to writing and signed by them.

Section 8.02 Notices. Any consents, approvals and permissions by the County shall be effective and valid only if in writing and any notice by either party to the other shall be in writing and shall be deemed to be duly given only if mailed prepaid by certified mail return, receipt requested, addressed:

(a) If to the County:

Director, Palm Beach County Water Utilities Department
8100 Forest Hill Boulevard
West Palm Beach, FL 33413

Palm Beach County Attorney's office
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401

(b) If to the District:

District Manager
4001 Seminole Pratt-Whitney Road
Loxahatchee, FL 33470

District Attorney
Lewis, Longman & Walker, P.A.
515 North Flagler Drive, Suite 1500
West Palm Beach, FL 33401

Section 8.03 Waiver of Jury Trial. The parties hereto waive trial by jury in connection with proceedings or counterclaims brought by either of the parties hereto against the other, in connection with this Agreement.

Section 8.04 Governing Law and Venue. This Agreement shall be governed by and interpreted according to the laws of the State of Florida and venue shall be in Palm Beach County.

Section 8.05 Time of Essence. Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

Section 8.06 No Third Party Beneficiary. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or the District.

Section 8.07 Palm Beach County Office of the 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 its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

Section 8.08 Non-Discrimination. District warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

District has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as amended, or in the alternative, if District does not have a written non-discrimination policy or one that conforms to County's policy, it has acknowledged through a signed statement provided to County that it will conform to County's non-discrimination policy as provided in R-2014-1421, as amended.

IN WITNESS WHEREOF, County and District have executed this Agreement, or have caused the same to be executed as of the day and year first above written.

ATTEST:
SHARON R. BOCK,
CLERK AND COMPTROLLER

PALM BEACH COUNTY, FLORIDA BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Shelley Vana, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
County Attorney

By: Jim Stiles
Director-Water Utilities

ATTEST:

SEMINOLE IMPROVEMENT DISTRICT
BOARD OF SUPERVISORS

Jared Stern
Jared Stern, Secretary

By: Janet Kroll
Janet Kroll, President

NOTARY CERTIFICATE

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 12th day of June, 2015, by Janet Kroll, President of the Seminole Improvement District Board of Supervisors is personally known to me.

My Commission
Expires: _____



KENNETH G CASSEL
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF081863
Expires 2/15/2018

Kenneth G. Cassel
Signature of Notary

Kenneth G. Cassel

Serial Number

Typed, Printed, or Stamped Name

Exhibit "A"
Description of Facilities

The Facilities are generally described as that potable water main running between the Northern Terminus and the Southern Terminus described below:

Northern Terminus: The Northern Terminus of the Facilities is described and depicted on the Record Drawings for the Seminole Improvement District Water System Improvements – Water Transmission Main Extension, No. A.02.0016.00, a copy of which is on file with the County and the District (the "Northern Terminus Record Drawings"). The Northern Terminus of the Facilities is more particularly described as follows:

The 3" Meter Assembly located at Station 26 + 83.88 (as depicted on Sheet 5 of the Northern Terminus Record Drawings).

Southern Terminus: The Southern Terminus of the Facilities is described and depicted on the Record Drawings for the Seminole Improvement – Sunsport Gardens Water Main Extension, No. A.02.0019.00, a copy of which is on file with the County and the District (the "Southern Terminus Record Drawings"). The Southern Terminus of the Facilities is more particularly described as follows:

Station 35+00 (as depicted on Sheet 6 of the Southern Terminus Record Drawings).

Exhibit "B"
Description of License Area

The License Area shall consist of a 20' strip of land with the center line being the center of the Facilities described in Exhibit "A" hereto, except that the Northern Terminus of the License Area shall be the South boundary of the 250' City of West Palm Beach M-Canal Right of Way, as depicted on Sheet 5 of the Northern Terminus Record Drawings.