

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: December 1, 2015 Consent [X] Regular [ ]  
Public Hearing [ ]  
Department: Water Utilities Department

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to receive and file: executed Agreements received during the month of September 2015.

A) Indemnification Agreement with Atlantic Land Investments, LLC, (District 6);

**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 are attached to the item unless the documents have been recorded in the Public Records of Palm Beach County. The documents have been fully executed on behalf of the Board of County Commissioners (BCC) by the County Administrator/Director of the Water Utilities Department (WUD) in accordance with Resolutions R93-1619, R96-0228, and R2003-0539 and are now being submitted to the BCC to receive and file. (MJ).

**Background and Justification:** WUD'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 BCC 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 Agreement has been executed on behalf of the BCC by the Director of the WUD in accordance with the authority delegated by the BCC, and is now being submitted to the BCC to receive and file.

A) Indemnification Agreement with Atlantic Land Investments, LLC. (District 6). This Agreement will indemnify WUD from any costs, losses, claims, demands and liabilities that could arise from the construction of utilities facilities by Atlantic Land Investments, LLC.

**Attachment:**

A. One (1) Original Indemnification Agreement

Recommended By: Jim Steles 10-19-15  
Department Director Date

Approved By: Sharon G. B. 10-29-15  
Assistant County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2016	2017	2018	2019	2020
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> *	<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 X

Reporting Category N/A

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

\*No Fiscal Impact

C. Department Fiscal Review: Delia M. Street

**III. REVIEW COMMENTS**

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

10/21/15 OEMB

10/27/15  
Contract Development and Control  
Buckley, 10-26-15

**B. Legal Sufficiency:**

10/28/15  
Assistant County Attorney

**C. Other Department Review:**

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

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

EXHIBIT "KK"

INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("Agreement") is made and entered into this 10th day of Sept., 2015 by and between ATLANTIC LAND INVESTMENTS, 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 a 12" x 8" TAPPING SLEEVE, VALVE BOX, AND ASSOCIATED PIPING ("Utility Facilities") (WUD Project No. 15-504); and

WHEREAS, the FLORIDA DEPT. OF TRANS. 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: ATLANTIC LAND INVESTMENTS, LLC  
C/O JOSEPH D. LEONER  
360 COLUMBIA DRIVE, SUITE 102  
WEST PALM BEACH, FL 33409

With a copy to: BRIAN C. HICKEY, ESQ  
NASON YEAGER, GILSON, WHITE & LIOCE, PA.  
1645 PALM BEACH LAKES BLVD, SUITE 1200  
WEST PALM BEACH, FL 33401

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:

**OWNER:**

[Signature]  
Witness Signature

Jeff Zito  
Print Name

[Signature]  
Witness Signature

Kristie James  
Print Name

[Signature]  
Signature

Joseph D. Lelonek  
Print Name

Manager  
Title

Atlantic Land Investments, LLC  
Company Name

(SEAL)

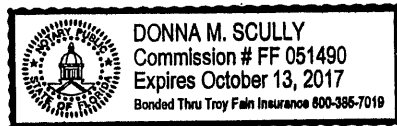
**NOTARY CERTIFICATE**

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 2 day of Sept., 2015 by Joseph D. Lelonek, Manager and \_\_\_\_\_ who is are personally known to me ~~or who has~~ produced \_\_\_\_\_ as identification.

My Commission Expires: 10-13-2017

[Signature]  
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 10<sup>th</sup> day of September, 2015.

**WITNESSES:**

Sandra Smith  
Witness Signature

Sandra Smith  
Typed or Printed Name

Victor M. Ortiz  
Witness Signature

Victor M. Ortiz  
Typed or Printed Name

**PALM BEACH COUNTY**

By: Jim Stebbins  
County Administrator or Designee

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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