

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: May 15, 2018

Consent [X]      Regular [ ]  
Public Hearing [ ]

Department:      Water Utilities Department

**I. EXECUTIVE BRIEF**

**Motion and Title: Staff recommends motion to approve:** a Reimbursement Agreement (Agreement) between Palm Beach County and Boca Raton Associates VII, LLLP (Property Owner) in the amount of \$527,564.

**Summary:** The Water Utilities Department (WUD) is requiring the Property Owner to extend the 20-inch reclaimed watermain along the eastern boundary of the Hyder South AGR PUD in conjunction with their construction of the adjacent property. Knowing that WUD is additionally seeking to establish greater connectivity and efficiency within the County's reclaimed water system, the Property Owner proposed to design and construct approximately 5,420 feet of 20-inch reclaimed watermain from Lyons Road to State Road 7 along the southern boundary of the property, conditioned upon full reimbursement by WUD. All improvements will be constructed in accordance with WUD's Uniform Policies and Procedures Manual, subject to review by WUD staff.

Following the completion of the construction, the Property Owner will transfer the ownership of the improvements to the County via a Bill of Sale, provide comprehensive utility record drawings and grant utility easements over all County owned facilities on the property. The Agreement provides for the payment of \$527,564 for the design and construction along the southern border of the property that will be undertaken by the Property Owner. Should the project cost exceed the agreed upon amount, the Agreement provides that the County will be responsible for approving any additional necessary costs above and beyond 10% of the original estimated project cost. The Property Owner will construct the reclaimed watermain on undeveloped land in conjunction with their project, which will result in a cost savings of approximately \$700,000 compared to the cost for WUD to install these improvements under current contracts. The Property Owner is able to minimize the cost due to the timing and size of the project. The improvements are beneficial to the County and the public and will result in a large savings to the County. District 2 (MJ)

**Background and Justification:** The County has entered into an agreement with Broward County to accept reclaimed water as part of a cooperative regional project. WUD is additionally undertaking an assessment of its reclaimed water system to plan for future needs and efficiencies. Ultimately, the reclaimed watermain from Broward will connect to the Palm Beach County reclaimed watermain to provide additional reclaimed water to WUD ratepayers. The construction of the 20" reclaimed watermain along the southern boundary of Hyder South AGR PUD provides an opportunity to extend the reclaimed watermain closer to the Broward reclaimed watermain. The cost to install the reclaimed watermain will be substantially higher after the adjacent properties are developed, making it advantageous to undertake an agreement to construct the line at the present time.

**Attachments:**

- 1. Location Map
- 2. Four (4) Original Reimbursement Agreements

Recommended By: Jim Stiles      5-4-18  
 Department Director      Date

Approved By: [Signature]      5-7-18  
 Deputy County Administrator      Date

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures	<u>\$527,564</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Operating Costs	<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>	<b><u>\$527,564</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>

**Budget Account No.:** Fund 4011 Dept 721 Unit W008 Object 6543


Is Item Included in Current Budget? Yes  X  No

Does this item include the use of federal funds? Yes   No  X

Reporting Category  N/A

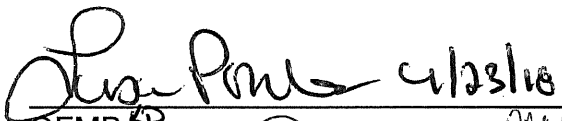
**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

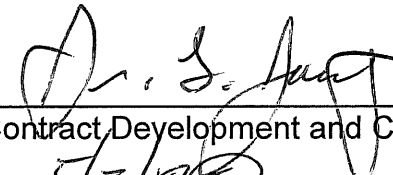
Water and sewer user funds

**C. Department Fiscal Review:** \_\_\_\_\_ 

**III. REVIEW COMMENTS**

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

  
 OFMB 4/23 4/23 4/23

 5/2/18  
 Contract Development and Control  
5/2/18

**B. Legal Sufficiency:**

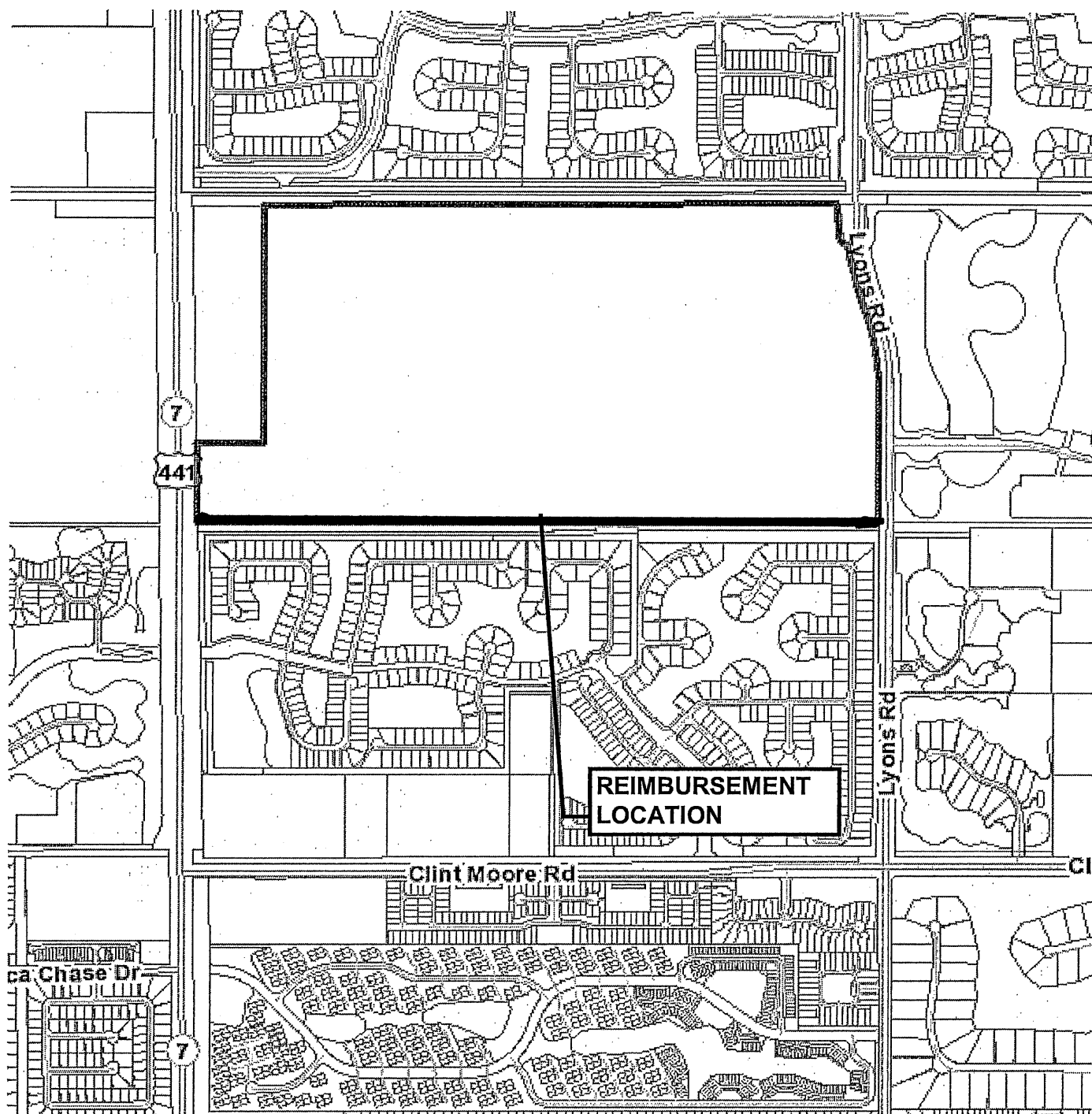
 5/3/18  
 Assistant County Attorney

**C. Other Department Review:**

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

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

ATTACHMENT 1



## REIMBURSEMENT AGREEMENT

**THIS AGREEMENT**, made and entered into this \_\_\_ day of \_\_\_, 2018, by and between **PALM BEACH COUNTY**, a subdivision of the State of Florida, hereinafter referred to as “County,” and **BOCA RATON ASSOCIATES VII, LLLP**, a Florida Limited Liability Limited Partnership, hereinafter referred to as “Property Owner.”

### WITNESSETH

**WHEREAS**, Property Owner is in the process of constructing certain utility improvements to serve the “Hyder AGR-PUD South” property located at Lyons Road and LWDD Canal #39 – approximately a half mile north of Clint Moore Road (the “Property”); and

**WHEREAS**, as part of the utility construction project, County desires for the Property Owner to design, permit and construct a 20” reclaimed watermain and appurtenances along the southern boundary of the subject property (the “New Reclaimed Watermain”); and

**WHEREAS**, following completion of construction, County desires to reimburse the Property Owner for the costs of the New Reclaimed Watermain; and

**WHEREAS**, construction and installation of the New Reclaimed Watermain by the Property Owner is beneficial to the County and the public as it will save the County both time and money, as Property Owner’s contractor is already mobilized in the area due to the construction of facilities to serve the Property, and the design and construction of the New Reclaimed Watermain can easily be integrated into the Property’s site development.

**NOW, THEREFORE**, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, Property Owner and County hereby covenant and agree as follows:

1. **Recitals.** The foregoing statements are true and correct and are incorporated herein by specific reference.
2. **Construction of New Reclaimed Watermain.** Property Owner shall design, permit and construct, or cause to have constructed, the New Reclaimed Watermain. The New Reclaimed Watermain is more specifically described in **Exhibit “A”**, which is attached hereto and incorporated herein. The location of the New Reclaimed Watermain is shown in **Exhibit “B”**, which is attached hereto and incorporated herein. The County will have no contractual relationship with any contractor hired to install the New Reclaimed Watermain. However, County has approved the design of the New Reclaimed Watermain and will inspect the installation of the New Reclaimed Watermain to ensure construction is in accordance with the approved construction plans and specifications. The New Reclaimed Watermain shall not be considered completed until final approval by the County in accordance with Section 3 below.
3. **Reimbursement.** Attached hereto and incorporated herein as **Exhibit “C”** is an estimate of the costs to design, permit and construct the New Reclaimed Watermain (the “Estimated Costs”). Any increases to the Estimated Costs in an amount greater than \$52,756.00 (10% of the original estimate) shall require the prior approval of the County. Following the completion of the New Reclaimed Watermain, Property Owner shall deliver, or cause to be delivered, to the County, the Bill of Sale and Release attached hereto and incorporated herein as **Exhibit “D”**, as well as the appropriate record drawings, easements, close-out documents, and an invoice for the actual costs of the New Reclaimed Watermain. County shall determine whether the documentation provided by Property Owner is complete, and shall request additional documentation if necessary. Within thirty (30) days of receipt of all necessary close-out documentation, the County shall reimburse Property Owner the Estimated Costs (plus any agreed-upon increases) as full compensation for the design, permitting and construction of the New Reclaimed Watermain.
4. **Remedies.** This Agreement shall be governed by the laws of the State of Florida.

Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter.

5. **Successors and Assigns.** The County and the Property Owner each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Neither the County nor the Property Owner shall assign, sublet, convey, or transfer its interest in this Agreement without prior written consent of the other.
6. **Waiver.** The failure of either party to insist on the strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that said party may have for any subsequent breach, default, or non-performance, and said party's right to insist on strict performance of this Agreement shall not be affected by any previous waiver of course or dealing.
7. **Severability.** If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, then the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
8. **Notice.** All notices provided for herein shall be in writing and transmitted by mail or by courier, and, if to the Property Owner, shall be mailed or delivered to the Property Owner at:

Boca Raton Associates VII, LLLP  
Attn: Rick Elsner  
1600 Sawgrass Corporate Parkway  
Sunrise, Florida 33323

and if to County, shall be mailed or delivered at:

Palm Beach County Water Utilities Department  
8100 Forest Hill Boulevard  
West Palm Beach, FL 33413-3336.  
Attn: Department Director

9. **Amendment and Modification.** This Agreement may only be amended, modified, changed, supplemented or discharged by an instrument in writing signed by the parties hereto.

10. **Entirety of Agreement.** The County and the Property Owner agree that this Agreement and any Exhibits hereto set forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties.

11. **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.

12. **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 Property Owner.

13. **Non-Discrimination.** County and Property Owner assure and certify that they shall comply with Title VII of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, disability, gender identity or expression, or genetic information, during their performance of this Agreement.

14. **Public Records.** Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Property Owner: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2), F.S., the Property Owner shall comply with the requirements of Section 119.0701, F.S., as it may be amended from time to time. The Property Owner is specifically required to:

- A. Keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the service;
- B. Upon request from the County's Custodian of Public Records ("County's Custodian") or the County's representative/liaison, on behalf of the County's Custodian, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Property Owner further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time;
- C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract, if the Property Owner does not transfer the records to the public agency. Nothing contained herein shall prevent the disclosure of or the provision of records to the County;
- D. Upon completion of the Contract, the Property Owner shall transfer, at no cost to the County, all public records in possession of the Property Owner unless notified by the County's representative/liaison, on behalf of the County's Custodian, to keep and maintain public records required by the County to perform the service. If the Property Owner transfers all public records to the County upon completion of the Contract, the Property Owner shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Property Owner keeps and maintains public records upon completion of the Contract, the Property Owner shall meet all applicable requirements for retaining public records. All records stored electronically by the Property Owner must be provided to County, upon request of the County's Custodian or the County's representative/liaison, on behalf of the County's Custodian, in a format that is compatible with the information technology systems of the County, at no cost to the County.

Property Owner acknowledges that it has familiarized itself with the requirements of Chapter 119, F. S., and other requirements of state law applicable to public records not specifically set forth herein. Failure of the Property Owner to comply with the requirements of this Section, Chapter 119, F.S. and other applicable requirements of

state law, shall be a material breach of this Contract. The County shall have the right to exercise any and all remedies available to it for breach of contract as provided for hereunder, including but not limited to, the right to terminate for cause.

**IF THE PROPERTY OWNER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROPERTY OWNER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.**

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Property Owner and County have executed or have caused this Agreement to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

ATTEST:

SHARON R. BOCK, CLERK  
AND COMPTROLLER

PALM BEACH COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Melissa McKinlay, Mayor

[SEAL]

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY

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

APPROVED AS TO TERMS AND CONDITIONS

By: Jim Steele  
Department Director

WITNESSES:

PROPERTY OWNER:  
Boca Raton Associates VII, LLLP  
By: Boca Raton VII Corporation,  
It's General Partner

[Signature]  
\_\_\_\_\_

By: [Signature]  
\_\_\_\_\_

Rick Ecsner  
Type or Print Name

Signature  
VP

Gladys DiGirolamo  
Type or Print Name

Title  
Richard M. Norwalk  
Typed or Printed Name

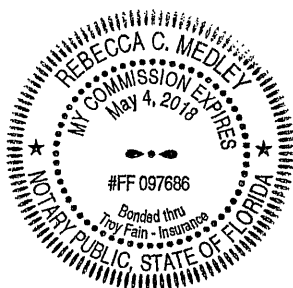
GLADYS DIGIROLAMO  
Type or Print Name

[ Corporate  
Seal ]

NOTARY CERTIFICATE

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of April, 2018 by Richard M. Norwalk. He/~~she~~ is personally known to me or has produced \_\_\_\_\_ as identification.



Rebecca C. Medley  
Signature of Notary

Rebecca C. Medley  
Typed, Printed, or Stamped Name  
Of Notary

Notary Public  
FF 097686  
Serial Number

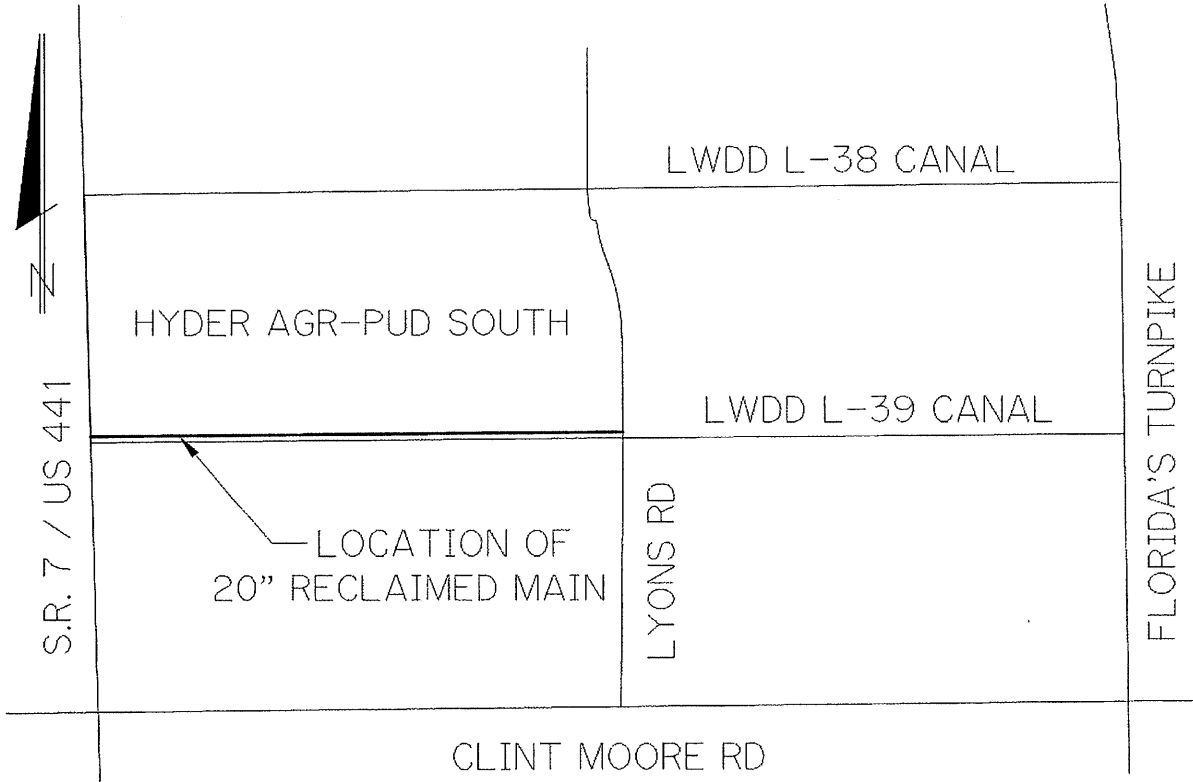


**EXHIBIT "A"**  
**DESCRIPTION OF NEW RECLAIMED WATERMAIN**

A 20" Reclaimed Watermain as per approved plans prepared by GLH Engineering, LLC and W.U.D. Project Number 18-501. Includes 5,420 LF of 20" Reclaimed Watermain, four (4) 20" Valves and one (1) Flushing Hydrant.

The Reclaimed Watermain is located within the Hyder AGR-PUD South project between Lyons Road and State Road 7 (U.S. 441), 5-feet north of the Lake Worth Drainage District L-39 Canal northern right-of-way line.

**EXHIBIT "B"**  
**LOCATION OF NEW RECLAIMED WATERMAIN**



**EXHIBIT "C"**  
**ESTIMATED COSTS OF NEW RECLAIMED WATERMAIN**

**HYDER AGR-PUD SOUTH**  
**ESTIMATED COST**  
**(20" RECLAIM MAIN ALONG SOUTH PROPERTY LINE)**

<b>ITEM</b>	<b>ITEM</b>	<b>QUANTITY</b>	<b>UNIT</b>	<b>UNIT PRICE</b>	<b>TOTAL PRICE</b>
1.	20" DIP RECLAIM MAIN	5,420	LF	\$ 75.50	\$409,210.00
2.	20" GATE VALVE & BOX	4	EA	\$ 10,075.00	\$40,300.00
3.	FLUSHING HYD. W. CONC COLLAR	1	EA	\$ 2,500.00	\$2,500.00
4.	20" RECLAIM MAIN FITTINGS	1	EA	\$ 33,600.00	\$33,600.00
5.	RECLAIM MAIN TESTING	1	EA	\$ 10,900.00	\$10,900.00
6.	INSPECTION FEE TO PBCWUD	1	LS	\$ 18,254.00	\$18,254.00
7.	SURVEY (STAKING & AS-BUILTS)	1	LS	\$ 12,800.00	\$12,800.00
<b>TOTAL REIMBURSEMENT:</b>					<b>\$527,564.00</b>

**EXHIBIT "D"**  
**BILL OF SALE AND RELEASE**

Know All Men by These Presents, that \_\_\_\_\_, a \_\_\_\_\_, located at \_\_\_\_\_ hereinafter referred to as "Property Owner", for and in consideration of the sum Ten Dollars lawful money of the United States, and other compensation set forth in that certain Reimbursement Agreement dated \_\_\_\_\_ (County Resolution No. R \_\_\_\_\_), and received from Palm Beach County c/o Water Utilities Department, 8100 Forest Hill Boulevard, West Palm Beach, Florida, 33413-3336, hereinafter referred to as "County", the receipt whereof is hereby acknowledged, has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, sell, transfer and deliver to the County, its administrators and assigns, the following goods and chattels:

Those reclaimed water pipelines and related appurtenances identified on **Attachment "1"**, which is attached hereto and incorporated herein (hereinafter referred to as the "New Reclaimed Watermain").

To Have and to Hold the same unto the County, its administrators and assigns forever.

And Property Owner for its successors, and assigns, covenants to and with the County, its administrators and assigns, that Property Owner is the lawful owner of the New Reclaimed Watermain; that the New Reclaimed Watermain are free from all encumbrances; that Property Owner has good right to sell the New Reclaimed Watermain, and that Property Owner will warrant and defend the sale of the New Reclaimed Watermain hereby made, to the County, its administrators and assigns against the lawful claims and demands of all persons claiming by, through or under Property Owner. Property Owner further, for itself and its successors, assigns, predecessors, affiliated entities, directors, officers, employees, principals, agents and servants, hereby releases, acquits, and forever discharges any and all claims it may have against the County, its departments, divisions, elected officials and employees, for any additional payments or credits related to the construction of the New Reclaimed Watermain.

In Witness Whereof, Property Owner has hereunto set its hand on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

WITNESSES:

PROPERTY OWNER:

Signed and delivered in presence of:

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Name

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

**NOTARY CERTIFICATE**

**STATE OF** \_\_\_\_\_

**COUNTY OF** \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by \_\_\_\_\_ who is personally known to me or has produced \_\_\_\_\_ as identification.

My Commission Expires: \_\_\_\_\_

Signature of Notary

\_\_\_\_\_  
Typed, Printed or Stamped Name of Notary

**ATTACHMENT 1 TO BILL OF SALE  
NEW RECLAIMED WATERMAIN**