PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:

August 22, 2023

Consent [X]

Regular []

Public Hearing []

Department:

Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an Easement Agreement for a non-standard Utility Easement (Easement) in the amount of \$5,000.00 granted by Cemex Construction Materials Florida, LLC (Cemex) to Palm Beach County (County) on property located at 400 SW 16th Street, Belle Glade, Florida.

Summary: The proposed alignment of a force main transmission main designed by the County crosses a private property owned by Cemex. The easement property serves for the production of ready mix concrete. Cemex agreed to enter into an Easement Agreement and grant County an Easement to construct, access, maintain and repair County's utility facilities in exchange for payment of \$5,000 and certain changes to the County's standard easement. Under the non-standard provisions of the Easement, County acknowledges that the affected area will be restored to equal or better condition and that traffic access will be maintained at all times. The construction will be coordinated with Cemex. Cemex will retain the right of continuing use of the Easement area as an access and other use, which does not impede County's rights spelled out in the Easement. (PBCWUD Project No. 20-026) <u>District 6</u> (MWJ)

Background and Justification: The proposed Easement will allow PBCWUD staff access to the subject property to perform normal operations and maintenance to the utility infrastructure. The Easement requires Board of County Commissioners approval as it contains certain non-standard provisions not contained within PBCWUD's standard utility easement.

Attachments:

- 1. Two (2) Original Easement Agreements
- 2. Location Map

Recommended By:	Ali Bayat	811123
•	Department Director	Date
Approved By:	Wy Shi	5/3/23
	Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fisca	l Years	2	2023	2024	ļ	2025	2026	6	2027
Opera Exterr Progra	al Expenditures ating Costs nal Revenues am Income (County d Match County	enditures \$5,000 osts <u>0</u> venues <u>0</u> ome (County) <u>0</u>		<u>0</u> 0 0 0		00000	0 0 0 0		00000
NET F	FISCAL IMPACT	<u>\$5</u>	.000	<u>0</u>		<u>0</u>	<u>0</u>		<u>0</u>
	DITIONAL FTE TIONS (Cumulative))	<u>0</u>	<u>0</u>		<u>0</u>	<u>0</u>		<u>0</u>
Budg	et Account No.:	Fund	<u>4011</u>	Dept	<u>721</u>	Unit	<u>W026</u>	Object	<u>6547</u>
Is Item Included in Current Budget?				Yes X	No				
Does	Does this item include the use of federal funds? Yes No _X								
			F	Reporting (Categ	ory <u>N/A</u>			
B.	B. Recommended Sources of Funds/Summary of Fiscal Impact:								
One (1) time expenditure from user fees, connection fees and balance brought forward.									
C.	C. Department Fiscal Review:								
III. REVIEW COMMENTS									
Α.	A. OFMB Fiscal and/or Contract Development and Control Comments:								
OFMB 94 780 Sw Contract Development and Control 12123 Mil 1/25/23									
B.	Legal Sufficience Assistant C	tor.	<u>میں ا</u> ttorney	5 8/2/23	•				
C.	Other Departmen	nt Revie	w:						

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

Department Director

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT, entered into this 22 day of August by and between CEMEX Construction Materials Florida, LLC, whose address is 1720 Centrepark Drive E, WEST PALM BEACH FL 33401 hereinafter referred to as "Property Owner", and Palm Beach County, a political subdivision of the State of Florida, whose address is c/o Palm Beach County Water Utilities Department, 8100 Forest Hill Blvd., West Palm Beach, FL 33413, hereinafter referred to as "County".

WITNESSETH

WHEREAS, Property Owner owns certain real property in Palm Beach County identified as TMS 00-36-43-36-01-015-0060 located at 400 SW 16th Street, Belle Glade, Florida ("Property"); and

WHEREAS, County has determined that a utility easement over a twenty (20) foot strip of land lying, situate and being along the southeastern and southern boundary of the Property is required for County Water Utilities Department purposes; and

WHEREAS, Property Owner has agreed to grant the County the necessary utility easement.

NOW THEREFORE, in consideration of the mutual covenants and promises of the parties hereto, Property Owner and the County agree as follows:

1. Recitals

The recitals set forth above are true and correct and form a part of this Agreement.

2. Grant of Utility Easements/Payment

- A. Property Owner hereby acknowledges, represents and warrants to the County that Property Owner is lawfully seized and in possession of the Property and has good and lawful right to grant the utility easement attached hereto as Exhibit "A", hereinafter referred to as "Utility Easement".
- B. The County agrees to pay to Property Owner the total amount of \$5,000.00 for the Utility Easement.
- C. Following the Effective Date of this Agreement, County and Property Owner shall coordinate the closing of the transaction contemplated under this Agreement, at which time County will pay Property Owner \$5,000.00 in exchange for the executed Utility Easement.
- A. County shall be responsible for all costs and fees associated with the granting and recording of the Utility Easement, including costs for all surveys of the

Easement Area and preparation of a legal description for the Easement Area. Upon acceptance of the survey and legal description of the Easement Area by Property Owner, the parties agree to update and/or replace Exhibit A attached to the Utility Easement with the accepted survey and legal description of the Easement Area.

D. Property Owner's grant of the Utility Easement is made on the express condition that Property Owner is to be free from all liability for injury, illness or death to persons or damage to property arising from County's construction, installation and maintenance of the Utility Easement on the Property. County shall require that any of it contractors or consultants performing services on the Property indemnify the Property Owner and its respective officers, directors, employees, affiliates and agents. Said indemnification shall be as set forth on Exhibit "B".

3. Applicable Law

Any litigation arising from or relating to this Agreement shall be governed by the laws of the State of Florida and venue in any such proceeding shall be exclusively in Palm Beach County, Florida.

4. Severability

In the event that any section, paragraph, sentence, clause, or provision of this Agreement is held to be invalid by a court of competent jurisdiction, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

5. Enforcement Costs

Any costs or expenses, including reasonable attorney's fees, associated with the enforcement of the terms or conditions of this Agreement shall be borne by the respective parties.

6. Entirety of Agreement

This Agreement represents the entire understanding between the parties, and supersedes all other negotiations, representations, or agreements, either written or oral, relating to this Agreement.

7. Successors in Interest

This Agreement shall be binding upon and shall inure to the benefit of the County and Property Owner and their assigns and successors by merger, consolidation, conveyance or otherwise.

8. Counterparts

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, all of which together shall constitute one (1) and the same instrument.

9. Modification of Agreement

No additions, alterations, or variations from the terms of this Agreement shall be valid, nor can the provisions of this Agreement be waived by either party, unless such addition, alteration, variation or waiver is expressed in writing and signed by the parties hereto.

10. Captions

The captions and section designations set forth herein are for convenience only and shall have no substantive meaning.

11. Survival

The parties' warranties, agreements, covenants and representations set forth herein shall not be merged and shall survive consummation of the transaction contemplated by this Agreement.

12. Incorporation by Reference

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by Reference.

13. Time of Essence

Time is of the essence with respect to the performance of each and every provision of this Agreement where a time is specified for performance.

14. Default

In the event either party fails or refuses to perform any term, covenant or condition of this Agreement for which a specific remedy is not set forth in this Agreement, the non-defaulting party shall, in addition to any other remedies provided at law or equity, have the right to specific performance thereof.

15. Assignment

Neither the County nor Property Owner may assign this Agreement or any interest herein without the prior written consent of the other party, which may be granted or withheld at the other party's sole and absolute discretion. This provision shall be construed to include a prohibition against any assignment by operation of law, legal process, bankruptcy, receivership or otherwise, whether voluntary or involuntary.

16. 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 Or Property Owner.

17. Palm Beach County Office of the Inspector General

Pursuant to Palm Beach County Code, Sections 2-421 through 2-440, as amended, Palm Beach County's Office of Inspector General is authorized to have the power to review past, present and proposed Palm Beach 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 Palm Beach County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 through 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, County and Property Owner 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 Joseph Abruzzo, Clerk of the Circuit Court & Comptroller	PALM BEACH COUNTY, FLORIDA BY ITS BOARD OF COUNTY COMMISSIONERS
Ву:	By:
Clerk	Gregg K. Weiss, Mayor
(SEAL)	
APPROVED AS TO FORM AND TO	APPROVED AS TO TERMS AND
LEGAL SUFFIENCY	CONDITIONS
By: Gomisons	By: AG150/NT
Čounty Attorney	Ali Bayat, P. E., PMP
PROPERTY OWNER:	
Signed in presence of:	13-16-6
Witness	Trpimir Renić, Vice President
Sherida Sloamb	Cemex Construction Materials Florida LLC

Print Name

EXHIBIT "A" UTILITY EASEMENT

Return to: Kerry Williams

Palm Beach County Water Utilities Department Attn:

Engineering

8100 Forest HillBlvd.

West Palm Beach, Florida 33413

PCN #: 00364336010150060

Project #: 20-026

Location: 400 SW 16 ST, BELLE GLADE FL Project

Name: FORCE MAINIMPROVEMENT

UTILITY EASEMENT

THIS EASEMENT is made, granted and entered into this 10 day of 2022 by CEMEX CONSTRUCTION MATERIALS FLORIDA, LLC, a Delaware limited liability company and successor by conversion of RINKER MATERIALS CORPORATION (hereinafter referred to as "Grantor"), whose address is 1720 CENTREPARK DR E, WEST PALM BEACH FL 33401 to Palm Beach County (hereinafter referred to as "Grantee"), c/o Water Utilities Department, P.O. Box 16097, West Palm Beach, Florida 33416-6097.

WITNESSETH

Grantor owns certain real property in Palm Beach County identified as TMS 00-36-43-36-01-015-0060 located at 400 SW 16th Street, Belle Glade, Florida.

In connection with Force Main Improvement, Project #20-026, Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) in hand paid by the Grantee and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant to the Grantee, its successors and assigns, a perpetual, non-exclusive utility easement upon, through, in, and under a portion of Grantor's property more specifically described in Exhibit A ("Easement Area") which shall permit Grantee authority to enter upon the Easement Area at any time to install, operate, maintain, service, construct, reconstruct, remove, relocate, repair, replace, improve, expand, tie into, and inspect potable water, reclaimed water and/or wastewater lines and appurtenant facilities and equipment (collectively, "Facilities") in, on, over, under and across the Easement Area. The easement hereby granted covers a 20 foot strip of land lying, situate and being in Palm Beach County, Florida, and being more particularly described as follows:

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

Grantee agrees that the Facilities to be constructed within the Easement Area shall be those normally associated with lines for Grantee's utility services and for no other purpose without the prior written consent of Grantor, which may be withheld in its sole and absolute discretion.

Grantor hereby covenants with Grantee that it is lawfully seized and in possession of the real property herein described and that it has good and lawful right to grant the aforesaid easement free and clear of mortgages and other encumbrances unless specifically stated to the contrary.

Grantor reserves the right and privilege to use and enjoy the Easement Area for ingress and egress to its facilities, including use as an entrance, driveway, paved area, road, parking and for any purpose that does not interfere with the Facilities installed on the Easement Area by Grantee.

Any activity performed by or for Grantee shall be in a manner that uses reasonable care to minimize damage to Grantor's property and shall not materially interfere with or limit Grantor's ingress/egress, or Grantor's business operations (as currently operated or as may be operated or expanded in the future). Grantor shall have priority use of all of Grantor's property including but not limited to the entrance, driveway, paved areas and roads.

Grantee shall repair damage to fencing, entrance, driveways, paved areas or other property and restore the surface of the Easement Area after it installs the Facilities provided that Grantee is not obligated to replace trees, shrubbery or other vegetation (other than grass) within the Easement Area that is removed or disturbed by Grantee or its agents.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and affixed its seal as of the date first above written.

WITNESSES: Signed, sealed and delivered in the presence of: Witness Signature Heigh Mehneney Print Name Witness Signature Witness Signature Shahad Hephany Print Name	a Delaware limited	RUCTION MATERIALS FLORIDA, LLC I liability company and successor to IALS CORPORATION
NOTARY	CERTIFICATE	(SEAL)
STATE OF FLORIDA COUNTY OF_		
The foregoing instrument was acknowledged before me by red day of Scottember and known to me or who has produced.	as identification. Notary Si	(year), by Kyan E. Mahon Rej , who is/are personally
	30	KAREN WALDEN Notary Public - State of Florida Commission = HH 110827 My Comm. Expires May 2, 2025 Indeed through National Notary Assn.

ACCEPTED BY PALM BEACH COUNTY

(COUNTY SEAL)

PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

ATTEST:

JOSEPH ABRUZZO, CLERK OF THE CIRCUIT COURT AND COMPTROLLER, PALM BEACH COUNTY

Ву:	Ву:
DEPUTY CLERK	Gregg K. Weiss, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: ASSISTANT COUNTY ATTORNEY

APPROVED AS TO TERMS AND CONDITIONS

By: DIRECTOR OF WATER UTILITIES

EXHIBIT A SKETCH OF DESCRIPTION THIS IS NOT A SURVEY NOT VALID WITHOUT ACCOMPANYING SHEETS 2 & 3

LEGAL DESCRIPTION

A STRIP OF LAND BEING 20 FEET WIDE AND BEING A PORTION OF THE PROPERTY WITH PALM BEACH COUNTY PARCEL CONTROL NUMBER 00-36-43-36-01-015-0060, LYING IN SECTION 36, TOWNSHIP 43 SOUTH, RANGE 36 EAST, PALM BEACH COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 36; THENCE SOUTHEASTERLY ALONG THE EASTERLY LINE OF SAID SECTION 36, S00°15'38"E, A DISTANCE OF 5,274.82 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 36, THENCE N13°13'35"W, A DISTANCE OF 222.83 FEET TO THE EAST CORNER OF SAID PROPERTY, SAID POINT ALSO BEING THE **POINT OF BEGINNING**.

THENCE SOUTHEASTERLY ALONG THE EASTERLY LINE OF SAID PROPERTY, S00"15'33"E, A DISTANCE OF 72.31 FEET TO A POINT ON THE NORTHERLY LINE OF THE FLORIDA EAST COAST RAILWAY RIGHT-OF-WAY (100 FOOT WIDE) AS RECORDED IN FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP NUMBER 93500-2101, THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE S48'43'13"E, A DISTANCE OF 191.18 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF SW AVENUE E (15 FOOT WIDE PUBLIC ROAD) AS SHOWN ON SAID RIGHT-OF-WAY MAP; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE N88'58'27"W, A DISTANCE OF 29.71 FEET; THENCE LEAVING AID NORTHERLY RIGHT-OF-WAY LINE AND ALONG A LINE 20 FEET NORTHWESTERLY OF AND PARALLEL TO SAID NORTHERLY LINE OF SAID FLORIDA EAST COAST RAILWAY RIGHT-OF-WAY LINE, N48'43'13"E, A DISTANCE OF 204.05 FEET TO A POINT ON A LINE 20 FEET WESTERLY OF AND PARALLEL TO SAID EASTERLY LINE OF SAID PROPERTY; THENCE ALONG SAID PARALLEL LINE, NOO'15'33"E, A DISTANCE OF 63.65 FEET TO A NORTHERLY LINE OF SAID PROPERTY; THENCE ALONG SAID NORTHERLY LINE S88'58'12"E, A DISTANCE OF 20.01 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 5,312 SQUARE FEET (0.121 ACRES) MORE OR LESS.

SURVEYOR'S CERTIFICATION

I HEREBY CERTIFY THAT THE ATTACHED SKETCH OF DESCRIPTION OF THE HEREON DESCRIBED PROPERTY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS PREPARED UNDER MY DIRECTION ON NOVEMBER 4, 2022. I FURTHER CERTIFY THAT THIS SKETCH OF DESCRIPTION MEETS THE STANDARDS OF PRACTICE SET FORTH IN RULE 5J–17 ADOPTED BY THE FLORIDA BOARD OF SURVEYORS AND MAPPERS PURSUANT TO FLORIDA STATUTES 472 027.

Jennifer Malin Digitally signed by Jennifer Malin Date: 2022.11.04 09:54:42 -04'00'

JENNIFER MALIN, P.S.M.
PROFESSIONAL SURVEYOR AND MAPPER
STATE OF FLORIDA LICENSE NO. 6667
STATE OF FLORIDA LB#6603

FDR:

UTILITY EASEMENT

DRAWN BY: MKA

CHECKED BY: J. MALIN

DATE: 11-3-2022



O CONGRESS AVENUE, SUITE 101, WEST PALM BEACH, FLORIDA 33409
H (561)655-1151 • FAX (561)832-9390 • WWW.ENGENUITYGROUP.COM

FIELD BOOK NO SHEET:

1
3
JOB NO
20032.01

Y:\Land Projects R2\20032.01 PBCWUD South Bay Force Main Improvements\dwg\20032_01 S&D Easement.dwg 11/4/2022 9:51:44 AM ED1

EXHIBIT A SKETCH OF DESCRIPTION THIS IS NOT A SURVEY NOT VALID WITHOUT ACCOMPANYING SHEETS 1 & 3

LEGEND

POINT OF COMMENCEMENT POC

POINT OF BEGINNING POB

SEC SECTION

TWP TOWNSHIP

RGE RANGE

FDOT FLORIDA DEPARTMENT OF TRANSPORTATION

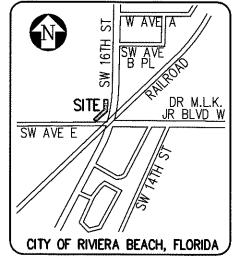
NO. NUMBER

PCN PARCEL CONTROL NUMBER

ROW RIGHT-OF-WAY ELY

EASTERLY

SECTION CORNER



LOCATION MAP

<u>NOTES:</u>

1, NO SEARCH OF THE PUBLIC RECORDS HAS BEEN MADE BY ENGENUITY GROUP, INC.

- 2. THIS SKETCH IS BASED ON INFORMATION FURNISHED BY THE CLIENT OR THE CLIENT'S REPRESENTATIVE.
- THIS SKETCH IS NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND RAISED SEAL, OR ELECTRONIC SIGNATURE OF A FLORIDA LICENSED PROFESSIONAL SURVEYOR AND MAPPER.
- 4. BEARINGS SHOWN HEREON ARE BASED ON A GRID BEARING (NAD 83-90) OF N0015'38"W ALONG THE EASTERLY LINE OF SECTION 36, TOWNSHIP 43 SOUTH, RANGE 36 EAST AND ALL OTHER BEARINGS ARE RELATIVE THERETO.
- DISTANCES SHOWN HEREON ARE GROUND DISTANCES EXPRESSED IN U.S. FEET AND DECIMAL PARTS THEREOF. UNLESS OTHERWISE NOTED.
- 6. THIS SURVEY MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN RULE 5J17-050-.052, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472.027, FLORIDA STATUES.
- 7. COORDINATES SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, TRANSVERSE MERCATOR, FLORIDA EAST ZONE 901, USING THE NORTH AMERICAN DATUM OF 1983 WITH THE 1990 ADJUSTMENT (NAD 83–90).

SCALE FACTÓR: 0.9999533

GROUND DISTANCE X SCALE FACTOR = GRID DISTANCE



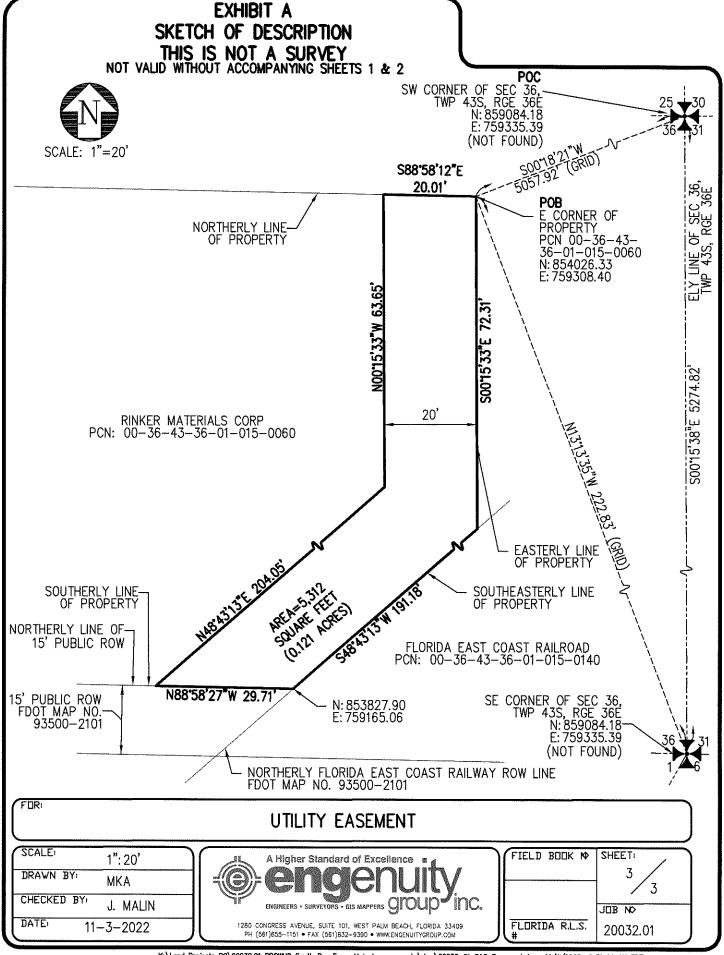


EXHIBIT B TO THE EASEMENT AGREEMENT

For Contractors:

Contractor shall indemnify and hold harmless the County, its officers and employees, and CEMEX Construction Materials Florida, LLC, including its respective officers, directors, employees, affiliates and agents, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of this Contract.

For Consultants:

Consultant shall indemnify and hold harmless the County, it officers and employees, and CEMEX Construction Materials Florida, LLC, including its respective officers, directors, employees, affiliates and agents, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Consultant and persons employed or utilized by the Consultant in the performance of this Contract.

ATTACHMENT 2 LOCATION MAP CEMEX PROPOSED EASEMENT PBCWUD PROJECT No. 20-026

