

Janice Haas

From: William Clague
Sent: Friday, December 29, 2017 9:25 AM
To: Sia Mollanazar
Cc: Mitchell Palmer; Alex Nicodemi; Dan Schlandt; Ron Schulhofer; Mike Gore; Juliet Shepard
Subject: Utility Reimbursement Agreement for Polo Run; RLS-2017-0634
Attachments: Polo Run Utility Reimbursement (CAO Comments).docx

Sia:

Pursuant to the above Request for Legal Services you have asked this office to review the above referenced Reimbursement Agreement. I provide the following advice in response:

1. Attached is the redlined draft of the Agreement submitted under the RLS, reflecting my comments in the margins. The Agreement generally follows a form this office and the County have accepted in similar transactions. The developer has redlined numerous changes into the form, prompting your request for legal review.
2. Most of the developer's changes deal with business terms, such that I have no objection to them. I have, however, flagged the following changes as legally unacceptable, for the reasons stated below:
 - A. The deletion of the language in Section 4 committing the developer to pay applicable impact fees violates the County's Land Development Code.
 - B. The deletion of the language in Section 5 that subjects the County's financial obligations to budgeting and appropriation of legally available funds violates Florida law.
 - C. The insertion of language in Section 7 that limits the developer's indemnity to instances of "gross negligence" or "willful misconduct" is inconsistent with standard contract practice for allocation of risk, and contravenes the longstanding advice of this office.

Unless the flagged changes are removed from the Agreement, this office will advise against the Agreement being approved by the Board. Subject to the removal of the objectionable changes, and the resolution of any business issues identified by staff, I have no objection from a legal standpoint to the Agreement being scheduled for approval by the Board. I express no opinion as to the business judgment of entering into the Agreement.

This concludes my response to the RLS. Please let me know if you have any questions or concerns.

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