

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date:	February 24, 2009	Consent <input checked="" type="checkbox"/>	Regular <input type="checkbox"/>
		Public Hearing <input type="checkbox"/>	
Submitted By:	Water Utilities Department		
Submitted For:	Water Utilities Department		

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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: Closing Documents relating to the acquisition of the Beeline Community Development District's (District) water and wastewater utility system.

Summary: On February 15, 2005, the Board approved the acquisition of the District's water and wastewater utility system (R2005-0365). On October 21, 2008, the Board approved the Third Amendment to the Palm Beach County/Beeline Community Development District Water and Wastewater Utility Acquisition, Service and Service Area Agreement, and authorized the BCC Chairperson to execute any and all documents necessary to carry out the closing of the purchase (R2008-1905). On or before October 31, 2008, the Board's Chairperson, the District's Chairperson and United Technology Corporation's (UTC) authorized agent executed the required documents. On December 16, 2008, the Board received and filed certain closing documents (R-2008-2321). The final closing document is now available to be received and filed. District 1 (MJ)

Background and justification: Prior to or at the October 31, 2008 closing, the Chairperson of the Board of County Commissioners, the Chairperson of the District and the authorized agent of UTC executed certain documents required for the closing. The final document is the Assignment of the Right to Purchase Equivalent Residential Connections (ERCs) from the District to UTC. This document is being presented to the Board to receive and file into the public record.

Attachments:

1. Assignment of the Right to Purchase ERCs from BCDD to UTC

Recommended By: Burl Ben 2/2/09
 Department Director Date

Approved By: Sharon R. Boy 2/10/09
 Assistant County Administrator Date

CHARGE #1023 RETURN VIA WILL CALL #133
ATTN: MARK FALLON, CONTRACT MANAGEMENT,
PBC WATER UTILITIES DEPT,
8100 FOREST HILL BLVD, WPB, FL 33413

**ASSIGNMENT OF THE RIGHT TO PURCHASE WATER / WASTEWATER
EQUIVALENT RESIDENTIAL CONNECTIONS**

THIS ASSIGNMENT made and entered into this 31st day of October, 2008, by and between the Beeline Community Development District, a legal entity created under Chapter 190, Florida Statutes, whose address is c/o Special District Services, Inc., Suite 104, 11000 Prosperity Farms Road, Palm Beach Gardens, FL 33410 (“hereinafter Assignor”), and United Technologies Corporation, a Delaware corporation, operating through its Pratt & Whitney Division, whose address is 400 Main Street, M/S 132-12, East Hartford, CT 06108 (hereinafter “Assignee”), and consented to by Palm Beach County, Florida, 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, 33416 (hereinafter “County”).

WITNESSETH

WHEREAS, Assignor and County entered into a Water and Wastewater Utility Acquisition, Service and Service Area Agreement (County Resolution No. R2005-0366) dated February 15, 2005 as amended by First Amendment to Water and Wastewater Utility Acquisition, Service and Service Area Agreement dated January 9, 2007, as amended by Second Amendment to Water and Wastewater Utility Acquisition, Service and Service Area Agreement dated January 15, 2008, as amended by the Third Amendment to Water and Wastewater Utility Acquisition, Service and Service Area Agreement dated October 21, 2008 (collectively, the “Acquisition Agreement”) which is incorporated herein by reference, wherein Assignor agreed to sell, and County agreed to purchase, Assignor’s potable water distribution system and wastewater collection system, current customer base, as well the exclusive retail and whole potable water, wastewater, and reclaimed service with Assignor’s utility service area; and

WHEREAS, the Acquisition Agreement gave Assignor the right to purchase up to one thousand (1,000) additional Equivalent Residential Connections (ERCs) each of potable water and wastewater capacity within ten (10) years of the effective date of the Acquisition Agreement; and

WHEREAS, Assignor wishes to assign the right to purchase additional ERCs of potable water and wastewater capacity to Assignee together with all rights and benefits under the Acquisition Agreement related to such ERCs of potable water and wastewater capacity, and Assignee wishes to accept said assignment; and

WHEREAS, the County wishes to consent to the assignment of the right to purchase additional ERCs of potable water and wastewater capacity and related rights to Assignee.

NOW, THEREFORE, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, the parties hereto covenant and agree as follows:

1. The foregoing statements are true and correct.

2. (a) Pursuant to Section 2.4 of the Acquisition Agreement, Assignor hereby assigns to Assignee: the right to purchase one thousand (1,000) additional ERCs of potable water capacity, together with all rights and benefits under the Acquisition Agreement related to such ERCs, and

(b) Pursuant to Section 3.3 of the Acquisition Agreement, Assignor hereby assigns to Assignee: the right to purchase one thousand (1,000) ERCs of wastewater capacity, together with all rights and benefits under the Acquisition Agreement related to such ERCs.

3. The ERCs assigned under this Assignment shall only be used within the District Utility Service Area, as defined in the Acquisition Agreement. Assignee shall have through October 31, 2018, (the "Expiration Date") to purchase the ERCs. Assignee shall be responsible for paying the County the sum of One Thousand Two Hundred Dollars (\$1,200.00) for each ERC of potable water capacity purchased, and the sum of One Thousand (\$1,000.00) for each ERC of wastewater capacity purchased, and, at the time of service initiation of any of the additional ERCs of potable water capacity or wastewater capacity, Assignee shall only be required to pay: Service Installation Fees (exclusive of Tap fees), Meter Drop Fees, and Road Crossing Fees, if necessary, all as defined in the County's Water Utilities Department Uniform Policies and Procedures Manual ("UPAP"), as may be amended from time to time, and which is incorporated herein by reference. Certain other standard fees also shall not apply as provided in the Acquisition Agreement. Any ERCs not purchased by Assignee by Expiration Date, shall lapse. Assignee shall be required to enter into a Developer Agreement with the County prior to the purchase of any ERCs. The right to purchase and utilize ERCs may be freely assigned by Assignee to customers within the District Utility Service Area for use solely within the District Utility Service Area, provided such assignment must be in writing submitted to the County, and in the same form as this Assignment or otherwise in a form acceptable to the County, and provided further that each assignee shall be required to enter into a Developer Agreement prior to the purchase of the ERCs, in accordance with the UPAP, which shall not contain any terms inconsistent with this Assignment or the Acquisition Agreement.

4. This Assignment shall be recorded in the Public Records of Palm Beach County.


5. This Assignment shall be effective upon the approval of all parties. The Effective Date of this Assignment shall be October 31, 2008.

6. This Assignment and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida. Any and all legal action necessary to enforce this Assignment shall be held in Palm Beach County.

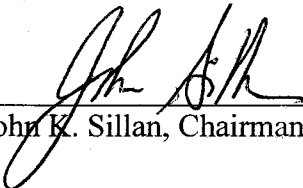
IN WITNESS WHEREOF, the parties hereto have executed or have caused this Agreement, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

ATTEST:

**BEELINE COMMUNITY DEVELOPMENT
DISTRICT**

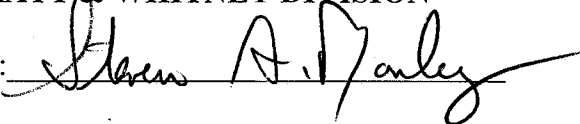
for 

Peter L. Pimentel, Secretary
TODD WODRASKA, ASST. SEC.



John K. Sillan, Chairman

**UNITED TECHNOLOGIES CORPORATION,
PRATT & WHITNEY DIVISION**

By: 

Name: Steven A. Bouley

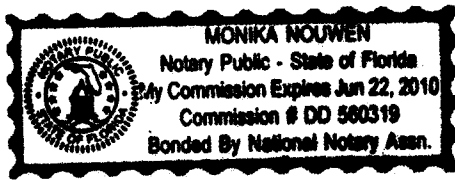
Title: General Manager
Florida and Mississippi Operations

NOTARY CERTIFICATE

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 31ST day of OCTOBER, 2008, by John K. Sillan, Chairman of the Beeline Community Development District. He is personally known to me or produced _____ as identification.

[NOTARY SEAL]



Monika Nouwen
Signature of Notary

MONIKA NOUWEN
Typed, Printed or Stamped Name of Notary

My Commission expires: _____

NOTARY CERTIFICATE

STATE OF Florida
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 12th day of December, 2008, by Steven Bouley as General Manager of Pratt & Whitney Rocketdyne, Florida and Mississippi Operation, United Technologies Corporation, Pratt & Whitney Division. He/she is personally known to me or produced _____ as identification.

[NOTARY SEAL]



Paula M Coffey
Signature of Notary

Paula M Coffey
Typed, Printed or Stamped Name of Notary

My Commission expires: 4/9/2011

IN WITNESS WHEREOF, this Of The Right To Purchase Water And Wastewater Equivalent Residential Connections is consented to by the Palm Beach County Board of County Commissioners.

ATTEST:
SHARON R. BOCK
CLERK AND COMPTROLLER

By: *Sharon R. Bock*
Deputy Clerk



(SEAL)

PALM BEACH COUNTY, BY ITS
BOARD OF COUNTY
COMMISSIONERS

By: *Addie L. Greene*
Addie L. Greene, Chairperson

APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY

By: *[Signature]*
County Attorney

APPROVED AS TO TERMS AND
CONDITIONS

By: *[Signature]*
Director of Water Utilities