

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: March 01, 2011 Consent [X] Regular []
Public Hearing []

Submitted By: Water Utilities Department
Submitted For: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Wastewater Development Agreement with Green House Bazaar, Inc. (Green House).


Summary: In conjunction with the City of Greenacres, the Palm Beach County Water Utilities Department (Department) is currently in the process of planning and designing a gravity sewer system along 10th Avenue North, west of Haverhill Road, which will provide sufficient capacity to serve the Green House property, as well as other potential users, with wastewater service. The construction of the gravity sewer system will eliminate the need for Green House, and other potential users, to construct, operate, and maintain private lift stations. As a contribution in lieu of construction, Green House agrees to pay to the Department the amount of \$10,000.00, said contribution to be allocated by the County to the costs for installation of the gravity sewer system. Green House shall pay the \$10,000 prior to or within ten (10) days of the effective date of this Agreement. In exchange for this contribution, Department shall use its best efforts to have the gravity sewer system installed in order to be available for connection to Green House's onsite wastewater collection system on or before April 2, 2011. (WUD Project No.11-507) District 2 (MJ)

Background and Justification: While the Department Director has been delegated the authority to enter into Standard Development Agreements (SDA) on behalf of the County, Board approval is being sought in this case due to issues unique to the project, including the contribution in lieu of construction.

Attachments:

- 1. Two (2) Original Agreement 02-01126-000
- 2. Location Map

Recommended By:  1/6/11
Department Director Date

Approved By:  2/4/2011
Assistant County Administrator Date

WASTEWATER

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

DA # 02-01126-000

WASTEWATER DEVELOPMENT AGREEMENT (DA)

THIS AGREEMENT made and entered into this _____ day of _____, 20___, by and between PALM BEACH COUNTY, a subdivision of the State of Florida, hereinafter referred to as "Utility" and GREEN HOUSE BAZAAR, INC., hereinafter referred to as "Property Owner."

WITNESSETH

WHEREAS, Property Owner owns property located in Palm Beach County, Florida, and as more fully described on Exhibit "A", attached hereto and made a part hereof and hereinafter referred to as "Property", whereupon Property Owner has or is about to develop the Property by erecting thereon residential or non-residential improvements; and

WHEREAS, Property Owner desires to construct wastewater facilities hereinafter referred to as "facilities"; and

WHEREAS, upon the conditions set forth herein, Utility desires to accept ownership of the completed wastewater facilities for operation and maintenance purposes; and

WHEREAS, Property Owner understands that this contract for service in no way entitles Property Owner to densities which are greater than those allowed under the density provisions of the Comprehensive Plan of Palm Beach County, or to densities or development rights as may otherwise be limited by the Board of County Commissioners; and

WHEREAS, in the interest of public health and to encourage the use of central wastewater facilities, Utility desires to enter into this Agreement.

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

1. The foregoing statements are true and correct.
2. The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:
 - (a) "UPAP" - the Uniform Policies and Procedures Manual of the Palm Beach County Water Utilities Department as may be amended from time to time, which is incorporated herein by reference;
 - (b) "Service" - the readiness and ability on the part of Utility to collect wastewater from the property;
 - (c) "Point of Service" - generally, the point where the pipes or meters of Utility are connected with the pipes of Property Owner as further defined in Chapter 1 of the UPAP;
 - (d) "Equivalent Residential Connection" (ERC) - a system capacity equivalency unit which corresponds to the peak demand of the 5/8" x 3/4" meter sub-category of the single family residential category of Customer usage. This system capacity equivalency unit is utilized to establish the system demand for various sized connections for the purpose of assessing fees;
 - (e) "Mandatory Agreement Payment (MAP)" - twelve months of Guaranteed Revenue Fees plus applicable Franchise Fees payable to Utility upon submission of an SDA or renewal agreement for each ERC (or ERIC) represented in the Agreement;

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- (f) "Service Initiation" - the date a wastewater connection is requested;
 - (g) "Guaranteed Revenue Fee" - the fee designed to recover the carrying costs of system capacity which has been or is being constructed in anticipation of future service requests. Carrying costs include fixed operating and renewal and replacement expenses necessary to maintain excess system capacity for future use. Guaranteed Revenue does not recover variable operating expenses;
 - (h) "Total Accrued Amount (TAA)" - At the time of Service Initiation for each ERC, a TAA equal to sixty months Guaranteed Revenue Fees plus applicable Franchise Fees at the then current rate minus the MAP paid per each ERC shall be due and payable for such ERC. The TAA for each ERC will be determined at the time of Service Initiation;
 - (i) "Standard Development Renewal Agreement (SDRA)" - an agreement between Utility and Property Owner extending the capacity reservation for unused ERCs/ERICs in a Standard Development Agreement for an additional five (5) years; and
 - (j) "Franchise Fee" - A percentage surcharge applied to all of Utility's fees for Customers within portions of Utility's Service Area with said fees collected by Utility and distributed to another governmental entity.
3. Property Owner hereby grants and gives to Utility the exclusive right and privilege to construct, own, maintain, operate and expand the wastewater facilities in, under, upon, over and across the present and future streets, roads, easements, reserved utility sites and public places as provided and dedicated to public use in the record plats, or as provided for in agreement, dedications or grants made otherwise and independent of said record plats. Utility covenants that it will use due diligence in ascertaining all easement locations; however, should Utility install any of its facilities outside a dedicated easement area, Property Owner covenants and agrees that Utility will not be required to move or relocate any facilities lying outside a dedicated easement area as long as the facilities do not interfere with the then or proposed use of the area in which the facilities have been installed. Property Owner hereby further agrees that the foregoing grants include the necessary rights of ingress and egress to any part of the Property which Utility requests for the maintenance, operation or expansion of the wastewater facilities; that in the event Utility is required or desires to install any of its wastewater facilities in lands within the Property lying outside the streets and easement areas described above, then Property Owner shall grant to Utility, without cost or expense to Utility, the necessary easement or easements for such installation; provided, all such installations by Utility shall be made in such a manner as not to interfere with the then primary use of such Property. Property Owner shall obtain written approval from Utility prior to installing any structure or object, including, but not limited to, fences, gates, signs, trees or poles, within an easement area. In consideration of Utility's consent to an encroachment, Property Owner shall agree to indemnify and hold Utility harmless from and against all liabilities, damages, penalties, claims costs and expenses, including attorney's fees at all levels, which may be imposed upon or asserted against Utility as a result of or in any way connected to an encroachment approved by Utility. In the event Utility determines that it is necessary to construct, maintain, repair, remove, or replace any of its facilities located under, over or upon an easement, Property Owner shall immediately remove the encroachment from the easement upon the request of Utility at Property Owner's sole cost and expense. If Property Owner fails to remove the encroachment, Utility shall have the right to remove the encroachment from the easement. Property Owner shall pay all costs related to removing the encroachment from the easement incurred by Utility.

Property Owner as further consideration of this Agreement, and in order to effectuate the foregoing grants to Utility, hereby places the following covenant, as a covenant running with the land, upon the Property and thereby subjecting it to a reservation, condition, limitation or restriction in favor of Utility, as follows:

Utility, or its successors, has the sole and exclusive right to provide all wastewater facilities and services to the Property described in **Exhibit "A"** and in addition to any property to which wastewater service is actually rendered by Utility. All occupants of any residence or non-residential improvement erected or located on the Property, and all subsequent or future owners or purchasers of the Property, or any portion thereof, shall exclusively receive their wastewater service from the aforesaid Utility and shall pay for the same and shall abide by the terms and intent of this Agreement, and the UPAP, for as long as the aforesaid Utility provides such services to the property. Further, all occupants of any residence or non-residential

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improvement erected or located on the Property, and all subsequent or future owners or purchasers of the property, or any portion thereof, agree, by occupying any premises on the Property or by recording any deed of conveyance with respect to the Property, that they will not construct or otherwise make available or use wastewater service from any source other than that provided by Utility.

Any water well or water source used solely for the purpose of supplying irrigation for the Property is excluded from this restriction unless the Property is required to utilize reclaimed water in accordance with the Palm Beach County Reclaimed Water Ordinance.

Further, in order to give an additional and supplementary notice to all the future Property Owners of any of the Property of the rights of Utility to provide the Property with wastewater facilities and services, Property Owner hereby covenants and agrees to have the above restrictive covenant or its equivalent included in the general subdivision restrictions and to place the same of record in the Public Records of Palm Beach County, Florida.

4. Upon the continued accomplishment of all the prerequisites contained in this Agreement to be performed by Property Owner, Utility covenants and agrees that it will allow the connection of the wastewater collection facilities installed by Property Owner to the wastewater facilities of Utility in accordance with the terms and intent of this Agreement. Such connection shall be in accordance with rules and regulations of the Health Department, the UPAP, and other governmental agencies having jurisdiction over the wastewater collection and disposal operation of Utility.
5. Property Owner is required to pay Guaranteed Revenue Fees plus applicable Franchise Fees in order to support investment in plant facilities, as well as the fixed costs of maintaining such facilities and the unused capacity it represents. Therefore, Property Owner agrees to pay in accordance with the UPAP:
 - (a) a MAP per each ERC for the requested capacity upon submission of this Agreement; and
 - (b) a TAA per each ERC for the requested capacity upon Service Initiation.

Utility has advised Property Owner that construction of additional wastewater facilities will be completed in phases designed to coincide with the need for service to Property Owner and other Property Owners in the service area. Utility should not be expected to provide service to connections in excess of those reserved as evidenced by proper payment of Guaranteed Revenue.

The MAP required upon submission of this Wastewater Agreement is:

Wastewater:	\$255.78 per ERC x	1.50 ERCs =	\$383.67
		Franchise Fee	\$0.00
		TOTAL	\$383.67

Upon receipt of the MAP, Utility agrees to reserve **1.50** ERCs of Wastewater system capacity for Property Owner until **February 28, 2016**, which term may be extended in accordance with the UPAP, as may be amended from time to time, and upon payment of applicable fees. Property Owner acknowledges and agrees Utility shall not refund or reimburse the MAP upon expiration.

Property Owner acknowledges that it is the sole responsibility of Property Owner to provide payment of a new MAP at the then current fees thirty (30) days before the expiration of the original five-year term. Should multiple assignments exist for this Agreement, each assignee must submit the appropriate MAP for any unconnected ERCs related to the assignee's ERCs. Should Property Owner or assignee fail to submit a new MAP payment for their respective unconnected ERCs, Property Owner acknowledges and agrees that Utility may unilaterally execute a document evidencing termination and partial release of this Agreement except for the rights, duties, or obligations as set forth in Paragraphs 3, 4, 8, 9, 10, 13, and 14 of this Agreement and record the document in the public records of Palm Beach County, Florida.

At the time of Service Initiation, the applicable ERCs will be deducted from said reservation. Upon approval of Utility, the total number of ERCs may be increased up to 10% of the original reservation or ten (10) ERCs, whichever is greater, by an amendment to this Agreement. The MAP required for the amendment shall be paid at the rate applicable to the original Agreement.

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Any amendments to the SDA shall be binding upon both Utility and Property Owner and subject to all applicable rules and regulations of Utility; however, any amendments shall not extend the original five (5) year term of the Agreement. Any adjustment which is greater than that specified herein requires a new Agreement to be signed. Upon written notice to Utility, said ERCs may be adjusted downward however no refund or credit will be given by Utility to Property Owner for said downward adjustment.

6. Subsequent to construction of the facilities and prior to receiving a meter(s) from Utility, Property Owner shall convey to Utility all easements and/or rights-of-way covering areas in which wastewater lines are installed by a recordable document in a form supplied by Utility. All conveyance of easements or rights-of-way shall be accompanied by a paid title policy for the benefit of Utility in a minimum amount of:
 - \$50.00 per linear foot of any granted utility easement (based on the centerline of the easement); and
 - \$150,000 for a Utility-owned wastewater lift station (if not constructed within an existing utility easement).

Said title policy shall confirm the Grantor's rights to convey such easements or rights-of-way, and further, evidencing Utility's right to the continuous enjoyment of such easements or rights-of-way for those purposes set forth in this Agreement. The use of easement(s) granted by Property Owner may be used by other utilities as long as such use is approved by Utility.

Property Owner hereby agrees to pay to Utility, Guaranteed Revenue Fees, Connection Fees, Service Installation Fees, Franchise Fees, and any other applicable fees as set forth in the UPAP at the then current rate. The timely payment by Property Owner of all fees in accordance with the terms set forth herein, shall be considered essential to the continued performance by Utility of the terms and conditions of this Agreement. The construction and transfer of ownership of the wastewater collection system does not and will not result in Utility waiving or offsetting any of its fees, rules, or regulations. Property Owner shall not have any present or future right, title, claim, or interest in and to the wastewater facilities transferred to or owned by Utility.

7. Upon submission of this Agreement, Property Owner, at his expense, agrees to furnish Utility with a copy of the recorded Warranty Deed for the purpose of establishing ownership of the Property. Any mortgagee or lien holder having an interest in the Property shall be required to execute a Consent and Joinder of Mortgagee/Lienholder as supplied by Utility. Property Owner must submit either a title policy or a letter from an attorney licensed to do business in Florida confirming that there is no mortgage or lien on the Property. The title policy or letter must be issued within thirty (30) days of submittal of the SDA.
8. **Intentionally left blank.**
9. Notwithstanding any provision in this Agreement, Utility may establish, revise, modify, and enforce rules, regulations, and fees covering the provision of wastewater service to the Property. Such rules, regulations, and fees are subject to the approval of the Palm Beach County Board of County Commissioners. Such rules, regulations, and fees shall be reasonable and subject to regulation as may be provided by law or contract. Fees charged to Property Owner or Customers located upon the Property shall be identical to fees charged for the same classification of service in the particular service area. All rules, regulations and fees as set forth in the UPAP, shall be binding upon Property Owner, upon any other entity holding by, through or under Property Owner, and upon any Customer of wastewater service provided to the Property by Utility. Said rules and regulations include, but are not limited to, Service Initiation, oversizing of facilities, use of previously oversized facilities or extension of facilities. Any fee or rate delinquent more than 120 days will automatically void this Standard Development Agreement.
10. Property Owner or his assignee shall not have the right to and shall not connect to the wastewater facilities of Utility until approval for such connection has been granted by Utility. The parties hereto further agree that the expense of construction operation and maintenance of all improvements beyond the point of service shall be the sole cost and expense of Property Owner or other than Utility.

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11. Property Owner acknowledges and agrees that the transfer or assignment of this Agreement upon the sale, conveyance, transfer or assignment of the Property, or any portion thereof, as described in Exhibit "A" of this Agreement by Property Owner shall only be performed in accordance with the provisions of UPAP. Property Owner further acknowledges and agrees that documenting the transfer or assignment of this Agreement in a form acceptable to Utility is the sole responsibility of Property Owner. Failure to provide documentation to Utility of an assignment or transfer within thirty (30) days after the sale, conveyance, transfer, or assignment of the Property, or any portion thereof, may result in the cancellation of the capacity reserved and/or loss of the Mandatory Agreement Payment identified herein.
12. All notices provided for herein shall be in writing and transmitted by mail or by courier, and if to Property Owner shall be mailed or delivered to Property Owner at:

**7245 Smithbrooke Dr
Lake Worth, FL 33467-7201;**

and if to Utility, shall be mailed to Palm Beach County Water Utilities Department Contract Management Section, P.O. Box 16097, West Palm Beach, FL 33416-6097.

13. The rights, privileges, obligations, and covenants of Property Owner and Utility shall survive the completion of the work of Property Owner with respect to completing wastewater facilities and services to any phased area and to the Property as a whole.
14. Unless Property Owner is requesting additional capacity for the property described in Exhibit "A", this Agreement shall supersede, null and void, all previous agreements or representations, either verbal or written, heretofore in effect between Property Owner and Utility, made with respect to the matter herein contained, and when duly executed, constitutes the entire agreement between Property Owner and Utility. No additions, alterations, or variations of terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alterations, variations or waiver are expressed in writing and duly signed by the parties hereto. This Agreement shall be governed by the laws of the State of Florida and shall become effective upon execution by the parties hereto. The venue for actions arising out of this Agreement is in Palm Beach County, Florida.
15. Inspector General: Pursuant to Ordinance No. 2009-049, as amended, Palm Beach County's Officer of Inspector General is authorized to review past, present and proposed 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.
16. Special Conditions: In conjunction with the City of Greenacres, Utility is currently in the process of planning and designing a gravity sewer system which will provide sufficient capacity to serve the Property, as well as other potential users, with wastewater service. The construction of the gravity sewer system will eliminate the need for the Property Owner, and other potential users, to construct, operate, and maintain private lift stations. As a contribution in lieu of construction, Property Owner agrees to pay to the Utility the amount of \$10,000.00, said contribution to be allocated by the County to the costs for installation of the gravity sewer system. Property Owner shall pay the \$10,000.00 prior to or within ten (10) days of the effective date of this Agreement. Utility shall use its best efforts to have the gravity sewer system installed in order to be available for connection to the Property's onsite wastewater collection system on or before April 2, 2011. The exact location of the wastewater stub-out shall be coordinated between Property Owner and Utility.

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

ATTEST:

Clerk & Comptroller (or Deputy Clerk)

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

By: _____
Karen T. Marcus, Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS AND
CONDITIONS

By: _____
Bevin A. Beudet,
Department Director or Designee

WATER UTILITIES DEPARTMENT
FINANCE AND ADMINISTRATION
APPROVAL

By: _____
Director of Finance and Administration ©
PBC Water Utilities Department

WITNESSES:

Wanda R. Nunez

Typed or Printed Name

STEVEN ZWIRZ

Typed or Printed Name

PROPERTY OWNER:

By: _____
Signature

ALEX BAYATNIA - GREEN HOUSE BARAAK INC.

Typed or Printed Name

PRESIDENT

Title

[Corporate Seal]

NOTARY CERTIFICATE

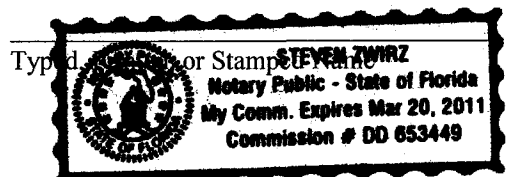
STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 22nd day of December, 2010, by ALEX BAYATNIA. He/she is personally known to me or has produced FLDL as identification.

My Commission Expires: MARCH 20, 2011

DD 653449
Serial Number

Signature of Notary



WASTEWATER

**EXHIBIT "A"
LEGAL DESCRIPTION**

**LOTS 17, 18, 19 AND 20, BLOCK 20, GREENACRES PLAT NO. 2, ACCORDING TO THE
PLAT THEREOF RECORDED IN PLAT BOOK 13, PAGE 3, OF THE PUBLIC RECORDS
OF PALM BEACH COUNTY, FLORIDA.**

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*OK
12/21/10
G*

CONSENT AND JOINDER OF MORTGAGEE/LIENHOLDER

Andres Soto, Jr., a(n) individual, existing under the laws of the State of _ and authorized to do business in the State of Florida, hereby certifies that it is the mortgagee/lienholder under a mortgage from Green House Bazaar, Inc., a(n) Florida Corporation, dated July 23, 2010, filed ____, and recorded in Official Record Book 23977, Page, 1361, as modified by Mortgage Modification Agreement dated N/A; filed _____ and recorded in Official Record Book _____, Page _____, all in the Public Records of Palm Beach County, Florida, and hereby consents to and joins in the execution of the Agreement between Palm Beach County and GREEN HOUSE BAZAAR, INC., for the provision of potable water, wastewater, and/or reclaimed water service to the property described in Exhibit "A" to the Agreement and further consents to and joins in the granting of utility easements to Palm Beach County as provided for in the aforesaid agreement with Palm Beach County.

Andres Soto, Jr., as mortgagee aforesaid, consents to the recording by _____ or Palm Beach County, Florida, in the Public Records of Palm Beach County, Florida of the contract.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 31st day of January, 2011.

WITNESSES:

Linda M. Collins
Signature
Linda M. Collins
Typed or Printed Name

Judy D. Provence
Signature
Judy D. Provence
Typed or Printed Name

a(n) _____
authorized to do business in the
State of Florida.

By: Mortgagee
Title
Andres Soto Jr.
Typed or Printed Name

NOTARY CERTIFICATE

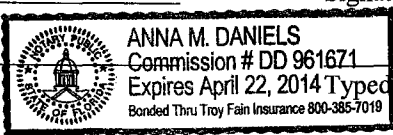
STATE OF Florida
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 31st day of January, 2011, by Andres Soto Jr. He/she is personally known to me or has produced FL D/C as identification.

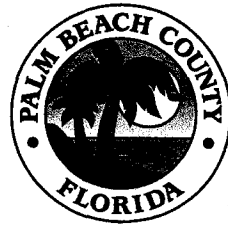
My Commission Expires: _____

Anna M Daniels
Signature of Notary

Serial Number _____



Printed, or Stamped Name



**Palm Beach County
Water Utilities
Department
Service Area (SA) and
Major Facilities**

Legend

- P.B.C.W.U.D. SA
- Mandatory Reclaimed SA
- - - Palm Beach County Limits
- ★ Administration
- Water Reclamation Facility
- ▲ Water Treatment Facility
- ⊕ Wetlands

