

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: April 17, 2012

Consent [X]
Public Hearing []

Regular []

Department: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: executed Utility Concurrency Reservation Agreement with The Allegro at Boynton Beach, L.L.C. UCRA # 05-01109-000

Summary: In accordance with County PPM CW-0-051, all delegated contracts/agreements/grants/procurement items must be submitted by the initiating Department as a receive and file agenda item. The attached Utility Concurrency Reservation Agreement has been fully executed on behalf of the Board of County Commissioners (Board) by the County Administrator/Director/Deputy Director of the Water Utilities Department in accordance with Resolutions R93-1619, R96-0228, and R2003-0539 and is now being submitted to the Board to receive and file. District 5 (MJ) **Original documents can be viewed in Minutes.**


Background and Justification: Water Utilities Department's Uniform Policies and Procedures require Standard Development Agreements to obtain concurrency for water and/or wastewater service. The terms and conditions for Standard Development Agreements are outlined in the Water Utilities Department's Uniform Policies and Procedures Manual. The Board of County Commissioners delegated the authority to execute various types of Standard Development Agreements, and related documents including Standard Indemnity Agreements to the Department Director including potable water and wastewater agreements (R93-1619); reclaimed water agreements (R96-0228); and additional conditions for potable water, wastewater, and reclaimed water agreements (R2003-0539).

The Agreement attached has been executed on behalf of the Board by the County Administrator/Director/Deputy Director of the Water Utilities Department in accordance with the authority delegated by the Board, and is now being submitted to the Board to receive and file.

Attachments:

1. Two (2) Original Utility Concurrency Reservation Agreement UCRA # 05-01109-000 (1)

Recommended By:  4/4/12
Department Director Date

Approved By:  4/10/12
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	0	0	0	0	0
External Revenues	(32,664)	0	0	0	0
Program Income (County)	0	0	0	0	0
In-Kind Match County	0	0	0	0	0
NET FISCAL IMPACT	(32,664)	0	0	0	0
# ADDITIONAL FTE POSITIONS (Cumulative)	0	0	0	0	0
Budget Account No.:	Fund _____	Dept _____	Unit _____	Object _____	

Is Item Included in Current Budget? Yes _____ No _____

Reporting Category N/A

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

No Fiscal Impact

C. Department Fiscal Review: Debra M West

III. REVIEW COMMENTS

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

MAP have been paid in Full which is credited by the UCF payment. All service and installation fees will be collected at the time of connection.

[Signature] 4/5/12
OFMB
4/5/12

[Signature] 4/9/12
Contract Development and Control
4-9-12 *[Signature]*

B. Legal Sufficiency:

[Signature] 4/10/12
Assistant County Attorney

C. Other Department Review:

Department Director

UTILITY CONCURRENCY RESERVATION AGREEMENT

THIS UTILITY CONCURRENCY RESERVATION AGREEMENT is made and entered into this 16th day of MARCH, 2012, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "Utility" and THE ALLEGRO AT BOYNTON BEACH, L.L.C, a Florida limited liability company, hereinafter referred to as "Developer."

WITNESSETH:

WHEREAS, Developer plans to develop property located in Palm Beach County, Florida, as more fully described in Exhibit "A," attached hereto and made a part hereof and hereinafter referred to as "Property"; and

WHEREAS, Developer does not own all portions of Property, but must demonstrate reservation of:

Potable Water [X] Wastewater [X] Reclaimed Water []

capacity in Utility system ("Capacity") in order to obtain concurrency and proceed with the developmental approvals for the Property; and

WHEREAS, Utility warrants that Capacity, identified in terms of Equivalent Residential Connections (ERC) as defined in the Utility's Uniform Policies and Procedures Manual (UPAP), will be reserved for Developer for up to five (5) years upon execution of this Utility Concurrency Reservation Agreement ("UCRA") and payment of a Utility Concurrency Fee ("UCF"); and

WHEREAS, in the interest of public health and to encourage the use of central potable water, wastewater, and/or reclaimed water facilities, Utility desires to enter into this UCRA.

NOW THEREFORE, in consideration of the mutual covenants and agreements expressed herein, the parties hereby agree as follows:

- 1. Developer certifies that he is currently under contract to purchase, or has an option to purchase, those portions of Property that he does not already own.
2. The Capacity reserved by this UCRA is temporary in nature and will expire in five (5) years of the date this UCRA is executed and the applicable UCF is paid.
3. This UCRA will not be recorded in the official Public Records against Property.
4. The UCF may be credited toward the Mandatory Agreement Payment (MAP) as defined in the UPAP and as required by Utility in order to obtain a Standard or Non-Standard Development Agreement (DA) on Property before the expiration of this UCRA. In the case of a rate increase after execution of this UCRA, additional MAP funds will be due at the time of entering into a DA. Once a DA has been entered into for Property, then this UCRA shall automatically expire.
5. Developer may assign his interests in and under this UCRA to a Successor Developer who meets the requirements in Section 1 above. Upon such assignment, (i) the assignee shall assume and be bound by all of the terms, conditions, duties, obligations and liabilities of and under this UCRA and become the "Successor Developer" hereunder; and (ii) Developer shall be released from all of the terms and conditions of this UCRA and have no further duty, obligation and/or liability hereunder. The assignment of this UCRA shall not extend the term of the original UCRA.

UCRA # 05-01109-000

The number and type of ERCs reserved through, and the UCF due upon submission of, this UCRA are:

Potable Water:	\$190.08 per ERC x	71.5 ERCs =	\$13,590.72
Wastewater:	\$266.76 per ERC x	71.5 ERCs =	\$19,073.34
		UCF DUE	<u>\$32,664.06</u>

6. UCF payments are not refundable, not reimbursable, and not assignable except as identified above or as allowable in UPAP.
7. This UCRA must be converted to a DA prior to final site plan approval by Palm Beach County's Development Review Committee.
8. The UCRA's Approval Date shall be used to determine the DA's five-year expiration date if the UCF payment is credited against the DA's MAP.
9. Developer agrees that Utility shall be the sole and exclusive provider of retail and/or wholesale Potable Water, Wastewater, and Reclaimed Water service to the Property and that Developer shall not seek to obtain retail and/or wholesale Potable Water, Wastewater, or Reclaimed Water service for the property from another public or private utility service provider.
10. All notices concerning this UCRA shall be in writing and transmitted by mail or courier, and if to Developer, shall be mailed or delivered to Developer at:

**212 South Central, Suite 301
St. Louis, Missouri, 63105**

And if to Utility, shall be mailed Palm Beach County Water Utilities Department, Contract Management Section, P.O. Box 16097, West Palm Beach, FL 33416-6097, or delivered to 8100 Forest Hill Blvd., West Palm Beach, FL.

11. 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 the Developer(s), its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties, by and through their fully authorized agents, have hereunto set their hands and seals on the date first above written.

WITNESSES:

Nancy M May
NANCY M. MAY

Type or Print Name

Judy D. Provence
Judy D. Provence

Type or Print Name

PALM BEACH COUNTY

By: Burg Ben
County Administrator or Designee

WITNESSES:

Jana C. Fata
Jennifer Fata

Type or Print Name

Jana E Veselsky
JANA E. VESELSKY

Type or Print Name

DEVELOPER:

The Allegiant at Boynton Beach, L.L.C.
By: [Signature]
Signature
Executive Vice President
Title

Richard C. Miller
Typed or Printed Name

NOTARY CERTIFICATE

STATE OF Missouri
COUNTY St. Louis

The foregoing instrument was acknowledged before me this 23rd day of February, 2012 by Richard C. Miller. He/she is personally known to me or has produced _____ as identification.

My Commission Expires: _____

Signature of Notary [Signature]

Typed, Printed, or Stamped Name of Notary



GEORGENE R. HEINZ
My Commission Expires
April 21, 2013
Jefferson County
Commission #09482582

Notary Public
Serial Number _____

WATER UTILITIES DEPARTMENT APPROVAL:

By: Selma Moxest
Director, Finance and Administration
PBC Water Utilities

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: [Signature]
County Attorney

EXHIBIT "A"
LEGAL DESCRIPTION

ALL OF THE PLAT OF RARE SPECIES NURSERY, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 84, PAGE 154 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

OK
03/01/2012
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