

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: June 5, 2012

Consent [X]
Public Hearing []

Regular []

Department: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: executed Agreement received during the month of April 2012.

A) Utility Concurrency Reservation Agreement with Delray Beach Associates I, LLC - UCRA # 05-01110-000

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 are 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 or Utility Concurrency Reservation Agreements to obtain concurrency for water and/or wastewater service. The terms and conditions for 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 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 are now being submitted to the Board to receive and file.

Attachments:

1. Two (2) Originals Utility Concurrency Reservation Agreements UCRA #05-01110-000

Recommended By:  5/10/12
Department Director Date

Approved By:  5/18/12
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact

Fiscal Years	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	(325,384)	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
Net Fiscal Impact	<u>(325,384)</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____ 0	_____ 0	_____ 0	_____ 0	_____ 0

Is Item Included In Current Budget? Yes ___ No x

Budget Account No.: FUND ___ DEPT ___ UNIT ___ OBJECT ___

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

MAP has been paid in full and service installation fees will be collected at the time of connection.

C. Department Fiscal Review: _____

III. REVIEW COMMENTS

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

OFMB
5/17/12

Contract Administration
5-17-12 B. Whell
5/17/12

B. Legal Sufficiency:

Assistant County Attorney
5/18/12

C. Other Department Review:

Department Director

UTILITY CONCURRENCY RESERVATION AGREEMENT

THIS UTILITY CONCURRENCY RESERVATION AGREEMENT is made and entered into this 27th day of APRIL, 2012, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "Utility" and **DELRAY BEACH ASSOCIATES I, LLC**, 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 ☒ Wastewater ☒ 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.

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	712.25 ERCs =	\$135,384.48
Wastewater:	\$266.76 per ERC x	712.25 ERCs =	\$189,999.81
Reclaimed Water:	\$0.00 per ERC x	TBD ERCs =	\$0.00
UCF DUE			<u>\$325,384.29</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:

1600 Sawgrass Corporate Parkway, Suite 400
Sunrise, FL 33323

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:

PALM BEACH COUNTY

Nancy M May
NANCY M. MAY

By: [Signature]
County Administrator or Designee

Type or Print Name

Judy D. Provence
Judy D. Provence
Type or Print Name

WITNESSES:

DEVELOPER:
DELRAY BEACH ASSOCIATES I, LLC

Larry Portnoy
Larry Portnoy
Type or Print Name

By: [Signature]
Signature
VICE PRESIDENT
Title

Gladys DiGirolamo
GLADYS DIGIROLAMO
Type or Print Name

KEVIN RATTERREE
Typed or Printed Name

STATE OF FLORIDA
COUNTY CLAY

NOTARY CERTIFICATE

The foregoing instrument was acknowledged before me this 12 day of APRIL, 20 12 by KEVIN RATTERREE. He/she is personally known to me or has produced _____ as identification.

My Commission Expires: 9-7-2015

Signature of Notary [Signature]
TERRY LILLIAN
Typed, Printed, or Stamped Name of Notary

Notary Public
Serial Number



WATER UTILITIES DEPARTMENT APPROVAL:

By: [Signature]
Director, Finance and Administration
PBC Water Utilities

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: [Signature]
County Attorney

EXHIBIT "A"
LEGAL DESCRIPTION

DESCRIPTION: VALENCIA ASSEMBLAGE – DEVELOPMENT PARCEL BEING A PORTION OF TRACT "Y", CANYON LAKES PRESERVE AREA NO. 5, AS RECORDED IN PLAT BOOK 101, PAGES 173 THROUGH 175, A PORTION OF TRACT A-1 AND TRACT C, CANYON ISLES PRESERVE PLAT ONE, AS RECORDED IN PLAT BOOK 104, PAGES 139 AND 140, A PORTION OF TRACT "A-1", TRACT "A-2" AND TRACT "B", CANYON SPRINGS PRESERVE PLAT NO. 2, AS RECORDED IN PLAT BOOK 107, PAGES 105 THROUGH 107 AND A PORTION OF TRACT "A", CANYON SPRINGS PRESERVE PLAT NO. 5, AS RECORDED IN PLAT BOOK 107, PAGES 112 THROUGH 114, ALL OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA TOGETHER WITH A PORTION OF ACME DAIRY ROAD RIGHT-OF-WAY ACCORDING TO OFFICIAL RECORDS BOOK 7542, PAGE 1239 AND OFFICIAL RECORDS BOOK 18673, PAGE 7 AND A PORTION OF A ROAD, DYKE AND DITCH RESERVATION 30 FEET IN WIDTH, LYING BETWEEN TRACTS 9, 24, 41, 56 AND TRACTS 8, 25, 40 AND 57, BLOCK 63 ACCORDING TO PALM BEACH FARMS COMPANY PLAT NO. 3, AS RECORDED IN PLAT BOOK 2, PAGES 45 THROUGH 54, ALL OF SAID PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF SAID TRACT "Y", CANYON LAKES PRESERVE AREA NO. 5; THENCE NORTH 00°23'30" WEST ALONG THE BOUNDARY LINE OF SAID TRACT "Y", A DISTANCE OF 1,335.00 FEET; THENCE SOUTH 89°36'30" WEST ALONG THE BOUNDARY LINE OF SAID TRACT "Y", A DISTANCE OF 860.03 FEET; THENCE NORTH 00°23'30" WEST ALONG A LINE 100.00 FEET EAST OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE WEST LINE OF SAID TRACT "Y", A DISTANCE OF 1,305.00 FEET; THENCE NORTH 89°36'30" EAST ALONG THE NORTH LINE OF SAID TRACT "Y", A DISTANCE OF 2,495.08 FEET; THENCE SOUTH 00°23'29" EAST ALONG THE EAST LINE OF SAID TRACT "Y", A DISTANCE OF 5.64 FEET; THENCE NORTH 89°36'30" EAST ALONG THE NORTH LINE OF SAID TRACTS "A-1" AND "A-2", SAID CANYON SPRINGS PRESERVE PLAT NO. 2, AND THEIR WESTERLY EXTENSION, A DISTANCE OF 374.97 FEET; THENCE ALONG THE NORTH BOUNDARY OF SAID TRACT "A-1", CANYON SPRINGS PRESERVE PLAT NO. 2 FOR THE FOLLOWING EIGHT (8) DESCRIBED COURSES , SOUTH 00°26'28" EAST, A DISTANCE OF 0.36 FEET; THENCE NORTH 89°36'30" EAST, A DISTANCE OF 660.00 FEET; THENCE NORTH 00°26'28" WEST, A DISTANCE OF 0.36 FEET; THENCE NORTH 89°36'30" EAST, A DISTANCE OF 660.00 FEET; THENCE SOUTH 00°26'28" EAST, A DISTANCE OF 0.36 FEET; THENCE NORTH 89°36'30" EAST, A DISTANCE OF 330.00 FEET; THENCE NORTH 00°26'28" WEST, A DISTANCE OF 0.36 FEET; THENCE NORTH 89°36'30" EAST, A DISTANCE OF 29.66 FEET; THENCE DEPARTING SAID NORTH LINE, SOUTH 00°26'28" EAST ALONG A LINE 300.34 FEET WESTERLY OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE EAST LINE OF SAID TRACT "A-1", CANYON SPRINGS PRESERVE PLAT NO. 2, A DISTANCE OF 1,813.86 FEET; THENCE SOUTH 49°54'03" WEST, A DISTANCE OF 198.17 FEET; THENCE NORTH 82°55'09" WEST, A DISTANCE OF 496.45 FEET; THENCE SOUTH 26°34'43" WEST, A DISTANCE OF 437.90 FEET; THENCE SOUTH 39°07'46" WEST, A DISTANCE OF 321.79 FEET, TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 2,160.00 FEET, WHOSE RADIUS POINT BEARS SOUTH 09°57'30" EAST FROM SAID POINT AND A CENTRAL ANGLE OF 09°03'36"; THENCE WESTERLY, ALONG THE SOUTH LINE OF SAID TRACT A-I, CANYON ISLES PRESERVE PLAT ONE FOR THE FOLLOWING TWO (2) DESCRIBED COURSES AND ALONG THE ARC OF SAID CURVE TO THE LEFT, A DISTANCE OF 341.55 FEET, TO A POINT OF REVERSE CURVATURE WITH A CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 2,040.00 FEET AND A CENTRAL ANGLE OF 03°34'26"; THENCE WESTERLY, ALONG THE ARC OF SAID CURVE TO THE RIGHT, A DISTANCE OF 127.25 FEET, TO A POINT OF INTERSECTION WITH A NON-TANGENT LINE; THENCE SOUTH 89°36'30" WEST ALONG THE SOUTH LINE OF SAID TRACT A-I, CANYON ISLES

PRESERVE PLAT ONE AND ALONG THE SOUTH LINE OF SAID TRACT "Y", CANYON LAKES PRESERVE AREA NO. 5, A DISTANCE OF 2,190.49 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL OF LAND:

COMMENCE AT THE SOUTHEAST CORNER OF SAID TRACT "A", CANYON SPRINGS PRESERVE PLAT NO. 5; THENCE SOUTH $89^{\circ}36'30''$ WEST ALONG THE SOUTH LINE OF SAID TRACT "A", A DISTANCE OF 300.01 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH $89^{\circ}36'30''$ WEST ALONG SAID SOUTH LINE OF SAID TRACT "A" AND ITS WESTERLY EXTENSION, A DISTANCE OF 1,858.90 FEET, TO A POINT OF INTERSECTION WITH A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1,640.00 FEET, WHOSE RADIUS POINT BEARS SOUTH $62^{\circ}05'38''$ EAST FROM SAID POINT AND A CENTRAL ANGLE OF $18^{\circ}16'21''$; THENCE NORTHEASTERLY, ALONG THE ARC OF SAID CURVE TO THE RIGHT AND ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID ACME DAIRY ROAD AS RECORDED IN OFFICIAL RECORDS BOOK 18673, PAGE 7, A DISTANCE OF 523.02 FEET, TO A POINT OF REVERSE CURVATURE WITH A CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 1,660.00 FEET AND A CENTRAL ANGLE OF $17^{\circ}11'06''$; THENCE NORTHEASTERLY, ALONG THE ARC OF SAID CURVE TO THE LEFT AND ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 497.89 FEET, TO A POINT OF RADIAL INTERSECTION; THENCE SOUTH $61^{\circ}00'23''$ EAST, A DISTANCE OF 80.00 FEET TO A POINT OF RADIAL INTERSECTION WITH A CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 1,740.00 FEET AND A CENTRAL ANGLE OF $04^{\circ}50'23''$; THENCE NORTHEASTERLY, ALONG THE ARC OF SAID CURVE TO THE LEFT AND ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID ACME DAIRY ROAD AND ALONG THE WESTERLY BOUNDARY OF SAID TRACT "A", A DISTANCE OF 146.98 FEET, TO A POINT TO A POINT OF REVERSE CURVATURE WITH A CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 32.00 FEET AND A CENTRAL ANGLE OF $47^{\circ}19'17''$; THENCE ALONG THE WESTERLY BOUNDARY OF SAID TRACT "A" FOR THE FOLLOWING FOUR DESCRIBED COURSES, NORTHEASTERLY, ALONG THE ARC OF SAID CURVE TO THE RIGHT, A DISTANCE OF 26.43 FEET, TO A POINT OF REVERSE CURVATURE WITH A CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 77.00 FEET AND A CENTRAL ANGLE OF $100^{\circ}02'46''$; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE TO THE LEFT, A DISTANCE OF 134.45 FEET, TO A POINT OF REVERSE CURVATURE WITH A CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 32.00 FEET AND A CENTRAL ANGLE OF $47^{\circ}19'17''$; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE TO THE RIGHT, A DISTANCE OF 26.43 FEET, TO A POINT OF REVERSE CURVATURE WITH A CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 1,740.00 FEET AND A CENTRAL ANGLE OF $08^{\circ}02'08''$; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE TO THE LEFT, A DISTANCE OF 244.03 FEET; THENCE LEAVING SAID BOUNDARY LINE, NORTH $89^{\circ}36'32''$ EAST, A DISTANCE OF 975.00 FEET; THENCE SOUTH $00^{\circ}26'28''$ EAST ALONG A LINE 300.01 FEET WESTERLY OF (AS MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE EAST LINE OF SAID TRACT "A", CANYON SPRINGS PRESERVE PLAT NO. 5, A DISTANCE OF 1,283.88 FEET TO THE POINT OF BEGINNING.

CONTAINING 273.953 ACRES, MORE OR LESS.

OK
04/18/12 G