

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

Meeting Date: December 4, 2012 Consent [X] Regular []
Public Hearing []

Department: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A First Amendment to the Potable Water and Wastewater Development Agreement with United Technologies Corporation ("Tenant") and the Beeline Community Development District ("Property Owner") reimbursing the Tenant \$42,550 for certain redesign and re-permitting costs.

Summary: Tenant rents property from the Beeline Community Development District. Tenant's facility, which tests fire protection systems, requires a much higher than standard level of fire flow protection. Tenant completed the design and permitting, with Water Utilities Department (WUD) approval, of a suitable system and was permitted to construct it. Prior to the beginning of construction WUD discovered that a recently installed WUD-owned auxiliary re-chlorination facility would inhibit Tenant from achieving its required and permitted fire protection flow. Tenant was required to re-design and re-permit the utility facilities. WUD recommends a partial reimbursement of Tenant's re-design and re-permitting fees due to the late discovery of the re-chlorination facility. The completed water system installed by the Tenant is owned by County and has adequate capacity to provide higher than standard level of fire protection to future projects in the vicinity of Tenant property. Board's approval will reimburse the Tenant for the partial cost of re-design and re-permitting only. District 1 (MJ)

Background and Justification: County, Tenant and Property Owner entered into a Potable Water and Wastewater Development Agreement for subject property on April 5, 2011. County required Tenant to design and construct certain potable water facilities to serve the property, which upon completion of construction would be conveyed to the County. The design approved by County took into consideration the requirement of a higher level of fire flow projection, substantially exceeding the standard flow rate committed by County to the Property Owner in a master service agreement. Subsequent to the County's approval of the design of the facilities, it was discovered that a County installed in-line auxiliary re-chlorination facility would negatively affect the available fire flow. Tenant re-designed and re-permitted the water distribution system per County's direction. The installed facilities are sized to serve adjacent properties with higher level of fire protection, if needed.

Attachments:

1. Location Map
2. Two (2) Original First Amendment Agreements

Recommended By:  11/6/12
Department Director Date

Approved By:  11-27-12
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2013	2014	2015	2016	2017
Capital Expenditures	<u>\$42,550.00</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues (see part B)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>\$42,550.00</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No.: Fund 4011 Dept. 721 Unit W006 Object 6543

Is Item Included in Current Budget? Yes X No

Reporting Category N/A

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

The expenditure will be funded using Water Utility Department user fees.

C. Department Fiscal Review: Debra M West

III. REVIEW COMMENTS

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

[Signature] 11/19/2012
OFMB
11/17/12
JB

[Signature] 11/19/12
Contract Development and Control
11-19-12 B. Keller



B. Legal Sufficiency:

[Signature] 11/26/12
Assistant County Attorney

C. Other Department Review:

Department Director



<p>UTC Fire & Security Project</p> <p>produced by: myGeoNav</p>	 
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**FIRST AMENDMENT TO POTABLE WATER AND WASTEWATER
DEVELOPMENT AGREEMENT – BEELINE ADDITIONAL ERCS**

THIS FIRST AMENDMENT, made and entered into this _____ day of _____, 2012, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as “County,” and **UNITED TECHNOLOGIES CORPORATION, PRATT AND WHITNEY DIVISION**, a foreign profit corporation authorized to do business in Florida, hereinafter referred to as “Tenant”, and the **BEELINE COMMUNITY DEVELOPMENT DISTRICT**, a legal entity created under Chapter 190, Florida Statutes, hereinafter referred to as “Property Owner”.

WITNESSETH

WHEREAS, County, Tenant and Property Owner entered into a Potable Water and Wastewater Development Agreement – Beeline Additional ERCs (“Agreement”) on April 5, 2011, a copy of which is recorded in Official Record Book 24477, Page 702 of the Official Records for Palm Beach County, Florida; and

WHEREAS, as part of the development of the Property, County required the Tenant to design and construct certain potable water facilities to serve the Property; and

WHEREAS, subsequent to the County’s approval of the design and the permitting of the potable water facilities, it was discovered that a recently-installed auxiliary chlorination facility would impact the potable water pressure and flow availability to the Property; and

WHEREAS, in order to meet the operational requirements of the Property as developed, Tenant was required to redesign and re-permit the potable water facilities at an additional cost to the Tenant; and

WHEREAS, the redesigned potable water facilities are beneficial to the County in that they will provide a higher level of potable water service to future development than the potable water facilities as originally designed; and

WHEREAS, the County wishes to reimburse Tenant for a portion of the additional redesign and re-permitting costs; and

WHEREAS, Tenant and Property Owner wish to release County from any future claims related to the design, permitting, construction, and installation of the potable water facilities.

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

1. The foregoing statements are true and correct and are incorporated herein by

specific reference.

2. Any capitalized words not specifically defined herein shall have the same meaning as set forth in the Agreement.
3. The following is added to the Agreement as a new Section 20:
 - A. County shall reimburse Tenant in the amount of \$42,550 for the redesign and re-permitting of the potable water facilities on the Property. A summary of the costs is set forth in **Exhibit "A"**, a copy of which is attached hereto and incorporated herein. The potable water facilities are those facilities providing potable water service (including fire flow service) to the Property, as identified in the Engineering plans titled "UTC Fire & Security", Sheets C-109 and C-109A, project number WFOUTCFS.0001, prepared by Arcadis, Inc, with a County assigned project number WUD 11-508 and a corresponding Record Drawing number 4137, which are incorporated herein by reference as **Exhibit "B"**.
 - B. Tenant, for itself and its successors, assigns, predecessors, affiliated entities, directors, officers, employees, principals, agents and servants, hereby releases, acquits, and forever discharges any and all claims it may have against the County, its departments, divisions, elected officials and employees, for any additional payments or credits related to the design, permitting, construction, and installation of the potable water facilities shown in **Exhibit "B"**.
 - C. Property Owner, for itself and its successors, assigns, predecessors, affiliated entities, directors, officers, employees, principals, agents and servants, hereby releases, acquits, and forever discharges any and all claims it may have against the County, its departments, divisions, elected officials and employees, for any additional payments or credits related to the design, permitting, construction, and installation of the potable water facilities shown in **Exhibit "B"**.
4. All other provisions of the Agreement, dated April 5, 2011, are hereby confirmed and, except as provided herein, are not otherwise altered or amended and shall remain in full force and effect.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Property Owner, Tenant, and County have executed or have caused this First Amendment to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this First Amendment.

ATTEST:

SHARON R. BOCK, CLERK
AND COMPTROLLER

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Chair

[SEAL]

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

By: _____
County Attorney

APPROVED AS TO TERMS AND CONDITIONS

By: *Burt Brantley*
Department Director

WITNESSES:

Peter L. Pimentel

PETER L. PIMENTEL
Type or Print Name

Patricia Las Casas

Patricia Las Casas
Type or Print Name

PROPERTY OWNER:

By: *William B. Howden*
Signature

WILLIAM B. HOWDEN
Title

VICE CHAIRMAN
Typed or Printed Name

[Corporate
Seal]

NOTARY CERTIFICATE

STATE OF FLORIDA
COUNTY PALM BEACH

The foregoing instrument was acknowledged before me this 21ST day of AUGUST, 2012 by WILLIAM B. HOWDEN, of _____ a _____ corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ as identification.

Peter L. Pimentel
Signature of Notary

NOTARY PUBLIC-STATE OF FLORIDA
Peter L. Pimentel
Typed, Printed, or Stamped Name of Notary Commission # DD964922
Expires: MAR. 01, 2014
BONDED THRU ATLANTIC BONDING CO., INC.

Notary Public

Serial Number _____

WITNESSES:

[Signature]
Type or Print Name
DREW V. PALMER JR
Type or Print Name

[Signature]
Type or Print Name
DAN ROSE
Type or Print Name

TENANT:

By: [Signature]
Signature
OPERATIONS MANAGER
Title
BRYAN SIEWERT
Type or Printed Name

[Corporate Seal]

NOTARY CERTIFICATE

STATE OF FLORIDA
COUNTY PALM BEACH

The foregoing instrument was acknowledged before me this 10th day of September, 2012 by Bryan Siewert, of UTC (United Technologies) a _____ corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ as identification.

Brandy Holmes
Signature of Notary

Brandy Holmes
Typed, Printed, or Stamped Name of Notary

Notary Public

Serial Number _____

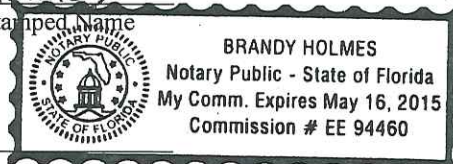


EXHIBIT "A"
SUMMARY OF COSTS

• Preparation and Processing of DRO Site Plan Modification	
• Landscape Plan Modifications	
• Irrigation Plan Modifications	
Subtotal	\$10,500.00
• Offsite Survey Design Locations	
• Design Coordination with Palm Beach County	
• Waterline Re-Design	
• Permitting	
Subtotal	\$29,700.00
• Permit Application Fees and Expenses	
Subtotal	\$ 2,350.00
Supplemental Services Lump Sum	
Total	\$42,550.00

Exhibit "B"

Engineering plans titled "UTC Fire & Security", Sheets C-109 and C-109A, project number WFOUTCFS.0001, prepared by Arcadis, Inc, with a County assigned project number WUD 11-508 and a corresponding Record Drawing number 4137. The documents are available for viewing at:

Palm Beach Water Utilities Department
Central Region Operations Center
8100 Forest Hill Boulevard
West Palm Beach, FL 33413