

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

Meeting Date: September 9, 2014

Consent Regular
Public Hearing

Department : Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: executed Agreement received during the month of May 2014.

Utility Concurrency Reservation Agreement with Willow Development USA, LLC, UCRA # 03-01033-000.

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 document 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, R2003-0539, and Purchasing Code 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 the agreements are outlined in the Water Utilities Department's Uniform Policies and Procedures Manual (UPAP). The Board of County Commissioners delegated the authority to execute various types of agreements and related documents 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). Additional delegated authority is set forth within the UPAP.

The Agreement 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:

- A. Two (2) Original Utility Concurrency Reservation Agreements with Willow Development USA LLC, UCRA # 03-01033-000

Recommended By:


Department Director

8/29/14
Date

Approved By:


Assistant County Administrator

9-2-14
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>(\$60,245.47)</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>(\$60,245.47)</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 <u>4000</u>	Dept. <u>720</u>	Unit <u>4200</u>	Rvrsc <u>6992</u>	

Is Item Included in Current Budget? Yes No

Reporting Category N/A

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: Debra M. West

III. REVIEW COMMENTS

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

[Signature]
 B.W. JB OFMB
 8/22/14

[Signature]
 Contract Development and Control
 8-27-14 B. Whalen

B. Legal Sufficiency:

[Signature] 8/29/14
 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

UTILITY CONCURRENCY RESERVATION AGREEMENT

THIS UTILITY CONCURRENCY RESERVATION AGREEMENT is made and entered into this 22nd day of April, 2004, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "Utility" and **WILLOW DEVELOPMENT USA 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.

UCRA #03-01033-000

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

Potable Water:	\$206.88	per ERC x	121.15	ERCs =	\$25,063.51
Wastewater:	\$290.40	per ERC x	121.15	ERCs =	\$35,181.96
Reclaimed Water:	\$N/A	per ERC x		ERCs =	N/A
				Franchise Fee	N/A
				UCF DUE	\$60,245.47

7. UCF payments are not refundable, not reimbursable, and not assignable except as identified above or as allowable in UPAP.
8. This UCRA must be converted to a DA prior to final site plan approval by Palm Beach County's Development Review Committee.
9. 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.
10. 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.
11. 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:
- 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.
12. 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, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.
13. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a third party to this Agreement, including but not limited to, any citizen or employees of Palm Beach County and/or Willow Development USA, LLC.

(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

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

By: [Signature]
County Administrator or Designee

(CW)

Sandra Smith
Sandra Smith
Type or Print Name

WITNESSES:

DEVELOPER:

[Signature]
BRADLEY D. MILLER
Type or Print Name

By: [Signature]
Signature
MANAGER
Title
Willow Development USA, LLC
SERGE VAN DUUREN
Typed or Printed Name

[Signature]
Curtis Deberly
Type or Print Name

NOTARY CERTIFICATE

STATE OF Florida
COUNTY Palm Beach

The foregoing instrument was acknowledged before me this 21 day of February, 2014 by Serge van Duuren, who is personally known to me or has produced _____ as identification.

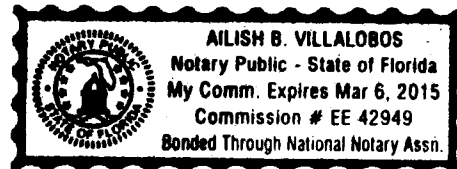
My Commission Expires: March 6, 2015

Signature of Notary
[Signature]

Ailish B. Villalobos
Typed, Printed, or Stamped Name of Notary

UTILITIES DEPARTMENT APPROVAL:

By: [Signature]
Director, Finance and Administration



APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: [Signature]
County Attorney

LEGAL DESCRIPTION:

A PARCEL OF LAND LYING WITHIN SECTION 3, TOWNSHIP 46 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY LINE OF THE LAKE WORTH DRAINAGE DISTRICT RIGHT-OF-WAY FOR THE CANAL L-29, IN ACCORDANCE TO THAT RIGHT-OF-WAY WIDTH REFERRED TO IN THE CHANCERY NO. 407, RECORDED IN OFFICIAL RECORDS BOOK 6495, PAGE 761, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AND THE WESTERLY RIGHT-OF-WAY LINE OF JOG ROAD, IN ACCORDANCE TO THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 5867, PAGES 561 THROUGH 563, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE S 00° 58' 10" E, ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF JOG ROAD, A DISTANCE OF 621.31 FEET; THENCE S 00° 18' 04" W, A DISTANCE OF 370.34 FEET; THENCE S 06° 32' 38" W, A DISTANCE OF 101.62 FEET; THENCE S 00° 58' 10" E, A DISTANCE OF 280.00 FEET; THENCE S 54° 07' 19" W, A DISTANCE OF 66.37 FEET; THENCE N 70° 48' 16" W, A DISTANCE OF 445.46 FEET; (THE PREVIOUS FIVE COURSES AND DISTANCES ARE ALONG THE RIGHT-OF-WAY LINE OF "FLAVOR PICT ROAD", IN ACCORDANCE TO THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 11789, PAGES 54 THROUGH 56, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA); THENCE N 00° 54' 50" W, ALONG THE EASTERLY BOUNDARY OF THE PLAT OF GREEN CAY VILLAGE AS RECORDED IN PLAT BOOK 106, PAGES 120 THROUGH 124, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, A DISTANCE OF 1257.21 FEET TO A POINT OF INTERSECTION WITH SAID SOUTHERLY RIGHT-OF-WAY LINE OF THE LAKE WORTH DRAINAGE DISTRICT RIGHT-OF-WAY FOR THE CANAL L-29; THENCE N 89° 05' 10" E ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 492.86 FEET TO THE POINT OF BEGINNING.

OK
02/04/14 (A)