

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

Meeting Date: September 1, 2015 **Consent [X]** **Regular []**
Public Hearing []

Department: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: executed Agreements received during the months of June and July 2015.

- A) Utility Concurrency Reservation Agreement with Max Realty Corporation, #05-01114-000 (District 3);
- B) Utility Concurrency Reservation Agreement with Providence I Investments, LLC, #02-01141-000 (District 5);
- C) Standard Potable Water and Wastewater Development Renewal Agreement with Palm Beach West Associates I, LLLP, #11-01003-001, (Recorded in OR BK 27619 PG 0682) (District 6); and
- D) Indemnity Agreement with Isla Verde Wellington, LLC, (Recorded in OR BK 27619 PG 0687) (District 6).

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 documents have been fully executed on behalf of the Board of County Commissioners (BCC) by the County Administrator/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. (MJ) **Original documents can be viewed in Minutes.**

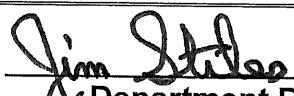
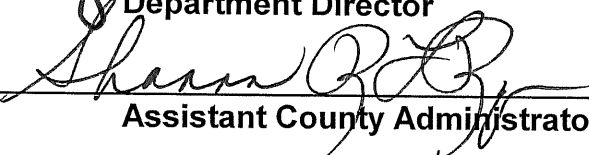
Background and Justification: Water Utilities Department's Uniform Policies and Procedures require Standard Development Agreements to obtain concurrency for water and/or wastewater service. The terms and conditions for Standard Development Agreements are outlined in the Water Utilities Department's Uniform 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 attached Agreements have been executed on behalf of the BCC by the County Administrator/Director of the Water Utilities Department in accordance with the authority delegated by the Board, and are now being submitted to the BCC to receive and file.

Continued on Page 3

Attachments:

- A. Two (2) Original Utility Concurrency Reservation Agreements # 05-01114-000.
- B. Two (2) Original Utility Concurrency Reservation Agreements # 02-01141-000.

Recommended By:		8-13-15	
	Department Director	Date	
Approved By:		8-25-15	
	Assistant County Administrator	Date	

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>(\$92,702)</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>(\$92,702)</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 4000 Dept. 720 Unit 4200 Object IRSC 6992

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: Delra M. West

III. REVIEW COMMENTS

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

Sherry Bon
8/14 8/18 QEMB

Ann J. Jacobson 8/21/15
 Contract Development and Control

B. Legal Sufficiency:

[Signature] 8/24/15
 Assistant County Attorney

C. Other Department Review:

 Department Director

Continued From Page 1

A) Utility Concurrency Reservation Agreement with Max Realty Corporation, #05-01114-000 (District 3). The Agreement allows the Developer to demonstrate reservation of potable water and wastewater capacity (17.30 Equivalent Residential Connections (ERC's) in order to obtain concurrency and proceed with the developmental approvals.

B) Utility Concurrency Reservation Agreement with Providence I Investments, LLC, #02-01141-000 (District 5). The Agreement allows the Developer to demonstrate reservation of potable water and wastewater capacity (54 ERC's) in order to obtain concurrency and proceed with the developmental approvals.

C) Standard Potable Water and Wastewater Development Renewal Agreement with Palm Beach West Associates I, LLLP, #11-01003-001 (District 6). The Agreement Authorizes the Property Owner to renew their reservation of 100 (ERC's) for both potable water and wastewater for an additional five (5) years.

D) Indemnity Agreement with Isla Verde Wellington, LLC, (District 6). The Agreement will indemnify the Water Utilities Department from any cost, losses, claims, demands and liabilities that could arise from construction of utilities facilities by Isla Verde Wellington, LLC.

UTILITY CONCURRENCY RESERVATION AGREEMENT

THIS UTILITY CONCURRENCY RESERVATION AGREEMENT is made and entered into this 6th day of July, 2015 by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "Utility" and MAX REALTY CORPORATION, a Florida corporation, 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 # 05-01114-000

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

Potable Water:	\$212.76 per ERC x	17.30 ERCs =	\$3,680.75
Wastewater:	298.56 per ERC x	17.30 ERCs =	\$5,165.09
Reclaimed Water:	\$0.00 per ERC x	0.00 ERCs =	\$0.00
		UCF DUE	<u>\$8,845.84</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:

**401 S. Dixie Highway, Suite 300
West Palm Beach, FL 33401**

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.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

12. 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 Max Realty Corporation

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13. Non-Discrimination Policy - The Developer warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

The Developer has submitted to Utility a copy of its non-discrimination policy, which is consistent with the above paragraph, as contained in Palm Beach County Resolution R-2014-1421, as amended, or in the alternative, if Developer does not have a written non-discrimination policy, or one that conforms to the Palm Beach County policy, it has acknowledged through a signed statement provided to Utility that Developer will conform to Palm Beach County's non-discrimination policy as provided in R-2014-1421, as amended.

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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:

Judy Provence
Judy Provence
Type or Print Name

Victor M. Ortiz
Victor M. Ortiz
Type or Print Name

PALM BEACH COUNTY

By: Jim Stiles
County Administrator or Designee

WITNESSES:

J. Kyle Duncan
J. Kyle Duncan
Type or Print Name

Sarah Abercrombie
Sarah Abercrombie
Type or Print Name

DEVELOPER:

By: [Signature]
Signature
V.P.
Title

Kent Williams
Typed or Printed Name

NOTARY CERTIFICATE

STATE OF Florida
COUNTY Palm Beach

The foregoing instrument was acknowledged before me this 22 day of June, 2015 by Sarah Abercrombie. He/she is personally known to me or has produced PHOTO ID as identification.

My Commission Expires: March 6, 2018

Signature of Notary Kalieg M. Hazelton
Kalieg Hazelton
Typed, Printed, or Stamped Name of Notary



Notary Public
Serial Number FF 99187

WATER UTILITIES DEPARTMENT APPROVAL:

By: Delbra M West
Director, Finance and Administration
PBC Water Utilities

APPROVED AS TO TERMS AND CONDITIONS:

By: [Signature]
Assistant Director, Finance and Administration

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: [Signature]
County Attorney

EXHIBIT "A"
LEGAL DESCRIPTION

A PARCEL OF LAND LYING WITHIN THE PLAT OF THE **FALLS COUNTRY CLUB**, AS RECORDED IN PLAT BOOK 61, PAGE 177, PALM BEACH COUNTY FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID PLAT, SAID CORNER INDICATED AS THE **POINT OF BEGINNING** OF THE PLATTED BOUNDARY;

THENCE SOUTH $89^{\circ}07'17''$ WEST, ALONG THE SOUTH LINE OF SAID PLAT (THE SOUTH LINE OF SAID PLAT IS ASSUMED TO BEAR SOUTH $89^{\circ}07'17''$ WEST AND ALL OTHER BEARINGS ARE RELATIVE THERETO), A DISTANCE OF 11.92 FEET TO THE **POINT OF BEGINNING** OF THE HEREINAFTER DESCRIBED PARCEL;

THENCE CONTINUE SOUTH $89^{\circ}07'17''$ WEST ALONG SAID SOUTH LINE, A DISTANCE OF 577.21 FEET TO A POINT;

THENCE NORTH $44^{\circ}42'32''$ EAST, DEPARTING SAID SOUTH LINE, A DISTANCE OF 310.82 FEET TO A POINT;

THENCE NORTH $55^{\circ}04'03''$ EAST A DISTANCE OF 239.49 FEET TO A POINT;

THENCE NORTH $44^{\circ}57'37''$ EAST A DISTANCE 236.28 FEET TO A POINT ON THE EAST LINE OF SAID PLAT;

THENCE SOUTH $00^{\circ}47'15''$ EAST, ALONG SAID EAST LINE A DISTANCE OF 347.78 FEET TO A POINT;

THENCE SOUTH $03^{\circ}15'34''$ WEST, ALONG THE WEST LINE OF "ADDITIONAL THOROUGHFARE RIGHT-OF-WAY", A DISTANCE OF 168.90 FEET TO THE **POINT OF BEGINNING**.

CONTAINING IN ALL 3.511 ACRES, MORE OR LESS.

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DU
06/26/2015
⑥

UTILITY CONCURRENCY RESERVATION AGREEMENT

THIS UTILITY CONCURRENCY RESERVATION AGREEMENT is made and entered into this 6th day of July, 2015, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "Utility" and PROVIDENCE I INVESTMENTS, 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

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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.
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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 # 02-01141-000

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

Potable Water:	\$212.76 per ERC x	54.00 ERCs =	\$11,489.04
Wastewater:	298.56 per ERC x	54.00 ERCs =	\$16,122.24
Reclaimed Water:	\$0.00 per ERC x	0.00 ERCs =	\$0.00
		UCF DUE	<u>\$27,611.28</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:

**400 Colonial Center Pkwy, Suite 120
Lake Mary, FL 32746**

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.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

12. 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 Providence I Investments, LLC.

13. Non-Discrimination Policy - The Developer warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

The Developer has submitted to Utility a copy of its non-discrimination policy, which is consistent with the above paragraph, as contained in Palm Beach County Resolution R-2014-1421, as amended, or in the alternative, if Developer does not have a written non-discrimination policy, or one that conforms to the Palm Beach County policy, it has acknowledged through a signed statement provided to Utility that Developer will conform to Palm Beach County's non-discrimination policy as provided in R-2014-1421, as amended.

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 Provence
Type or Print Name

By: Jim Stiles
County Administrator or Designee

Victor M. Ortiz
Type or Print Name

WITNESSES:

DEVELOPER:

Thomas Green
Type or Print Name

By: Michelle Pierce
Signature
VP
Title

Paul Vera
Type or Print Name

Michelle Pierce
Typed or Printed Name

POLLADAK VERAWETWATANA
Type or Print Name

NOTARY CERTIFICATE

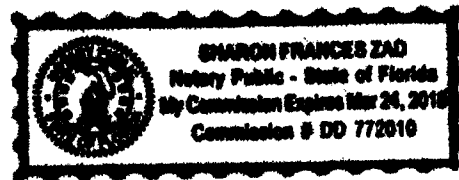
STATE OF Florida
COUNTY Seminole

The foregoing instrument was acknowledged before me this 15th day of June, 2015 by Michelle Pierce. He/she is personally known to me or has produced _____ as identification.

My Commission Expires: 3/24/2016

Signature of Notary Sharon F. Zad

SHARON F. ZAD
Typed, Printed, or Stamped Name of Notary



Notary Public Serial Number 772010

WATER UTILITIES DEPARTMENT APPROVAL:

By: Alura M. West
Director, Finance and Administration
PBC Water Utilities

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: [Signature]
County Attorney

APPROVED AS TO TERMS AND CONDITIONS:

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

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 1

THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 14, TOWNSHIP 46 SOUTH, RANGE 42 EAST, IN PALM BEACH COUNTY, FLORIDA, LESS THE SOUTH 500 FEET THEREOF, AND LESS THE NORTH 12.5 FEET FOR ROAD RIGHT-OF-WAY, AND LESS THE EAST 40 FEET OF THE E-3 CANAL RIGHT-OF-WAY, AND LESS THE WEST 40.00 FEET OF THE EAST 120 FEET THEREOF FOR ROAD RIGHT-OF-WAY.

PARCEL 2:

THE NORTH 125 FEET OF THE SOUTH 500 FEET OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 14, TOWNSHIP 46 SOUTH, RANGE 42 EAST, IN PALM BEACH COUNTY, FLORIDA, LESS THE EAST 40 FEET FOR THE E-3 CANAL RIGHT-OF-WAY, AND LESS THE WEST 40.00 FEET OF THE EAST 120 FEET THEREOF FOR ROAD RIGHT-OF-WAY.

PARCEL 3:

THE NORTH 125 FEET OF THE SOUTH 375 FEET OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 14, TOWNSHIP 46 SOUTH, RANGE 42 EAST, IN PALM BEACH COUNTY, FLORIDA, LESS THE EAST 40 FEET FOR THE E-3 CANAL RIGHT-OF-WAY, AND LESS THE WEST 40.00 FEET OF THE EAST 120 FEET THEREOF FOR ROAD RIGHT-OF-WAY.

PARCEL 4:

THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4, LESS THE NORTH 12.5 FEET FOR ROAD RIGHT-OF-WAY, OF SECTION 14, TOWNSHIP 46 SOUTH, RANGE 42 EAST, IN PALM BEACH COUNTY, FLORIDA.

SAID LANDS SITUATE IN PALM BEACH COUNTY, FLORIDA AND CONTAINING 329,712 SQUARE FEET (7.57 ACRES) MORE OR LESS.