

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: November 3, 2015 Consent [X] Regular [ ]

Department: Water Utilities Department Public Hearing [ ]

I. EXECUTIVE BRIEF

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

- A) Utility Concurrency Reservation Agreement with Columbia/Wegman Acquisition II, LLC, #02-01142-000, (District 6);
- B) Standard Potable Water and Wastewater Development Agreement with Taurus Vista Center, LP, #01-01230-000 (District 2), Recorded in OR BK 27737 PG 1859;
- C) Standard Potable Water and Wastewater Development Agreement with W&W XXIV, LLC, #05-01115-000 (District 3), Recorded in OR BK 27766 PG 0799;
- D) Standard Potable Water and Wastewater Development Agreement with Cheney 109, LLC, #01-01232-000, (District 6) Recorded in OR BK 27766 PG 0789;
- E) Standard Potable Water and Wastewater Development Agreement with Cheney 109, LLC, #01-01233-000, (District 6), Recorded in OR BK 27766 PG 0779;
- F) Standard Potable Water and Wastewater Development Agreement with MPC 3, LLC, #01-01231-000 (District 6), Recorded in OR BK 27737 PG 1868;
- G) Standard Potable Water and Wastewater Development Renewal Agreement with FC Atlantic Commons Phase II, LLC, #03-01025-003 (District 5), Recorded in OR BK 27737 PG 1855;
- H) Standard Potable Water and Wastewater Development Renewal Agreement with Atlantic Commons Associates, LLLP, #03-01025-001 (District 5), Recorded in OR BK 27737 PG 1878;
- I) Standard Potable Water and Wastewater Development Renewal Agreement with Isla Verde Wellington, LLC, #01-01194-001 (District 6), Recorded in OR BK 27737 PG 1882;
- J) Standard Potable Water and Wastewater Development Renewal Agreement with Delray 282, LLC, #05-01069-000 (District 5), Recorded in OR BK 27766 PG 0775;
- K) Standard Potable Water and Wastewater Development Renewal Agreement with Town Commons Acquisition, LLC, #05-01101-000 (District 3), Recorded in OR BK 27737 PG 1887;
- L) Standard Potable Water and Wastewater Development Renewal Agreement with Lennar Homes, LLC, #02-01109-002 (District 6), Recorded in OR BK 27766 PG 0808; and
- M) Standard Potable Water and Wastewater Development Renewal Agreement with Congress Oaks Development Group, LLC, #01-01182-000 (District 3), Recorded in OR BK 27737 PG 1850.

**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 are attached to the item unless the documents have been recorded in the Public Records of Palm Beach County. The documents have been fully executed on behalf of the Board of County Commissioners (BCC) by the County Administrator/Director of the Water Utilities Department (WUD) in accordance with Resolutions R93-1619, R96-0228, and R2003-0539 and are now being submitted to the BCC to receive and file. (MJ). **Continued on Page 3**

**Attachments:**

- A. Two (2) Original Utility Concurrency Reservation Agreements #02-01142-000

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Recommended By: Jim Stee 10-15-15  
 Department Director Date

Approved By: Sharon G. B... 10-26-15  
 Assistant County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>(\$746,345)</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>
<b>NET FISCAL IMPACT</b>	<b><u>(\$746,345)</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>

**Budget Account No.:** Fund \_\_\_\_\_ Dept. \_\_\_\_\_ Unit \_\_\_\_\_ Object \_\_\_\_\_

Is Item Included in Current Budget? Yes \_\_\_\_\_ No X

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:** Delramo West

**III. REVIEW COMMENTS**

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

[Signature]  
 12/8 10/7 OFMB

[Signature] 10/16/15  
 Contract Development and Control  
 B. Wheeler 10-15-15

**B. Legal Sufficiency:**

[Signature] 10/22/15  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**Background and Justification:** WUD'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 BCC 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 Agreements have been executed on behalf of the BCC by the Director of the WUD in accordance with the authority delegated by the BCC, and are now being submitted to the BCC to receive and file.

A) Utility Concurrency Reservation Agreement with Columbia/Wegman Acquisition II, LLC, #02-01142-000, (District 6). The Agreement allows the Developer to demonstrate the reservation of 44.40 Equivalent Residential Connections (ERC) for potable water and wastewater capacity for five (5) years in order to obtain concurrency and proceed with the developmental approvals.

B) Standard Potable Water and Wastewater Development Agreement with Taurus Vista Center, LP., #01-01230-000 (District 2). The Agreement authorizes the Property Owner to reserve 29.80 ERC's for both potable water and wastewater for five (5) years.

C) Standard Potable Water and Wastewater Development Agreement with W&W XXIV, LLC, #05-01115-000 (District 3). The Agreement authorizes the Property Owner to reserve 17.40 ERC's for both potable water and wastewater for five (5) years.

D) Standard Potable Water and Wastewater Development Agreement with Cheney 109, LLC, #01-01232-000 (District 6). The Agreement authorizes the Property Owner to reserve 57.50 ERC's for both potable water and wastewater for five (5) years.

E) Standard Potable Water and Wastewater Development Agreement with Cheney 109, LLC, #01-01233-000 (District 6). The Agreement authorizes the Property Owner to reserve 54.50 ERC's for both potable water and wastewater for five (5) years.

F) Standard Potable Water and Wastewater Agreement with MPC 3, LLC, #01-01231-000 (District 6). The Agreement authorizes the Property Owner to reserve 17.40 ERC's for both potable water and wastewater for five (5) years.

G) Standard Potable Water and Wastewater Development Renewal Agreement with FC Atlantic Commons Phase II, LLC, #03-01025-003 (District 5). The Agreement authorizes the Property Owner to renew their reservation of 126.70 ERC's for both potable water and wastewater for an additional five (5) years.

H) Standard Potable Water and Wastewater Development Renewal Agreement with Atlantic Commons Associates, LLLP, #03-01025-001 (District 5). The Agreement authorizes the Property Owner to renew their reservation of 348.40 ERC's for both potable water and wastewater for an additional five (5) years.

I) Standard Potable Water and Wastewater Development Renewal Agreement with Isla Verde Wellington, LLC, #01-01194-001 (District 6). The Agreement authorizes the Property Owner to renew their reservation of 258.50 ERC's for both potable water and wastewater for an additional five (5) years.

J) Standard Potable Water and Wastewater Development Renewal Agreement with Delray 282, LLC, #05-01069-000 (District 5). The Agreement authorizes the Property Owner to renew their reservation of 295.05 ERC's for potable water and 292.15 ERC's for wastewater for an additional five (5) years.

K) Standard Potable Water and Wastewater Development Renewal Agreement with Town Commons Acquisition, LLC, #05-01101-000 (District 3). The Agreement authorizes the Property Owner to renew their reservation of 30.50 ERC's for both potable water and wastewater for an additional five (5) years.

L) Standard Potable Water and Wastewater Development Renewal Agreement with Lennar Homes, LLC, #02-01109-002 (District 6). The Agreement authorizes the Property Owner to renew their reservation of 157.80 ERC's for both potable water and wastewater for an additional five (5) years.

M) Standard Potable Water and Wastewater Development Renewal Agreement with Congress Oaks Development Group, LLC, #01-01182-000 (District 3). The Agreement authorizes the Property Owner to renew their reservation of 20.00 ERC's for both potable water and wastewater for an additional five (5) years.

**UTILITY CONCURRENCY RESERVATION AGREEMENT**

**THIS UTILITY CONCURRENCY RESERVATION AGREEMENT** is made and entered into this 26<sup>th</sup> day of August, 2015, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "Utility" and **COLUMBIA/WEGMAN ACQUISITION II, 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 # 02-01142-000

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

<b>Potable Water:</b>	<b>\$212.76 per ERC x</b>	<b>44.40 ERCs =</b>	<b>\$9,446.54</b>
<b>Wastewater:</b>	<b>298.56 per ERC x</b>	<b>44.40 ERCs =</b>	<b>\$13,256.06</b>
<b>Reclaimed Water:</b>	<b>\$0.00 per ERC x</b>	<b>0.00 ERCs =</b>	<b>\$0.00</b>
		<b>UCF DUE</b>	<b><u>\$22,702.60</u></b>

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:

**550 Latona Road  
Rochester, NY 14626**

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 Palm Beach 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 Columbia/Wegman Acquisition II, LLC.

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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

Not N.G.  
Victor M. Ortiz  
Type or Print Name

**PALM BEACH COUNTY**

By: Jim Stiteo  
County Administrator or Designee

**WITNESSES:**

Sarah Rosler  
Sarah Rosler  
Type or Print Name

Leigh Noble  
Leigh Noble  
Type or Print Name

**DEVELOPER:**

By: [Signature]  
Signature  
Manager  
Title

Alex Washburn  
Typed or Printed Name

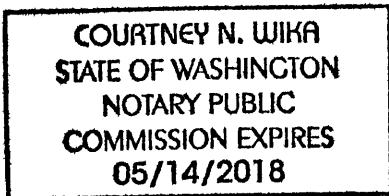
**NOTARY CERTIFICATE**

STATE OF WA  
COUNTY KING

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of August, 20 15 by Alex Washburn. He/she is personally known to me or has produced Passport as identification.

My Commission Expires: 05/14/2018

Signature of Notary Courtney N. Wika



Courtney N. Wika  
Typed, Printed, or Stamped Name of Notary

Notary Public  
Serial Number \_\_\_\_\_

**WATER UTILITIES DEPARTMENT APPROVAL:**

By: Debra M. Vest  
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**

**LOT 24, BLOCK 34, THE PALM BEACH FARMS CO. PLAT NO. 3, ACCORDING TO  
THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 45 THROUGH 54,  
INCLUSIVE, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.**

**CONTAINING 298,697 SQUARE FEET OR 6.85714 ACRES, MORE OR LESS.**

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OK  
08/18/15  
A