

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: March 22, 2016 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 November and December 2015.

- A) Utility Concurrency Reservation Agreement with D.R. Horton, Inc., #01-01238-000 (District 6);
- B) Standard Potable Water and Wastewater Development Agreement with JCL Management, LLC, #01-01236-000 (District 6) (OR BK 28015 PG 0724-0732);
- C) Standard Potable Water Development Agreement with Kennedy Homes, LLC, #01-01237-000 (District 2) (OR BK 28015 PG 0733-0740);
- D) Standard Potable Water and Wastewater Development Agreement with Herbert F. Kahlert and Thomas V. Daily, #02-01143-000 (District 6) (OR BK 28015 PG 0741-0751);
- E) Standard Potable Water and Wastewater Development Agreement with The Treatment Center of the Palm Beaches, LLC, #02-01145-000 (District 3) (OR BK 28015 PG 0752-0760);
- F) Standard Potable Water and Wastewater Development Agreement with The Place of Hope at the Haven Campus, Inc., #09-01074-000 (District 5) (OR BK 27957 PG 0386-0394);
- G) Standard Potable Water and Wastewater Development Agreement with Toll FL I, LLC, #09-01075-000 (District 5) (OR BK 28015 PG 0761-0769); and
- H) Indemnity Agreement between The Westcap Corporation and Palm Beach County, (District 2) (OR BK 27957 PG 0381-0385).

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 and are attached 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 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)

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 WUD 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 WUD in accordance with the authority delegated by the BCC, 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 #01-01238-000

Recommended By: Jim Stiles Department Director Date: 2-18-16

Approved By: Sharon G. By Assistant County Administrator Date: 3-4-16

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>(\$254,509)</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>(\$254,509)</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 _____ 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: 

III. REVIEW COMMENTS

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


RP CA
2/19 VA OFMB


 Contract Development and Control 2/9/16

B. Legal Sufficiency:

 3/1/16
 Assistant County Attorney

C. Other Department Review:

 Department Director

Background and Justification:

A) Utility Concurrency Reservation Agreement with D.R. Horton, Inc., #01-01238-000. The Agreement allows the Developer to reserve 25.5 Equivalent Residential Connections (ERC's) for potable water and wastewater capacity in order to obtain concurrency and proceed with the developmental approvals. (District 6)

B) Standard Potable Water and Wastewater Development Renewal Agreement with JCL Management, LLC, #01-01236-000. The Agreement authorizes the Property Owners located on the northeast corner of Southern Blvd. and Benoist Road in West Palm Beach to reserve 17.4 ERC's for both potable water and wastewater for five (5) years. (District 6)

C) Standard Potable Water Development Agreement with Kennedy Homes, LLC, #01-01237-000. The Agreement authorizes the Property Owner located at 3775 Military Trail in West Palm Beach to reserve 16.25 ERC's for potable water for five (5) years. (District 2)

D) Standard Potable Water and Wastewater Development Agreement with Herbert F. Kahlert and Thomas V. Daily, #02-01143-000. The Agreement authorizes the Property Owners located at the northeast corner of Lyons Road and Lake Worth Road in Lake Worth to reserve 108.8 ERC's for both potable water and wastewater for five (5) years. (District 6)

E) Standard Potable Water and Wastewater Development Agreement with The Treatment Center of the Palm Beaches, LLC #02-01145-000. The Agreement authorizes the Property Owners located on the north side of Lantana Road east of Haverhill Road in Lantana to reserve 16.25 ERC's for both potable water and wastewater for five (5) years. (District 3)

F) Standard Potable Water and Wastewater Development Agreement with The Place of Hope at the Haven Campus, Inc., #09-01074-000. The Agreement authorizes the Property Owners located on the west side of Boca Rio Road, 3300 feet south of Glades Road in Boca Raton to reserve 44.8 ERC's for both potable water and wastewater for five (5) years. (District 5)

G) Standard Potable Water and Wastewater Development Agreement with Toll FL I, LLC, #09-01075-000. The Agreement authorizes the Property Owners located east of Jog Road and north of Old Clint Moore Road in Boca Raton to reserve 259.25 ERC's for both potable water and wastewater for five (5) years. (District 5)

H) Indemnity Agreement between The Westcap Corporation and Palm Beach County, This Agreement indemnifies WUD from any liability resulting from the installation of roof overhang and a guardrail by the Property Owner. (District 2)

UTILITY CONCURRENCY RESERVATION AGREEMENT

THIS UTILITY CONCURRENCY RESERVATION AGREEMENT is made and entered into this 17th day of December, 2015, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "Utility" and **D.R. HORTON, INC.**, 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 # 01-01238-000

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

Potable Water:	\$221.16 per ERC x	25.50 ERCs =	\$5,639.58
Wastewater:	310.44 per ERC x	25.50 ERCs =	\$7,916.22
Reclaimed Water:	\$0.00 per ERC x	0.00 ERCs =	\$0.00
		UCF DUE	<u>\$13,555.80</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:

**431 Fairway Dr. Ste #300
Deerfield Beach, FL 33441**

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 D.R. Horton, Inc.