

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: July 12, 2016 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 March, April and May 2016.

- A) Indemnification Agreement with Marino Performance, Inc. and Palm Beach County (District 7);
- B) Utility Concurrency Reservation Agreement with TLH-42 Ranchette, LLC, #01-01242-000 (District 2);
- C) Standard Potable Water and Wastewater Development Agreement with PBA Holdings, Inc., #11-01015-000 (District 6) (OR BK 28209 PG 1386-1393);
- D) Standard Potable Water and Wastewater Development Agreement with Hedrick 33, LLC, #01-01229-000 (District 2) (OR BK 28209 PG 1394-1402);
- E) Standard Potable Water and Wastewater Development Agreement with Procacci Vista #2, LLC, #01-01243-000 (District 2) (OR BK 28281 PG 0041-0048); and
- F) Standard Potable Water and Wastewater Development Agreement with 6595, LLC, #09-01077-000 (District 5) (OR BK 28281 PG 0049-0056).

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: WUD 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.

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Attachments:

- (A) One (1) Original Indemnification Agreement with Marino Performance, Inc.
- (B) Two (2) Original Utility Concurrency Reservation Agreements #01-01242-000

Recommended By: Jim Stebo Department Director Date 6-22-16
Approved By: Sharon O'Byrne Assistant County Administrator Date 7-7-16

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	(\$99,843)	<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	(\$99,843)	<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 various

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: Delmar West

III. REVIEW COMMENTS

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

<p><u>[Signature]</u> 6/28/16 OFMB Ex 427 6/28</p>	<p><u>[Signature]</u> 7/6/16 Contract Development and Control 7/6/16</p>
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B. Legal Sufficiency:

[Signature] 7/7/16
Assistant County Attorney

C. Other Department Review:

Department Director

Continued From Page 1

Background and Justification:

A) Indemnification Agreement with Marino Performance, Inc. and Palm Beach County. The Agreement will indemnify the County from any liability that may result during the construction of utility facilities by the property owner prior to transfer and acceptance by WUD. (District 7)

B) Utility Concurrency Reservation Agreement with TLH-42 Ranchette, LLC, #01-01242-000. The Agreement allows the Developer located 0.25 miles south of the Ranchette Road and Summit Boulevard intersection to reserve 41 Equivalent Residential Connections (ERC's) for potable water and wastewater capacity in order to obtain concurrency and proceed with the developmental approvals. (District 2)

C) Standard Potable Water and Wastewater Development Agreement with PBA Holdings, Inc., #11-01015-000. The Agreement authorizes the Property Owners located on the north side of SR 80 west of L-8 canal, approximately 3 miles west of Lion Country Safari to reserve 97.5 ERC's for both potable water and wastewater for five (5) years. (District 6)

D) Standard Potable Water and Wastewater Development Agreement with Hedrick 33, LLC, #01-01229-000. The Agreement authorizes the Property Owner located on the east side of Jog Road between Southern Blvd. and Belvedere Road to reserve 34.5 ERC's for both potable water and wastewater for five (5) years. (District 2)

E) Standard Potable Water and Wastewater Development Agreement with Procacci Vista #2, LLC, Inc., #01-01243-000. The Agreement authorizes the Property Owner located on the NW corner of Okeechobee Blvd. and Vista Pkwy. to reserve 16.25 ERC's for both potable water and wastewater for five (5) years. (District 2)

F) Standard Potable Water and Wastewater Development Agreement with 6595, LLC, #09-01077-000. The Agreement authorizes the Property Owner located on the north side of Morikami Pk. Rd west of Jog Road to reserve 31.75 ERC's for both potable water and wastewater for five (5) years. (District 5)

INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("Agreement") is made and entered into this 16th day of March, 2016 by and between Marino Performance Inc., a Corporation (hereinafter referred to as "Indemnitor") and Palm Beach County, a political subdivision of the State of Florida ("County").

WHEREAS, In order to provide wastewater service to a certain parcel of property, Indemnitor is required to construct and install 2 Sanitary Manholes and 111 feet of 8" gravity sewer main ("Utility Facilities") (WUD Project No. 14-561); and

WHEREAS, the Florida Department of Transportation will issue a permit(s) ("Utility Permit(s)") in the name of the County Water Utilities Department as the Permittee, and County is concerned about the potential liability that it might incur until the construction of the Utility Facilities is completed and title to those Utility Facilities is transferred to and has been accepted by County; and

WHEREAS, County requires as a condition of entering into the Utility Permits that Indemnitor enter into this Agreement; and

WHEREAS, Indemnitor and County desire to set forth their understandings regarding potential liabilities imposed against the County, arising as a result of entering into the Utility Permit(s).

NOW, THEREFORE, for and in consideration exchanged between the parties, the adequacy of which shall not be disputed by the parties, the parties agree as follows:

1. **RECITALS.** The recitals above are true and correct and are incorporated herein by reference.
2. **ACKNOWLEDGMENT.** Indemnitor acknowledges that it will initially be the owner of the Utility Facilities and will be totally responsible for compliance with the Utility Permit(s) and any other applicable laws, rules and regulations during the construction phase of the Utility Facilities and until such time the Utility Facilities are formally transferred to and accepted by County.
3. **INDEMNIFICATION.** Indemnitor, therefore, agrees to indemnify and hold County harmless from and against any and all costs, losses, claims, demands and liabilities, including reasonable attorneys fees and costs (at both a trial and appellate level), which might arise out of or relate to or are attributable to any and all acts and omissions by Indemnitor or its contractors arising as a result of the construction of the Utility Facilities, including but not limited to, the failure of Indemnitor or its contractors to comply with the rules and regulations of the Florida Department of Transportation or its demands in connection with the work contemplated by the Utility Permits.

If a demand is made on County for any such liability or obligation or County otherwise incurs any loss or expense as a result of the activities described herein, Indemnitor shall forthwith upon demand reimburse County for all expenses incurred as a result thereof. County shall, in its sole discretion, have the right to employ separate counsel in any such action and to participate in the defense thereof, and the reasonable fees and expenses of such counsel shall be paid by Indemnitor. All such fees and expenses payable by Indemnitor shall be paid from time to time as incurred, both in advance of and after the final disposition of such action or claim. All of the foregoing losses, damages, costs and expenses of County shall be payable by Indemnitor upon demand by County. All amounts at any time due to County may, in County's sole discretion, be reduced or offset by other amounts payable to Indemnitor by County. No failure to exercise any right of set-off hereunder shall prejudice or constitute a waiver of any other right or remedy County may have against Indemnitor. This section shall survive the expiration or termination of this Agreement.

4. **MISCELLANEOUS PROVISIONS.**

4.1 **Notice.** All notices, demands, requests, offers or responses permitted or required to be given under this Agreement shall be deemed sufficient if mailed by registered or certified mail, postage prepaid, addressed to the Party to be charged with notice, etc., at the following addresses:

County: Director
Palm Beach County Water Utilities
8100 Forest Hill Boulevard
P.O. Box 16097
West Palm Beach, FL 33416

with a copy to: County Attorney
301 N. Olive Ave, Suite 601
West Palm Beach, FL 33401

INDEMNITOR: 2151 S. HIGHWAY A1A, STE. 425
JUPITER FL 33477
With a copy to: 5408 HAVERHILL ROAD NORTH
SUITE 232
WEST PALM BEACH FL 33407

Any party hereto may change the address to which notices shall be sent by written notice of such new or changed address given to the other party.

4.2 **Florida Law and Venue.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida. If any action, suit or proceeding is instituted as a result of any matter or thing affecting this Agreement, the parties hereby designate Palm Beach

County, West Palm Beach, Florida, as the proper jurisdiction and the venue in which same is to be instituted.

- 4.3 **Headings.** The Paragraph headings contained herein are for reference purposes only and shall not in any way affect the meaning and interpretation of this Agreement.
- 4.4 **Binding Effect.** This Agreement shall be legally binding upon and shall operate for the benefit of the parties hereto, their respective heirs, personal and legal representatives, transferees, successors and assigns.
- 4.5 **Entire Agreement.** This Agreement contains the entire agreement of the parties hereto with respect to the subject matter addressed herein, and all prior understandings and agreements, whether written or oral, between and among the parties hereto relating to the subject matter of this Agreement are merged in this Agreement. Each party specifically acknowledges, represents and warrants that they have not been induced to sign this Agreement by any belief that the other will waive or modify the provisions of this Agreement in the future.
- 4.6 **Severability.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 4.7 **Counterparts.** This Agreement may be signed and executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one agreement.
- 4.8 **Inspector General.** 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 Indemnitor, 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.

4.9 **No Third Party Beneficiary.** 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 party to this Agreement, including but not limited to any citizen or employees of the County and/or the Property Owner.

5.0 **Non-Discrimination Policy.** The Property Owner 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 Property Owner has submitted to COUNTY a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as amended, or in the alternative, if the Property Owner does not have a written non-discrimination policy or one that conforms to the COUNTY'S policy, it has acknowledged through a signed statement provided to COUNTY that Property Owner will conform to the COUNTY'S non-discrimination policy as provided in R-2014-1421, as amended.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, this Agreement is entered into and is effective on the date indicated above.

INDEMNITOR:

WITNESSES:

Signed, sealed and delivered in the presence of:

[Signature]
Witness Signature

ERROL A. LAWRENCE
Print Name

[Signature]
Witness Signature

Gilles L Courchene Sr.
Print Name

OWNER:

[Signature]
Signature

Gregory Marino
Print Name

MGRM
Title

Performance 21 Realty LLC
Marino Performance
Company Name Inc

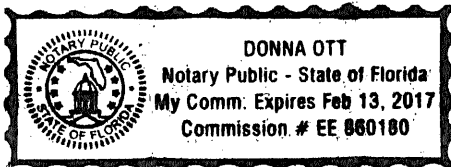
(SEAL)

NOTARY CERTIFICATE

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 18 day of November, 2015 by Gregory Marino and Mr Errol A Lawrence who is/are personally known to me or who has produced _____ as identification.

My Commission Expires:



[Signature]
Notary Signature

Donna Ott
Typed, Printed or Stamped Name of Notary

ACCEPTANCE

COUNTY does hereby accept the foregoing Agreement as a condition of entering into the Utility Permits as a Permittee, this 16th day of March, 2016

WITNESSES:

PALM BEACH COUNTY

Judy Provence
Witness Signature

By: Jim Stiles
County Administrator or Designee

Judy Provence
Typed or Printed Name

Sandra L. Smith
Witness Signature

Sandra L. Smith
Typed or Printed Name

WATER UTILITIES DEPARTMENT APPROVAL

By: Debra M. West
Director of Finance and Administration
PBC Water Utilities Department

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: [Signature]
County Attorney

**APPROVED AS TO TERMS
AND CONDITIONS**

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

UTILITY CONCURRENCY RESERVATION AGREEMENT

THIS UTILITY CONCURRENCY RESERVATION AGREEMENT is made and entered into this 4th day of April, 2016, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "Utility" and TLH-42 RANCHETTE, LLC, 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 [X] Wastewater [X] 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 # 01-01242-000

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	41.00 ERCs =	\$9,067.56
Wastewater:	310.44 per ERC x	41.00 ERCs =	\$12,728.04
Reclaimed Water:	\$0.00 per ERC x	0.00 ERCs =	\$0.00
		UCF DUE	<u>\$21,795.60</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:

**961 Hillsboro Mile
Hillsboro Beach, FL 33062**

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 TLH-38 Ranchette, LLC.

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 D. Provence
Judy D. Provence
Type or Print Name

Anna M Daniels
Anna M Daniels
Type or Print Name

PALM BEACH COUNTY

By: Jim Stiles
County Administrator or Designee

WITNESSES:

Lindsay Libes
Lindsay Libes
Type or Print Name

Stack E. Snow Jr
STACK E. SNOW JR
Type or Print Name

DEVELOPER:

By: [Signature]
Signature
MANAGER
Title

BRIAN TUTTLE
Typed or Printed Name

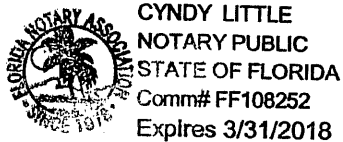
NOTARY CERTIFICATE

STATE OF Florida
COUNTY Palm Beach

The foregoing instrument was acknowledged before me this 8th day of March, 2010 by Brian Tuttle. He/she is personally known to me or has produced _____ as identification.

My Commission Expires: 3-31-18

Signature of Notary Cyndy Little
Cyndy Little
Typed, Printed, or Stamped Name of Notary



Notary Public Serial Number FF108252

WATER UTILITIES DEPARTMENT APPROVAL:

By: William 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

O.R.B. 19105 PG 0831

THE SOUTH ½ OF THE NE ¼ OF THE SE ¼ OF THE NE ¼, LESS THE WEST 30' FOR RIGHT-OF-WAY, OF SECTION 10, TOWNSHIP 44 SOUTH, RANGE 42 EAST, LYING AND BEING SITUATE IN PALM BEACH COUNTY, FLORIDA.

CONTAINING 230,520.28 SQUARE FEET OR 5.29 ACRES, MORE OR LESS.

TOGETHER WITH

O.R.B. 13798, PG 981

THE NORTH ONE-HALF OF THE NORTHEAST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SECTION 10, TOWNSHIP 44 SOUTH, RANGE 42 EAST, PALM BEACH COUTNTY, FLORIDA. LESS THE WEST 30 FEET THEREOF FOR ROAD PURPOSES.

CONTAINING 231,135.40 SQUARE FEET OR 5.31 ACRES, MORE OR LESS.

CONTAINING IN ALL, A COMBINED AREA OF 461,655.69 SQUARE FEET OR 10.60 ACRES, MORE OR LESS.

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OK!
AW/wvd
3/16/16