

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

Meeting Date:	April 4, 2017	Consent <input checked="" type="checkbox"/>	Regular <input type="checkbox"/>
		Public Hearing <input type="checkbox"/>	
Department:	Water Utilities Department		

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: executed Agreements received during the months of December 2016 and January 2017.

- A) Utility Concurrency Reservation Agreement with FCC II Genpar Corporation, #02-01149-000 (District 2); and
- B) Standard Potable Water and Wastewater Development Agreement with SGD Wellington Crossing, LLC, #02-01139-001 (District 6) (OR BK 28810 PG 1021-1029).

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)

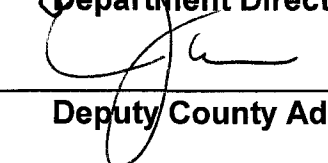
Background and Justification: The WUD Uniform Policies and Procedures require Standard Development Agreements to obtain concurrency for water and/or wastewater service. The terms and conditions for Standard Development Agreements are outlined in the WUD Uniform Policies and Procedures Manual. The BCC 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.

- A) Utility Concurrency Reservation Agreement with FCC II Genpar Corporation, #02-01149-000. The Agreement allows the Developer located south of Lake Worth Rd., west of Jog Rd. to demonstrate reservation of 204.8 Equivalent Residential Connections (ERC's) in order to obtain concurrency and proceed with developmental approvals. (District 2)
- B) Standard Potable Water and Wastewater Development Agreement with SGD Wellington Crossing, LLC. The Agreement authorizes the Property Owner located on the NW corner of Lake Worth Rd. and Blanchette Trl. in Lake Worth to reserve 54.4 Equivalent Residential Connections (ERC's) for both potable water and wastewater for five (5) years. (District 6)

Attachments:

- A. Two (2) Original Utility Concurrency Reservation Agreements #02-01149-000

Recommended By:	 Department Director	2-9-17 Date
Approved By:	 Deputy County Administrator	3-10-17 Date

UTILITY CONCURRENCY RESERVATION AGREEMENT

THIS UTILITY CONCURRENCY RESERVATION AGREEMENT is made and entered into this 10th day of January 2017, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "Utility" and FCC II GENPAR CORPORATION, a Florida corporation, the general partner of FCC Associates II, LLLP, a Florida limited liability partnership, 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 # 02-01149-000

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

Potable Water:	\$227.88 per ERC x	204.80 ERCs =	\$46,669.82
Wastewater:	319.92 per ERC x	204.80 ERCs =	\$65,519.62
Reclaimed Water:	\$0.00 per ERC x	0.00 ERCs =	\$0.00
		UCF DUE	<u>\$112,189.44</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:

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 FCC II Genpar Corporation.

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
Type or Print Name

Victor M. Ortiz
Type or Print Name

PALM BEACH COUNTY

By: Jim [Signature]
County Administrator or Designee

WITNESSES:

Kevin Ratterree
Type or Print Name

Gladys DiGirolamo
Type or Print Name

DEVELOPER:

FCC GENERAL CORPORATION
By: [Signature]
Signature
VICE PRESIDENT
Title

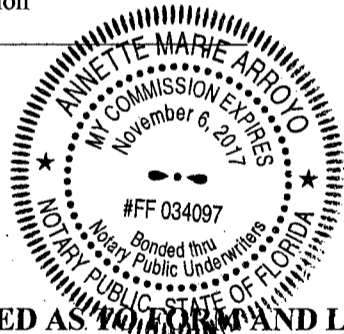
ALAN J. FANT
Typed or Printed Name

NOTARY CERTIFICATE

STATE OF FLORIDA
COUNTY BROWARD

The foregoing instrument was acknowledged before me this 22 day of December 2016 by ALAN FANT. He/she is personally known to me or has produced _____ as identification.

My Commission Expires: _____



Signature of Notary [Signature]
Annette Arroyo
Typed, Printed, or Stamped Name of Notary

Notary Public Serial Number FF 034097

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: [Signature]
County Attorney

WATER UTILITIES DEPARTMENT APPROVAL:

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

APPROVED AS TO TERMS AND CONDITIONS:

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

EXHIBIT "A"
LEGAL DESCRIPTION

DESCRIPTION: PARCEL A

BEING ALL OF THE GOLF COURSE TRACT, PARCEL 2, PLAT 5, PALM BEACH GOLF CLUB ESTATES, AS RECORDED IN PLAT BOOK 30, PAGES 193 THROUGH 196 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

LESS AND EXCEPT THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 22121, PAGE 612, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

CONTAINING 45.633 ACRES MORE OR LESS.

④ 12/22/2016