

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: **March 8, 2022** Consent Regular
Public Hearing

Department: **Water Utilities Department**

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: One (1) executed Standard Potable Water and Wastewater Development Agreement, two (2) Standard Potable Water and Wastewater Development Renewal Agreements, and One (1) Memorandum of Understanding Regarding Water and Wastewater Service for the months of October and November 2021.

- A) Standard Potable Water and Wastewater Development Agreement with RickWayne LLC, SDA #02-01166-000 (District 3), Recorded in OR BK 33013 PG 0442.
- B) Standard Potable Water and Wastewater Development Renewal Agreement with Lennar Homes, LLC, SDA #13-01025-000 (District 6) Recorded in OR BK 33013 PG 0430.
- C) Standard Potable Water and Wastewater Development Renewal Agreement with Pioneer Estates By Luxcom, LLC, SDA #13-01028-000 (District 6) Recorded in OR BK 33013 PG 0424.
- D) Memorandum of Understanding Regarding Water and Wastewater Service with Palm Beach County Facilities Development and Operations Department, MOU #01-01274-000 (District 2).

Summary: In accordance with County PPM CW-O-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 Palm Beach County Water Utilities Department (PBCWUD) in accordance with Resolutions R93-1619, R96-0228, and R2003-0539 and are now being submitted to the BCC to receive and file. Districts 2, 3 & 6 (MJ)

Background and Justification: PBCWUD'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 PBCWUD 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).

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Attachment:

- 1. Memorandum of Understanding Regarding Water and Wastewater Service

Recommended By: Ali Boyat 2/15/22
Department Director Date

Approved By: Pee 2/16/22
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Operating Costs	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>(\$142,509)</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>(\$142,509)</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 4000 Dept. 720 Unit 4200 Object 6992

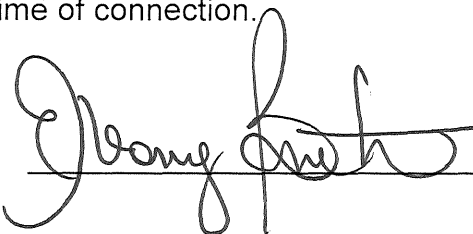
Is Item Included in Current Budget? Yes X No

Does this item include the use of federal funds? Yes No X

Reporting Category N/A

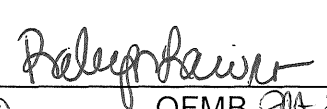
B. Recommended Sources of Funds/Summary of Fiscal Impact:


Mandatory Agreement Payment has been paid in full and service installation fees will be collected at the time of connection.

C. Department Fiscal Review:  GE

III. REVIEW COMMENTS

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

for review county 2/10/22
 2/10/22
 OFMB MA 2.16.22


 Contract Development and Control
2-11-22 TW

B. Legal Sufficiency:

 2/15/22
 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

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- A) Standard Potable Water and Wastewater Development Agreement with RickWayne LLC, SDA #02-01166-000 (District 3). The Agreement authorizes the Property Owner located on S Haverhill Road east of Dillion Street, 53.00 Equivalent Residential Connections (ERC's) for both water and wastewater for five (5) years.
- B) Standard Potable Water and Wastewater Development Renewal Agreement with Lennar Homes, LLC, SDA #13-01025-000 (District 6). The Agreement authorizes the Property Owner located 1/4th mile west of Royal Palm Beach Boulevard and Crestwood Boulevard, 147.00 ERC's for both water and wastewater for five (5) years.
- C) Standard Potable Water and Wastewater Development Renewal Agreement with Pioneer Estates By Luxcom, LLC, SDA #13-01028-000 (District 6). The Agreement authorizes the Property Owner located on the east side of SR 7 and South side of Pioneer Road, south of Southern Boulevard, 21.00 ERC's for both water and wastewater for five (5) years.
- D) Memorandum of Understanding regarding Water and Wastewater Service with Palm Beach County Facilities Development and Operations Department, MOU #01-01274-000 (District 2). The Memorandum authorizes the Property Owner located on Cherry Road just east of Military Trail, 43.80 ERC's for both water and wastewater.

MEMORANDUM OF UNDERSTANDING REGARDING WATER AND WASTEWATER SERVICE

THIS MEMORANDUM OF UNDERSTANDING ("MOU") made and entered into this 18th day of NOVEMBER, 2021, by and between the **Palm Beach County Water Utilities Department** (hereinafter referred to as "Utility"), and **Palm Beach County Facilities Development and Operations Department** (hereinafter referred to as "FDO").

WITNESSETH

WHEREAS, FDO and Utility are both departments of Palm Beach County, a political subdivision of the State of Florida ("County"); and

WHEREAS, FDO is in the process of developing the County-owned property described on **Exhibit "A"** which is attached hereto and incorporated herein (hereinafter referred to as "Property"); and

WHEREAS, FDO as part of the County project on the Property will construct potable water and wastewater facilities which will connect to Utility's water and wastewater systems; and

WHEREAS, upon the conditions set forth herein, Utility desires to acknowledge ownership and control of the completed County facilities for operation and maintenance purposes; and

WHEREAS, FDO and Utility desire in this MOU to set forth the understandings and responsibilities between the two County departments regarding the construction, ownership, costs, operation and maintenance of the water and wastewater facilities for the County project on the Property.

NOW THEREFORE, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, FDO and Utility agree as follows:

1. The foregoing statements are true and correct.
2. The following definitions and references are given for the purpose of interpreting the terms as used in this MOU and apply unless the context indicates a different meaning:
 - (a) "UPAP" - the Uniform Policies and Procedures Manual of the Palm Beach County Water Utilities Department as may be amended from time to time, which is incorporated herein by reference;
 - (b) "Service" - the readiness and ability on the part of Utility to furnish potable water to and to collect wastewater from the Property;
 - (c) "Point of Service" - generally, the point where the pipes or meters of Utility are connected with pipes of FDO as further defined in Chapter 1 of the UPAP;
 - (d) "Equivalent Residential Connection (ERC)" - a system capacity equivalency unit which corresponds to the peak demand of the 5/8" x 3/4" meter sub-category of the single-family residential category of Customer usage. This system capacity equivalency unit is utilized to establish the system demand for various sized connections for the purpose of assessing fees;
 - (e) "Mandatory Agreement Payment (MAP)" - twelve months of Guaranteed Revenue Fees plus applicable Franchise Fees payable to Utility upon submission this MOU or renewal for each ERC (or ERIC) represented in the MOU;
 - (f) "Service Initiation" - the date a potable water meter or wastewater connection is requested;
 - (g) "Guaranteed Revenue Fee" - the fee designed to recover the carrying costs of system capacity which has been or is being constructed in anticipation of future service requests. Carrying costs include fixed operating and renewal and replacement expenses necessary to maintain excess system capacity for future use. Guaranteed Revenue does not recover variable operating expenses;
 - (h) "Total Accrued Amount (TAA)" - At the time of Service Initiation for each ERC, a TAA equal to sixty months of Guaranteed Revenue Fees plus applicable Franchise Fees at the then current rate minus the MAP paid per each ERC shall be due and payable for such ERC. The TAA for each ERC will be determined at the time of Service Initiation;

current rate minus the MAP paid per each ERC shall be due and payable for such ERC. The TAA for each ERC will be determined at the time of Service Initiation;

- (i) "Standard Development Renewal MOU (SDRM)" – an agreement between Utility and FDO extending the capacity reservation for unused ERCs/ERICs in this MOU for an additional five (5) years; and
3. The Property is owned by the County, and FDO acknowledges and agrees that Utility has the exclusive right and privilege to construct, own, maintain, operate and expand the potable water and wastewater facilities in, under, upon, over and across the present and future streets, roads, easements, reserved utility sites and public places as provided and dedicated to public use in the record plats, or as provided for in agreement, dedications or grants made otherwise and independent of said record plats and may exist on the Property. Utility covenants that it will use due diligence in ascertaining all easement locations; on the Property; however, should Utility install any of its facilities on the Property outside of a dedicated easement area, FDO covenants and agrees that Utility will not be required to move or relocate any facilities lying outside of a dedicated easement area as long as the facilities do not interfere with the then or proposed use of the area in which the facilities have been installed. FDO hereby further agrees that the foregoing grants include the necessary rights of ingress and egress to any part of the Property which Utility requests for the maintenance, operation or expansion of the potable water and wastewater facilities; that in the event Utility is required or desires to install any of its potable water and wastewater facilities in lands within the Property lying outside the streets and easement areas described above, then FDO shall secure to Utility, without cost or expense to Utility, the necessary easement or other required approval for such installation; provided, all such installations by Utility shall be made in such a manner as not to interfere with the then primary use of such Property. FDO shall obtain written approval from Utility prior to installing any structure or object, including, but not limited to, fences, gates, signs, trees or poles, within an easement area. In the event Utility determines that it is necessary to construct, maintain, repair, remove, or replace any of its facilities located under, over or upon an easement, FDO shall immediately remove the encroachment from the easement upon the request of Utility at FDO's sole cost and expense. If FDO fails to remove the encroachment, Utility shall have the right to remove the encroachment from the easement. FDO shall pay all costs related to removing the encroachment from the easement incurred by Utility.
 4. Upon the continued accomplishment of all the prerequisites contained in this MOU to be performed by FDO, Utility covenants and agrees that it will allow the connection of the potable water distribution and wastewater collection facilities installed by FDO to the potable water and wastewater facilities of Utility in accordance with the terms and intent of this MOU. Such connection shall be in accordance with rules, and regulations of the Health Department, the UPAP, and other governmental agencies having jurisdiction over the water supply and wastewater collection and disposal operation of Utility.
 5. FDO is required to pay Guaranteed Revenue Fees in order to support investment in plant facilities, as well as the fixed costs of maintaining such facilities and the unused capacity it represents. Therefore, FDO agrees to pay in accordance with the UPAP:
 - (a) a MAP per each ERC for the requested capacity upon submission of this MOU; and
 - (b) a TAA per each ERC for the requested capacity upon Service Initiation.

Utility has advised FDO that construction of additional potable water and wastewater facilities will be completed in phases designed to coincide with the need for service to FDO and other property owners in the service area. Utility should not be expected to provide service to connections in excess of those reserved as evidenced by proper payment of Guaranteed Revenue.

The MAP required upon submission of this Potable Water and Wastewater MOU is:

Potable Water:	\$281.64 per ERC x	43.80	ERCs =	\$12,335.83
Wastewater:	\$271.92 per ERC x	43.80	ERCs =	\$11,910.10
			Franchise Fee	\$0.00
			TOTAL	\$24,245.93

Upon receipt of the MAP, Utility agrees to reserve **43.80** ERCs of Potable Water and Wastewater system capacity for FDO until November 30, 2026, which term may be extended in accordance

6. Since the County owns the Property, FDO hereby agrees to construct and to transfer operation and control up to the Point of Service to Utility, at no cost, the on-site and off-site potable water distribution, and wastewater collection systems referred to herein. Upon acceptance of said facilities, Utility acknowledges County ownership and hereby agrees to accept control of the potable water and wastewater facilities for operation and maintenance purposes. FDO shall cause to be prepared engineering plans and specifications prepared by and sealed by a professional engineer registered in the State of Florida, showing the on-site and off-site potable water distribution and wastewater collection systems for the Property. Utility will advise FDO's engineer of any sizing requirements as mandated by the UPAP. Such detailed plans may be limited to a phase of the Property, and subsequent phases may be furnished from time to time. However, each such phase shall conform to a master plan for the development of the Property and such master plan shall be submitted to Utility concurrent with or prior to submission of plans for the first phase. All such plans and specifications, including hard copy and electronic media, submitted to Utility's engineer shall be subject to the approval of Utility and shall conform to Utility's standards as set forth in the UPAP, and no construction shall commence until Utility has approved such plans and specifications in writing. After approval, FDO shall cause to be constructed, at FDO's expense, the potable water distribution, and wastewater collection systems as shown on the plans and specifications. Fees, as set forth in the UPAP, shall be levied by Utility to cover the cost of plan review and inspection. FDO shall also be required to pay Guaranteed Revenue Fees, Connection Fees, Installation Fees, and other fees as set forth in the UPAP.

During the construction of the potable water distribution and wastewater collection systems by FDO, Utility may from time to time inspect such installation to determine compliance with the plans and specifications, adequacy of the quality of the installation, and further, shall be entitled to perform standard tests for pressure, infiltration, line and grade, and all other normal engineering tests to determine that the system has been installed in accordance with the approved plans and specifications and the UPAP. Inspection by Utility shall in no way relieve FDO of its responsibility to install the facilities in accordance with the approved plans and specifications and the UPAP. Complete as-built plans, including hard copy and electronic media when utilized, shall be submitted to Utility upon completion of construction.

FDO hereby agrees that the County owns title to the Property and will own the title to all potable water distribution and wastewater collection systems when installed and constructed by FDO's contractor. FDO acknowledges that upon the acceptance by Utility of the said installation, Utility will control the systems for operational and maintenance purposes. Upon completion, FDO shall provide Utility required Cost Documentation and a No-Lien Affidavit on forms supplied by Utility.

Utility's acceptance of the potable water distribution and wastewater collection system installed by FDO shall be in accordance with provisions as set forth in the UPAP. All installations by FDO or its contractor shall be warranted for one year (or five years in the case of lift station pumps and motor assemblies) from date of Final DEP Certification. All potable water distribution and wastewater collection facilities shall be located within an easement if not located within platted or dedicated right-of-way.

FDO hereby agrees to pay to Utility Guaranteed Revenue Fees, Connections Fees, Service Installation Fees, Franchise Fees, and any applicable fees as set forth in the UPAP at the then current rate.

The timely payment by FDO of all fees in accordance with the terms set forth herein shall be considered essential to the continued performance by Utility of the terms and conditions of this MOU. The construction and transfer of control of the potable water distribution and wastewater collection system does not and will not result in Utility waiving or offsetting any of its fees, rules or regulations. Upon acceptance of control by Utility, FDO shall not have any present or future right, title, claim, or interest in and to the control or maintenance of the potable water and wastewater facilities accepted by Utility

7. FDO agrees with Utility that all potable water and wastewater facilities owned by the County and managed by Utility for use in connection with providing potable water and wastewater service to the Property, shall at all times remain in the complete and exclusive ownership of Utility, and any entity owning any part of the Property or any residence or building constructed or located thereon, shall not have the right, title, claim or interest in and to such facilities, or any part of them, for any purpose. In addition, Utility shall have the exclusive right and privilege to provide potable water and wastewater services to the Property and to the occupants of each residence or building constructed thereon.

8. Notwithstanding any provision in this MOU, Utility may establish, revise, modify, and enforce rules, regulations, and fees covering the provision of potable water and wastewater service to the Property. Such rules, regulations, and fees are subject to the approval of the Palm Beach County Board of County Commissioners. Such rules, regulations, and fees shall be reasonable and subject to regulation as may be provided by law or contract. Fees charged to FDO or Customers located upon the Property shall be identical to fees charged for the same classification of service in the particular service area. All rules, regulations and fees as set forth in the UPAP, shall be binding upon FDO, upon any other entity holding by, through or under FDO, and upon any Customer of the potable water and wastewater service provided to the Property by Utility. Said rules and regulations include, but are not limited to, Service Initiation, oversizing of facilities, use of previously oversized facilities or extension of facilities.
9. FDO or its assignee shall not have the right to and shall not connect to the potable water and wastewater facilities of Utility until approval for such connection has been granted by Utility. The parties hereto further agree that the expense of construction, operation, and maintenance of all improvements beyond the Point of Service shall be the sole cost and expense of FDO or other than Utility.
10. FDO acknowledges and agrees that the transfer or assignment of this MOU upon the sale, conveyance, transfer, lease or assignment of the Property, or any portion thereof, as described in Exhibit "A" of this MOU by FDO shall only be performed in accordance with the provisions of UPAP. FDO further acknowledges and agrees that documenting the transfer or assignment of this MOU in a form acceptable to Utility is the sole responsibility of FDO.
11. All notices provided for herein shall be in writing and transmitted by mail or by courier and, if to FDO shall be mailed or delivered to FDO at:

**Palm Beach County FD&O/Capital Improvements
2633 Vista Parkway
West Palm Beach, FL 33411**

and if to Utility, shall be mailed to Palm Beach County Water Utilities Department - Contract Management Section, 8100 Forest Hill Boulevard, West Palm Beach, FL 33413.

12. The rights, privileges, obligations, and covenants of FDO and Utility shall survive the completion of the work of FDO with respect to completing the potable water and wastewater facilities and services to any phased area and to the Property as a whole.
13. Unless FDO is requesting additional capacity for the property described in **Exhibit "A"**, this MOU shall supersede, null and void, all previous agreements or representations, either verbal or written, heretofore in effect between FDO and Utility, made with respect to the matter herein contained, and when duly executed, constitutes the entire agreement between FDO and Utility. No additions, alterations, or variations of terms of this MOU shall be valid, nor can provisions of this MOU be waived by either party, unless such additions, alterations, variations or waiver are expressed in writing and duly signed by the parties hereto.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, FDO and Utility have executed or have caused this MOU, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this MOU.

FDO:

Samir P. Gopal Cheloo
Director, PBC Facilities Development and Operations

UTILITY:

SMR ALBOYAL
Director, PBC Water Utilities Department

Exhibit "A"
LEGAL DESCRIPTION

TRACT A, CHERRY ROAD COMPLEX PLAT, ACCORDING TO THE PLAT THEREOF ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA, RECORDED IN PLAT BOOK 114, PAGE 114, LESS, THOSE LANDS IN PALM BEACH COUNTY RESOLUTION NUMBER R-2015-1779 RECORDED IN OFFICIAL RECORDS BOOK 28026, PAGE 1038.
AREA=19.462 ACRES MORE OR LESS.