




## Interoffice Memorandum

March 26, 2018

**TO:** Mayor Teresa Jacobs  
and Board of County Commissioners

**FROM:** Raymond E. Hanson, P. E., Director  
Utilities Department 

**SUBJECT:** BCC Agenda Item – Consent Agenda  
April 10, 2018 BCC Meeting  
Adara World Gateway Apartment Complex Water and Wastewater  
Capacity Adjustment Agreement  
Contact Person: Andres Salcedo, P. E.  
Assistant Director, Utilities Department  
407-254-9719

Orange County Code, Chapter 37, Section 37-5, describes the methodology by which Utilities Department staff calculates capital charges and also includes a means for property owners to appeal Orange County Utilities' capital charge calculation methodologies. Appeals are made to the Utilities Capital Charge Appeal Board (UCCAB).

On September 14, 2016, the UCCAB heard an appeal of the capital charges associated with the Adara World Gateway Apartment Complex located at 14670 Continental Gateway, Orlando, Florida. The appeal was made by DD OWG, LLC. Based on a water consumption study provided, the UCCAB approved reducing the total equivalent residential unit (ERU)/equivalent residential connection (ERC) from 284.754 ERU/ERC to 199.328 ERU/ERC, a reduction of 85.426 ERU/ERC. The capital charge reduction becomes effective upon approval of the Adara World Gateway Apartment Complex Water and Wastewater Capacity Adjustment Agreement. The agreement also stipulates the terms under which the lowered capital charges will remain in effect.

The County Attorney's Office and Risk Management Division have reviewed the agreement and find it acceptable as to form and content. Utilities Department staff recommends approval.

**Action Requested:** Approval and execution of Adara World Gateway Apartment Complex Water and Wastewater Capacity Adjustment Agreement Parcel ID: 33-24-28-9295-12-011 by and between DD OWG, LLC, Morrow Construction Company, Inc. and Orange County, to reduce the capital charge by 85.426 ERU/ERC.

District 1.

BCC Mtg. Date: April 10, 2018

Prepared by  
And return to:

Anthony Cotter  
Orange County Attorney's Office  
P.O. Box 1393  
Orlando, FL 32802-1393

**ADARA WORLD GATEWAY APARTMENT COMPLEX  
WATER AND WASTEWATER CAPACITY ADJUSTMENT AGREEMENT  
Parcel ID: 33-24-28-9295-12-011**

This Adara World Gateway Apartment Complex Water and Wastewater Capacity Adjustment Agreement (the "Agreement") is made and entered into as of the date later executed below by and between **DD OWG, LLC**, a foreign limited liability company, whose address is 403 Corporate Center Drive, Suite 201, Stockbridge, Georgia, 30281 (the "Owner"), **Morrow Construction Company, Inc.**, a foreign profit corporation, whose address is 403 Corporate Center Drive, Suite 201, Stockbridge, Georgia, 30281 ("Morrow"), and **Orange County**, a charter county and political subdivision of the state of Florida whose address is 201 South Rosalind Avenue, Orlando, Florida 32801 (the "County").

**RECITALS**

**WHEREAS**, Section 37-5, Orange County Code (the "Code"), requires property owners to pay capital charges, as defined in Section 37-2 of the Code and calculated pursuant to Section 37-5, for new connections to the County's water or wastewater systems, or for existing connections that increase flows to the water system or wastewater system by altering the interior or the use of an existing structure; and

**WHEREAS**, Section 37-5 of the Code provides a process for non-residential property owners within the County's water and wastewater service territories to appeal the capital charges to be assessed pursuant to the calculations required by the Code by demonstrating to the Utility Capital Charge Appeal Board ("UCCAB") that actual water use and wastewater flow will be less than eighty percent of the Equivalent Residential Connection ("ERC") as applied to the water service connection and Equivalent Residential Unit ("ERU") as applied to the wastewater service connection calculated for the establishment; and

**WHEREAS**, the Owner owns a property located at 14670 Continental Gateway, Orlando, Florida, 32821, and such property is more particularly described in **Exhibit "A"** attached hereto and incorporated herein (the "Property"); and

**WHEREAS**, the Property is located within the County's water and wastewater service territories and, therefore, the County is the appropriate provider of water and wastewater services with jurisdiction over the Property; and

**WHEREAS**, Owner proposes to convert the Property into a new apartment complex (the "Apartment Complex"), which is more particularly shown on **Exhibit "B"** attached hereto and incorporated herein; and

**WHEREAS**, the Owner has submitted to the County an engineering study, signed and sealed by a professional engineer licensed in the State of Florida and prepared at the Owner's expense, to demonstrate that the expected water use and wastewater flow will be less than eighty percent of the ERC and ERU usage assigned to the Apartment Complex under the Code; and

**WHEREAS**, the Owner has paid appropriate application fees; and

**WHEREAS**, the UCCAB has reviewed the study submitted by the Owner, and determined that the Owner demonstrated that the expected water use and wastewater flow would be less than eighty percent of the calculated ERC and ERU for the Apartment Complex; and

**WHEREAS** the Owner and Morrow have entered into a separate agreement, by which Morrow has agreed to provide and maintain a letter of credit on behalf of the Owner as required by this Agreement and for the duration of this Agreement; and

**WHEREAS**, as a condition of approval of the Owner's appeal and in accordance with Section 37-5 of the Code, the County, the Owner, and Morrow desire to enter into this Agreement to ensure that the water use and wastewater flow will be established and subsequently monitored on a routine basis.

**NOW, THEREFORE**, and in consideration of fees and charges specified in this Agreement, the covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the County and the Owner agree as follows:

1. **Recitals.** The above Recitals are true and incorporated herein and form a material part of this Agreement.
2. **Capital Charge Payments Remain with the Property.** Pursuant to Section 37-5 of the Code, water and wastewater capacity may only be purchased for the property specified in the application for service, and may not be transferred to another property. Therefore, any and all water and wastewater capacity purchased by the Owner is purchased on behalf of the Property, runs with the Property, and may not be transferred to any other property.
3. **Adjustment to Capacity and Capital Charges.** Based on the engineering study prepared by Stantec Consulting Services, Inc., and dated February 29, 2016,

submitted by the Owner, the UCCAB determined that the Owner demonstrated that the expected water use and wastewater flow for the Apartment Complex would be at least eighty percent below the ERCs and ERUs calculated under the Code for the Apartment Complex. Therefore the UCCAB reduced the capacity associated with the Apartment Complex from 284.754 ERUs/ERCs (the "Normal Capacity") to 199.328 ERUs/ERCs (the "Adjusted Capacity"), a difference of 85.426 ERUs/ERCs, thereby reducing the Apartment Complex's capital charges by \$438,833.36. The Adjusted Capacity equates to 54,815.20 gallons per day (gpd) water and 44,848.80 gpd wastewater. Once this Agreement is executed by all Parties, and the Owner has complied with the provisions of Section 4 below, and the Owner and Morrow have complied with Section 5 below, the Owner may apply for a refund or credit adjustment, in accordance with the applicable provisions Chapter 37 of the Code at the time of the request, for any capital charges paid over the Adjusted Capacity.

**4. Metering, Fees and Compliance.**

- a. The Owner shall maintain a reduced water consumption and wastewater flow for continued eligibility of the Adjusted Capacity and reduced capital charges.
- b. The Apartment Complex's water consumption and wastewater flow will be measured by the approved County water meter which will be placed in a location accessible to the County.
- c. The Owner shall ensure that the meter remains unobstructed for County meter reading.
- d. The Owner shall allow the County access to the Apartment Complex to inspect the meter, water and wastewater plumbing; to read the water meter; and to conduct monitoring tests, including, but not limited to tests of usage and flows at any time the Apartment Complex is occupied, and at any other time upon reasonable notice.
- e. A monthly monitoring fee, per Board of County Commissioners' Rate Resolutions as amended from time to time, shall be assessed and billed directly to the Owner by the County through the current monthly billing process.
- f. No changes in the building, Apartment Complex use, water meter, water and wastewater plumbing, or utility mains shall be made by the Owner without prior review, inspection, and written approval of the County. County approval shall not be unreasonably withheld, conditioned, or delayed.

g. Water consumption will be monitored by the County based upon a six-month rolling average for the term of the Agreement. Water and wastewater flow capacity (ERC/ERU) will be calculated by taking the billed water consumption readings, dividing by the number of days in that billing period and dividing by 275 gallons per ERC/ERU per day (the "Billing Period Capacity").

- i. If any Billing Period Capacity exceeds the Adjusted Capacity, the County may issue a written warning to the Owner notifying them of the reading.
- ii. If at any time the six-month average Billing Period Capacity exceeds the Adjusted Capacity, but is less than eighty percent of the Normal Capacity, the Owner shall pay the County the difference between the ERCs and ERUs represented by the six-month Billing Period Capacity average and the Adjusted Capacity. The cost of an ERC/ERU shall be calculated using the then current County water and wastewater capital charge rates.
- iii. If additional capital fees are incurred, as described in paragraph ii above, and at a later date a six-month average Billing Period Capacity exceeds the cumulative total paid capacity for the Apartment Complex, the Owner shall again pay the County any difference between the ERCs and ERUs represented by the six-month average Billing Period Capacity and the cumulative total paid capacity for the Apartment Complex. The cost of an ERC/ERU shall be calculated using the then current County water and wastewater capital charge rates.
- iv. If at any time the six-month average Billing Period Capacity exceeds eighty percent of the Normal Capacity, the Owner shall pay to the County capital fees representing the difference between the Normal Capacity and the cumulative total paid capacity for the Apartment Complex. The cost of an ERC/ERU shall be based upon the then current rates, and this Agreement shall terminate.
- v. The Owner shall pay to the County within thirty days any additional water and wastewater capacity charges that may be due and owing for the Apartment Complex based on the conditions set forth in this Agreement. If the additional fees assessed are not paid within thirty days from the demand date, the County may draw on the Letter of Credit, provided by the Owner to the County as described below.

5. **Letter of Credit.** A Letter of Credit acceptable to the County is required as part of this Agreement for the duration of Owner's obligations under this Agreement. Morrow, on behalf of the Owner, has provided this Letter of Credit to the County

simultaneous with the execution of this Agreement in the amount representing the difference between the Normal Capacity and the Adjusted Capacity. Morrow agrees to maintain the Letter of Credit in accordance with the terms of the Letter of Credit and this Agreement. If Morrow fails to maintain the Letter of Credit in accordance with the terms of this Agreement, the Owner shall provide the County with a Letter of Credit in the same amount and under the same terms as the Letter of Credit supplied by Morrow. Failure to continuously maintain a Letter of Credit by Morrow or Owner shall be a breach of this Agreement and Owner shall pay to the County all capital charges due based on the then-existing County rates for water and/or wastewater capital charges.

6. **Indemnification of the County.** The Owner shall indemnify and hold the County harmless for any and all claims and losses for personal injury, property damage, or financial loss arising at any time from any aspect of this Agreement, other than claims and losses arising from the sole negligence of the County, its employees or agents. Nothing contained herein shall be construed as a waiver of the County's sovereign immunity including but not limited to the provisions of Section 768.28, Florida Statutes.
7. **Term of Agreement.** This Agreement shall continue in full force and effect for a period of five years from the Certificate of Occupancy of the Apartment Complex or the Effective Date of the Agreement, whichever is later, unless sooner terminated as set forth herein.
8. **Sale of Land.** The Owner's right to sell or transfer the Property shall not be restricted by this Agreement provided, however, that the County is provided with thirty days prior notice of such sale or transfer. And provided further that (i) a replacement Letter of Credit, in form and substance acceptable to the County has been put in place by the successor party(s) prior to the transfer, or Morrow notifies the County that it will continue to maintain the Letter of Credit under the terms of this Agreement or a successor agreement with the new owner of the Property, (ii) at the time of the closing of the sale or transfer of all or any portion of the Apartment Complex, the successor party(s) in ownership shall execute an acknowledgment and agreement whereby such party acknowledges the existence of this Agreement and agrees to be bound by the terms of this Agreement. Such Agreement and acknowledgment signed by such successor party must be delivered to the County within thirty days after the date of such sale or transfer, and prior to the expiration of Morrow's Letter of Credit. If successor party does not provide the County a replacement Letter of Credit, if needed because Morrow is not willing to maintain the Letter of Credit after the purchase of the Property by the successor party, or an acknowledgement binding the successor party to the terms of this Agreement as specified above, this Agreement shall terminate immediately and the County shall collect the full amount due on the Letter of Credit from Morrow. Capital charges run with the land, as stated in paragraph 2.

9. **Compliance with Laws.** The Owner shall at all times comply with applicable local, state and federal regulations. Failure of said compliance may result in immediate interruption or termination of credit.

10. **Termination.**

- a. This Agreement may be terminated upon written mutual consent of all Parties.
- b. The County may terminate this Agreement if (i) the Owner, or anyone else, changes or modifies the water or wastewater plumbing, the nature of the business, the utility infrastructure, or the building structures without prior approval of the County; or (ii) the Owner, or anyone else in control of the building or any portion thereof, fails or refuses to allow the County access to the Property; or (iii) Morrow or the Owner fails to maintain the Letter of Credit; or (iv) as otherwise provided in this Agreement. Prior to Agreement termination, the County shall provide written notification to the Owner, and Morrow if the breach of this Agreement relates to the Letter of Credit, providing thirty days to cure non-compliance with any terms of this Agreement.
- c. The entitlement to Adjusted Capacity (reduced capital charges) will be terminated if the actual six-month rolling average water or wastewater usage is more than eighty percent of the Normal Capacity, as described above in paragraph 3.
- d. Upon Termination of this Agreement by either Party, the Owner shall be assessed and shall pay to the County within thirty days thereafter, any additional water and wastewater Capital Charges that may be due and owing for the Apartment Complex, based on the County's then-current water and wastewater capital charge rates.
- e. Upon Termination of this Agreement and upon the Owner's failure to pay sums due for Capital Charges within thirty days after Termination, the County shall collect such sums from Owner by drawing on the Letter of Credit required by this Agreement.

11. **Notice.** Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered when: (a) hand-delivered to the official hereinafter designated; (b) deposited with Federal Express or other nationally recognized overnight courier service for delivery; or (c) received when such notice is deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to a party at the address set forth opposite the party's name below, or such other address as the party shall have specified by written notice to the other party delivered in accordance therewith.

If to the County: Orange County Utilities Department  
9150 Curry Ford Road  
Orlando, Florida 32825  
Attention: Assistant Manager, Utilities Customer Service

If to the Owner: DD OWG, LLC  
403 Corporate Center Drive, Suite 201  
Stockbridge, GA 30281  
Attention: Phil Spann

If to Morrow: Morrow Construction Co., Inc.  
403 Corporate Center Drive, Suite 201  
Stockbridge, GA 30281  
Attention: Phil Spann

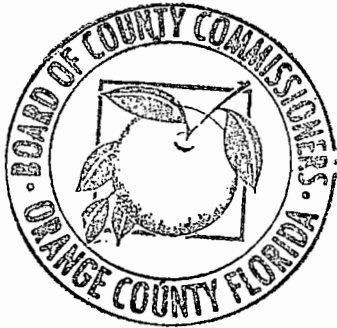
12. **Recording.** The parties hereto agree that an executed copy of this Agreement and Exhibits attached hereto shall be recorded at the Owner's expense in the Public Records of Orange County, Florida. The obligations imposed in this Agreement shall run with the land and shall be binding upon the parties hereto and their respective successors and assigns of the land.
13. **Governing Law.** This Agreement and provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, without giving effect to any choice of law rules thereof which may direct the application of the laws of another jurisdiction.
14. **Jurisdiction.** Any legal proceeding of any nature brought by any party against the other to enforce any right or obligation under this Agreement, or arising out of any matter pertaining to this Agreement, shall be exclusively submitted for trial before the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida; or, if the Circuit Court does not have jurisdiction, then before the United States District Court for the Middle District of Florida (Orlando Division); or if neither of such courts shall have jurisdiction, then before any other court sitting in Orange County, Florida, having subject matter jurisdiction. The parties consent and submit to the exclusive jurisdiction of any such court and agree to accept service of process outside the State of Florida in any matter to be submitted to any such court pursuant hereto and expressly waive all rights to trial by jury for any matters arising under this Agreement.
15. **Attorneys' Fees and Costs.** If any party files suit or brings a judicial action or proceeding against the other to recover any sum due hereunder or for default or breach of any of the covenants, terms or conditions herein contained, each party shall be responsible for its costs, fees and expenses incurred (including the fees and expenses of attorneys and paraprofessionals) in connection with such suit, action or proceeding (whether or not such costs, fees and expenses are taxable to

the other party as such by any law) through any and all final appeals arising out of such suit, action or proceeding.

16. **Headings.** The headings or captions of sections and descriptive headings in this Agreement are inserted for convenience only, and shall not affect the construction or interpretation hereof.
17. **Severability.** If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties and if the intention of the parties can continue to be effective. To that end, this Agreement is declared severable.
18. **No Third Party Beneficiaries.** This Agreement is solely for the benefit of the formal parties hereto and no rights or cause of action shall accrue upon or by reason hereof, to or for the benefit of, any third party not a formal party hereto.
19. **Entire Agreement.** This instrument constitutes the entire Agreement between the parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this Agreement.
20. **Amendment.** This Agreement shall not be amended unless the amendment is in writing and approved by the County, Morrow, and the Owner.
21. **Effective Date.** The Effective Date of this Agreement shall be the date of recording in the Public Records of Orange County.

[SIGNATURES ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the respective dates set forth under each signature.



**ORANGE COUNTY, FLORIDA**

By: Board of County Commissioners

By: *Teresa Jacobs*  
Teresa Jacobs  
County Mayor  
Date: 4.10.18

ATTEST: Phil Diamond, CPA, County Comptroller  
As Clerk of the Board of County Commissioners

By: *Katie Price*  
Deputy Clerk

**The OWNER:**

DD OWG, LLC, a Foreign Limited Liability Company

By: Morrow Investors, Inc. a Georgia Domestic Profit Corporation, its Managing Member

By: [Signature]  
Miguel Davis, CEO

Date: 11/20/18

Witness: [Signature]

Print Name: Phil Spina

Witness: [Signature]

Print Name: Will Martin

STATE OF GEORGIA  
COUNTY OF HENRY

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of January, 2018, by Miguel Davis, as CEO of Morrow Investors, Inc., a Georgia Domestic Profit Corporation, the Managing Member of DD OWG, LLC, a Foreign Limited Liability Company. He is personally known to me or has produced \_\_\_\_\_ as identification.



[Signature]  
Notary Public  
My Commission Expires:

**MORROW CONSTRUCTION  
COMPANY, INC., a Georgia corporation**

By: [Signature]  
Fred S. Hazel, Vice President

Date: 1/20/18

Witness: [Signature]

Print Name: [Signature]

Witness: [Signature]

Print Name: Will Martin

STATE OF GEORGIA  
COUNTY OF HENRY

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of January, 2018, by Fred S. Hazel, as Vice President of Morrow Construction Company, Inc., a Georgia corporation, He is personally known to me or has produced \_\_\_\_\_ as identification.

[Signature]  
\_\_\_\_\_  
Notary Public  
My Commission Expires:



## **EXHIBIT "A"**

### **LEGAL SKETCH AND DESCRIPTION**

#### **WORLD GATEWAY**

##### **PHASE 5**

**Portion of Parcel L1**

**(REVISED 8/21/15)**

#### **DESCRIPTION:**

That part of Parcel L1, WORLD GATEWAY PHASE 5, according to the plat thereof, as recorded in Plat Book 66, Pages 62 and 63, of the Public Records of Orange County, Florida, described as follows:

BEGIN at the Southwest corner of Parcel L1, WORLD GATEWAY PHASE 5, according to the said plat; thence run the following twenty four (24) courses along the boundary line of said Parcel L1: N53°04'35"E, 384.46 feet; thence N42°17'02"E, 87.00 feet; thence N32°03'04"E, 37.85 feet; thence N48°58'45"E, 55.59 feet; thence N45°05'14"E, 26.03 feet; thence N27°40'51"E, 54.39 feet; thence N56°51'22"E, 47.22 feet; thence N47°26'03"E, 87.71 feet; thence N18°15'06"E, 21.04 feet; thence N39°02'26"E, 58.70 feet; thence N00°03'54"E, 61.24 feet; thence N15°42'28"E, 64.35 feet; thence N33°44'34"E, 31.54 feet; thence N35°22'29"E, 51.81 feet; thence N10°57'40"E, 71.66 feet; thence N45°29'47"E, 66.91 feet; thence N89°54'41"E, 38.97 feet; thence N73°47'46"E, 53.58 feet; thence N76°00'29"E, 19.14 feet to a point on a non-tangent curve concave Northeasterly having a radius of 44.00 feet and a chord bearing of N41°37'12"W; thence Northwesterly along the arc of said curve through a central angle of 112°58'51" for a distance of 86.76 feet to the point of reverse curvature of a curve concave Westerly having a radius of 25.00 feet and a chord bearing of N05°04'05"E; thence Northerly along the arc of said curve through a central angle of 19°36'18" for a distance of 8.55 feet to the point of tangency; thence N04°44'04"W, 336.19 feet to the point of curvature of a curve concave Easterly having a radius of 333.00 feet and a chord bearing of N01°12'50"E; thence Northerly along the arc of said curve through a central angle of 11°53'48" for a distance of 69.14 feet to a point on a non-tangent line; thence N85°48'28"W, 398.15 feet; thence departing said boundary line run S14°11'32"W, 284.54 feet; thence N85°48'28"W, 517.64 feet to the aforesaid boundary of Parcel L1; thence run the following three (3) courses along said boundary line: S04°11'32"W, 161.54 feet to the point of curvature of a curve concave Easterly having a radius of 2200.00 feet and a chord bearing of S00°49'26"E; thence Southerly along the arc of said curve through a central angle of 10°01'56" for a distance of 385.21 feet to a point on a non-tangent curve concave Easterly having a radius of 1680.00 feet and a chord bearing of S18°33'42"E; thence Southerly along the arc of said curve through a central angle of 22°32'11" for a distance of 660.80 feet to the POINT OF BEGINNING.

TOGETHER WITH Stormwater Drainage Easement Agreement recorded in Official Records Book 10860, Page 9220 and Temporary Construction, Grading and Permanent Slope and Maintenance Agreement recorded in Official Records Book 10860, Page 9230, Public Records of Orange County, Florida.

Containing 20.863 acres more or less (not including benefiting easements) and being subject to any rights-of-way, restrictions and easements of record.

