

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date: May 4, 2010 Consent [X] Regular []
Public Hearing []

Submitted By: Water Utilities Department
Submitted For: Water Utilities Department

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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a "Utility Work by Highway Contractor" Agreement with Florida's Department of Transportation (FDOT) in the amount of \$11,742.50.

Summary: Florida's Department of Transportation (FDOT) is proposing improvements to State Road 802 (Lake Worth Road) from State Road 7(SR 7) to Florida's Turnpike. These improvements will necessitate the adjustment of thirty seven (37) Palm Beach County Water Utilities Department (PBCWUD) water/wastewater valve boxes and one (1) Air Release Valve (ARV) manhole that need to be protected and adjusted to the new grade. In order to include the adjustment of the valve boxes and ARV manhole within the road improvement project, FDOT requires PBCWUD to enter into a "Utility Work by Highway Contractor" Agreement to reimburse FDOT for the valve box and ARV manhole adjustments in the amount of \$11,742.50 (lump sum). (WUD Project No. 10-010E) District 6 (MWJ)

Background and justification: PBCWUD has reviewed and coordinated the utility relocation for the improvement of SR 802 (Lake Worth Road) between SR 7 and Florida's Turnpike and thirty seven (37) valves and one (1) ARV manhole need to be protected and adjusted to new grade by the road contractor during the road improvement project.

Attachments:

1. Location Map
2. Five (5) Original Agreements

Recommended By:  _____ 4/14/2010
Department Director Date

Approved By:  _____ 4/26/10
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	<u>\$11,742.50</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>0</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>\$11,742.50</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 4001 Agency 720 Org. 2521 Object 4615

Is Item Included in Current Budget? Yes X No

Reporting Category N/A

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

The contract will be funded from Water Utilities Department user fees.

C. Department Fiscal Review: *[Signature]*

III. REVIEW COMMENTS

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

[Signature] 4/22/10
 OFMB
 #122/10
 POM
 4/14/10

[Signature] 4/23/10
 Contracts
 E. Jones 4/23/10

B. Approved as to form and legal sufficiency:

This Contract complies with our contract review requirements.

[Signature] 4/26/10
 Assistant County Attorney

C. Other Department Review:

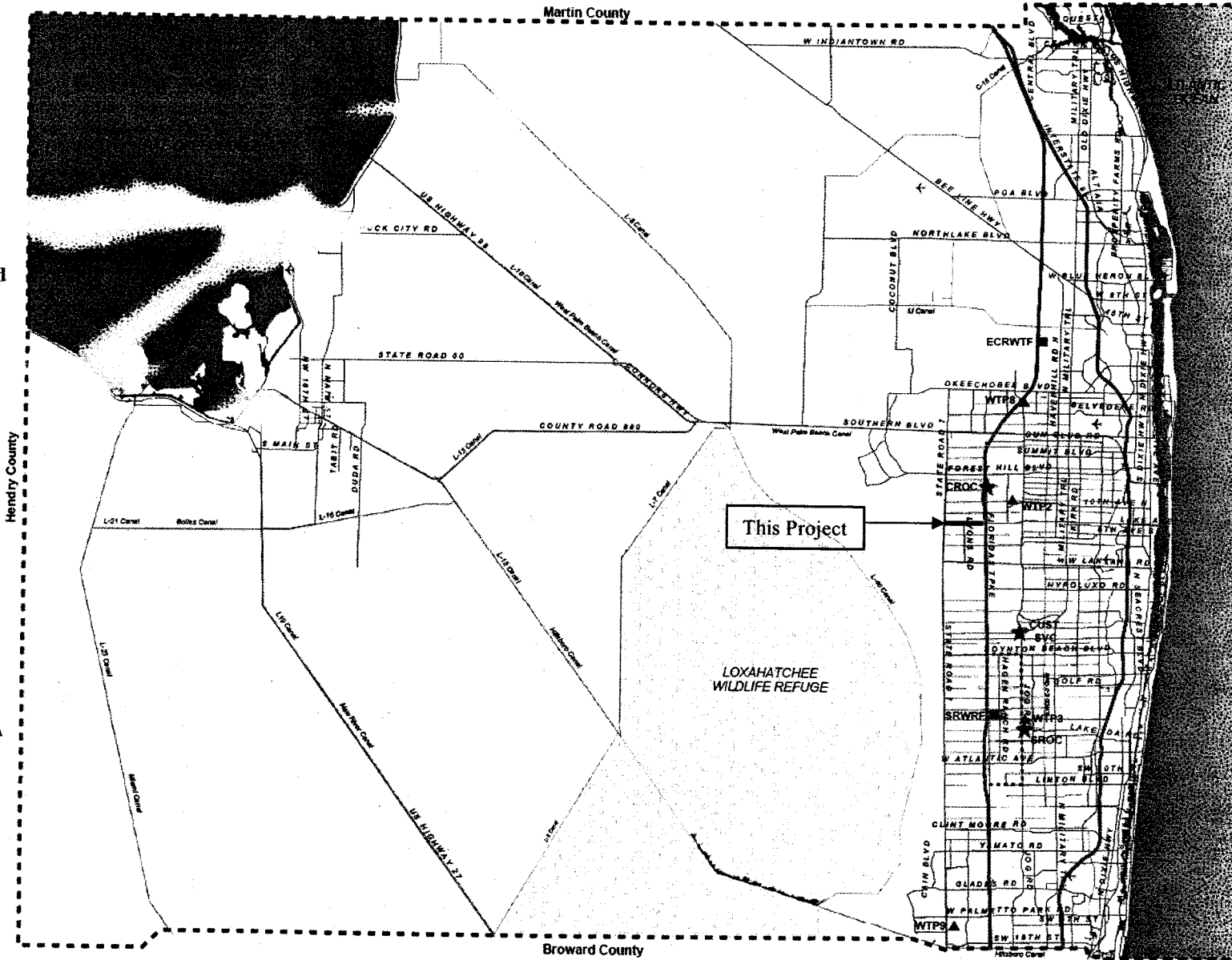
 Department Director

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

ATTACHMENT 1



Palm Beach County
Water Utilities
Department
Service Area (SA) and
Major Facilities



Legend

- P.B.C.W.U.D. SA
- - - MANDATORY RECLAIMED SA
- · · COUNTY LIMITS
- ★ Administration
- Water Reclamation Plant
- ▲ Water Treatment Plant
- ⊙ Wetlands



STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT
(LUMP SUM)

Form No. 710-010-57
UTILITIES
10/04

Financial Project ID: 421691-1-52-01	Federal Project ID: NA
County: Palm Beach	State Road No.: 802
District Document No: 01	
Utility Agency/Owner (UAO): Palm Beach County Water Utilities Department	

THIS AGREEMENT, entered into this _____ day of _____, year of _____, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as the "FDOT," and **Palm Beach County Water Utilities Department**, hereinafter referred to as the "UAO";

WITNESSETH:

WHEREAS, the **UAO** owns certain utility facilities which are located on the public road or publicly owned rail corridor identified below, hereinafter referred to as the "Facilities" (said term shall be deemed to include utility facilities as the same may be relocated, adjusted, or placed out of service); and

WHEREAS, the **FDOT**, is currently engaging in a project which involves constructing, reconstructing, or otherwise changing a public road and other improvements located on a public road or publicly owned rail corridor identified as Lake Worth Road, State Road No. 802, hereinafter referred to as the "Project"; and

WHEREAS, the Project requires minor modifications to the Facilities of the **FDOT's** design more particularly described in Exhibit A attached hereto and by this reference made a part hereof, hereinafter referred to as "Utility Work," and full plans and technical specifications for the Utility Work are not required; and

WHEREAS, the **FDOT** will perform the Utility Work as part of the Project; and

WHEREAS, the **UAO**, pursuant to the terms and conditions hereof, will bear certain costs associated with the Utility Work; and

WHEREAS, the **FDOT** and the **UAO** desire to enter into an agreement which establishes the terms and conditions applicable to the Utility Work;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the **FDOT** and the **UAO** hereby agree as follows:

1. Performance of Utility Work

- a. The **FDOT** will include the Utility Work in its plans and specifications for the Project and will include the Utility Work as part of the **FDOT's** construction of the Project. The preparation of the plans and specifications and the construction of the Project will be performed in such manner as the **FDOT**, in its discretion, deemed appropriate.
- b. All location, protection, relocation, adjustment, or removal of the **UAO's** Facilities which is not listed in Exhibit A shall be performed pursuant to a separate agreement.

2. Cost of Utility Work

- a. The **UAO** will, at least thirty (30) calendar days prior to the date on which the **FDOT** advertises the Project for bids, pay the **FDOT** the amount of \$ 11,742.50 for the cost of the Utility Work. Said amount will be deposited into the State Transportation Trust Fund.
- b. The **FDOT** and the **UAO** acknowledge and agree that the amount stated above includes an additional ten percent (10%) to cover the **UAO's** obligation for the cost of the Utility Work as set forth in Section 337.403(1)(b), Florida Statutes.

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- c. Except for costs associated with any changes or additions to the Utility Work, the **FDOT** and the **UAO** agree that the deposit shall be an asset of the **FDOT** and that it constitutes a full and final lump sum payment for the cost of the Utility Work, without any requirement for a subsequent accounting for the use of the deposit.
- d. Pursuant to Section 337.403(1)(b), Florida Statutes, no changes or additions to the Utility Work will be made during the construction of the Project unless the **UAO** has made an additional deposit to cover the cost of the changes or additions. To the extent that the amount stated in Subparagraph 2.a. above exceeds the amount of the **FDOT contractor's** bid that applies to the Utility Work, such excess may be applied to cover the cost of the changes or additions. All changes or additions shall be subject to the limitations on supplemental agreements and change orders contained in Section 337.11(8), Florida Statutes.

3. Default

- a. In the event that the **UAO** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement, the **FDOT** may exercise one or more of the following options, provided that at no time shall the **FDOT** be entitled to receive double recovery of damages:
 - (1) Terminate this Agreement if the breach is material and has not been cured within 60 days from written notice thereof from the **FDOT**.
 - (2) Pursue a claim for damages suffered by the **FDOT**.
 - (3) Suspend the issuance of further permits to the **UAO** for the placement of Facilities on **FDOT** property if the breach is material and has not been cured within 60 days from written notice thereof from **FDOT** until such time as the breach is cured.
 - (4) Pursue any other remedies legally available.
 - (5) Perform any work with its own forces or through contractors and seek repayment for the cost thereof under Section 337.403(3), Florida Statutes.
- b. In the event that the **FDOT** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement, the **UAO** may exercise one or more of the following options:
 - (1) Terminate this Agreement if the breach is material and has not been cured within 60 days from written notice thereof from the **UAO**.
 - (2) Pursue any other remedies legally available.
- c. Termination of this Agreement shall not relieve either party from any obligations it has pursuant to other agreements between the parties and from any statutory obligations that either party may have with regard to the subject matter hereof.

4. Indemnification

FOR GOVERNMENT-OWNED UTILITIES:

To the extent provided by law, the **UAO** shall indemnify, defend, and hold harmless the **FDOT** and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by the **UAO**, its agents, employees, or contractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which **FDOT** or said parties may be subject, except that neither the **UAO**, its agents, employees, or contractors will be liable under this

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section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the **FDOT** or any of its officers, agents, or employees during the performance of this Agreement.

When the **FDOT** receives a notice of claim for damages that may have been caused by the **UAO** in the performance of services required under this Agreement, the **FDOT** will immediately forward the claim to the **UAO**. The **UAO** and the **FDOT** will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the **FDOT** will determine whether to require the participation of the **UAO** in the defense of the claim or to require the **UAO** to defend the **FDOT** in such claim as described in this section. The **FDOT's** failure to notify the **UAO** of a claim shall not release the **UAO** from any of the requirements of this section. The **FDOT** and the **UAO** will pay their own costs for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all costs.

FOR NON-GOVERNMENT-OWNED UTILITIES:

The **UAO** shall indemnify, defend, and hold harmless the **FDOT** and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by the **UAO**, its agents, employees, or contractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which **FDOT** or said parties may be subject, except that neither the **UAO**, its agents, employees, or contractors will be liable under this section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the **FDOT** or any of its officers, agents, or employees during the performance of this Agreement.

The **UAO's** obligation to indemnify, defend, and pay for the defense or at the **FDOT's** option, to participate and associate with the **FDOT** in the defense and trial of any damage claim or suit and any related settlement negotiations, shall be within fourteen (14) days of receipt by the **UAO** of the **FDOT's** notice of claim for indemnification to the **UAO**. The notice of claim for indemnification shall be served by certified mail. The **UAO's** obligation to defend and indemnify within fourteen (14) days of such notice shall not be excused because of the **UAO's** inability to evaluate liability or because the **UAO** evaluates liability and determines the **UAO** is not liable or determines the **FDOT** is solely negligent. Only a final adjudication or judgment finding the **FDOT** solely negligent shall excuse performance of this provision by the **UAO**. The **UAO** shall pay all costs and fees related to this obligation and its enforcement by the **FDOT**. The **FDOT's** failure in notifying the **UAO** of a claim shall not release **UAO** of the above duty to defend.

5. Force Majeure

Neither the **UAO** nor the **FDOT** shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimate duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible.

6. Miscellaneous

- a. To the Facilities shall at all times remain the property of and be properly protected and maintained by the **UAO** in accordance with the then current Utility Accommodation Manual and the current utility permit for the Facilities.
- b. Pursuant to Section 287.058, Florida Statutes, the **FDOT** may unilaterally cancel this Agreement for refusal by the **UAO** to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the **UAO** in conjunction with this Agreement.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT
(LUMP SUM)

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- c. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto, except that the parties understand and agree that the **FDOT** has manuals and written policies and procedures which shall be applicable at the time of the Project and the relocation of the Facilities and except that the **UAO** and the **FDOT** may have entered into other agreements for work not included in Exhibit A for Facilities located within the limits of the Project. Copies of **FDOT** manuals, policies, and procedures will be provided to the **UAO** upon request.
- d. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.
- e. Time is of essence in the performance of all obligations under this Agreement.
- f. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five business days from the proper sending thereof unless proof of prior actual receipt is provided. The **UAO** shall have a continuing obligation to notify each District of the **FDOT** of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

If to the **UAO**:

Mr. Hector Rodriguez, PE
PBCWUD/ Engineering Division
8100 Forest Hill Boulevard
West Palm Beach, Florida 33416

If to the **FDOT**:

Mr. Timothy Brock, PE
FDOT - District 4 Utility Office
3400 West Commercial Boulevard
Fort Lauderdale, Florida 33309

7. **Certification**

This document is a printout of an **FDOT** form maintained in an electronic format and all revisions thereto by the **UAO** in the form of additions, deletions, or substitutions are reflected only in an Appendix entitled Changes to Form Document and no change is made in the text of the document itself. Hand notations on affected portions of this document may refer to changes reflected in the above-named Appendix but are for reference purposes only and do not change the terms of the document. By signing this document, the **UAO** hereby represents that no change has been made to the text of this document except through the terms of the appendix entitled Changes to Form Document."

You MUST signify by selecting or checking which of the following applies:

- No changes have been made to this Form Document and no Appendix entitled "Changes to Form Document" is attached.
- No changes have been made to this Form Document, but changes are included on the attached Appendix entitled "Changes to Form Document."

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UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT
(LUMP SUM)

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UTILITIES
10/04

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first written.

UTILITY: Palm Beach County Water Utilities Department

BY: (Signature) _____

DATE: _____

(Typed Name: _____)

(Typed Title: _____)

Recommend Approval by the District Utility Office

BY: (Signature) _____

DATE: _____

FDOT Legal review

BY: (Signature) _____

DATE: _____

District Counsel

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: (Signature) _____

DATE: _____

(Typed Name: _____)

(Typed Title: _____)

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

BY: _____

DATE: _____

(Typed Name: _____)

(Typed Title: _____)

**ATTEST:
SHARON R. BOCK, CLERK &
COMPTROLLER**

**PALM BEACH COUNTY, BY ITS
BOARD OF COUNTY
COMMISSIONERS**

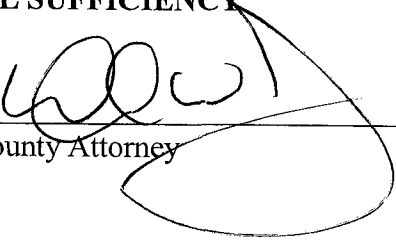
By: _____
Deputy Clerk

By: _____
Burt Aaronson, Chair

(SEAL)

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND
CONDITIONS**

By: 
County Attorney

By: 
Department Director

APPENDIX 1
"CHANGES TO FORM DOCUMENT"

In Section 4 Indemnification, add: "Nothing contained in this section shall be construed to modify, in any way, the waiver of sovereign immunity contained in Florida Statute Section 768.28."

EXHIBIT A

The Contractor shall protect and adjust as needed the existing valve boxes during construction and not cover them up. The Contractor shall coordinate with Palm Beach County Water Utilities Department a valve survey before and after construction.

Valves

Site	Station and Offset	Utility	Plan Sheet	Item Number	Item Description	Unit
1	121+97, 33' RT	Force Main	9	0425-6	Valve Boxes, Adjust	EA
2	122+04, 33' RT	Force Main	9	0425-6	Valve Boxes, Adjust	EA
3	122+12, 24' RT	Force Main	9	0425-6	Valve Boxes, Adjust	EA
4	122+22, 42' LT	Water	9	0425-6	Valve Boxes, Adjust	EA
5	122+25, 46' LT	Water	9	0425-6	Valve Boxes, Adjust	EA
6	122+25, 52' LT	Water	9	0425-6	Valve Boxes, Adjust	EA
7	129+52, 37' LT	Water	11	0425-6	Valve Boxes, Adjust	EA
8	129+60, 37' LT	Water	11	0425-6	Valve Boxes, Adjust	EA
9	129+65, 42' LT	Water	11	0425-6	Valve Boxes, Adjust	EA
10	137+46, 29' LT	Water	12	0425-6	Valve Boxes, Adjust	EA
11	137+46, 36' LT	Water	12	0425-6	Valve Boxes, Adjust	EA
12	137+68, 30' RT	Force Main	12	0425-6	Valve Boxes, Adjust	EA
13	138+25, 48' RT	Water	12	0425-6	Valve Boxes, Adjust	EA
14	138+30, 44' RT	Water	12	0425-6	Valve Boxes, Adjust	EA
15	138+85, 40' LT	Water	12	0425-6	Valve Boxes, Adjust	EA
16	138+95, 45' LT	Water	12	0425-6	Valve Boxes, Adjust	EA
17	138+95, 50' LT	Water	12	0425-6	Valve Boxes, Adjust	EA
18	149+77, 48' LT	Water	14	0425-6	Valve Boxes, Adjust	EA
19	149+80, 30' RT	Force Main	14	0425-6	Valve Boxes, Adjust	EA
20	149+83, 17' RT	Force Main	14	0425-6	Valve Boxes, Adjust	EA
21	152+18, 43' LT	Water	15	0425-6	Valve Boxes, Adjust	EA
22	158+40, 06' RT	Force Main	16	0425-6	Valve Boxes, Adjust	EA
23	158+40, 28' RT	Force Main	16	0425-6	Valve Boxes, Adjust	EA
24	158+45, 22' RT	Force Main	16	0425-6	Valve Boxes, Adjust	EA
25	158+50, 22' RT	Force Main	16	0425-6	Valve Boxes, Adjust	EA
26	158+65, 16' RT	Force Main	16	0425-6	Valve Boxes, Adjust	EA
27	158+65, 25' RT	Force Main	16	0425-6	Valve Boxes, Adjust	EA
28	159+27, 35' LT	Water	16	0425-6	Valve Boxes, Adjust	EA
29	159+27, 43' LT	Water	16	0425-6	Valve Boxes, Adjust	EA
30	159+27, 51' LT	Water	16	0425-6	Valve Boxes, Adjust	EA
31	159+27, 58' LT	Water	16	0425-6	Valve Boxes, Adjust	EA
32	163+45, 45' LT	Water	17	0425-6	Valve Boxes, Adjust	EA
33	178+40, 43' LT	Water	19	0425-6	Valve Boxes, Adjust	EA
34	188+22, 22' RT	Force Main	21	0425-6	Valve Boxes, Adjust	EA
35	188+36, 22' RT	Force Main	21	0425-6	Valve Boxes, Adjust	EA
36	192+44, 45' LT	Water	22	0425-6	Valve Boxes, Adjust	EA
37	193+75, 27' RT	Force Main	22	0425-6	Valve Boxes, Adjust	EA
Quantity Total Valve Boxes, Adjust						37

Air Release Valve

Site	Station and Offset	Utility	Plan Sheet	Item Number	Item Description	Unit
1	166+22, 07' RT	Force Main	17	0425-5-1	Manhole, Adjust, Utilities	EA
Quantity Total Manhole, Adjust, Utilities						1

EXHIBIT B

PROJECT: 421691-1-52-01 (S.R. 802) LAKE WORTH RD RRR
 UTILITY AGENCY / OWNER: PALM BEACH COUNTY WATER UTILITIES DEPARTMENT
 RE: UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT
 COST ESTIMATE FOR VALVE BOX AGREEMENT

SUMMARY OF UTILITY PAYMENTS

ITEM NUMBER	ITEM	UNIT	QUANTITY TOTAL	UNIT COST*	TOTAL
425-6	ADJUST VALVE BOX	EA	37	\$ 275.00	\$ 10,175.00
0425-5-1	ADJUST MANHOLE COVER	EA	1	\$ 500.00	\$ 500.00
				SUBTOTAL =	\$ 10,675.00
				10 % CONTINGENCY =	\$ 1,067.50

ESTIMATED TOTAL = \$ 11,742.50

*From FDOT Item Average Unit Cost for Area 12 (01/02/2009 - 01/31/2010)



**Palm Beach County
Water Utilities
Department
Service Area (SA) and
Major Facilities**

Legend

- P.B.C.W.U.D. SA
- MANDATORY RECLAIMED SA
- - - COUNTY LIMITS
- ★ Administration
- Water Reclamation Plant
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- ⊙ Wetlands

