

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: October 22, 2013

Consent [X] Regular []
Public Hearing []

Department: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an "Utility Work by Highway Contractor" Agreement with Florida's Department of Transportation (FDOT) in the amount of \$10,285.

Summary: FDOT is proposing improvements to State Road (SR) 715 from West Canal Street in Belle Glade to State Road 15 in Pahokee. These improvements will necessitate the adjustment of seven (7) Palm Beach County Water Utilities Department (PBCWUD) water/wastewater valve boxes and 13 manholes that must be protected and adjusted to the new grade elevation. In order to include the adjustment of the valve boxes and manholes 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 manhole adjustments in the amount of \$10,285. (WUD Project No. 13-012-F) District 6 (MJ)

Background and justification: PBCWUD has reviewed and coordinated the utility adjustments for the improvement for 10 miles of SR 715 and determined seven (7) valve boxes and 13 manholes will require protection and adjustment to the new road elevation by the contractor during the improvement project.

Attachments:

- 1. Location Map
- 2. Four (4) Original Agreements

Recommended By:  10/1/13
Department Director Date

Approved By:  10/15/13
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2014	2015	2016	2017	2018
Capital Expenditures	<u>\$10,285.</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>\$10,285.</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 <u>4001</u>	Agency <u>720</u>	Org. <u>2521</u>	Object <u>4615</u>	

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: Debra M. West

III. REVIEW COMMENTS

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

<p><u>Susan Neary</u> 10/2/13 OFMB <i>10/2</i> <i>10/2</i> <i>INU</i></p>	<p><u>Dr. J. Jacobson</u> 10/9/13 Contract Development and Control 10-9-13 <i>skh</i></p>
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B. Legal Sufficiency:

[Signature]
Assistant County Attorney

C. Other Department Review:

Department Director



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

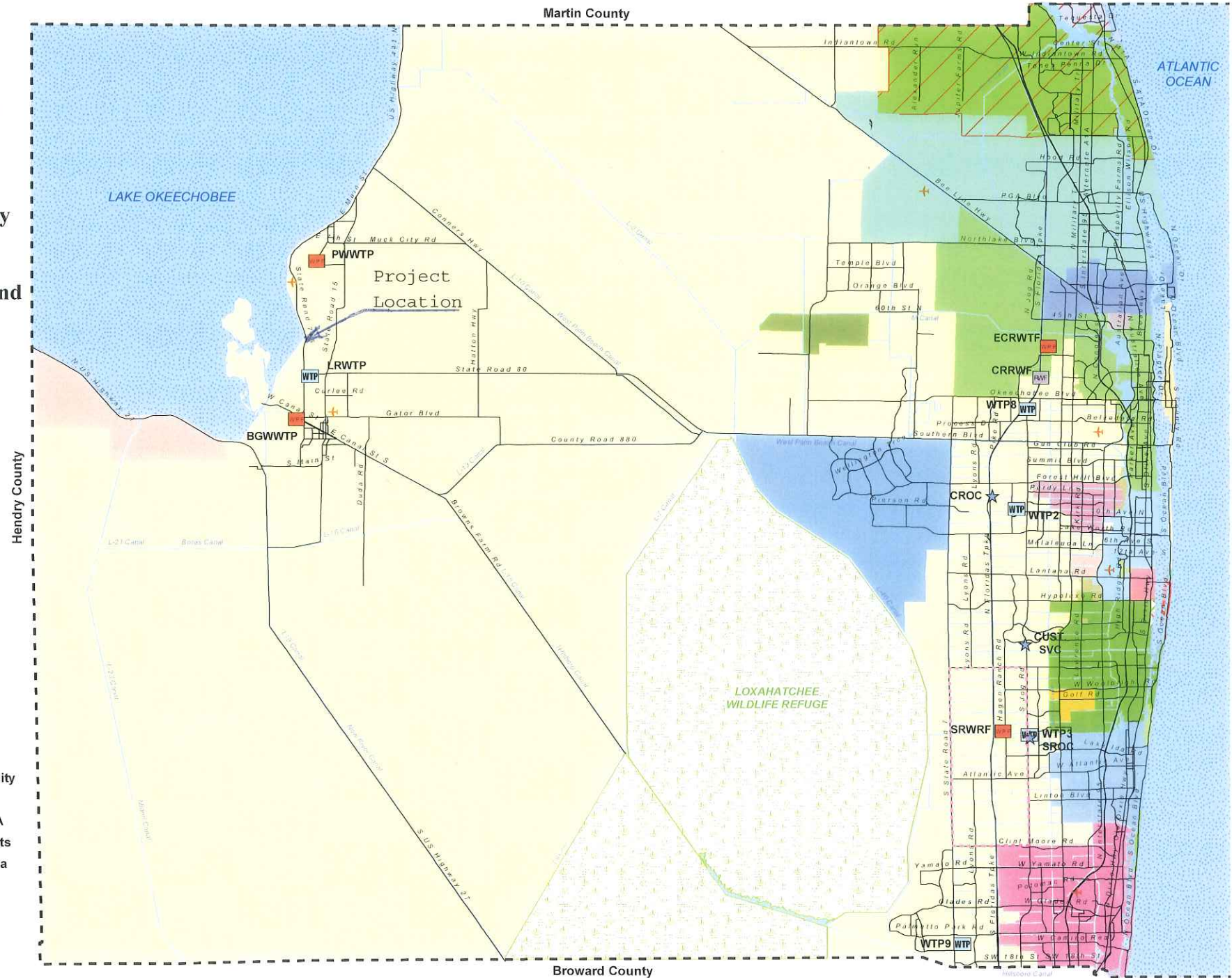
Attachment 1

Legend

- Administration
- Water Treatment Facility
- Water Reclamation Facility
- Reclamation Facility
- Mandatory Reclaimed SA
- Palm Beach County Limits
- P.B.C.W.U.D. Service Area



NOT TO SCALE



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: 428722-1-56-01	Federal Project ID: 4391-004P
County: Palm Beach	State Road No.: 715
District Document No:	
Utility Agency/Owner (UAO): Palm Beach County	

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, 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 SR 715 from W. Canal Street South (SR 717) to SR 15, State Road No. 715, hereinafter referred to as the "Project"; and

WHEREAS, the Project requires minor modifications to the Facilities or 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 \$ 10,285 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.

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

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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

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UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT
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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.

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 arise 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 delay 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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UTILITIES
10/04

- 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:

Duane Palumbo, P.E., Utility Coordinator
Palm Beach County Water Utilities Department
8100 Forest Hill Blvd.
West Palm Beach, FL 33413

If to the FDOT:

Kenzot Jasmin, P.E.
FDOT Project Manager
3400 West Commercial Blvd.
Fort Lauderdale, FL 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."

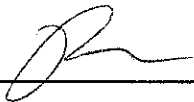
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT
(LUMP SUM)

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

UTILITY: Palm Beach County

BY: (Signature) _____



DATE: 9/18/13

(Typed Name: Brian Shields, P.E.)

(Typed Title: Deputy Director, PBCWUD)

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: _____)

PALM BEACH COUNTY
A POLITICAL SUBDIVISION OF THE
STATE OF FLORIDA
BOARD OF COUNTY COMMISSIONERS
OF PALM BEACH COUNTY, FLORIDA

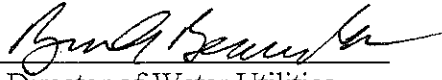
Signed: _____

Typed Name: Steven L. Abrams, Mayor

ATTEST:
Sharon R. Bock, Clerk & Comptroller

(Deputy Clerk)

APPROVED AS TO TERMS AND
CONDITIONS

By: 
Director of Water Utilities

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

(County Attorney)

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY ESTIMATE SUMMARY

710-010-06
 UTILITIES
 03/13

Financial Project ID: 428722-1-56-01	Federal Project ID: 4391-004P
County: Palm Beach	State Road No.: 715
District Document No:	
Utility Agency/Owner (UAO): Palm Beach County	

1.

TYPE OF WORK ESTIMATED: (Mark "X" in appropriate box(es).)

Engineering	Relocation/ Installation	Item(s)
<input type="checkbox"/>	<input type="checkbox"/>	Force Account
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Lump Sum
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Third party Contract
<input type="checkbox"/>	<input type="checkbox"/>	DOT Administered Contract
<input type="checkbox"/>	<input type="checkbox"/>	Other _____

2.

ESTIMATE SUMMARY: (If more than one work order complete "Total" Column.)

Item(s)	Job or Work Order No. ()	Job or Work Order No. ()	Total
Preliminary Engineering			
R/W (Acquisition Only)			
Construction Engineering			
Construction Labor			10,285.00
Materials & Supplies			
Materials Handling Charges			
Transportation & Equipment			
Contract Construction			
Miscellaneous Expense			
General Overhead Costs (%)			
GROSS RELOCATION COSTS:			
*Salvage			
*Betterment			
*Expired Service Life			
*Nonreimbursable			
TOTAL CREDITS:	()	()	()
TOTAL REIMBURSABLE COSTS:			10,285.00
*% To be Applied to Final Billing for Credits Due Project	(%)	(%)	()

SUBMITTED FOR THE UTILITY OWNER BY:

Charles

DATE: 9-17-2013