

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: September 1, 2015

Consent Regular
Public Hearing

Department: Water Utilities Department

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 \$1,428.

Summary: FDOT is proposing improvements to SE Avenue G from South Main Street to SE 9th Street in Belle Glade. These improvements will necessitate the adjustment of two (2) water valve boxes and one (1) sewer manhole cover owned by the Water Utilities Department (WUD) to final grade elevation. In order to include the adjustment of the aforementioned facilities within the road improvement project, FDOT requires WUD to enter into a "Utility Work by Highway Contractor" Agreement to reimburse FDOT for the work in the amount of \$1,428. (WUD Project No.15-088) District 6 (MJ)

Background and Justification: WUD has reviewed the proposed FDOT roadway improvements for 0.639 mile of SE Avenue G in Belle Glade and concluded that the above-mentioned facilities will require protection and adjustment to the final road elevation by the contractor. The proposed agreement will provide payment to FDOT for reimbursement of the work necessary to adjust the facilities. FDOT policy requires prepayment of the reimbursement amount of \$1,428. The Department believes that said prepayment is necessary for the Department to conduct business and is therefore in compliance with Section 305.02 of the County Administrative Code.

Attachments:

1. Location Map
2. Two (2) Original Agreements
3. Cost Estimate

Recommended By: Jim Stiles Department Director 8-21-15 Date

Approved By: Sharon G. By Assistant County Administrator 8-25-15 Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	<u>\$1,428</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>\$1,428</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>6GUA</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: Selma M. West

III. REVIEW COMMENTS

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

Shelly Bon
8/14 OFMB
8/17

D. J. Jacobson 8/21/15
Contract Development and Control

B. Legal Sufficiency:

[Signature] 8/24/15
Assistant County Attorney

C. Other Department Review:

Department Director

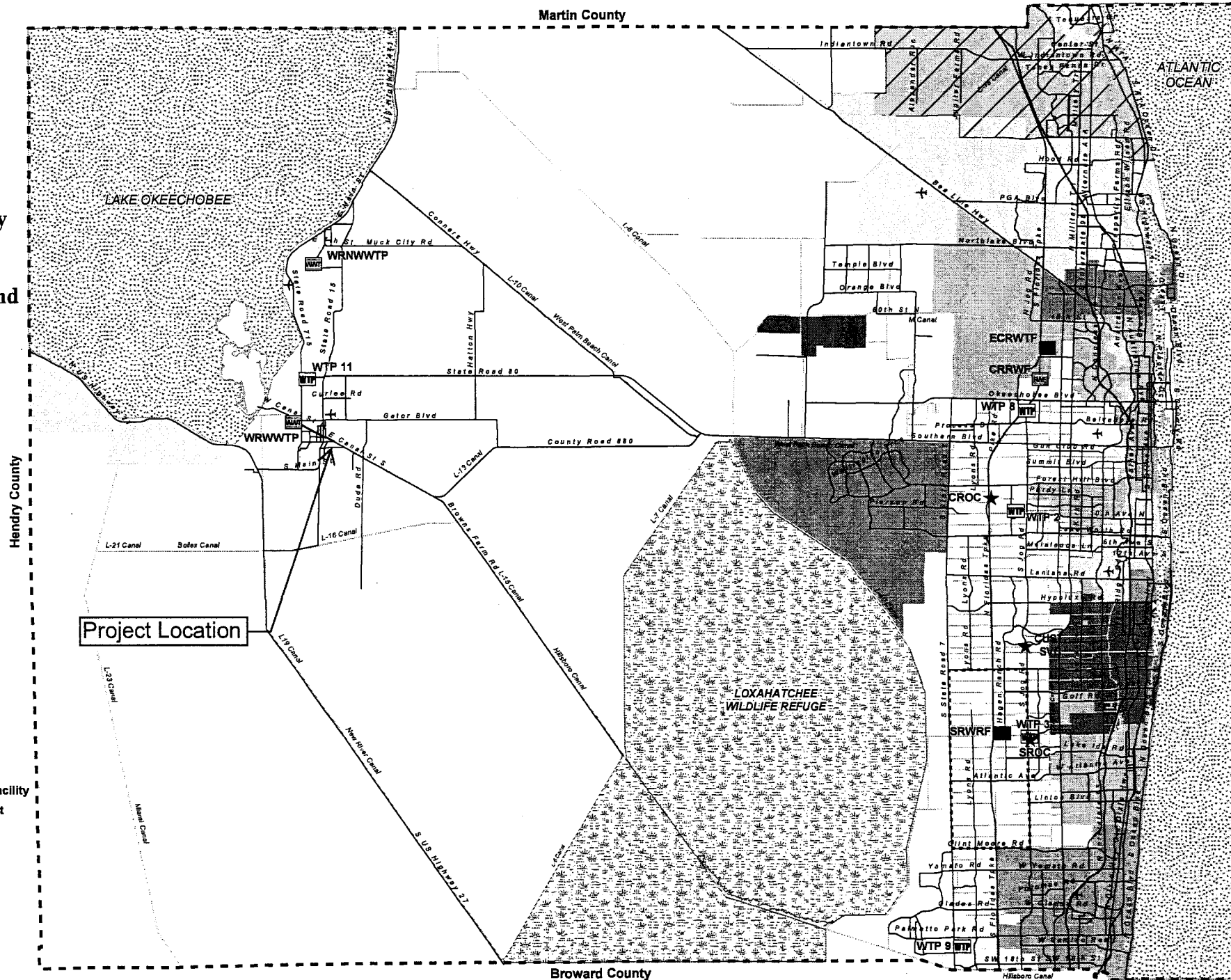
This summary is not to be used as a basis for payment.



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

Attachment 1

- Legend
- ★ Administration
 - WTP Water Treatment Plant
 - Reclamation Facility
 - Wastewater Reclamation Facility
 - WWTW Wastewater Treatment Plant
 - Mandatory Reclaimed SA
 - - - Palm Beach County Limits
 - P.B.C.W.U.D. Service Area



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

Form No. 710-010-57
UTILITIES
07/14

Financial Project ID: 435159-1-52-02	Federal Project ID:
Financial Project ID:	
Financial Project ID:	
Financial Project ID:	
County: Palm Beach	State Road No.: n/a
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 SE Ave G, State Road No. n/a, 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 ninety (90) calendar days prior to the date on which the FDOT advertises the Project for bids, pay the FDOT the amount of \$ 1,428.00 for the cost of the Utility Work. Said amount will be deposited into the State Transportation Trust Fund.

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

Form No. 710-010-57
UTILITIES
07/14

- 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.
- 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

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

Form No. 710-010-57
UTILITIES
07/14

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.

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

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

Form No. 710-010-57
UTILITIES
07/14

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.

- 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:

Frantz Fenelon
Technical Assistant III
8100 Forest Hill Blvd.
West Palm Beach FL 33413

If to the FDOT:

Tim Brock (Tim.Brock@dot.state.fl.us)
District Utility Engineer
3400 W 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)

Form No. 710-010-57
UTILITIES
07/14

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

UTILITY: Palm Beach County

BY: (Signature) 
(Typed Name: Maurice Tobon, PE)
(Typed Title: Director of Engineering)

DATE: 7/24/11

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: Stacy L. Miller, P.E.)
(Typed Title: Director of Transportation Development)

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

BY: _____

DATE: _____

(Typed Name: _____)
(Typed Title: _____)

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT

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

Signed: _____

Typed Name: Shelley Vana, Mayor

ATTEST:
Sharon R. Bock, Clerk & Comptroller

(Deputy Clerk)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

(County Attorney)

APPROVED AS TO TERMS AND
CONDITIONS

By: Jim Sides
Director of Water Utilities

EXHIBIT "A" ATTACHMENTS

1. Scope of Services
2. Changes to Form Document - "Buy America" Appendix

Scope of Services

SUMMARY OF UTILITY WORK TO BE PERFORMED BY FDOT CONTRACTOR FOR PALM BEACH COUNTY

FPID # 435159-1-52-01

SE Ave G from South Main St to SE 9th St

Item No.	Description	Unit	Quantity
425-5-1	Adjust Manhole Cover	Ea	1
425-6	Adjust Valve Box	Ea	2

Changes to Form Document

“Buy America” Appendix (Applies to Materials Supplied by the UAO)

“Buy America” Material Certification Requirements: The UAO will only use steel and iron produced in the United States, in accordance with the Buy America provisions of 23 CFR 635.410, as amended. The UAO will ensure that all manufacturing processes for this material occur in the United States. As used in this provision, a manufacturing process is any process that modifies the chemical content, physical shape or size, or final finish of a product, beginning with the initial melding and mixing and continuing through the bending and coating stages. A manufactured steel or iron product is complete only when all grinding, drilling, welding, finishing and coating have been completed. If a domestic product is taken outside the United States for any process, it becomes foreign source material. These requirements are applicable to all steel and iron materials incorporated into the finished work, but are not applicable to steel and iron items that are not incorporated into the finished work. The UAO will provide a certification from the producer of steel or iron, or any product containing steel or iron as a component, stating that all steel or iron furnished or incorporated into the furnished product was manufactured in the United States in accordance with the requirements of this specification and the Buy America provisions of 23 CFR 635.410, as amended. Such certification shall also include a statement that the product was produced entirely within the United States. The UAO will furnish each such certification to the Florida Department of Transportation prior to incorporating the material into the project.