

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: December 1, 2015 Consent [X] 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 the Florida Department of Transportation (FDOT) in the amount of \$1,820.

Summary: FDOT is proposing improvements to State Road 25 (US 27) in Belle Glade. The improvements will necessitate the adjustment of five (5) water valve boxes 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 to be completed in the amount of \$1,820. (WUD Project No.15-103) District 6 (MJ)

Background and Justification: WUD has reviewed the proposed FDOT roadway improvements to State Road 25 (US 27) in the City of Belle Glade and determined that the above-mentioned facilities will require protection through the modification of the final road elevation by the Contractor. The proposed agreement will provide payment to FDOT for the reimbursement of the work necessary to modify the facilities. FDOT policy requires prepayment of the reimbursement amount of \$1,820. WUD has determined that the required prepayment is necessary to conduct business with FDOT and is therefore in compliance with Section 305.02 of the County Administrative Code.

Attachments:

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

Recommended By: Jim Stiles 10-19-15
Department Director Date

Approved By: Sharon B. Bay 10-4-15
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	<u>\$1,820</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>\$1,820</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: Silvia M. West

III. REVIEW COMMENTS

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

Sherry Bm
 10/21 10/21 OFMB

Dr. J. Harlan
Contract Development and Control
BWheeler 113-15

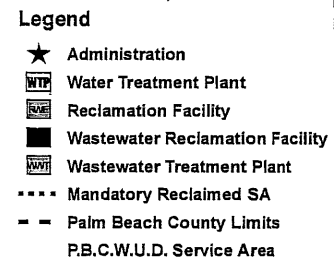
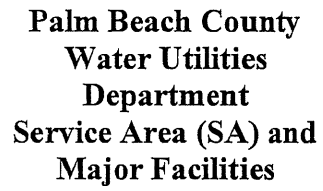
B. Legal Sufficiency:


Assistant County Attorney

C. Other Department Review:

Department Director

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



ATTACHMENT #2

PALM BEACH COUNTY WATER UTILITIES DEPARTMENT

PROJECT NAME:

STATE ROAD NO. 25 (US 27) - INTERSECTION IMPROVEMENT AT SR 80

AGENCY NAME:

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

FINANCIAL PROJECT ID:

435386-1-52-01

PBCWUD #:

15-103

COST ESTIMATE FOR ADJUSTMENT OF VALVE BOXES (CONCRETE COLLAR IN GRASS) BY HIGHWAY CONTRACTOR					
NO.	ITEM	UNIT	UNIT PRICE	QUANTITY	COST
1	Protection & Adjustment of Water Valve Boxes between sta 1396+20 & sta 1397+00 to Final Grade	EA	\$325.00	5	\$1,625.00
				SUB-TOTAL:	\$1,625.00
2	10% for Contingency	LS	162.50	1	\$162.50
3	2% CEI	LS	32.50	1	\$32.50
				GRAND TOTAL:	\$1,820.00

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: 435386-1-52-02	Federal Project ID:
Financial Project ID:	
Financial Project ID:	
Financial Project ID:	
County: Palm Beach	State Road No.: 25
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 US-27, State Road No. 25, 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 \$ 1,820.00 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**:

Maurice Tobon, P.E.
Director of Engineering
8100 Forest Hill Blvd.
West Palm Beach FL 33413

If to the **FDOT**:

Tim Brock, P.E.
District Utility Engineer
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)

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) _____ 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: 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: 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 Stiles
Director of Water Utilities

ATTACHMENTS

1. Appendix A Of Assurances – Required Contract Provisions for Federal Aid Contracts
2. Exhibit A – Scope of Services

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
REQUIRED CONTRACT PROVISIONS FOR FEDERAL AID CONTRACTS
(Appendix A of Assurances)

710-010-08
UTILITIES
OGC-08/15

Financial Project ID: 435386-1-52-02	Federal Project ID:
County: Palm Beach	State Road No.: 25
District Document No:	
Utility Agency/Owner (UAO): Palm Beach County	

During the performance of this Agreement, the **Utility Agency Owner (UAO)**, for itself, its assignees and successors in interest (**hereinafter referred to as the UAO**), agrees as follows:

(1) **Compliance with Regulations:** The **UAO** will comply with the Regulations of the **FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as the DEPARTMENT)** relative to nondiscrimination in Federally-assisted programs of the **DEPARTMENT** (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

(2) **Nondiscrimination:** The **UAO**, with regard to the work performed by it after award and prior to completion of the **UAO** work, will not discriminate on the ground of race, color or national origin in the selection and retention of subcontractors, including procurement of materials or leases of equipment. The **UAO** will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix A & B of the Regulations.

(3) **Solicitations:** In all solicitations either by competitive bidding or negotiation made by the **UAO** for work to be performed under a subcontract, including procurement of materials and leases of equipment, each potential subcontractor or supplier shall be notified by the **UAO** of the **UAO's** obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color or national origin.

(4) **"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 Florida Department of Transportation's "Guidelines for the Implementation of Buy America Requirements for Utility Relocations" "UAO Guidelines" signed by FHWA Florida Division Administrator are attached hereto. The **UAO** may rely on the Guidance contained in the UAO Guidelines. The **UAO** shall comply with the Certification contained in the UAO Guidelines in certifying the **UAO's** compliance with the Buy America provisions of 23 CFR 635.410, as amended, and the **UAO** shall select either the UAO Self-Certification Method or the Vendor/Manufacture Certification Method by designating one of the boxes below in this Section 4. If the **UAO** elects to use the Vendor/Manufacture Certification Method, the **UAO** shall furnish each such certification to the Florida Department of Transportation prior to incorporating the material into the project.

- ☐ **UAO Self-Certification Method**
- ☐ **Vendor/Manufacture Certification Method**

(5) **Information and Reports:** The **UAO** will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the **DEPARTMENT** or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the **UAO** is in the exclusive possession of another who fails or refuses to furnish this information, the **UAO** shall so certify to the **DEPARTMENT** or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
REQUIRED CONTRACT PROVISIONS FOR FEDERAL AID CONTRACTS
(Appendix A of Assurances)

710-010-08
UTILITIES
OGC-08/15

(6) **Sanctions for Noncompliance:** In the event of the **UAO's** noncompliance with the nondiscrimination provisions of paragraphs (1) through (4), the **DEPARTMENT** shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the contractor under the Agreement until the **UAO** complies; and/or
- (b) cancellation, termination or suspension of the Agreement, in whole or in part.

(7) **Incorporation of Provisions:** The **UAO** will include the provisions of paragraph (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, order or instructions issued pursuant thereto. The **UAO** will take such action with respect to any subcontract, procurement or lease as the **DEPARTMENT** or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the **UAO** becomes involved in, or is threatened with, litigation with a subcontractor, supplier or lessor as a result of such direction, the **UAO** may request the State to enter into such litigation to protect the interests of the State, and, in addition, the **UAO** may request the United States to enter into such litigation to protect the interests of the United States.

Exhibit A

SCOPE OF SERVICES

Summary of Utility Work to be performed by FDOT Contractor for Palm Beach County

FPID 435386-1-52-02

SR-25 / US27 at SR-80 Intersection

Item No.	Description	Unit	Quantity
425-6	Adjusting Valve Boxes	Ea	5