

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: **March 22, 2016**

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 (Lump Sum)" with the Florida Department of Transportation (FDOT) in the amount of \$10,892.

Summary: FDOT is proposing improvements to State Road 809 (Military Trail) from Lake Worth Road to south of State Road 80 (Southern Blvd). These improvements will necessitate the adjustment of two (2) water valve boxes to final grade and the relocation of existing water and force mains owned by Water Utilities Department (WUD). In order to include the adjustment and relocation of the aforementioned facilities within the road improvement project, FDOT requires WUD to enter into a "Utility Work by Highway Contractor Agreement (Lump Sum)" to reimburse FDOT for the work in the amount of \$10,892. (WUD Project No.16-026) Districts 2 and 3 (MJ)

Background and Justification: WUD has reviewed the plans for the proposed improvements to State Road 809 (Military Trail) from Lake Worth Road to south of State Road 80 (Southern Blvd) and determined that the facilities will indeed require adjustment and relocation. Moreover, FDOT policy requires prepayment of the reimbursement amount of \$10,892, which WUD believes is necessary to conduct business with FDOT. Such prepayment is in compliance with Section 305.02 of the County Administrative Code.

Attachments:

1. Location Map
2. Cost Estimate
3. Three (3) Original Utility Work by Highway Contractor Agreements (Lump Sum)

Recommended By: Jim Stiles 2-16-16
 Department Director Date

Approved By: Sharon G. B. 2-29-16
 Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	<u>\$10,892</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>\$10,892</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 Moritt

III. REVIEW COMMENTS

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

Sherry Brown
5P 2/16 OFMB

John S. Jacobson 2/23/16
Contract Development and Control

B. Legal Sufficiency:

COO 2/24/16
Assistant County Attorney

C. Other Department Review:

Department Director

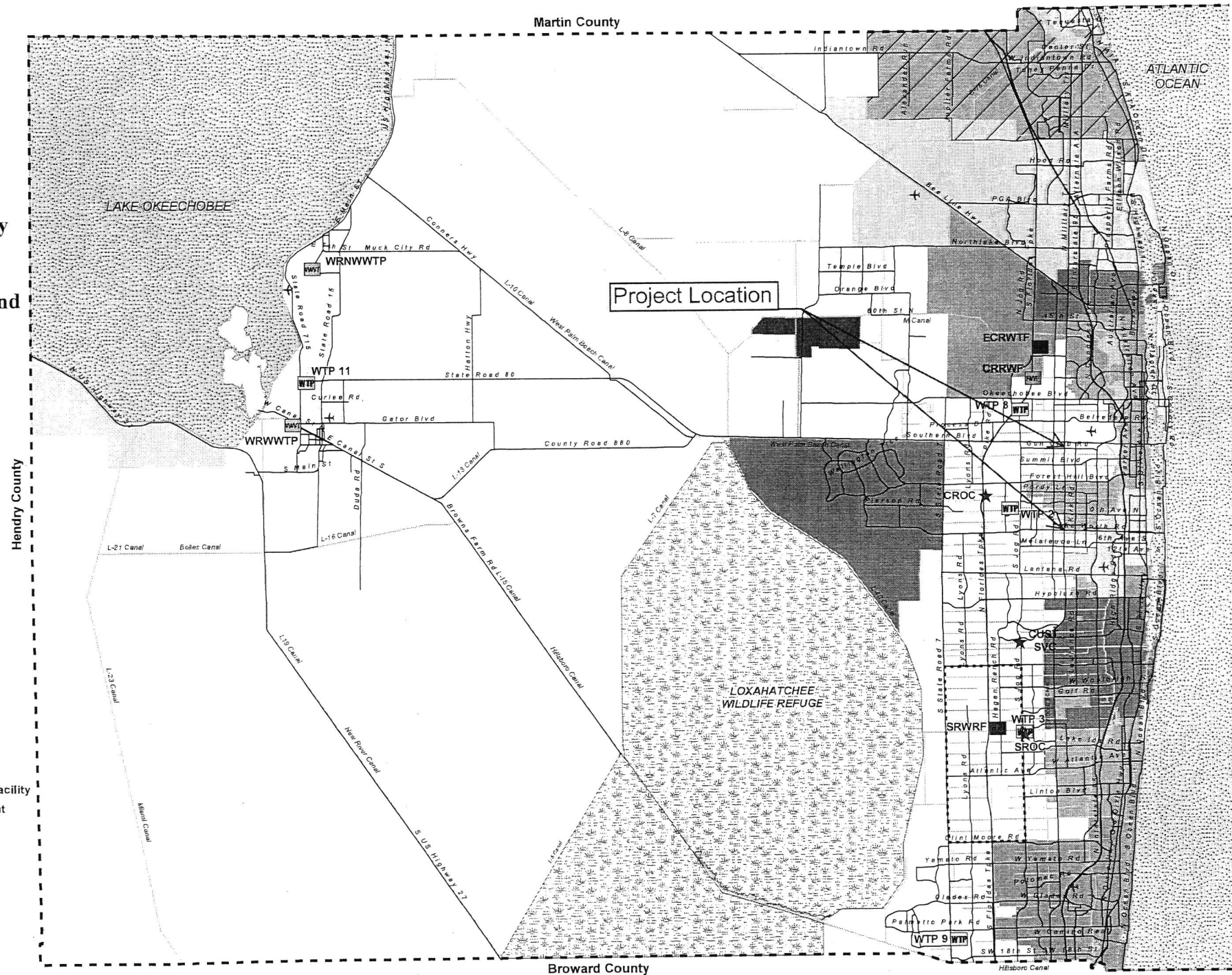
This summary is not to be used as a basis for payment.



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

Legend

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



ATTACHMENT #2

PALM BEACH COUNTY WATER UTILITIES DEPARTMENT

PROJECT NAME:

STATE ROAD NO. 809 (MILITARY TRAIL) FROM LAKE WORTH RD TO N OF GUN CLUB RD

AGENCY NAME:

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

FINANCIAL PROJECT ID:

428719-1-52-01

PBCWUD #:

16-026

COST ESTIMATE FOR ADJUSTMENT OF VALVE BOXES (CONCRETE COLLAR IN GRASS) & WATER MAIN RELOCATION BY HIGHWAY CONTRACTOR					
NO.	ITEM	UNIT	UNIT PRICE	QUANTITY	COST
1	Protection & Adjustment of Water Valve Boxes at sta 540+80, 60' RT (Whispering Pines St) to Final Grade	EA	\$325.00	2	\$650.00
2	Deflect Existing 8" DIP Water Main (Station 528+40, 56.4' LT) around ITS Pole with DIP and 45° or 22 1/2° Elbows and restrained joints per details 18W & 19W as required	EA	\$2,250.00	1	\$2,250.00
3	Deflect Existing 10" DIP Force Main (Station 481+20, 49.1' LT) around ITS Pole with DIP and 45° or 22 1/2° Elbows and restrained joints per details 18W & 19W as required	EA	\$3,500.00	1	\$3,500.00
4	Deflect Existing 8" DIP Force Main (498+30, 54.3' RT) around ITS Pole with DIP and 45° or 22 1/2° Elbows and restrained joints per details 18W & 19W as required	EA	\$2,375.00	1	\$2,375.00
5	Bacteriological Testing of Water Main after deflection	LS	\$500.00	1	\$500.00
6	PBCWUD Record Drawing per Standards for all deflections	LF	\$3.75	120	\$450.00
SUB-TOTAL:					\$9,725.00
7	10% for Contingency	LS	972.50	1	\$972.50
8	2% CEI	LS	194.50	1	\$194.50
GRAND TOTAL:					\$10,892.00

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: 428719-1-52-03	Federal Project ID: 6319-016-U
Financial Project ID:	
Financial Project ID:	
Financial Project ID:	
County: Palm Beach	State Road No.: 809
District Document No:	
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 Military Trail from Lake Worth Road to South of SR-80/Southern Blvd, State Road No. 809, 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 \$ 10,892 for the cost of the Utility Work. Said amount will be deposited into the State Transportation Trust Fund.

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UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT
(LUMP SUM)

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- 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:

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

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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 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)

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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**:

Jackie Michels, P.E.
Plan Review Manager
8100 Forest Hill Blvd, West Palm Beach, FL 33413
JMichels@pbcwater.com; 561-493-6116

If to the **FDOT**:

Tim Brock, P.E.
District Utility Engineer
3400 West Commercial Blvd, Fort Lauderdale, FL 33309
Tim.Brock@dot.state.fl.us

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 Water Utilities Department

BY: (Signature) See attached 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: Mary Lou Berger, 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: 428719-1-52-03	Federal Project ID: 6319-016-U
County: Palm Beach	State Road No.: 809
District Document No:	
Utility Agency/Owner (UAO): Palm Beach County Water Utilities Department	

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)

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(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.

UAO GUIDELINES



Florida Department of Transportation

RICK SCOTT
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

ANANTH PRASAD, P.E.
SECRETARY

January 16, 2014

Mr. James Christian, FHWA Division Administrator
Federal Highway Administration
545 John Knox Road, Suite 200
Tallahassee, Florida 32303

Re: Florida - Guidelines for the Implementation of Buy America Requirements for Utility Relocations

Dear Mr. Christian:

The Florida Department of Transportation (Department) is pleased to offer guidelines to be used by utility agency/owners (UAOs) for the purpose of clarifying and defining Buy America (BA) requirements for utility relocations or adjustments within the State of Florida. The use of these guidelines is strictly limited to relocation or adjustments of UAO facilities and will not impact or modify how the Department applies BA requirements to transportation materials.

These guidelines are applicable for all federally eligible transportation projects where the Federal Highway Administration (FHWA) is the lead federal agency; it does not take precedence over projects where the Federal Transit Administration or the Federal Railroad Administration is the lead federal agency. These guidelines are intended to supplement and to be implemented in conjunction with the Federal Highway Administration's memorandum issued Dec. 21, 2012 (the Baxter memo) and July 11, 2013, (the Shepherd memo).

The Department intends to utilize the following definitions and documented decisions to provide clarity and to assist UAOs as they strive to develop internal processes to discern and track materials that are subject to BA in the field.

It should be noted that these guidelines were reviewed by the Florida Utility Coordinating Committee's Subcommittee on "Buy America" whose members represent major Florida utility companies. These members have indicated that, without the clear guidance provided herein, the successful application of BA would be questionable. Therefore, the Florida Department of Transportation will implement BA utility relocation activities required for highway projects funded under Title 23 of the US Code as follows:

Guidance:

- The following materials, when comprised of more than 90% steel or iron, are subject to BA compliance:
 - Poles and cross arms;
 - Pipes and valves (except as stated below);
 - High-strength bolts, anchor bolts and anchor rods;
 - Girders used to comprise transmission towers and stand-alone structures;
 - Rebar and other reinforcing iron/steel for all precast and cast-in-place installations;
 - Conduit and duct work;
 - Fire hydrants; and

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- o Manhole covers and rims, and drop-inlet grates.

The Department will review utility relocation projects to determine that the above categories are adequate to comply with BA. These reviews may result in the addition of categories.

- All Utility Agreements (UA) executed before December 31, 2013, that will not have federal funding for utility materials or relocations are not subject to BA (even if other contracts associated with the project were reimbursed with federal funds).
- The date of the original UA will be used as the date to determine BA compliance even if the UA is amended after December 31, 2013.
- BA does not apply to items that are not 90% iron or steel (i.e. wood poles, copper wire, etc.).
- BA does not apply to items that are not permanently incorporated into the project and are not a functional part of the project (i.e., scaffolding, sheet piles left in place after construction that are not an integral part of the finished project). This includes equipment that was placed in a temporary location to facilitate construction of the project.
- BA does not apply to existing materials that are relocated from one location to another within the project limits.
- If the UAO does not wish to subject betterment materials (as defined below) to BA provisions then the betterments must be excluded from the UA or contract that includes work eligible for federal aid.
- BA does not apply to assembly materials, attachment materials, miscellaneous electronics, or encasements, as defined below.
- BA does not apply to any associated materials (including spare materials) required for maintenance.
- BA does not apply to any materials necessary to repair equipment that was discovered or damaged during construction which required immediate action to restore to safe conditions or to minimize adverse public impacts.
- BA does not apply to associated materials necessary for a temporary utility relocation.
- Minimal use threshold exclusion: Non-domestic iron and steel material may be used provided the cost of such materials do not exceed one-tenth of one percent (0.1%) of the individual UA amount, or \$2,500.00, whichever is greater using the following equation:

$$\text{Percentage of non-compliant materials} = \frac{\text{Combined cost of only those materials that are subject to BA and are non-compliant (limited to the individual UA) times 100.}}{\text{Total utility relocation costs (cited in the individual UA)}}$$

- BA does not apply if the utility relocation effort is not eligible for reimbursement with federal funds because the State is legally unable to pay the utility. However, all such work must remain separate from and cannot be accomplished under a UA or contract that includes work eligible for federal aid.
- Per 23 CFR 635.410, the work to be performed under the UA may include foreign iron and steel products if the cost of BA compliant materials will cause the cost of the work to increase by at least 25%. To determine applicability of this provision, one of the following two procedures shall be used:
 - 1) If the UAO will use a contractor to perform the work included in the UA, the following procedures apply: Demonstration of meeting the 25% excess costs requirement must be accomplished by receiving two separate bids each from at least two qualified contractors for the work. Requests for bids from the qualified contractors must conform to 23 CFR 635.410 (b)(3). One bid from each contractor will include a cost of performing the work described in the UA using BA compliant materials and the other bid will include a cost for

- the same work assuming foreign materials. If the bid with the BA compliant materials is at least 25% greater than the bid that includes foreign materials, then the contract can be awarded to the lowest bid based on materials that are not compliant with BA.
- 2) If the UAO will perform work in the UA with its own forces, the following procedures apply: Demonstration of meeting the 25% excess cost requirement must be accomplished by receiving two separate bids from vendors or manufacturers listing the cost of BA compliant materials on one bid document and listing the cost of non-compliant materials on a separate bid document. The UAO will take the cost of the BA compliant materials and use it to create the total estimated cost of the work included in the UA. The UAO will do the same with the costs of the non-compliant materials. If the costs of the work included in the UA with BA compliant materials is at least 25% greater than the costs using the non-compliant materials, then the non-compliant materials may be used.

Definitions:

Anchor and High-Strength Bolts - Anchor and high-strength bolts will be distinguished in one of three methods to be selected and consistently applied by the UAO:

- 1) The UAO may identify anchor and high-strength bolts in the specifications or plans as necessary for the safe and functional design of the utility relocation. If a bolt is not called out as anchor or high-strength, it stands that the design did not require that level of performance and the supplied bolt is not subject to BA;
- 2) The UAO may identify anchor and high-strength bolts through the application of a strength rating. Any bolt possessing a yield strength of fifty-thousand pounds per square inch (50-ksi) or greater will be considered an anchor or high-strength bolt.
- 3) The UAO may identify anchor and high-strength bolts through the application of a weight measurement. Any bolt possessing a weight of 15 pounds or greater will be considered an anchor or high-strength bolt.

Assembly Materials (miscellaneous steel) - The collection of miscellaneous materials used to fasten, hold, attach, secure and/or assemble materials including, but not limited to, nuts, bolts, U-bolts, screws, washers, clips, fittings, sleeves, lifting hooks, mounting brackets, pole steps, clamps, brackets, mountings, straps, fasteners, hooks, pins, braces, disks, clevises, couplers, swivels, snaps, crimps, trunnions, dead-ends, compression swages, and other miscellaneous materials used to assemble.

Attachment Materials - An item or material that is not an integral part or permanently attached to the pole, pipe or valve. Cross arms are an exception to this definition and do not qualify as attachment materials. Attachment materials include, but are not limited to, cross arm bracing, insulators, avian equipment, miscellaneous hardware (defined below), fittings, racks, ladders, encasements, guy wire, strand, conductors and tubing 0.75-inch diameter or less.

Betterments - Any upgrading of the facility being relocated that is not attributable to the highway construction and is made solely for the benefit of and at the election of the UAO (23 CFR 645.105). As such, betterments are not eligible for federal aid.

Conductor - A material (specifically wires and cables) that allows the flow of energy, including electricity, heat, data, audio/video transmission, etc.

Encasements - Include cabinets, housings, boxes, vaults, covers, shelves, and other items used to protect or house equipment or miscellaneous electronics.

Fittings - Individual parts used to join, adjust or adapt a system of pipes including, but not limited to, elbows, tees, wyes, crosses, nipples, reducers, end caps, couplers, o-lets, transitions, connectors (steady state, seismic and flexible), unions, mechanical flanges (not permanently affixed to the pipe), bushings, ferrules, gaskets, O-rings, plugs or taps.

Girders - A load bearing beam or strut commonly taking the cross-sectional shape of a circle, square, rectangle, or an: I, C, L, or Z, and assembled for the purpose of creating lattice towers, stand-alone platforms or transmission towers.

Lattice Towers - A structure that is compiled of girders and is typically used in series to support conductor cables.

Maintenance - An action or application of materials necessary to keep a system functioning safely and at optimal capacity, general up-keep.

Miscellaneous Electronics - Manufactured products or assemblies consisting of many components such as electronic equipment, routers, transformers, switches, radios, processors, power supplies, batteries, antennas, splice cases, pre-connectorized hubs and terminals, and cross-boxes.

Miscellaneous Hardware - An assembly of small parts that are compiled to form a finished product that is often used independently or as an attachment material, including, but not limited to: locks, switches, cutouts, regulators, gauges, meters, barometers, strainers, filters, pilots, arrestors, insulators, ball bearings, dampeners, needle valves, braces, pipe supports, actuators, motors and pumps.

Permanent Installation - The final location and final installation of the materials as defined on the plans or in the specifications. No further adjustments or relocations are necessary to accommodate the final transportation project improvements.

Stand-Alone Platform - A structure that is compiled of girders and is used to permanently hold or support large equipment.

Temporary Utility Relocation - A temporary utility relocation is generally subject to the schedule necessary to accomplish the scope as defined by the NEPA document. A temporary utility relocation is one that is needed to allow the roadway construction to proceed, but is not required to remain in its relocation as a result of the ultimate roadway improvement. For example, if the scope requires the sequential completion of six separate construction contracts, theoretically a temporary utility relocation could remain in place prior to commencement of the first construction contract and extend beyond completion of the sixth construction contract prior to its final placement. A temporary utility relocation can also be established if the contract specification or plans require that the steel or iron material used on the project either must be removed at the end of the project or may be removed at the contractor's convenience.

Certification:

The Department desires a process that provides reasonable assurance that utility materials subject to BA requirements are compliant prior to permanent installation. The Department will accept either of the following two certification methods: 1) UAO Self Certification and 2) Vendor/Manufacturer Certification. Each provides sufficient demonstration of BA compliance for utility relocations.

1) **UAO Self Certification Method:**

The Department will enter into a legally binding UA with each UAO on a project by project basis. The UA will include the following provisions:

- a) The UAO will source materials that comply with BA requirements.
- b) The UAO will certify compliance via a contract provision in the UA as follows:

"[UAO] understands and acknowledges that this project is subject to the requirements of the Buy America Law (23 USC § 313) and applicable regulations, including 23 CFR 635.410 and Federal Highway Administration guidance. [UAO] hereby certifies that in the performance of this Agreement,

for products where Buy America requirements apply, it shall use only such products for which it has received a certification from its supplier, or provider of construction services that procures the product certifying Buy America compliance. This does not include products for which waivers have been granted under 23 CFR. § 635.410 or other applicable provisions or excluded materials cited in the Florida Department of Transportation's "Guidelines for the Implementation of Buy America Requirements for Utility Relocations."

The UAO will not be required to provide copies of supplier certifications or other UAO signed certifications as part of this Agreement or with the final invoice.

- c) All documents obtained to demonstrate BA compliance will be held by the UAO for a period of three years from the date the final payment was received by the UAO and will be made available to the Department or FHWA upon request.
- 2) Vendor/Manufacturer Certification Method:
The Department will enter into a legally binding UA with each UAO on a project by project basis. The UA will include the following provisions:
- a) The UAO will source materials that comply with BA requirements.
 - b) The UAO will demonstrate BA compliance by one of the two following methods (or a combination of both):
 - 1. The UAO will collect written certifications from the vendor(s):
The written certification will be signed by the vendor on company letterhead, or other acceptable documentation, signed by an authorized representative of the vendor and will declare that all supplied materials subject to the BA provisions are fully compliant.
 - 2. The UAO will collect written certifications from the factory(s):
 - i) The Mill Test Report (MTR) issued and signed by the initial fabricator stating that the materials subject to BA were melted and manufactured in the United States.
 - ii) Other written statements on company letterhead, or other acceptable documentation, signed by an authorized representative, from the manufacturers providing any additional treatment to the fabricated material (such as blasting, galvanizing or painting) will state that all treatment processes occurred in the United States in accordance with FHWA guidelines.
 - c) All documents obtained to demonstrate BA compliance will be held by the UAO for a period of three years from the date the final payment was received by the UAO and will be made available to the Department or FHWA upon request.
 - d) One set of copies of all documents obtained to demonstrate BA compliance will be attached to, and submitted with, the final invoice.
 - e) If no materials were subject to BA, the UAO will indicate that as part of the final invoice submittal (i.e., with a separate memo, rubber stamp on the invoice or other reasonable method).

Additional Provisions Common To Both Certification Methods:

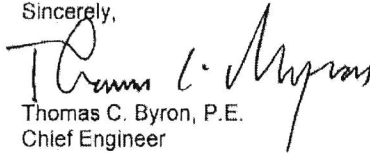
- 1) No certification (demonstration of BA compliance) is required for any materials or parts that are not subject to BA requirements for any reason, including, but not limited to application, material composition and the "minimal use threshold exclusion".
- 2) It will be up to the UAO to declare compliance with the "minimal use threshold exclusion" as defined in the guidance above.
- 3) The UAO will bear responsibility to ensure all materials permanently incorporated into their utility relocations are either compliant or not required to be compliant.

Mr. James Christian, FHWA Division Administrator
January 16, 2014
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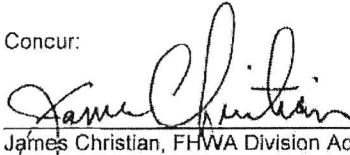
- 4) Where the UAO purchases manufactured products from a vendor for use by the UAO in its relocation activities, a certification from the vendor to the UAO that the materials meet BA requirements shall be deemed to constitute compliance by the UAO.
- 5) Where the UAO obtains construction services in connection with utility relocation work and the provider of those construction services is also responsible for provision of manufactured products used in connection with that project, a certification from the provider of construction services that the materials provided for that project meet BA requirements shall be deemed to constitute compliance by the UAO.

I am hopeful you will find this satisfactory and able to offer concurrence. Should you have any questions or require additional information, please do not hesitate to contact me at 850-414-5240. Thank you for your assistance in this matter.

Sincerely,


Thomas C. Byron, P.E.
Chief Engineer

Concur:


James Christian, FHWA Division Administrator

1/28/14
Date

TB/tb

EXHIBIT A
Scope of Services 428719-1-52-03
Palm Beach County Water Utilities Department (PBCWUD)

The utility work to be perform under this agreement consists of various modifications to and related items thereto:

- 1. Protection and adjustment of two Palm Beach County water main valve boxes at Sta. 540+80, 60' RT
- 2. Deflection of existing Palm Beach County 8" DIP water main located near Station 528+40, 56.4' LT; to be deflected east toward the roadway to avoid proposed ITS ADMS #3 cantilever sign structure foundation, as per approve Technical Special Provision (TSP).
- 3. Deflection of existing Palm Beach County 10" DIP force main located near Station 481+20, 49.1' LT; to be deflected east toward the roadway to avoid proposed ITS Trailblazer #12 structure foundation, as per approve TSP.
- 4. Deflection of existing Palm Beach County 8" DIP force main located near Station 498+30, 54.3' RT; to be deflected west toward the roadway to avoid propose ITS Trailblazer #13/MVDS #5 structure foundation, as per approve TSP.

Summary of Quantities

No.	Item Description	Unit	Quantity
1	Protection & Adjustment of Water Valve Boxes to Final Grade	EA	2
2	Deflect Existing 8" DIP Water Main (Station 528+40, 56.4' LT) around ITS Pole with DIP and 45° Elbows and restrained joints per details 18W & 19W	EA	1
3	Deflect Existing 10" DIP Force Main (Station 481+20, 49.1' LT) around ITS Pole with DIP and 45° Elbows and restrained joints per details 18W & 19W	EA	1
4	Deflect Existing 8" DIP Force Main (498+30, 54.3' RT) around ITS Pole with DIP and 45° Elbows and restrained joints per details 18W & 19W	EA	1
5	Bacteriological Testing of Water Main after deflection	LS	1
6	PBCWUD Record Drawing per Standards for all three (3) deflections	LF	120