



**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

<b>Fiscal Years</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Capital Expenditures	<u>\$26,684</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>(\$44,123)</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>
<b>NET FISCAL IMPACT</b>	<b><u>(\$17,439)</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>	<b><u>0</u></b>
a					
<b>Budget Account No.:</b>	<b>Fund <u>4011</u></b>	<b>Dept. <u>721</u></b>	<b>Unit <u>W031</u></b>	<b>Object <u>6543</u></b>	

Is Item Included in Current Budget?      Yes       No

Reporting Category N/A

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

MAP has been paid in full and service installation fees will be collected at the time of connection.

The FDOT Contract will be funded by installation fees.

**C. Department Fiscal Review:** Delora M. West

**III. REVIEW COMMENTS**

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

[Signature]  
OFMB 8/12/16

[Signature] 8/12/16  
Contract Development and Control  
8/21/16

**B. Legal Sufficiency:**

[Signature] 8/3/16  
Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
Department Director

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: 435101-1-52-02	Federal Project ID: 9048-150-C
Financial Project ID:	
Financial Project ID:	
Financial Project ID:	
County: Palm Beach	State Road No.:
District Document No:	
Utility Agency/Owner (UAO): Palm Beach County	

THIS AGREEMENT, entered into this 23 day of JUNE, year of 2016, 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 Lyons Road from Norte Lago to Pine Springs Drive, 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 thirty (30) calendar days prior to the date on which the FDOT advertises the Project for bids, pay the FDOT the amount of \$ 26,684 for the cost of the Utility Work. Said amount will be deposited into the State Transportation Trust Fund.

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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:**

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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

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**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; 954-777-4125

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

UTILITY: Palm Beach County

BY: (Signature) See Pg 5 of 5  
(Typed Name: \_\_\_\_\_)  
(Typed Title: \_\_\_\_\_)

DATE: \_\_\_\_\_

Recommend Approval by the District Utility Office

BY: (Signature) Timothy W. Bull

DATE: 6/23/2016

FDOT Legal review

BY: (Signature) Deborah Radwan  
District Counsel

DATE: 6/23/2016

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

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

DATE: 6/23/16

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

BY: \_\_\_\_\_  
(Typed Name: \_\_\_\_\_)  
(Typed Title: \_\_\_\_\_)

DATE: \_\_\_\_\_

**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT  
&  
UTILITY DESIGN BY FDOT CONSULTANT**

**WITNESSES:**

Signed in the presence of:

**PALM BEACH COUNTY, FLORIDA, ON  
BEHALF OF ITS BOARD OF COUNTY  
COMMISSIONERS**

Sandra L. Smith  
Witness Signature  
Sandra L. Smith

By: Jim Stiles  
County Administrator or Designee

Judy Provence  
Print Name  
Judy Provence  
Witness Signature  
Judy Provence  
Print Name

**WATER UTILITIES DEPARTMENT APPROVAL**

By: Delma M. Vest  
Director of Finance and Administration

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

By: [Signature]  
County Attorney



## **ATTACHMENTS**

1. Appendix A of Assurances – Required Contract Provisions for Federal Aid Contracts
  2. Exhibit A – Scope of Services
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STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**REQUIRED CONTRACT PROVISIONS FOR FEDERAL AID CONTRACTS**  
(Appendix A of Assurances)

710-010-08  
UTILITIES  
OGC-02/16

Financial Project ID: 435101-1-52-02	Federal Project ID: 9048-150-C
County: Palm Beach	State Road No.:
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 use steel and iron manufactured 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 melting and continuing through final shaping and coating. If a steel or iron product is taken outside the United States for any manufacturing process, it becomes foreign source material. Foreign steel and iron may be used when the actual cost of such foreign materials does not exceed 0.1% of the total reimbursable amount of this agreement. 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. Prior to incorporating the material into the work, the **UAO** will provide the Florida Department of Transportation a certification from the manufacturer of steel or iron, or any product containing steel or iron as a component, stating either: a) "that all steel or iron furnished or incorporated into the furnished product was manufactured in the United States" or, b) "that all steel or iron furnished or incorporated into the furnished product was manufactured in the United States except for minimal quantities of foreign steel and iron with an actual cost of \$\_\_\_\_\_."

(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  
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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.

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**EXHIBIT A**  
**Scope of Services 435101-1-52-02**  
**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 & Adjustment of Water Valve Boxes at sta72+30 (Escondido Way) to Final Grade.
2. Deflect Existing 8" DIP/PVC Water Main under drainage pipe with DIP and 45° Elbows and restrained joints, as per approve Technical Special Provision (TSP).
3. Deflect Existing 16" DIP Water Main under drainage pipe with DIP and 45° Elbows and restrained joints, as per approve TSP.
4. Deflect Existing 6" DIP/PVC Force Main under drainage pipe with DIP and 45° Elbows and restrained joints, 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/PVC Water Main under drainage pipe with DIP and 45° Elbows and restrained joints per details 18W/19W as required	EA	3
3	Deflect Existing 16" DIP Water Main under drainage pipe with DIP and 45° Elbows and restrained joints per details 18W/19W as required	EA	2
4	Deflect Existing 6" DIP/PVC Force Main under drainage pipe with DIP and 45° Elbows and restrained joints per details 18W/19W as required	EA	3
5	Bacteriological Testing of Water Main after deflection	LS	1
6	PBCWUD Record Drawing per Standards for all deflections	LF	380