

**CITY OF RIVIERA BEACH DISTRICT BOARD
AGENDA ITEM SUMMARY**

MEETING DATE: OCTOBER 5, 2011

AGENDA ITEM SUMMARY NO. J11-101-1

- AWARDS / PRESENTATIONS / PETITIONS
- CONSENT
- PUBLIC HEARING
- ORDINANCE ON SECOND READING
- ORDINANCE ON FIRST HEARING

- REGULAR
- RESOLUTION
- DISCUSSION & DELIBERATION
- BOARD APPOINTMENT
- WORKSHOP

SUBJECT: APPROVAL OF UTILITY WORK AGREEMENT BETWEEN THE FLORIDA DEPARTMENT OF TRANSPORTATION AND THE CITY OF RIVIERA BEACH UTILITY DISTRICT FOR JOINT PROJECT PARTICIPATION/FUNDING IN THE CONSTRUCTION OF STATE ROAD 5 (US1) – FDOT PROJECT NO. 229744-3-56-1

RECOMMENDATIONS/MOTION: Staff recommends that District Board authorize and approve a Utility Work Agreement and Memorandum of Agreement between the Florida Department of Transportation and the City of Riviera Beach Utility District, FDOT Project No. 229744-3-56-1, for utility work on the referenced project along State Road No. 5 (US1). The Utility District is responsible for \$2,294,966.58; and staff recommends that the Utility District Board authorize the Interim District Finance Director to pay the amount of \$2,294,966.58 from the Utility Capital Account No. 413-1437-533-0-6558.

DEPARTMENTAL APPROVAL REVIEW & DATE

◆City Manager and/or ACM	Library
◆District Attorney	Marina
◆District Clerk	Police
Community Development	Public Works
◆Interim District Finance Director	◆Purchasing
Fire	Recreation & Parks
Human Resources	◆Utility District

APPROVED BY UTILITY DIRECTOR: _____

DATE: _____

Originating Dept. Utility District	Costs: \$ <u>2,294,966.58</u>	City Council Actions: <input type="checkbox"/> Approved <input type="checkbox"/> Approved w/conditions
User Dept. Utility District		<input type="checkbox"/> Denied <input type="checkbox"/> Tabled to <input type="checkbox"/> Referred to Staff
Advertised: Date: Paper: <input checked="" type="checkbox"/> Not Required Affected Parties <input type="checkbox"/> Notified <input checked="" type="checkbox"/> Not Required	<input checked="" type="checkbox"/> Capital Improvement <input type="checkbox"/> Operating <input type="checkbox"/> Other Budget Account Number: 413-1437-533-0-6558	Attachments: 1. Resolution 2. Capital Project Sheet 3. Utility Work Agreement w/ Exhibits 4. Memo of Agreement

SUMMARY: Staff recommends that Utility District Board approve the Agreements between the City of Riviera Beach Utility District and the Florida Department of Transportation, in the amount of \$2,294,966.58, for utility improvements along State Road 5 (US1).

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JPA Agreement – FDOT and CRB Utility District
Background/Summary, Continued
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BACKGROUND: This FDOT project is for street improvements, milling/resurfacing and drainage improvements along State Road No. 5 (US1) from Silver Beach Road to W. 12th Street. The City of Riviera Beach Utility District has certain utility lines within the work area including water mains and gravity sewer mains. New drainage structures require the adjustment of a number of the District's utility lines. A new watermain will be constructed for the length of the project. The Utility District would like to utilize the FDOT's roadway contractor to adjust the utility lines per the approved construction plans.

Per Florida Statute 337.403, the District is required to relocate, at its own expense, any utility interfering with the expansion of public roads. Capital Funds are available in this fiscal year's budget for this project.

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Operating Costs	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>\$2,294,966.58</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (City)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match (City)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>\$2,294,966.58</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

NO. ADDITIONAL FTE
 POSITIONS (Cumulative) 0 _____ _____ _____ _____

Is Item Included In Current
 Budget? 2011-2012 Yes X No _____

Budget Account No.: Fund 413 Dept/Division 1437 Org. 533-0 Object 6558

Reporting Category: CAP: WATER MAINS

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

C. District Fiscal Review: _____
 Mr. Louis C. Aurigemma, P.E., Executive Director

III. REVIEW COMMENTS

A. Finance Department and/or Purchasing/Intergovernmental Relations/Grant Comments:

 Finance Department

 Purchasing and Grants

B. Other Department Review:

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT, PALM BEACH COUNTY, FLORIDA, APPROVING THE FLORIDA DEPARTMENT OF TRANSPORTATION UTILITY WORK AGREEMENTS, IN THE CONSTRUCTION OF UTILITY IMPROVEMENTS TO THE WATER DISTRIBUTION AND SEWAGE TRANSMISSION SYSTEMS AND OTHER IMPROVEMENTS ALONG STATE ROAD NO. 5 (US1); AUTHORIZING THE DISTRICT CHAIRPERSON AND DISTRICT CLERK TO EXECUTE SAID AGREEMENT; IN THE AMOUNT OF \$2,294,966.58; APPROVING AND AUTHORIZING THE INTERIM DISTRICT FINANCE DIRECTOR TO PAY SAME FROM THE UTILITY DISTRICT ACCOUNT NO. 413-1437-533-0-6558; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida Department of Transportation (FDOT) is performing improvements along State Road No. 5 (US1) under FDOT Project No. 229744-3-56-01. The Utility District currently has underground utility lines existing in the FDOT's right-of-way that must be moved as stipulated in Florida Statutes Section 337.403; and

WHEREAS, staff recommends that the Utility District Board approve the Utility Work Agreement and Memorandum of Agreement between the Florida Department of Transportation and the City of Riviera Beach Utility District in the construction project; and

WHEREAS, FDOT agrees to construct the project in its entirety by assuming all responsibility for design, contract participation, labor and materials, and contract administration necessary for the Project, including payments to contractor(s) pursuant to all applicable governmental laws and regulations.

NOW, THEREFORE, BE IT RESOLVED BY THE UTILITY SPECIAL DISTRICT BOARD OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1: That the Utility District Board hereby approves the Florida Department of Transportation Utility Work Agreement in the construction of State Road No. 5 (US1) between FDOT and the City of Riviera Beach Utility District; and approves said payment to the FDOT, in the amount of \$2,294,966.58 for the construction of utility improvements to the water distribution and sewage transmission systems; and other improvements along State Road No. 5 (US1).

RESOLUTION NO. _____
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SECTION 2: That the Utility District Board authorizes the District Chairperson and District Clerk to execute the Utility Work Agreement and accompanying Memorandum of Agreement.

SECTION 3: That the Interim District Finance Director is authorized to make payment for same by proper invoice after written notice under Account Number 413-1437-533-0-6558, in the amount of \$2,294,966.58.

SECTION 4: This Resolution shall take effect upon its passage and approval by the Utility District Board.

PASSED AND APPROVED THIS 5th day of October, 2011

RESOLUTION NO. _____
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UTILITY SPECIAL DISTRICT

APPROVED:

ATTEST:

JUDY L. DAVIS
CHAIRPERSON

CARRIE E. WARD
MASTER MUNICIPAL CLERK
UTILITY SPECIAL DISTRICT CLERK

BILLIE E. BROOKS
VICE CHAIRPERSON

CEDRICK A. THOMAS
BOARD MEMBER

DAWN S. PARDO
BOARD MEMBER

SHELBY L. LOWE
BOARD MEMBER

MOTIONED BY: _____

SECONDED BY: _____

J. DAVIS _____

B. BROOKS _____

C. THOMAS _____

D. PARDO _____

S. LOWE _____

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: _____

**CITY OF RIVIERA BEACH
CAPITAL PROJECT PROPOSAL
FY 2012 - FY 2016**

DEPARTMENT:	UTILITY SPECIAL DISTRICT	PROJECT STATUS:	NEW
PROJECT TITLE:	US1 IMPROVEMENTS (SILVER BEACH ROAD TO 10th STREET)		
PRIORITY ASSIGNED BY DEPARTMENT (1 HIGHEST TO 5 LOWEST):	3		
PRIORITY ASSIGNED BY CITY MANAGER (1 HIGHEST TO 5 LOWEST):			
MANDATED BY LAW (CHECK YES OR NO):	YES	X	NO
MANDATED BY COUNCIL (CHECK YES OR NO):	YES		NO X
APPROVED BY RESOLUTION NO.		RESOLUTION DATE:	

PROJECT DESCRIPTION

The Florida Department of Transportation is improving US 1 from Silver Beach Road to 10th Street. Proposed improvements including widening, on street parking, landscaping, decorative lighting, sidewalks and pavement marking. The existing water main along the westside of US1 is shallow and in conflict with various proposed improvements. The Utility District is required to accommodate the road improvements and will have to modify the existing water and sewer mains.

PROPOSED COMPLETION DATES

PROJECT PROPOSAL / DISCUSSION	30-Oct-10	DESIGN	31-Dec-10	CONSTRUCTION	28-Feb-13
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CAPITAL OUTLAY COSTS

Description	PRIOR YEARS	FY 2011/2012	FY 2012/2013	FY 2013/2014	FY 2014/2015	FY 2015/2016	TOTAL
Land Acquisition							-
Engineering	218,354						-
Design & Survey							-
Construction		2,300,000					2,300,000
Buildings							-
Other Improvements							-
Inspection fees							-
Equipment							-
Other Project Costs							-
Contingency							-
TOTAL CAPITAL OUTLAY	218,354	2,300,000	-	-	-	-	2,300,000

PROPOSED SOURCES OF FUNDING

Source of Funding	PRIOR YEARS	FY 2011/2012	FY 2012/2013	FY 2013/2014	FY 2014/2015	FY 2015/2016	TOTAL
USD Capital Impact Fees (413)	218,354	2,300,000	-	-			2,300,000
TOTAL FUNDING	218,354	2,300,000	-	-	-	-	2,300,000

OPERATING COSTS

OPERATING COSTS:	PRIOR YEARS	FY 2011/2012	FY 2012/2013	FY 2013/2014	FY 2014/2015	FY 2015/2016	TOTAL
Personal Services							-
Operating Costs							-
Maintenance Costs							-
TOTAL OPERATING COSTS		-	-	-	-	-	-

Project Title: *State Road No.5 (US-1) Utility Relocation Project*
 Location: *State Road 5 (US-1), City of Riviera Beach, Palm Beach, FL*
 Owner: *City of Riviera Beach*
 Chen Project #: *137.005*
 Date: *8/31/2011*

Pay Item #	Description	Quantity	Unit	Unit Price FDOT	Estimated Amount - FDOT
0000-700-1	SUPPORT UTILITY DURING CONSTRUCTION	500	LF	\$25.00	\$12,500.00
0000-700-2	UTILITY FITTINGS	35	TN	\$7,500.00	\$262,500.00
0000-700-3	UTILITY FIXTURE, SAMPLE POINT	56	EA	\$375.00	\$21,000.00
730-76-111	STEEL CASING, OPEN TRENCH, F&I, 20"	60	LF	\$175.00	\$10,500.00
730-76-116	STEEL CASING, OPEN TRENCH, F&I, 30"	20	LF	\$375.00	\$7,500.00
1050-11-212	UTILITY PIPE, F&I, PVC, CASING/CONDUIT, 2-4.9"	1503	LF	\$12.75	\$19,163.25
1050-11-321	UTILITY PIPE, F&I, PE, WATER/SEWER, 0-1.9"	1503	LF	\$45.00	\$67,635.00
1050-11-422	UTILITY PIPE, F&I, DI/CI, WATER/SEWER, 2-4.9"	334	LF	\$38.74	\$12,939.16
1050-11-423	UTILITY PIPE, F&I, DI/CI, WATER/SEWER, 5-7.9"	2448	LF	\$65.00	\$159,120.00
1050-11-424	UTILITY PIPE, F&I, DI/CI, WATER/SEWER, 8-19.9"	8639	LF	\$75.00	\$647,925.00
1050-16-002	UTILITY PIPE, REMOVE & DISPOSE, 2-4.9"	572	LF	\$6.82	\$3,901.04
1050-16-003	UTILITY PIPE, REMOVE & DISPOSE, 5-7.9"	880	LF	\$8.06	\$7,092.80
1050-16-004	UTILITY PIPE, REMOVE & DISPOSE, 8-19.9"	561	LF	\$14.00	\$7,854.00
1050-18-000	UTILITY PIPE, PLUG & PLACE OUT OF SERVICE, CAP FOR UP TO 4" PIPE	11955	LF	\$4.50	\$53,797.50
1050-18-004	UTILITY PIPE, PLUG & PLACE OUT OF SERVICE, 8.0-19.9"	990	LF	\$7.00	\$6,930.00
1080-11-101	UTILITY FIXTURES, F&I, 0-1.9", VALVE/METER BOX	71	EA	\$350.00	\$24,850.00
1080-11-201	UTILITY FIXTURE, F&I, 2-4.9", VALVE/METER BOX	0	EA	\$1,500.00	\$0.00
1080-11-203	UTILITY FIXTURES, F&I, 2.0-4.9", TAPPING SADDLE/SLEEVE	64	EA	\$1,117.82	\$71,540.48
1080-11-204	UTILITY FIXTURES, F&I, 2.0-4.9", VALVE ASSEMBLY	47	EA	\$815.80	\$38,342.60
1080-11-206	UTILITY FIXTURES, F&I, 2.0-4.9", AIR RELEASE VALVE	7	EA	\$2,964.86	\$20,754.02
1080-11-207	UTILITY FIXTURES, F&I, 2.0-4.9", LINE STOP ASSEMBLY	2	EA	\$3,000.00	\$6,000.00
1080-11-209	UTILITY FIXTURE, F&I, 2-4.9", MECHANICAL JOINT RESTRAINT	25	EA	\$150.00	\$3,750.00
1080-11-301	UTILITY FIXTURE, F&I, 5-7.9", VALVE/METER BOX	0	EA	\$925.01	\$0.00
1080-11-304	UTILITY FIXTURES, F&I, 5.0-7.9", VALVE ASSEMBLY	119	EA	\$1,446.24	\$172,102.56
1080-11-307	UTILITY FIXTURES, F&I, 5.0-7.9", LINE STOP ASSEMBLY	2	EA	\$4,025.61	\$8,051.22
1080-11-309	UTILITY FIXTURE, F&I, 5.0-7.9", MECHANICAL JOINT RESTRAINT	25	EA	\$159.65	\$3,991.25
1080-11-401	UTILITY FIXTURE, F&I, 8-19.9", VALVE/METER BOX	0	EA	\$600.00	\$0.00
1080-11-404	UTILITY FIXTURES, F&I, 8.0-19.9", VALVE ASSEMBLY	72	EA	\$3,000.00	\$216,000.00
1080-11-407	UTILITY FIXTURES, F&I, 8.0-19.9", LINE STOP ASSEMBLY	8	EA	\$5,300.00	\$42,400.00
1080-11-409	UTILITY FIXTURE, F&I, 8.0-19.9", MECHANICAL JOINT RESTRAINT	41	EA	\$278.92	\$11,435.72
1080-14	UTILITY FIXTURE, RELOCATE (WATER METER)	64	EA	\$941.39	\$60,248.96
1080-15	UTILITY FIXTURE, ADJUST/MODIFY (ADJUST MH ELEVATION)	4	EA	\$634.76	\$2,539.04
1080-16	UTILITY FIXTURES, REMOVE & DISPOSE, VALVE/METER BOX	64	EA	\$150.00	\$9,600.00
1644-136-08	FIRE HYDRANT, F&I, TRAFFIC, THREE HOSE, ONE PUMPER, 6"	14	EA	\$3,535.55	\$49,497.70
1644-900	FIRE HYDRANT, REMOVE	17	EA	\$448.00	\$7,616.00

SUBTOTAL	\$ 2,049,077.30
10% CONTINGENCY	\$ 204,907.73
2% CEI	\$ 40,981.55
TOTAL ESTIMATED CONSTRUCTION COST	\$ 2,294,966.58

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT
(AT UTILITY EXPENSE)

Form No. 710-010-22
UTILITIES
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Financial Project ID: 229744-3-56-01	Federal Project ID:
County: Palm Beach	State Road No.: 5
District Document No:	
Utility Agency/Owner (UAO): City of Riviera Beach Utility District	

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 **City of Riviera Beach Utility District**, hereinafter referred to as the "UAO";

WITNESSETH:

WHEREAS, the **FDOT**, is constructing, reconstructing, or otherwise changing a portion of a public road or publicly owned rail corridor, said project being identified as Broadway, State Road No.: 5, hereinafter referred to as the "Project"; and

WHEREAS, the **UAO** owns or desires to install certain utility facilities which are located within the limits of the Project hereinafter referred to as the "Facilities" (said term shall be deemed to include utility facilities as the same may be relocated, adjusted, installed, or placed out of service pursuant to this Agreement); and

WHEREAS, the Project requires the location (vertically and/or horizontally), protection, relocation, installation, adjustment or removal of the Facilities, or some combination thereof, hereinafter referred to as "Utility Work"; and

WHEREAS, the **FDOT** and the **UAO** desire to enter into a joint agreement pursuant to Section 337.403(1)(b), Florida Statutes for the Utility Work to be accomplished by the **FDOT's** contractor as part of the construction of the Project; and

WHEREAS, the **UAO**, pursuant to the terms and conditions hereof, will bear certain costs associated with 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. Design of Utility Work

- a. **UAO** shall prepare, at **UAO's** sole cost and expense, a final engineering design, plans, technical special provisions, a cost estimate, and a contingency Utility Work Schedule (said contingency schedule to be used in the case of a bid rejection) for the Utility Work (hereinafter referred to as the "Plans Package") on or before April 08, year of 2011.
- b. The Plans Package shall be in the same format as the **FDOT's** contract documents for the Project and shall be suitable for reproduction.
- c. Unless otherwise specifically directed in writing, the Plans Package shall include any and all activities and work effort required to perform the Utility Work, including but not limited to, all clearing and grubbing, survey work and shall include a traffic control plan.
- d. The Plans Package shall be prepared in compliance with the **FDOT's** Utility Accommodation Manual and the **FDOT's** Plans Preparation Manual in effect at the time the Plans Package is prepared, and the **FDOT's** contract documents for the Project. If the **FDOT's** Plans Preparation Manual has been updated and conflicts with the Utility Accommodation Manual, the Utility Accommodation Manual shall apply where such conflicts exist.
- e. The technical special provisions which are a part of the Plans Package shall be prepared in accordance with the **FDOT's** guidelines on preparation of technical special provisions and shall not

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duplicate or change the general contracting provisions of the **FDOT's** Standard Specifications for Road and Bridge Construction and any Supplemental Specifications, Special Provisions, or Developmental Specifications of the **FDOT** for the Project.

- f. **UAO** shall provide a copy of the proposed Plans Package to the **FDOT**, and to such other right of way users as designated by the **FDOT**, for review at the following stages: Bidability. Prior to submission of the proposed Plans Package for review at these stages, the **UAO** shall send the **FDOT** a work progress schedule explaining how the **UAO** will meet the **FDOT's** production schedule. The work progress schedule shall include the review stages, as well as other milestones necessary to complete the Plans Package within the time specified in Subparagraph a. above.
- g. In the event that the **FDOT** finds any deficiencies in the Plans Package during the reviews performed pursuant to Subparagraph f. above, the **FDOT** will notify the **UAO** in writing of the deficiencies and the **UAO** will correct the deficiencies and return corrected documents within the time stated in the notice. The **FDOT's** review and approval of the documents shall not relieve the **UAO** from responsibility for subsequently discovered errors or omissions.
- h. The **FDOT** shall furnish the **UAO** such information from the **FDOT's** files as requested by the **UAO**; however, the **UAO** shall at all times be and remain solely responsible for proper preparation of the Plans Package and for verifying all information necessary to properly prepare the Plans Package, including survey information as to the location (both vertical and horizontal) of the Facilities. The providing of information by the **FDOT** shall not relieve the **UAO** of this obligation nor transfer any of that responsibility to the **FDOT**.
- i. The Facilities and the Utility Work will include all utility facilities of the **UAO** which are located within the limits of the Project, except as generally summarized as follows: all work listed in UWS is to be completed as part of the UWHC agreement. These exceptions shall be handled by separate arrangement.
- j. If any facilities of the **UAO** located within the project limits are discovered after work on the project commences to be qualified for relocation at the **FDOT's** expense, but not previously identified as such, the **UAO** shall file a claim with the **FDOT** for recovery of the cost of relocation thereof. The filing of the claim shall not necessarily entitle the **UAO** to payment, and resolution of the claim shall be based on a determination of fault for the error. The discovery of facilities not previously identified as being qualified for relocation at the **FDOT's** expense shall not invalidate this Agreement.
- k. The **UAO** shall fully cooperate with all other right of way users in the preparation of the Plans Package. Any conflicts that cannot be resolved through cooperation shall be resolved in the manner determined by the **FDOT**.
- l. Upon completion of the Utility Work, the Facilities shall be deemed to be located on the public road or publicly owned rail corridor under and pursuant to the Utility Permit: _____.
(Note: It is the intent of this line to allow either attachment of or separate reference to the permit).

2. Performance of Utility Work

- a. The **FDOT** shall incorporate the Plans Package into its contract for construction of the Project.
- b. The **FDOT** shall procure a contract for construction of the Project in accordance with the **FDOT's** requirements.
- c. If the portion of the bid of the contractor selected by the **FDOT** which is for performance of the Utility Work exceeds the **FDOT's** official estimate for the Utility Work by more than ten percent (10%) and the **FDOT** does not elect to participate in the cost of the Utility Work pursuant to Section 337.403(1)(b), Florida Statutes, the **UAO** may elect to have the Utility Work removed from the **FDOT's** contract by notifying the **FDOT** in writing within 7 days from the date that the **UAO** is notified

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UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT
(AT UTILITY EXPENSE)

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of the bid amount. Unless this election is made, the Utility Work shall be performed as part of the Project by the **FDOT's** contractor.

- d. If the **UAO** elects to remove the Utility Work from the **FDOT's** contract in accordance with Subparagraph 2. c., the **UAO** shall perform the Utility Work separately pursuant to the terms and conditions of the **FDOT's** standard relocation agreement, the terms and conditions of which are incorporated herein for that purpose by this reference, and in accordance with the contingency relocation schedule which is a part of the Plans Package. The **UAO** shall proceed immediately with the Utility Work so as to cause no delay to the **FDOT** or the **FDOT's** contractor in constructing the Project.
- e. The **UAO** shall perform all engineering inspection, testing, and monitoring of the Utility Work to insure that it is properly performed in accordance with the Plans Package, except for the following activities: NA and will furnish the **FDOT** with daily diary records showing approved quantities and amounts for weekly, monthly, and final estimates in accordance with the format required by **FDOT** procedures.
- f. Except for the inspection, testing, monitoring, and reporting to be performed by the **UAO** in accordance with Subparagraph 2. e., the **FDOT** will perform all contract administration for its construction contract.
- g. The **UAO** shall fully cooperate with the **FDOT** and the **FDOT's** contractor in all matters relating to the performance of the Utility Work.
- h. The **FDOT's** engineer has full authority over the Project and the **UAO** shall be responsible for coordinating and cooperating with the **FDOT's** engineer. In so doing, the **UAO** shall make such adjustments and changes in the Plans Package as the **FDOT's** engineer shall determine are necessary for the prosecution of the Project.
- i. The **UAO** shall not make any changes to the Plans Package after the date on which the **FDOT's** contract documents are mailed to Tallahassee for advertisement of the Project unless those changes fall within the categories of changes which are allowed by supplemental agreement to the **FDOT's** contract pursuant to Section 337.11, Florida Statutes. All changes, regardless of the nature of the change or the timing of the change, shall be subject to the prior approval of the **FDOT**.

3. Cost of Utility Work

- a. The **UAO** shall be responsible for all costs of the Utility Work and all costs associated with any adjustments or changes to the Utility Work determined by the **FDOT's** engineer to be necessary, including, but not limited to the cost of changing the Plans Package and the increase in the cost of performing the Utility Work, unless the adjustments or changes are necessitated by an error or omission of the **FDOT**. The **UAO** shall not be responsible for the cost of delays caused by such adjustments or changes unless they are attributable to the **UAO** pursuant to Subparagraph 4.a.
- b. The initial estimate of the cost of the Utility Work is \$2,294,966.58. At such time as the **FDOT** prepares its official estimate, the **FDOT** shall notify the **UAO** of the amount of the official estimate for the Utility Work. Upon being notified of the official estimate, the **UAO** shall have five (5) working days within which to accept the official estimate for purposes of making deposits and for determining any possible contribution on the part of the **FDOT** to the cost of the Utility Work, or to elect to have the Utility Work removed from the **FDOT's** contract and performed separately pursuant to the terms and conditions set forth in Subparagraph 2. d. hereof.
- c. At least Thirty (30) calendar days prior to the date on which the **FDOT** advertises the Project for bids, the **UAO** will pay to the **FDOT** an amount equal to the **FDOT's** official estimate; plus 2% for administrative costs of field work, tabulation of quantities, Final Estimate processing and Project accounting (said amounts are to be hereinafter collectively referred to as the Allowances); plus 10% of the official estimate for a contingency fund to be used as hereinafter provided for changes to the

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT
(AT UTILITY EXPENSE)

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Utility Work during the construction of the Project (the Contingency Fund).

d. Payment of the funds pursuant to this paragraph will be made (choose one):

- directly to the **FDOT** for deposit into the State Transportation Trust Fund.
- as provided in the attached Memorandum of Agreement between **UAO**, **FDOT** and the State of Florida, Department of Financial Services, Division of Treasury. Deposits of less than \$100,000.00 must be pre-approved by the Department of Financial Services and **FDOT** Comptroller's Office prior to execution of this agreement.

- e. If the portion of the contractor's bid selected by the **FDOT** for performance of the Utility Work exceeds the amount of the deposit made pursuant to Subparagraph c. above, then subject to and in accordance with the limitations and conditions established by Subparagraph 2. c. hereof regarding **FDOT** participation in the cost of the Utility Work and the **UAO's** election to remove the Utility Work from the Project, the **UAO** shall, within fourteen (14) calendar days from notification from the **FDOT** or prior to posting of the accepted bid, whichever is earlier, pay an additional amount to the **FDOT** to bring the total amount paid to the total obligation of the **UAO** for the cost of the Utility Work, plus Allowances and 10% Contingency Fund. The **FDOT** will notify the **UAO** as soon as it becomes apparent the accepted bid amount plus allowances and contingency is in excess of the advance deposit amount; however, failure of the **FDOT** to so notify the **UAO** shall not relieve the **UAO** from its obligation to pay for its full share of project costs on final accounting as provided herein below. In the event that the **UAO** is obligated under this Subparagraph 3.e. to pay an additional amount and the additional amount that the **UAO** is obligated to pay does not exceed the Contingency Fund already on deposit, the **UAO** shall have sixty (60) calendar days from notification from the **FDOT** to pay the additional amount, regardless of when the accepted bid is posted.
- f. If the accepted bid amount plus allowances and contingency is less than the advance deposit amount, the **FDOT** will refund the amount that the advance deposit exceeds the bid amount, plus allowances and contingency if such refund is requested by the **UAO** in writing and approved by the Comptroller of the **FDOT** or his designee.
- g. Should contract modifications occur that increase the **UAO's** share of total project costs, the **UAO** will be notified by the **FDOT** accordingly. The **UAO** agrees to provide, in advance of the additional work being performed, adequate funds to ensure that cash on deposit with the **FDOT** is sufficient to fully fund its share of the project costs. The **FDOT** shall notify the **UAO** as soon as it becomes apparent the actual costs will overrun the award amount; however, failure of the **FDOT** to so notify the **UAO** shall not relieve the **UAO** from its obligation to pay for its full share of project costs on final accounting as provided herein below.
- h. The **FDOT** may use the funds paid by the **UAO** for payment of the cost of the Utility Work. The Contingency Fund may be used for increases in the cost of the Utility Work which occur because of quantity overruns or because of adjustments or changes in the Utility Work made pursuant to Subparagraph 2. h. Prior to using any of the Contingency Fund, the **FDOT** will obtain the written concurrence of the person delegated that responsibility by written notice from the **UAO**. The delegatee shall respond immediately to all requests for written concurrence. If the delegatee refuses to provide written concurrence promptly and the **FDOT** determines that the work is necessary, the **FDOT** may proceed to perform the work and recover the cost thereof pursuant to the provisions of Section 337.403(3), Florida Statutes. In the event that the Contingency Fund is depleted, the **UAO** shall, within fourteen (14) calendar days from notification from the **FDOT**, pay to the **FDOT** an additional 10% of the total obligation of the **UAO** for the cost of the Utility Work established under Subparagraph 3. e. for future use as the Contingency Fund.
- i. Upon final payment to the Contractor, the **FDOT** intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred sixty (360) days. All project cost records and accounts shall be subject to audit by a representative of the **UAO**

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for a period of three (3) years after final close out of the Project. The **UAO** will be notified of the final cost. Both parties agree that in the event the final accounting of total project costs pursuant to the terms of this agreement is less than the total deposits to date, a refund of the excess will be made by the **FDOT** to the **UAO** in accordance with Section 215.422, Florida Statutes. In the event said final accounting of total project costs is greater than the total deposits to date, the **UAO** will pay the additional amount within forty (40) calendar days from the date of the invoice. The **UAO** agrees to pay interest at a rate as established pursuant to Section 55.03, Florida Statutes, on any invoice not paid within the time specified in the preceding sentence until the invoice is paid.

4. Claims Against UAO

- a. The **UAO** shall be responsible for all costs incurred as a result of any delay to the **FDOT** or its contractors caused by errors or omissions in the Plans Package (including inaccurate location of the Facilities) or by failure of the **UAO** to properly perform its obligations under this Agreement in a timely manner.
- b. In the event the **FDOT's** contractor provides a notice of intent to make a claim against the **FDOT** relating to the Utility Work, the **FDOT** will notify the **UAO** of the notice of intent and the **UAO** will thereafter keep and maintain daily field reports and all other records relating to the intended claim.
- c. In the event the **FDOT's** contractor makes any claim against the **FDOT** relating to the Utility Work, the **FDOT** will notify the **UAO** of the claim and the **UAO** will cooperate with the **FDOT** in analyzing and resolving the claim within a reasonable time. Any resolution of any portion of the claim directly between the **UAO** and the **FDOT's** contractor shall be in writing, shall be subject to written **FDOT** concurrence and shall specify the extent to which it resolves the claim against the **FDOT**.
- d. The **FDOT** may withhold payment of surplus funds to the **UAO** until final resolution (including any actual payment required) of all claims relating to the Utility Work. The right to withhold shall be limited to actual claim payments made by the **FDOT** to the **FDOT's** contractor.

5. Out of Service Facilities

No Facilities shall be placed out of service unless specifically identified as such in the Plans. The following terms and conditions shall apply to Facilities placed Out-of-Service:

- a. The **UAO** acknowledges its present and continuing ownership of and responsibility for out of service Facilities.
- b. The **FDOT** agrees to allow the **UAO** to leave the Facilities within the right of way subject to the continuing satisfactory performance of the conditions of this Agreement by the **UAO**. In the event of a breach of this Agreement by the **UAO**, the Facilities shall be removed upon demand from the **FDOT** in accordance with the provisions of Subparagraph e. below.
- c. The **UAO** shall take such steps to secure the Facilities and otherwise make the Facilities safe in accordance with any and all applicable local, state or federal laws and regulations and in accordance with the legal duty of the **UAO** to use due care in its dealings with others. The **UAO** shall be solely responsible for gathering all information necessary to meet these obligations.
- d. The **UAO** shall keep and preserve all records relating to the Facilities, including, but not limited to, records of the location, nature of, and steps taken to safely secure the Facilities and shall promptly respond to information requests of the **FDOT** or other permittees using or seeking use of the right of way.
- e. The **UAO** shall remove the Facilities at the request of the **FDOT** in the event that the **FDOT** determines that removal is necessary for **FDOT** use of the right of way or in the event that the **FDOT**

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determines that use of the right of way is needed for other active utilities that cannot be otherwise accommodated in the right of way. Removal shall be at the sole cost and expense of the **UAO** and without any right of the **UAO** to object or make any claim of any nature whatsoever with regard thereto. Removal shall be completed within the time specified in the **FDOT's** notice to remove. In the event that the **UAO** fails to perform the removal properly within the specified time, the **FDOT** may proceed to perform the removal at the **UAO's** expense pursuant to the provisions of Sections 337.403 and 337.404, Florida Statutes.

- f. Except as otherwise provided in Subparagraph e. above, the **UAO** agrees that the Facilities shall forever remain the legal and financial responsibility of the **UAO**. The **UAO** shall reimburse the **FDOT** for any and all costs of any nature whatsoever resulting from the presence of the Facilities within the right of way. Said costs shall include, but shall not be limited to, charges or expenses which may result from the future need to remove the Facilities or from the presence of any hazardous substance or material in or discharging from the Facilities. Nothing in this paragraph shall be interpreted to require the **UAO** to indemnify the **FDOT** for the **FDOT's** own negligence; however, it is the intent that all other costs and expenses of any nature be the responsibility of the **UAO**.

6. 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 sixty (60) days from written notice thereof from **FDOT**.
 - (2) Pursue a claim for damages suffered by the **FDOT**.
 - (3) If the Utility Work is reimbursable under this Agreement, withhold reimbursement payments until the breach is cured. The right to withhold shall be limited to actual claim payments made by **FDOT** to third parties.
 - (4) If the Utility Work is reimbursable under this Agreement, offset any damages suffered by the **FDOT** or the public against payments due under this Agreement for the same Project. The right to offset shall be limited to actual claim payments made by **FDOT** to third parties.
 - (5) 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 sixty (60) days from written notice thereof from **FDOT**.
 - (6) Pursue any other remedies legally available.
 - (7) 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 sixty (60) days from written notice thereof from the **UAO**.
 - (2) If the breach is a failure to pay an invoice for Utility Work which is reimbursable under this Agreement, pursue any statutory remedies that the **UAO** may have for failure to pay invoices.

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- (3) 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 nor from any statutory obligations that either party may have with regard to the subject matter hereof.

7. 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.

8. Indemnification

FOR GOVERNMENT-OWNED UTILITIES,

To the extent provided by law, the **UAO** shall indemnify, defend, and hold harmless the **FDOT** and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by the **UAO**, its agents, employees, or contractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which **FDOT** or said parties 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

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UAO is not liable or determines the **FDOT** is solely negligent. Only a final adjudication of 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.

9. Miscellaneous

- a. Time is of essence in the performance of all obligations under this Agreement.
- b. The Facilities shall at all times remain the property of and be properly protected and maintained by the **UAO** in accordance with the current Utility Accommodation Manual in effect at the time the Plans Package is prepared and the current utility permit for the Facilities; provided, however, that the **UAO** shall not be obligated to protect or maintain any of the Facilities to the extent the **FDOT's** contractor has that obligation as part of the Utility Work pursuant to the **FDOT's** specifications.
- c. The **FDOT** may unilaterally cancel this Agreement for refusal by the **UAO** to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the **UAO** in conjunction with this Agreement.
- d. 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 may be applicable at the time of the Project and the relocation of the Facilities.
- e. 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.
- 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**:

Mario E. Loaiza, P.E. Utility District Engineer

600 West Blue Heron Boulevard

Riviera Beach, Florida 33404

If to the **FDOT**:

Courtney Drummond, Operations Engineer

7900 Forest Hill Boulevard

West Palm Beach, Florida 33414

10. 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.

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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."

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

UTILITY: City of Riviera Beach Utility District

BY: (Signature) _____

DATE: _____

(Typed Name: Judy Davis)

(Typed Title: Chairperson)

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: James A. Wolfe)

(Typed Title: District Four Secretary)

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

BY: _____

DATE: _____

(Typed Name: _____)

(Typed Title: _____)

MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made and entered into this ____ , day of _____, 2011, by and between the State of Florida, Department of Transportation, hereinafter referred to as "FDOT" and the State of Florida, Department of Financial Services, Division of Treasury, hereinafter referred to as "TREASURY" and the Utility District of Riviera Beach, hereinafter referred to as the "PARTICIPANT".

WITNESSETH

WHEREAS, "FDOT" is currently constructing the following project:

Main Financial Project No.: **229744-3-56-01**
County: **Palm Beach**

hereinafter referred to as the "PROJECT"

WHEREAS, FDOT and the PARTICIPANT entered into a **Locally Funded Agreement** dated _____, 201____, wherein FDOT agreed to perform certain work on behalf of the PARTICIPANT in conjunction with the PROJECT.

WHEREAS, the parties to this AGREEMENT mutually agreed that it would be in the best interest of the FDOT and the PARTICIPANT to establish an interest bearing escrow account to provide funds for the work performed on the PROJECT on behalf of the PARTICIPANT by the FDOT.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties agree to the following:

1. An initial deposit in the amount of **Two Million Two Hundred Ninety Four Thousand Nine Hundred Sixty Six Dollars and 58/100, (\$2,294,966.58)** will be made by the PARTICIPANT into an interest bearing escrow account established by the FDOT for the purposes of the PROJECT. Said escrow account will be opened with the TREASURY on behalf of the FDOT upon receipt of this Memorandum of Agreement. Such account will be an asset of the FDOT.

2. Other deposits may be made by the PARTICIPANT as necessary to cover cost increases or the cost of additional work prior to the execution of any Supplemental Agreements or Amendments.

3. Payment will be made as follows (check appropriate payment method):

- Wire transfer
 ACH deposit
 Check

A wire transfer or ACH deposit is the preferred method of payment and should be used whenever possible. Following is the wiring and ACH deposit instructions:

For wire transfers: Bank of America
Account # 001 009068974
ABA # 026009593
Chief Financial Officer of Florida
Re: DOT - K 1 1-78, Financial Project # **229744-3-56-01**

For ACH deposits: Bank of America
Account # 001 009068974
ABA # 0631 00277
Chief Financial Officer of Florida
Re: DOT - K 11 -78, Financial Project # **229744-3-56-01**

If a check is the method of payment, the check shall be made payable to the Department of Financial Services, Revenue Processing and mailed to the FDOT, OOC-GAO for appropriate processing at the following address:

Florida Department of Transportation
OOC-GAO, LFA Section
605 Suwannee Street, MS 42B
Tallahassee, Florida 32399

A copy of this Agreement should accompany any deposits. When the check is mailed to Tallahassee, the District Office should instruct the PARTICIPANT to mail the District Office a copy of the check.

4. The FDOT's Comptroller or designee shall be the sole signatories on the escrow account with the TREASURY and shall have sole authority to authorize withdrawals from said account.

5. Unless instructed otherwise by the parties hereto, all interest accumulated in the escrow account shall remain in the account for the purposes of the PROJECT as defined in the LFA.

6. The TREASURY agrees to provide written confirmation of receipt of funds to the FDOT.

7. The TREASURY further agrees to provide periodic reports to the FDOT.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
COMPTROLLER

STATE OF FLORIDA
DEPARTMENT OF FINANCIAL
SERVICES, DIVISION OF TREASURY

PARTICIPANT SIGNATURE
CITY OF RIVIERA BEACH UTILITY DISTRICT
Judy Davis, Chairperson
PARTICIPANT NAME & TITLE

PARTICIPANT SIGNATURE
CITY OF RIVIERA BEACH
Carrie E. Ward, MMC, CITY CLERK
PARTICIPANT NAME & TITLE

600 W. Blue Heron Blvd.,
Riviera Beach, FL 33404
PARTICIPANT ADDRESS

59-6000417
FEDERAL EMPLOYER I.D. NUMBER