

Approved:



Department of Transportation

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Office: Utilities

Topic No.: 710-030-005-b

## **UTILITY WORK FOR LOCAL GOVERNMENT UTILITIES**

### **PURPOSE:**

To establish a uniform procedure for the performance of utility work by the Department in cooperation with local government utilities and for repayment to the Department in accordance with **Sections 337.403 and 337.404, Florida Statutes (F.S.)**, when local government utilities are financially unable to perform required utility work. This procedure is not intended to apply in situations where a local government is not cooperating with the Department as part of the process.

### **AUTHORITY:**

Section 20.23(3)(a), Florida Statutes (F.S.)

Section 334.048(3), Florida Statutes (F.S.)

### **SCOPE:**

Offices involved with the implementation of this procedure include the Comptroller, Central and District Work Program, General Counsel, Design, and Utilities.

### **REFERENCES:**

Rule 14-46.001, Utilities Installation or Adjustment  
Topic No. 710-020-001, Utility Accommodation Manual  
Work Program Instructions

Section 288.0656(2), Florida Statutes (F.S.)

Section 334.187, Florida Statutes (F.S.)

Section 337.403 Florida Statutes (F.S.)

Section 337.404 Florida Statutes (F.S.)

## **GENERAL:**

The procedure for performance of utility work by the Department for Local Government-Owned Utilities requires the following sequential steps:

### **1. INFORM LOCAL GOVERNMENT-OWNED UTILITY OF PROJECT**

When it comes to the Department's attention that a local government-owned utility (Utility) may not be able to financially afford to perform some required utility work in concert with a Department project, District personnel shall meet with the Utility's representative to discuss the project's scope, time schedule, and its potential impact on the Utility. The entire process should be explained so that official notices and subsequent acts will not come as a surprise or be misinterpreted. At the conclusion of this meeting each party should be fully informed as to the expected timing and assignment of anticipated costs associated with the relocation. Information gathered at this meeting will assist the Utility in estimating the financial impact of the project on its system(s) and formulating a plan for scheduling and payment of costs associated with the project, or determining that the payments for the relocation will create a hardship and the Utility wishes to request assistance from the Department. District personnel and the Utility representative shall establish a schedule for the submission of documentation for consideration of a financial hardship.

### **2. DETERMINE FINANCIAL HARDSHIP**

- 2.1** If the Utility indicates the existence of a financial hardship and presents evidence on the estimated design and construction costs related to the utility work, audited financial statements, evidence of the financial hardship and proposes a reasonable payback schedule, the District shall forward a copy of the submission to the Department's Deputy Comptroller for the General Accounting Office.
- 2.2** If the Utility is located in a rural area of opportunity, as defined in **Section 288.0656(2), F.S.**, and indicates the existence of a financial hardship and presents evidence on the estimated design and construction costs related to the utility work, audited financial statements, substantiates the financial hardship and proposes a reasonable payback schedule, and/or requests the Department to pay, in whole or in part, the cost of the utility work, the District shall forward a copy of the submission to the Department's Deputy Comptroller for the General Accounting Office.
- 2.3** The Deputy Comptroller shall consider all the documented variables and advise the Department's Comptroller as to whether a financial hardship exists. If a financial hardship exists, the Deputy Comptroller shall provide the Department's Comptroller with a recommendation that either a promissory note be approved or if the Utility is located in a rural area of opportunity, that the Department exercise

its authority to completely or partially pay the costs of such utility work pursuant to **Section 337.403(1)(h), F.S.** Only the Department Comptroller (in consultation with the Assistant Secretary for Finance and Administration and/or Secretary) has the authority to authorize promissory notes for the costs of utility work or exercise the Department's authority to completely or partially pay the costs of utility work in financial hardship cases. Every effort will be made to limit promissory notes to fifteen (15) years or less. However, based on the severity of the hardship, the Department Comptroller may approve terms up to thirty (30) years. Terms greater than thirty (30) years must be approved by the Department Assistant Secretary of Finance and Administration.

- 2.4** If a significant financial hardship is not substantiated, a promissory note is not recommended, or the Department does not elect to completely or partially pay the costs of the utility work, the Utility and the District Office will be notified accordingly by the Department Comptroller. The notification will include the basis for the Department's decision. The District will then proceed in accordance with the requirements of the law.

### **3. TRANSMIT THE INITIAL NOTICES (*SECTION 337.403, F.S.*)**

- 3.1** If a financial hardship is found to exist, the District shall send the first statutory Notice as described in **Section 337.403(1), F.S.**, to the Utility, stating that the Utility is unreasonably interfering with the maintenance, improvement, extension or expansion of the state road and generally describing the work that is required. The **Notice** should request the Utility to confirm in writing whether it intends to proceed with the work or not.

- 3.2** If the Utility fails to respond to the first **Notice** or notifies the Department that it is unable to perform the utility work, the District shall send a second **Notice** to the Utility stating either that the Department shall perform the work and such expense shall be charged against the Utility in accordance with **Section 337.403(3), F.S.**, or that the Department will either completely or partially pay for the costs of the utility work in accordance with **Section 337.403(1)(h), F.S.**

### **4. PREPARATION AND EXECUTION OF PROMISSORY NOTE**

- 4.1** A promissory note will be prepared by the Deputy Comptroller with District coordination containing the appropriate language and terms. The Office of the General Counsel will review and approve the promissory note prior to execution. Once executed by the Utility, the executed promissory note will be returned to the Department Comptroller to facilitate the Secretary's execution of the promissory note for the Department.

## 5. WORK PROGRAM NOTIFICATION

- 5.1** The *Work Program Instructions, Chapter 39*, state that the District Work Program Manager must be notified when the Department becomes aware of a Utility's inability to pay. The District Utility Office will notify the District Work Program Manager of the Utility's financial hardship via an e-mail, with a copy to the Deputy Comptroller for the General Accounting Office. Once notified of the financial hardship, the District Work Program Manager will change the funds programmed from Local Funds (LF) to:
- Promissory Note - Local Funds Default (LFD) if in the tentative cycle or to Local Funds Utility (LFU) if in the current year. The LFD/LFU fund code represents utility work funded up front with state funds due to the Utility's inability to pay for the utility work. The District will monitor these projects to ensure that the necessary steps are taken according to statute to recoup the costs expended on performing the utility work.
  - Approval for the Department to Pay – Once the Department exercises its authority to completely or partially pay the costs of such utility work, the District Work Program Manager will program state funds for projects on the state highway system or federal funds for projects off the state highway system.
- 5.2** An LFD/LFU estimate should remain programmed until the Department receives all funds due. The estimate should be adjusted annually until all funds are received. The Comptroller's Local Funds Section will notify the District Work Program Manager after the end of the fiscal year of any amounts collected from the Utility for the past fiscal year. When the amounts are received, the District Work Program Manager will reduce the LFD/LFU estimate and increase the LF estimate by the amount. The LFD/LFU will reflect amounts due, while the LF will reflect amounts paid. The estimates are to remain in their original program years.

## 6. PERFORM UTILITY WORK AND SETTLEMENT

- 6.1** The utility work shall be performed through contracts procured by the Department. The District shall assume official contract administration duties; however, the Utility will be advised and involved in any decision affecting its interests.
- 6.2** Should project costs change, the Deputy Comptroller for the General Accounting Office must be notified of change orders affecting the amount of promissory notes. At the conclusion of the construction, the District shall determine the final costs of the utility work that must be repaid by the Utility. These computations should be similar to the utility work by highway contractor and utility design by Department consultant scenarios normally used by the Department. The Utility shall be informed by the District Utility Office of the adjusted cost and will be given 30 days to contest the reasonableness of the cost in accordance with **Section 337.404, F.S.** If uncontested, the Deputy Comptroller will facilitate the completion of a replacement note reflecting the new amount. The District will inform the

Utility of all revisions in a timely manner and facilitate the execution of the replacement note by the Utility.

- 6.3** If a replacement note is not entered into and the adjusted costs have been found to be reasonable in accordance with **Section 337.404, F.S.**, the Department shall enter a final order indicating the full cost, the amount being compensated to the Department under any promissory note, and the remainder due and owing from the Utility. Upon entry of a final order, a lien will be placed on the Utility's property for the amount not compensated under the promissory note.

## **7. COLLECT FOR SERVICES RENDERED**

The Utility shall reimburse the Department in accordance with the executed promissory note or settlement agreement. The FDOT Deputy Comptroller for the General Accounting Office will process and keep track of payments received. If the Utility defaults on payments, the Central Office General Counsel's Office and the District Utility and General Counsel's Office will be notified.

## **8. TRAINING**

There is no training required by this procedure.

## **9. FORMS**

There are no forms required by this procedure.