

Meeting Date
April 11, 2017



AGENDA	
Section	Consent
Item No.	II.A.3

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approval Re: Right of Way Use Agreement with Watermill Association, Inc. for Electrical Line and Conduit Installation Within County Right of Way of Watermill Drive – District 2 (No Fiscal Impact)
DEPT/OFFICE:	Public Works Department – Finance and Contracts Administration

Requested Action:

It is requested that the Board of County Commissioners approve and authorize the Chairman to sign the Right of Way Use Agreement with Watermill Association Inc. for the installation of electrical line and conduit within the County right-of-way of Watermill Drive in Merritt Island.

Summary Explanation & Background:

Watermill Association Inc. desires to enter into a Right of Way Use Agreement with Brevard County to install electrical line and conduit within the County right-of-way of Watermill Drive as described in Exhibit "A". Watermill Association Inc. requests to install an electrical line and conduit, a private utility, to facilitate new lighting at their subdivision entrance.

The County is authorized to permit use of the right-of-way for utilities under Chapter 86 of the Code of Ordinances of Brevard County, Florida. The installation will be pursuant to Right-of-Way Permit #17RW00250 which has been reviewed by the Public Works staff for compliance with County code and regulations. The initial term of this Agreement shall be ten years and may be automatically renewed annually unless terminated by either party. The Agreement may be terminated with or without cause by either party upon forty-five days written notice.

In accordance with the Agreement, Watermill Association Inc. will be required to maintain this installation without cost to the County and to provide general liability insurance in an amount not less than one million dollars to include the coverage for XCU hazards during the term of the Agreement.

Fiscal Impact – FY 2016/2017/2018 – There is no cost to Brevard County for the electrical installation.

Clerk to the Board Instructions: Return executed Right of Way Use Agreements (2 originals) to the Public Works Department

Exhibits Attached: Right of Way Use Agreement (3 originals)

Contract /Agreement (If attached): Reviewed by County Attorney		Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager		Assistant County Manager		Department Director / Extension			
Stockton Whitten		Assistant County Manager		 John P. Denninghoff / 57202			

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT FORM

SECTION I - The following information must be completed on all new contracts submitted to the Board.

1. Contractor:	
2. Fund/Account #:	Department Name: Public Works
4. Contract Description: Hold Harmless Agreement – Watermill Association Inc. – Electrical Line/Conduit Installation	
5. Contract Monitor: Jeanette Scott	6. Mail Stop #: EXT 52853
7. Dept./Office Director: John P. Denninghoff	8. Contract Type: Use Agreement
ACTION DATE: 30 days from entry	ACTION REQUIREMENT: Need complete data

SECTION II - The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	✓	_____	HW	3-28-17
Risk Management	✓	_____	ML	3-22-2017
County Attorney	✓	_____	Dtg	3/30/2017

If any office denies approval, the package will be returned immediately to the User Agency.

SECTION III - CONTRACT MANAGEMENT DATABASE CHECKLIST

DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund and GL Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Data (No Additional renewals/extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in database (Initial Contract Form with County Attorney/Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>
Note: Insurance Certificates uploaded under collapsible/expandable <u>Monitor Bar Section</u> Change Order/Task Order uploaded under collapsible/expandable <u>Monitor Bar Section</u> Contract Renewal documents uploaded under collapsible/expandable <u>Renewal /Bar Section</u>	

NOTE: This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form, Executed/Attested Contract to department for contract to be entered and uploaded into the Contract Management System. See AO-29 for additional information.



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

April 12, 2017

M E M O R A N D U M

TO: John Denninghoff, Public Works Director

RE: Item II.A.3, Right of Way Use Agreement with Watermill Association, Inc., for Electrical Line and Conduit Installation within County Right-of-Way of Watermill Drive

The Board of County Commissioners, in regular session on April 11, 2017, authorized the Chairman to sign the Right-of-Way Use Agreement with Watermill Association Inc., for the installation of electrical line and conduit within the County right-of-way of Watermill Drive in Merritt Island. Enclosed are two fully-executed copies of the Agreement.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/cmw

Encls. (2)

cc: Contracts Administration
Finance
Budget

RIGHT OF WAY USE AGREEMENT

THIS AGREEMENT, made and entered into this 11 day of April 2017 by and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD, COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY", and WATERMILL ASSOCIATION INC., a Florida corporation, hereinafter referred to as the "ASSOCIATION".

WITNESSETH

WHEREAS the COUNTY owns the road right of way on Watermill Drive, and;

WHEREAS the ASSOCIATION desires to cross under and install within a portion of said right of way an electrical conduit pursuant to Permit #17RW00250; and,

WHEREAS, such electrical line provides a desired utility for the ASSOCIATION'S lighting in the area, and

WHEREAS, the COUNTY may, pursuant to the authority set forth in Section 125.01, Florida Statutes, allow the use of public right-of-way for purposes which do not conflict with the interest of the public; and

WHEREAS, the COUNTY is authorized to permit use of the right of way for utilities under Chapter 86 of the Code of Ordinances of Brevard County, Florida; and

WHEREAS, the COUNTY has determined that the use of portions of the public right-of-way by the ASSOCIATION for an electrical conduit pursuant to this Agreement does not conflict with the interests of the public; and

NOW THEREFORE, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1. INSTALLATION CONDITIONS. The ASSOCIATION hereby agrees to install the electrical line in the manner described in this Agreement and Permit #17RW00250 and the plans attached at Exhibit "A," on the following described property, hereinafter referred to as the "premises" and incorporated herein:

Roadway and shoulders within the County right-of-way of Watermill Drive at the entrance to the Watermill Subdivision as depicted on Exhibit "A" hereto.

2. TERM. The initial term of this Agreement shall be ten (10) years commencing with the date of the execution of this Agreement and shall thereafter be automatically renewed annually unless terminated by either party, in accordance with paragraph 13 Termination herein.

3. USE OF PREMISES. The ASSOCIATION shall use the premises for installation of an underground electrical line and conduit. It is hereby mutually agreed and understood that the use of any structure, improvement or facility now or hereafter located on the premises shall be placed on the premises at the ASSOCIATION'S risk. The COUNTY shall not



be responsible or liable for any damage to the electrical line and conduit caused by the COUNTY or any third parties. It is specifically agreed and understood that the use herein set forth shall be the only use consented to by the COUNTY, and that failure to comply with this provision shall be considered a material breach of this Agreement, whereupon the COUNTY shall be entitled to immediately terminate this Agreement.

4. IMPROVEMENTS. The plans and specifications for all improvements, structures, and facilities made by the ASSOCIATION on the premises shall be in accordance with all COUNTY specifications and shall be submitted as an attachment to the County's "Roadway and Easement Improvement Application Form" with appropriate fees, for approval by the COUNTY or its designated representative prior to the construction or installation of such improvement, structure, or facility. It is hereby agreed and understood that any structure placed on or constructed on the premises and permanently attached thereto, shall remain the property of the ASSOCIATION and that the ASSOCIATION retains the right to remove such structure within forty-five (45) days of the date of termination of this Agreement, whether by breach or by expiration of its natural term. In the event such structure is not removed within forty-five (45) days of termination, the COUNTY may remove the improvements, the cost of which shall be reimbursed by the ASSOCIATION within thirty (30) days of receiving statement of such work. In addition, the ASSOCIATION recognizes the dominant use of the property is for roadway purposes. The ASSOCIATION shall be responsible for relocating or removing the improvements upon request of the COUNTY at any time in the future. In the event the ASSOCIATION'S improvements cause damage to the County owned improvements in the roadway, the ASSOCIATION shall be responsible for repairing or replacing the damaged County owned improvements.

5. UTILITIES. The ASSOCIATION shall pay all charges for electrical service and other utility services supplied to the ASSOCIATION at the premises.

6. REPAIRS AND MAINTENANCE. The ASSOCIATION shall, at its own expense, maintain the improvements, structures and facilities on the premises and make all necessary repairs and replacements to the premises and to any improvements constructed thereon by ASSOCIATION. Such maintenance, repairs and replacements shall be made promptly as and when necessary. The ASSOCIATION shall apply for, successfully obtain, and be a member in good standing of "Sunshine State One Call" as per the "Underground Facility Damage Prevention and Safety Act" (Section 104 of Chapter 556, Florida Statutes). This requirement shall be in force for the period beginning the day of underground installation of the utility and terminating when the underground utility is removed from the public right-of-way.

7. ILLEGAL, UNLAWFUL OR IMPROPER USE. The ASSOCIATION shall make no unlawful, improper, immoral or offensive use of the premises, nor will the ASSOCIATION use the premises or allow use of the premises for any purposes other than that hereinabove set forth. Failure of the ASSOCIATION to comply with this provision shall be considered a material default under this Agreement. In the event any structure or improvement is deemed a traffic safety hazard by the COUNTY or Florida Department of Transportation, such use shall be deemed an improper use and the agreement shall be subject to immediate termination.



8. INDEMNIFICATION AND INSURANCE. Except where limited by law, the ASSOCIATION agrees that it will indemnify and save harmless the COUNTY from any and all liability, claims, damages, expenses, proceedings and causes of action of every kind and nature arising out of or connected with the use, occupation, management or control of the premises or any improvement thereon or any equipment or fixtures used in connection with the premises. The ASSOCIATION agrees that it will, at its own expense, defend any and all actions, suits or proceedings which may be brought against the COUNTY in connection with its premises and that it will satisfy, pay and discharge any and all judgments that may be entered against the COUNTY in any such action or proceedings. The parties acknowledge specific consideration has been exchanged for the provision.

The ASSOCIATION further agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the COUNTY, policies of General Liability Insurance insuring the ASSOCIATION against any and all claims, demands or causes of action whatsoever for injuries received and damages to property in connection with the use, occupation, management and control of the premises and the improvements thereon. Such policies of insurance shall insure the ASSOCIATION in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) to include the coverage for XCU hazards to cover any and all claims arising in connection with any one particular accident or occurrence. A certificate of such insurance policies shall be filed with the Public Works Department, 2725 Judge Fran Jamieson Way, Bldg. A-201, Viera, Florida, 32940, within ten (10) days of the date of execution of this Agreement. The COUNTY shall be named as an additional insured on the policy that the ASSOCIATION secures and endorsed with a provision that entitles the COUNTY to thirty (30) days written notice from the insurer of any change or cancellation in said policies.

The ASSOCIATION shall include in any contract for work upon or involving the PREMISES that the contractor shall indemnify and hold harmless ASSOCIATION and the COUNTY from liabilities, damages, losses and costs, including but not limited to attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of the contract.

The ASSOCIATION shall notify the COUNTY immediately in writing of any potentially hazardous condition existing on or about the premises.

All personal property, equipment, fixtures, structures or improvements constructed or placed on or about the premises shall be at the risk of the ASSOCIATION and the COUNTY shall not be liable for any damage or loss to personal property, equipment, fixtures, structures or improvements located thereon for any cause whatsoever. The ASSOCIATION agrees and understands that the COUNTY does not and shall not carry liability, theft, or fire insurance on any of said items or facilities to cover the ASSOCIATION's interests therein.

At the time of execution of this Agreement, any existing landscaping installed or caused to be installed by the developer on the premises, and subsequently transferred to the control of the ASSOCIATION, will be the responsibility of the ASSOCIATION. In the event this pre-existing landscaping causes damage to County property, to include but not limited to, sidewalk/roadway/curb and gutter/drainage inlets, the ASSOCIATION will be responsible for immediate repair to County property. If the ASSOCIATION fails to repair the damage, the ASSOCIATION will pay the County all costs incurred by the County to repair the damage.

9. RIGHT OF ENTRY. The COUNTY or its agents may enter in and on the premises at any reasonable time for the purpose of inspecting such property or performing other duties as are required by law or by the terms of this Agreement.

10. COMPLIANCE WITH STATUTES. The ASSOCIATION shall promptly execute and comply with all statutes, ordinances, rules, regulations, and requirements of all local, state and federal governmental; bodies applicable to the premises, for the correction, prevention and abatement of nuisances or other grievances in, upon, or connected with the premises during the term of the Agreement.

11. BINDING EFFECT AND ASSIGNABILITY. This Agreement will inure to the benefit of and will be binding upon the parties hereto and their respective successors and assigns. The ASSOCIATION shall not assign its responsibilities under this Agreement without the prior written consent of the COUNTY. In the event the ASSOCIATION does assign this Agreement, the ASSOCIATION and any such assigns shall be jointly and severally responsible for the ASSOCIATION's responsibilities under this Agreement. The ASSOCIATION shall provide the COUNTY with a written list of all subcontractors or other persons other than the members of the ASSOCIATION that will be performing work for the ASSOCIATION pursuant to this Agreement.

12. INDEPENDENT CONTRACTOR. The ASSOCIATION shall perform the services under this Agreement as an Independent Contractor and nothing herein shall be construed to be inconsistent with this relationship or status. Nothing in the Agreement shall be interpreted or construed to constitute that the ASSOCIATION or any of its agents or employees to be the agent, employee or representative of the COUNTY.

13. TERMINATION. This Agreement may be terminated with or without cause by either party upon forty-five (45) days' written notice thereof to the other party; provided, however, that upon termination, the ASSOCIATION shall, at the request of the COUNTY, remove all improvements to the premises, or, in the alternative, reimburse the COUNTY for the cost of such removal within thirty (30) days of receiving a statement of such work.

14. NOTICE. Notice under this Agreement shall be given to the COUNTY at the office of the County Manager, 2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida 32940, and to the ASSOCIATION at P.O. Box 541702, Merritt Island, FL 32954.

15. WAIVER. The waiver by the COUNTY of any of the ASSOCIATION'S obligations or duties under this Agreement shall not constitute a waiver of any other obligation or duty of the ASSOCIATION under this Agreement.

16. ATTORNEYS' FEES. In any legal action to interpret or enforce this Agreement or any provision hereof, each party shall pay its own attorneys' fees and costs and **any trial shall be non-jury.**

17. ENTIRETY. This Agreement represents the understanding between the parties in its entirety and no other agreements, either oral or written, exist between the COUNTY and the ASSOCIATION.



DONE, ORDERED and ADOPTED this 11 day of April 2017.

ATTEST

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



Scott Ellis
Scott Ellis, Clerk

Curt Smith
Curt Smith, Chairman
As approved by the Board on April 11, 2017

APPROVED AS TO FORM:

[Signature]
Assistant County Attorney

THE ASSOCIATION HAS EXECUTED A JOINDER TO THIS RIGHT OF WAY USE AGREEMENT THE PURPOSE THEREIN SET FORTH, WHICH IS ATTACHED HERETO AND BY THIS REFERENCE INCORPORATED HEREIN.

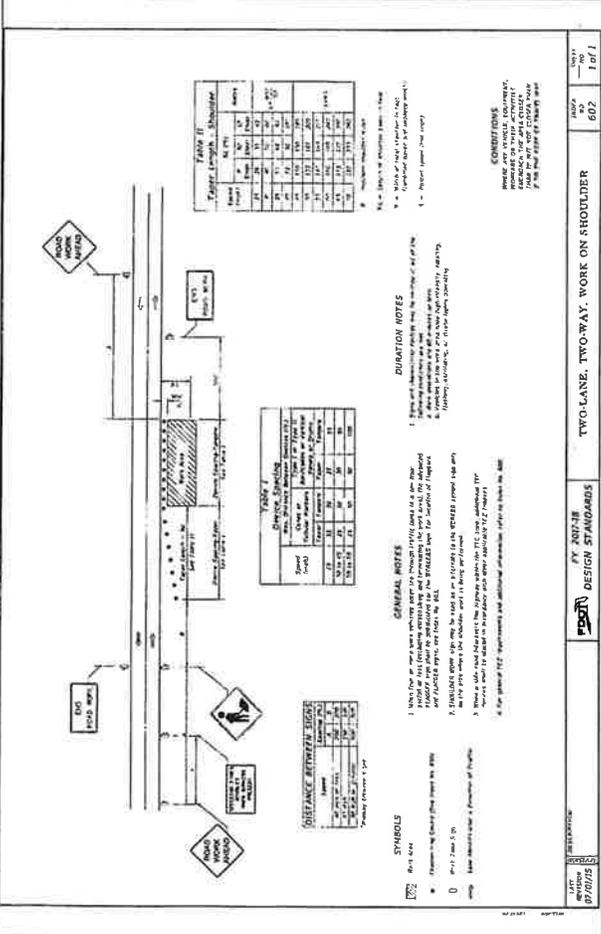
JOINDER TO
RIGHT OF WAY USE AGREEMENT

The undersigned does hereby execute the Right of Way Use Agreement by and between BOARD OF COUNTY COMMISSIONERS OF BREVARD, COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY", and Watermill Homeowner's Association, a Florida corporation, hereinafter referred to as the "ASSOCIATION", dated _____, 2017, to which this Joinder is attached for the purpose therein set forth.

ASSOCIATION:

Watermill Association Inc., a Florida corporation

[Signature]
Robert A. Lewandowski
(Name & Title) President



STANDARD CONSTRUCTION NOTES FOR WORK CONDUCTED IN BREVARD COUNTY RIGHT OF WAYS

1. THE CONTRACTOR IS RESPONSIBLE FOR ALL DAMAGE TO THE COUNTY RIGHT-OF-WAY DURING CONSTRUCTION. THIS INCLUDES, BUT IS NOT LIMITED TO, THE STRUCTURAL INTEGRITY OF THE ROADWAY ASPHALT, BASE, AND STABILIZED SUBGRADE, SIDEWALKS, STORMWATER DRAINAGE SYSTEM, DRAINAGE STRUCTURES, CURBS, GROUND COVER, WATER SYSTEMS, SANITARY SEWER SYSTEMS, AND RECLAIMED WATER SYSTEMS. ALL DAMAGE TO THE COUNTY RIGHT-OF-WAY SHALL BE REPAIRED TO ORIGINAL CONDITION OR BETTER. ALL REPAIRS SHALL BE COMPLETED PRIOR TO THE FINAL INSPECTION OF THE PROJECT. APPROXIMATE PATCH WORK SHALL NOT BE ACCEPTABLE. SEE A. BELOW FOR ACCEPTABLE PATCH WORK.
2. ALL PATCHES SHALL BE COMPLETED WITHIN THE COUNTY RIGHT-OF-WAY SHALL BE REPAIRED TO ORIGINAL CONDITION OR BETTER. ALL REPAIRS SHALL BE COMPLETED PRIOR TO THE FINAL INSPECTION OF THE PROJECT. APPROXIMATE PATCH WORK SHALL NOT BE ACCEPTABLE. SEE A. BELOW FOR ACCEPTABLE PATCH WORK.
3. ALL DIRECTIONAL SIGNS MUST EXTEND A MINIMUM OF EIGHT (8) FEET PAST THE EDGE OF PAVEMENT OF ANY ROADWAY OR COMMERCIAL DRIVEWAY. FOR RESIDENTIAL DRIVEWAYS AND SIDEWALKS, THE SIGNS MUST EXTEND THREE (3) FEET PAST THE EDGE OF THE DRIVEWAY.
4. ALL DIRECTIONAL SIGNS SHALL BE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION SECTION 504. DIRECTIONAL SIGNS AND THE FOOT CANTILEVER ACCORDANCE MANUAL.
5. ANY DAMAGE TO THE EXISTING INFRASTRUCTURE, INCLUDING SIDEWALKS, AT THE CONTRACTOR MUST BE REPLACED PRIOR TO FINAL INSPECTION. SIDEWALKS SHALL BE REPAIRED TO ORIGINAL CONDITION OR BETTER.
6. A VISUAL OR MECHANICAL INSPECTION OF EXISTING CURBS AND GUTTERS WILL BE REQUIRED PRIOR TO THE FINAL INSPECTION.
7. A MINIMUM OF 18 HOURS NOTICE OF REPAIRATION WILL BE MAINTAINED DURING PROPOSED TRENCH BORE OPERATIONS AND WILL BE RESTORED TO ORIGINAL CONDITION.
8. EXISTING DRAINAGE SWALES AND/OR CURBS WILL BE MAINTAINED DURING PROPOSED TRENCH BORE OPERATIONS AND WILL BE RESTORED TO ORIGINAL CONDITION.
9. OPEN CUTS SHALL HAVE FLOWABLE FILL AND TEMPORARY ASPHALT INSTALLED WITHIN TWO (2) DAYS OF EXCAVATION. PERMANENT ASPHALT SHALL BE COMPLETED WITHIN TEN (10) DAYS OF EXCAVATION. NO EXCAVATION WITHIN "TOP" 10 FEET OF EDGE OF PAVEMENT.
10. ALL ROAD CLOSURES SHALL BE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION SECTION 700.00. ALL ROAD CLOSURES SHALL BE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION SECTION 700.00. ALL ROAD CLOSURES SHALL BE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION SECTION 700.00.
11. ROAD CLOSURES: THE CONTRACTOR SHALL NOTIFY BREVARD COUNTY TRAFFIC OPERATIONS (352-3077) A MINIMUM OF TWO (2) WEEKS IN ADVANCE OF THE PROPOSED START DATE OF CONSTRUCTION WITHIN THE RIGHT-OF-WAY. FOR EACH PHASE OF CONSTRUCTION, IF APPLICABLE, THE CONTRACTOR SHALL NOTIFY BREVARD COUNTY TRAFFIC OPERATIONS (352-3077) A MINIMUM OF TWO (2) WEEKS IN ADVANCE. CERTAIN LOCATIONS MAY REQUIRE WORK IN THE RIGHT-OF-WAY TO BE PERFORMED AT NIGHT ONLY.
12. ROAD CLOSURES: THE CONTRACTOR SHALL NOTIFY BREVARD COUNTY TRAFFIC OPERATIONS (352-3077) A MINIMUM OF TWO (2) WEEKS IN ADVANCE OF THE PROPOSED START DATE OF CONSTRUCTION WITHIN THE RIGHT-OF-WAY. CONSTRUCTION SHALL NOT BEGIN UNTIL THE SIGN PLAN IS APPROVED AND NOTIFICATION HAS BEEN SENT TO AFFECTED AGENCIES. INCLUDE CLOSURES WILL BE PERMITTED DURING FOUR HOUR TRAFFIC VOLUMES.

