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# CHAPTER 12 JOINT PARTICIPATION AGREEMENTS/UTILITY WORK BY HIGHWAY CONTRACTOR'S AGREEMENT (UWHCA)

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## 12.1 PURPOSE

This procedure outlines the District Final Estimates Office (DFEO) personnel's responsibility with the different entities known as the Utility Agency Owners (UAOs) that do business with the Department. To avoid duplication of text, this procedure will refer you to the necessary websites for the appropriate information on paid off status, refunds, review and approval of a Tentative Acceptance Agreement (TAA), etc. between these UAOs and the Department.

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## 12.2 AUTHORITY

Section 339.135 (6) (a), Florida Statutes (F.S.)

Deleted: review and approval of a Tentative Acceptance Agreement to refund a Utility Agency Owner (UAO) for overestimated funds on locally funded Joint Participation Agreement (JPA) utility projects. The procedure describes the steps that must be followed in order to process the Tentative Acceptance Agreement.¶

## 12.3 DEFINITIONS

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Tentative Acceptance Agreement (TAA): An agreement to partially refund a Utility Agency Owner for an over estimated deposit on a utility project.

Non PTO: Non Public Transportation Office.

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Boilerplate Language: Standard pre-approved financial provision language.

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## 12.3 REFERENCES

Procedure No. 350-020-305e Partial Utility Refund/ Tentative Acceptance Agreement (TAA), Office of Comptroller.

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Procedure No. 350-020-301a Financial Provisions For Joint Participation Agreements (Non PTO) Office of Comptroller.

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Procedure No. 350-020-300 Locally Funded Agreements (Non PTO) Financial Provisions and Processing- Office of Comptroller.

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Local Funded Agreements Handbook – Office of Comptroller.

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1 Procedure No. 700-050-005, Review & Administration Manual and  
2  
3 Procedure No. 700-050-010 the Preparation & Documentation Manual, - Construction  
4 Office- Final Estimates,

## 5 12.4 SCOPE

6 This procedure will be used by Construction, Final Estimates, Office of Comptroller,  
7 General Accounting Office (OOC-GAO), and UAO personnel who are charged with the  
8 responsibility of documenting and verifying tentative final pay quantities related to the utility  
9 project and processing appropriate documentation to determine if a refund from any  
10 excess funds on deposit from the UAO is warranted.

## 11 12.5 BACKGROUND

12 In order to expedite construction projects, the Department may let utility projects with  
13 the Construction Contractor's Contract. By statute (section 339.135 (6) (a) F.S.), UAO's  
14 are required to deposit their share of the cost of doing the utility work prior to awarding  
15 the Contract. Historically, refunds of any excess deposit (deposited amount less  
16 recorded costs of the utility work including allowances) to the UAO did not usually occur  
17 until completion of the entire Construction Contract (longer in duration than the time  
18 required for the utility work). This procedure will refer you to the proper links to  
19 establish the necessary steps to follow, and to allow the refund of the utility participant's  
20 portion of any excess deposit before completion of the entire Construction Contract.

## 21 12.6 GENERAL INFORMATION

22 Prior to 2001, all utility agreements were labeled Joint Participation Agreements (JPA).  
23 Today, JPA's are stand-alone Contracts between the Department and another entity.  
24 Pursuant to these JPA's, the Department will reimburse the participant for the work the  
25 participant performed. TAA's will not be submitted for the completion of a JPA. Use the  
26 standard financial provisions to reimburse the participant for the work the participant  
27 performs. JPA's are to be processed in accordance to the **Contract Funds Approval**  
28 **Manual** and the **Disbursement Operations Manual**. Any reimbursement agreement  
29 drafted without the standards financial provisions from Office of Comptroller, Procedure No.  
30 350-020-301 – **Financial Provisions for Joint Participation Agreements (Non PTO)**  
31 shall be considered a modified agreement. All modified agreements must be submitted to  
32 the Department's Comptroller or designee for approval.

33  
34 See Procedure No. 350-020-301 **Financial Provisions for Joint Participation**  
35 **Agreements (Non PTO)** for modifications to standard financial provisions, submittals, etc.  
36

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1 **Refer to the current website for the JPA Procedure No. 350-020-301**

2 [http://ombnet.dot.state.fl.us/procedures/proceduresbynumber.asp?type=procedure&index=](http://ombnet.dot.state.fl.us/procedures/proceduresbynumber.asp?type=procedure&index=3)  
3 [3](http://ombnet.dot.state.fl.us/procedures/proceduresbynumber.asp?type=procedure&index=3)

6 **12.6.1 Locally Funded Agreement (LFA):**

7  
8 There are many types of JPA's that are available: An LFA is a type of  
9 a JPA. (If the Department receives an estimated amount of money  
10 from the participant prior to work, it is an LFA. If money is not received  
11 from the participant, it is not considered an LFA). The OOC-GAO LFA  
12 Section only processes LFAs.

13  
14 On LFA's, local funds are deposited with the Department in order to  
15 fund the project specified in the agreement, and because LFA  
16 projects are essential to the production of the Department's Work  
17 Program; financial provisions in the agreement establish criteria  
18 (boilerplate language) for the deposit and maintenance of the funds to  
19 be used for the project.

20  
21 TAA's are used only when the UAO contacts the District, and asks to  
22 be partially refunded. After receipt of all the necessary documentation,  
23 a review will be performed by the District Final Estimates Manager  
24 (DFEM) in accordance with the Review & Administration Manual (R &  
25 AM). The Department's DFEM should then sign the TAA and forward  
26 the agreement and a copy of the latest progress estimate to the  
27 Department's District Utility Office (DUO). After the DUO's review, the  
28 original TAA with a cover letter and the copy of the progress estimate  
29 is then sent to the Office of Comptroller – GAO LFA Section. For  
30 further information, see ***Partial Utility Refund/TAA – Procedure No.***  
31 ***350-020-305e*** at:

32  
33 [http://ombnet.dot.state.fl.us/procedures/proceduresbynumber.asp?type](http://ombnet.dot.state.fl.us/procedures/proceduresbynumber.asp?type=procedure&index=3)  
34 [e=procedure&index=3](http://ombnet.dot.state.fl.us/procedures/proceduresbynumber.asp?type=procedure&index=3)

35  
36 See ***Procedure No. 350-020-300, - Locally Funded Agreements***  
37 ***(Non PTO) Financial Provisions and Processing-*** for guidance on  
38 how to process an LFA at:

39  
40 [http://ombnet.dot.state.fl.us/procedures/proceduresbynumber.asp?type](http://ombnet.dot.state.fl.us/procedures/proceduresbynumber.asp?type=procedure&index=3)  
41 [e=procedure&index=3](http://ombnet.dot.state.fl.us/procedures/proceduresbynumber.asp?type=procedure&index=3).

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**Note:** It is also recommended that you refer to the **LFA Handbook**. This handbook goes into detail explanations on LFAs, it provides you with the necessary contact persons for questions, and provides the necessary forms needed, and more. The link is: <http://infonet.dot.state.fl.us/officeofcomptroller/>; Click on General Accounting, then scroll down to LFA, then click on Handbook.

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The Districts are advised to contact their District JPA-LFA Coordinator for any information before they contact the DOT Office of Comptroller.

Deleted: <#>JPAs are legal agreements between the DOT and other governmental entities, utility companies in which the parties involved agree to share the cost of construction on a project that is of mutual benefit. The construction encompassed by such agreements will usually be part of the larger State contract and will be accomplished under the direction of Department personnel.¶  
¶  
The most equitable settlement of this type agreement can only be attained if the responsible Design Section furnishes construction plans which clearly reflect the intent of the agreement. First, a set of plans which show the work originally anticipated by the Department should be prepared. A second set should then be prepared showing the change in scope precipitated by the JPA. The project personnel will then be able to prepare the final estimate breakdown, if the field records are kept in accordance with these procedures.

Deleted: The Project Engineer (PE) must be notified of any JPAs at the preconstruction conference and furnished with a copy of the agreement. The District Utilities and/or Drainage Engineer will usually have knowledge of these documents. At this time the proper information should be coded into the Contract Reporting System (CRS).¶  
¶  
When the final settlement of these agreements is to be based on final measurements and bid prices, construction personnel shall adhere to the following format:¶  
¶  
(A) Refer to JPA to identify the need for final measurements to be taken by construction or other parties.¶  
¶  
(B) The PE shall separate the measurements for the final quantities in accordance with the agreement, as delineated on the construction plans.¶

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The Project Engineer (PE) must be notified of any JPAs at the preconstruction conference and furnished with a copy of the agreement. The District Utilities and/or Drainage Engineer will usually have knowledge of these documents. At this time the proper information should be coded into the Contract Reporting System (CRS).

When the final settlement of these agreements is to be based on final measurements and bid prices, construction personnel shall adhere to the following format:

- (A) Refer to JPA to identify the need for final measurements to be taken by construction or other parties.
- (B) The PE shall separate the measurements for the final quantities in accordance with the agreement, as delineated on the construction plans.
- (C) The summary of quantities will be separated in accordance with the JPA with extensions made of the final contract bid prices and then totaled. Actual bid prices must also be reflected against the original quantities when applicable and available, so that the actual difference, rather than the estimated difference, in cost may be obtained. This summary is submitted along with the final plans to the District Final Estimates Office (DFEO).
- (D) Revised plan sheets are to be submitted and explanations made for all field revisions.

The following steps must be followed to complete the Tentative Acceptance Agreement. If any of the parties noted below do not approve and sign the Tentative Acceptance Agreement for any reason, the agreement will be null and void. The disapproving party will document on the agreement, "NOT APPROVED" by the appropriate signature block and will forward the disapproved agreement to the PE, along with an explanation. The PE will send a copy to the UAO and will keep the original in the contract folder.

Refunds of less than \$10,000.00 per JPA will not be processed under this procedure without written approval from the OOC.

#### **12.6.1. Utility Participant**

Ninety (90) days or more after completion of the JPA, the UAO may request a refund of a portion of the overage from the Department. The UAO will initiate their request by completing and signing the ***Tentative Acceptance Agreement, Form #350-020-04***, and sending the form by way of transmittal letter to the PE, with a copy to the District Utility Engineer. The transmittal letter will include the following information relative to the request:

Amount(s) Deposited: \$

Deductions:	
Costs to date (Includes: CEA , MOT, MOB, etc.)	\$
Cost Contingency (at 10% of Expenditures)	\$
Unresolved Claims	\$
Total Deductions	\$
Estimated Amount that may be refunded:	\$

Note: Any interest earned on account, if applicable, will be added to the refund amount when processed by the OOC.

**12.6.2. PE**

Upon completion and acceptance of the Utility work as called for in the locally funded JPA, the PE will determine if the tentative final cost to the UAO is less than the advanced payment on deposit with the Department. If the cost is determined to be less than the deposit, a portion of the excess deposit may be refunded to the UAO prior to final payment to the Contractor. The PE will verify the quantities in accordance with **Section 3.2 of the Construction Project Administration Manual (CPAM) No. 700-000-000**, and assure all unresolved claims and all outstanding supplemental agreements are listed on the UAO's transmittal letter. Once quantities are verified by the PE, he will sign the Tentative Acceptance Agreement that was received from the UAO and forward the Tentative Acceptance Agreement and a copy of the JPA contract with all supporting documentation to the District Final Estimates Engineer (DFEE) for review and approval.

**12.6.3. DFEE**

After the plans and records are received, an audit will be performed by the DFEE in accordance with the **Final Estimates Review & Administration Manual, 2000 Edition** and the **Final Estimates Preparation & Documentation Manual, 1999 Edition, 700-050-005 & 700-050-010**. Once quantities and prices are verified the DFEE will approve and sign the Tentative Acceptance Agreement and forward the agreement and a copy of the latest tentative monthly estimate to the Contractor for approval, with a copy to the PE.

**12.6.4. Contractor**

The Contractor is responsible for verifying the quantities and amounts. If the Contractor agrees with the tentative monthly estimate of completion for this utility project, the Contractor will sign the Tentative Acceptance Agreement and forward the signed agreement to the PE.

**12.6.5. OOC**

The OOC may refund a portion of the overage of the UAO's deposit prior to final payment to the Contractor. The UAO may be refunded the total amount of deposits

less appropriate deductions. Appropriate deductions are the tentative total amount of costs incurred to date plus ten percent (10%) of that amount. For example: The Department participation is limited to that difference between 110% of the official estimate and the contract bid amount for the utility work as per **Florida Statutes, 337.403(1) (B)**.

Amount(s) deposited:		
(\$100,000 estimate plus 10% contingency,		
Plus additional deposits, if any)	\$ 110,000	
Interest earned to date* (if applicable)	<u>1,750</u>	
Total funds available:		\$
111,750		
Deductions:		
Costs incurred to date	\$ 90,000	
Cost contingency (10% of costs		
Incurred to date)		
9,000		
Unresolved claims	<u>0</u>	
<u>99,000</u>		
Amount that may be refunded:	\$ <u>12,750</u>	

\* Eligibility for earning interest is described in the **Locally Funded Joint Participation Agreement Financial Provisions Procedure, No. 350-020-300**.

After receipt of the Tentative Acceptance Agreement, the OOC will make a determination of whether to approve the partial refund. The determination will be based on the following:

- \* Past financial performance of the UAO requesting a refund.
- \* Amounts due from the UAO on other projects with the Department
- \* Percentage of completion of the Utility projects
- \* Outstanding supplemental agreements related to the utility project
- \* Amount on deposit with the Department
- \* Unresolved claims on this project

Once the OOC has verified the items above, the OOC may approve a refund of a percentage of the excess deposit. If approved, the OOC will sign the Tentative Acceptance Agreement and process the partial refund.

If the amount of the approved refund is different than the amount listed on the Tentative Acceptance Agreement, an explanation of the difference will be noted on the agreement. If not approved, the OOC will forward a letter to the UAO with an explanation for the disapproval. All parties that had previously approved the Tentative Acceptance Agreement will be copied on any of the above OOC's responses.

