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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM Agenda Item No. 8(R)(1)(A)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: July 7, 2011

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Resolution ratifying the County Mayor's action executing acceptance of a sovereignty submerged lands easement from the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida for a portion of the 24-inch subaqueous water main to be constructed from Port Island to Fisher Island for the port dredging project

Resolution No. R-551-11

The accompanying resolution was prepared by the Water and Sewer Department and placed on the agenda at the request of Prime Sponsor Commissioner Bruno A. Barreiro.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

Memorandum

MIAMI-DADE COUNTY

Date: July 7, 2011

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Alina T. Hudak
County Manager

Subject: Resolution authorizing execution of a Sovereignty Submerged Lands Easement from the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida to Miami-Dade County to install 24-inch subaqueous water main from Port Island to Fisher Island to replace the existing 20-inch water main currently in service

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Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution authorizing the execution of a Sovereignty Submerged Lands Easement from the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida to Miami-Dade County to install 24-inch subaqueous water main from Port Island to Fisher Island to replace the existing 20-inch water main currently in service.

Scope

This Miami-Dade Water and Sewer Department (WASD) project is located in Commission District 5. It will have an impact county-wide as it consists of securing a submerged land easement as a condition to the permit to construct a 24-inch subaqueous water main installation of county-wide significance.

Fiscal Impact/Funding Source

Pursuant to Resolution R-530-10 adopted by the Board on May 4, 2010 1) there is a no payment required from the County for this submerged land easement, 2) a funding source is not required as there is no payment due to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, and 3) there is no fiscal impact to the County's current budget and to future annual budgets.

Track Record/Monitor

WASD's Real Estate Manager will record the easement in the public records of Miami-Dade County.

Background

As part of an ongoing time sensitive project to improve the Port of Miami which will facilitate the passage of larger vessels originating from the Panama Canal, WASD will be installing a 24-inch water main from Port Island to Fisher Island in Fisherman's Channel to replace the existing 20-inch water main currently in service. This project must be finished by December 2012 as it paves the way for a dredging project that will deepen and widen Fisherman's Channel to accommodate the passage of larger vessels to the Port of Miami. The dredging project is scheduled for completion in August 2014.

The submerged land easement is for a portion of the 24-inch water main beginning at Fisher Island and extending approximately one hundred and five feet (105') in length and twenty–one feet (21') in width into Fisherman's Channel. The total length of the water main between Fisher

Island and Port Island is approximately seven hundred and three feet (703'). The difference of five hundred ninety eight feet (598') is property owned by the County. In order to perform the necessary installation work for this project, a permit was required from the Florida Department of Environmental Protection (FDEP) which contains a condition that the County obtain a Sovereignty Submerged Lands Easement from the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida for that portion of land not owned by the County.

FDEP sent the Sovereignty Submerged Lands Easement to WASD on February 2, 2011 and requested that it be executed and returned within thirty days. The easement, which is for a 50-year period, was signed by the County and returned to FDEP on February 28, 2011.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: July 7, 2011

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(R)(1)(A)

Please note any items checked.

_____ "3-Day Rule" for committees applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ No committee review

_____ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve

_____ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(R)(1)(A)
7-7-11

RESOLUTION NO. R-551-11

RESOLUTION RATIFYING THE COUNTY MAYOR'S ACTION EXECUTING ACCEPTANCE OF A SOVEREIGNTY SUBMERGED LANDS EASEMENT FROM THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA FOR A PORTION OF THE 24-INCH SUBAQUEOUS WATER MAIN TO BE CONSTRUCTED FROM PORT ISLAND TO FISHER ISLAND FOR THE PORT DREDGING PROJECT

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board ratifies the action of the County Mayor's execution of the sovereignty submerged lands easement from the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, a copy of which is attached hereto and made a part hereof, for a portion of the 24-inch subaqueous water main to be constructed from Port Island to Fisher Island for the Port Dredging Project. Pursuant to Resolution No. R-974-09, the Board directs the County Mayor or the County Mayor's designee to record the instrument of conveyance accepted herein in the Public Records of Miami-Dade County, Florida; and to provide a recorded copy of the instrument to the Clerk of the Board within thirty (30) days of execution of said instrument; and directs the Clerk of the Board to attach and permanently store a recorded copy together with this resolution.

The foregoing resolution was offered by Commissioner **Sally A. Heyman** , who moved its adoption. The motion was seconded by Commissioner **Jose "Pepe" Diaz** and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman			aye
Audrey M. Edmonson, Vice Chairwoman			aye
Bruno A. Barreiro	absent	Lynda Bell	absent
Esteban L. Bovo, Jr.	aye	Jose "Pepe" Diaz	aye
Sally A. Heyman	aye	Barbara J. Jordan	aye
Jean Monestime	aye	Dennis C. Moss	aye
Rebeca Sosa	aye	Sen. Javier D. Souto	aye
Xavier L. Suarez	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of July, 2011. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. SED

Sara E. Davis

This Instrument Prepared By:
Pattie J. Scott
Recurring Revenue Section
Bureau of Public Land Administration
3900 Commonwealth Boulevard
Mail Station No. 125
Tallahassee, Florida 32399

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
OF THE STATE OF FLORIDA

SOVEREIGNTY SUBMERGED LANDS EASEMENT

EASEMENT NO.: 41263
BOT FILE NO.: 130234986
PA NO.: 13-0298780-002

THIS EASEMENT is hereby granted by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, hereinafter referred to as the Grantor.

WITNESSETH: That for the faithful and timely performance of and compliance with the terms and conditions stated herein, the Grantor does hereby grant to Miami-Dade County, Florida, hereinafter referred to as the Grantee, a nonexclusive easement on, under and across the sovereignty lands, if any, contained in the following legal description:

A parcel of sovereignty submerged land in Sections 03, 09, and 10,
Township 54 South, Range 42 East, in Biscayne Bay,
Miami-Dade County, as is more particularly described
and shown on Attachment A, dated August 27, 2010.

TO HAVE THE USE OF the hereinabove described premises for a period of 50 years from December 1, 2010, the effective date of this easement. The terms and conditions on and for which this easement is granted are as follows:

1. USE OF PROPERTY: The above described parcel of land shall be used solely for subaqueous water main pipelines and Grantee shall not engage in any activity except as described in the State of Florida Department of Environmental Protection, Environmental Resource Permit No. 13-0298780-002, dated December 1, 2010, incorporated herein and made a part of this easement by reference. All of the foregoing subject to the remaining conditions of this easement.

2. EASEMENT CONSIDERATION: In the event the Grantor amends its rules related to fees and the amended rules provide the Grantee will be charged a fee or an increased fee for this activity, the Grantee agrees to pay all charges required by such amended rules within 90 days of the date the amended rules become effective or by a date provided by an invoice from the Department, whichever is later. All fees charged under this provision shall be prospective in nature; i.e. they shall begin to accrue on the date that the amended rules become effective.

3. WARRANTY OF TITLE/GUARANTEE OF SUITABILITY OF USE OF LAND: Grantor neither warrants title to the lands described herein nor guarantees the suitability of any of the lands for any particular use.

4. RIGHTS GRANTED: The rights hereby granted shall be subject to any and all prior rights of the United States and any and all prior grants by the Grantor in and to the submerged lands situated within the limits of this easement.

5. DAMAGE TO EASEMENT PROPERTY AND INTERFERENCE WITH PUBLIC AND PRIVATE RIGHTS: Grantee shall not damage the easement lands or unduly interfere with public or private rights therein.

6. GRANTOR'S RIGHT TO GRANT COMPATIBLE USES OF THE EASEMENT PROPERTY: This easement is nonexclusive, and the Grantor, or its duly authorized agent, shall retain the right to enter the property or to engage in management activities not inconsistent with the use herein provided for and shall retain the right to grant compatible uses of the property to third parties during the term of this easement.

7. RIGHT TO INSPECT: Grantor, or its duly authorized agent, shall have the right at any time to inspect the works and operations of the Grantee in any matter pertaining to this easement.

8. INDEMNIFICATION/INVESTIGATION OF ALL CLAIMS: The Grantee shall investigate all claims of every nature at its expense. Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party and the officers, employees and agents thereof. Nothing herein shall be construed as an indemnity or a waiver of sovereign immunity enjoyed by any party hereto, as provided in Section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations on claims.

9. VENUE: Grantee waives venue as to any litigation arising from matters relating to this easement and any such litigation between Grantor and Grantee shall be initiated and maintained only in Leon County, Florida.

10. ASSIGNMENT OF EASEMENT: This easement shall not be assigned or otherwise transferred without prior written consent of the Grantor or its duly authorized agent and which consent shall not be unreasonably withheld. Any assignment or other transfer without prior written consent of the Grantor shall be null and void and without legal effect.

11. TERMINATION: The Grantee, by acceptance of this easement, binds itself, its successors and assigns, to abide by the provisions and conditions herein set forth, and said provisions and conditions shall be deemed covenants of the Grantee, its successors and assigns. In the event the Grantee fails or refuses to comply with the provisions and conditions herein set forth or in the event the Grantee violates any of the provisions and conditions herein, this easement may be terminated by the Grantor upon 30 days written notice to Grantee. If terminated, all of the above-described parcel of land shall revert to the Grantor. All costs, including attorneys' fees, incurred by the Grantor to enforce the provisions of this easement shall be paid by the Grantee. All notices required to be given to Grantee by this easement or applicable law or administrative rules shall be sufficient if sent by U.S. Mail to the following address:

Miami-Dade County, Florida
3071 SW 38th Avenue
Miami, Florida 33146

The Grantee agrees to notify the Grantor by certified mail of any changes to this address at least ten (10) days before the change is effective.

12. TAXES AND ASSESSMENTS: The Grantee shall assume all responsibility for liabilities that accrue to the subject property or to the improvements thereon, including any and all drainage or special assessments or taxes of every kind and description which are now or may be hereafter lawfully assessed and levied against the subject property during the effective period of this easement which result from the grant of this easement or the activities of Grantee hereunder.

13. REMOVAL OF STRUCTURES/ADMINISTRATIVE FINES: If the Grantee does not remove said structures and equipment occupying and erected upon the premises after expiration or cancellation of this easement, such structures and equipment will be deemed forfeited to the Grantor, and the Grantor may authorize removal and may sell such forfeited structures and equipment after ten (10) days written notice by certified mail addressed to the Grantee at the address specified in Item 11 or at such address on record as provided to the Grantor by the Grantee. However, such remedy shall be in addition to all other remedies available to Grantor under applicable laws, rules and regulations including the right to compel removal of all structures and the right to impose administrative fines.

14. ENFORCEMENT OF PROVISIONS: No failure, or successive failures, on the part of the Grantor to enforce any provision, nor any waiver or successive waivers on its part of any provision herein, shall operate as a discharge thereof or render the same inoperative or impair the right of the Grantor to enforce the same upon any renewal thereof or in the event of subsequent breach or breaches.

15. RECORDATION OF EASEMENT: The Grantee, at its own expense, shall record this fully executed easement in its entirety in the public records of the county within which the easement site is located within fourteen (14) days after receipt, and shall provide to the Grantor within ten (10) days following the recordation a copy of the recorded easement in its entirety which contains the O.R. Book and pages at which the easement is recorded.

16. AMENDMENT/MODIFICATIONS: This easement is the entire and only agreement between the parties. Its provisions are not severable. Any amendment or modification to this easement must be in writing and must be accepted, acknowledged and executed by the Grantee and Grantor.

17. ACOE AUTHORIZATION: Prior to commencement of construction and/or activities authorized herein, the Grantee shall obtain the U.S. Army Corps of Engineers (COE) permit if it is required by the COE. Any modifications to the construction and/or activities authorized herein that may be required by the COE shall require consideration by and the prior written approval of the Grantor prior to the commencement of construction and/or any activities on sovereign, submerged lands.

18. ADDITIONAL STRUCTURES OR ACTIVITIES/EMERGENCY STRUCTURAL REPAIRS: No additional structures shall be erected and/or activities undertaken, including but not limited to, dredging, relocation/realignment or major repairs or renovations made to authorized structures, on, in or over sovereignty, submerged lands without the prior written consent from the Grantor, with the exception of emergency repairs. Unless specifically authorized in writing by the Grantor, such activities or structures shall be considered unauthorized and a violation of Chapter 253, Florida Statutes, and shall subject the Grantee to administrative fines under Chapter 18-14, Florida Administrative Code. If emergency repairs are required to be undertaken in the interests of public health, safety or welfare, the Grantee shall notify the Grantor of such repairs as quickly as is practicable; provided, however, that such emergency activities shall not exceed the activities authorized by this easement.

19. UPLAND RIPARIAN PROPERTY INTEREST: During the term of this easement, Grantee must have satisfactory evidence of sufficient upland interest as defined in subsection 18-21.003(60), Florida Administrative Code, to the extent required by paragraph 18-21.004(3)(b), Florida Administrative Code, in order to conduct the activity described in this easement. If at any time during the term of this easement, Grantee fails to comply with this requirement, use of sovereignty, submerged lands described in this easement shall immediately cease and this easement shall terminate and title to this easement shall revert to and vest in the Grantor immediately and automatically.

WITNESSES:

Original Signature

Print/Type Name of Witness

Original Signature

Print/Type Name of Witness

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND OF THE STATE OF FLORIDA

(SEAL)

BY: _____

Jeffery M. Gentry, Operations and Management Consultant Manager, Bureau of Public Land Administration, Division Division of State Lands, State of Florida Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida

"GRANTOR"

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Jeffery M. Gentry, Operations and Management Consultant Manager, Bureau of Public Land Administration, Division of State Lands, State of Florida Department of Environmental Protection, as agent for and on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. He is personally known to me.

APPROVED AS TO FORM AND LEGALITY:

DEP Attorney

Notary Public, State of Florida

Printed, Typed or Stamped Name

My Commission Expires:

Commission/Serial No._____

WITNESSES:

Original Signature

Jeanette Vazquez

Typed/Printed Name of Witness

Original Signature

Tan Harrison

Typed/Printed Name of Witness

Miami-Dade County, Florida (SEAL)
By its Board of County Commissioners

BY: _____
Original Signature of Executing Authority

for Carlos Alvarez
Typed/Printed Name of Executing Authority

Mayor
Title of Executing Authority

"GRANTEE"

STATE OF FLORIDA

COUNTY OF Miami Dade

The foregoing instrument was acknowledged before me this 15 day of February, 2011, by Carlos Alvarez as Mayor, for and on behalf of the Board of County Commissioners of Miami-Dade County, Florida. He is personally known to me or who has produced _____, as identification.

* Susanne M. Torriente

My Commission Expires:

Notary Public, State of _____

Commission/Serial No._____

Printed, Typed or Stamped Name

Approved as to form and legal sufficiency

Assistant County Attorney

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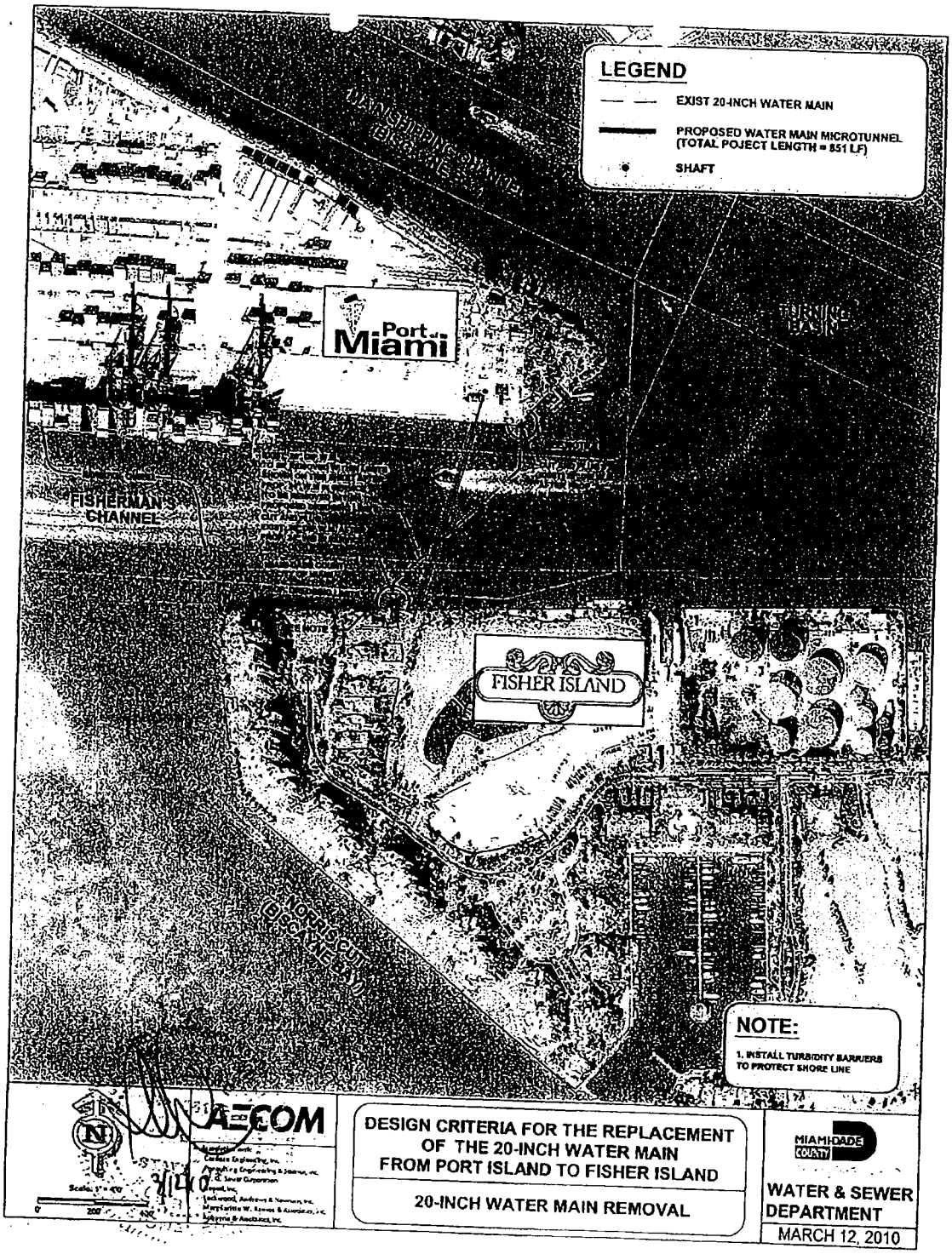

Attachment A
Page 5 of 7 Pages
Easement No. 41263

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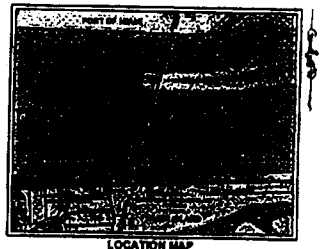
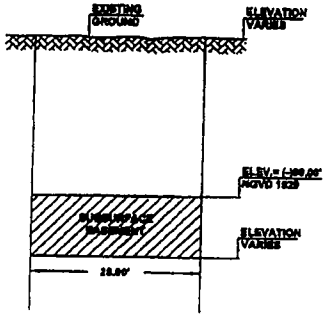
SPECIFIC PURPOSE SURVEY

SEC. 9, TWP. 54S, RGE. 42E



LOCATION MAP
N.T.S.



SUBSURFACE EASEMENT
TYPICAL SECTION
N.T.S.

LEGAL DESCRIPTION
(Subsurface Water Main Easement)

SUBSURFACE EASEMENT No. 122

A Subsurface Water Main easement to construct, repair, maintain, and operate water main facilities together with all uses appurtenant thereto, beneath that portion of the waters of Fishermens Channel between Port of Miami and Fisher Island within Section 9, Township 54 South, Range 42 East, patented to the State of Florida under Act of Thirty-First Congress Chapter 84, Section 4 dated September 28, 1850, lying South of a line 100 feet North of and parallel with the North boundary of Fisher's Island as described in Trustee's Deed No. 18736 dated August 21, 1942 recorded in Deed Book 2247 Page 380 of the Public Records of Miami-Dade County, Florida, said easement lying below elevation - 60.00 feet NGVD 1929 being horizontally described as follows:

COMMENCE at the Northwest corner of Tract A-8 LINDISFARNE ON FISHER ISLAND SECTION 5 according to the plat thereof recorded in Plat Book 143 at Page 9 of the Public Records of Miami-Dade County, Florida; thence N 87°40'43" E for 87.56 feet, along the North line of said Tract A-8, to the POINT OF BEGINNING; thence N 15°36'00" E for 106.13 feet to said line 100 feet North of and parallel with the North boundary of Fisher's Island; thence N 87°40'43" E for 21.03 feet, along said parallel line being also a corporate boundary of the City of Miami; thence S 15°36'00" W for 106.13 feet to the point of intersection with the North line of said Tract "A-8"; thence S 87°40'43" W for 21.03 feet, along the North line of said Tract "A-8", to the POINT OF BEGINNING.

Subject to:

The bearings and distances stated herein are based on the Mercator Grid System of the Florida East Zone, as adjusted in North American Datum 83/90.

SURVEYOR'S NOTES:

1) This "SPECIFIC PURPOSE SURVEY" was prepared and described to create a subsurface easement based on Legal Description as recorded.
2) This Certification is only for the lands as described. It is not as certification of Title, Zoning, Easements, or Freedom of Encumbrances. ABSTRACT NOT REVIEWED.
3) There may be additional Restrictions not shown on this survey that may be found in the Public Records of this County. Examination of ABSTRACT OF TITLE will have to be made to determine recorded instruments, if any affecting this property.
4) Ownership subject to OPINION OF TITLE.
5) Unless otherwise noted, this Firm has not attempted to locate Footings and/or Foundations (underground).
6) This LEGAL DESCRIPTION and SPECIFIC PURPOSE SURVEY, has been prepared for the exclusive use of the entities named hereon Miami-Dade Public Works Department.
7) The Certificate does not extend to any unnamed party.
8) Precision of Closure 1:10000 Urban Class Survey

AREA OF SUBSURFACE EASEMENT NO. 122: 2,102 SQ. FT., 0.048 ACRE ±

THIS SHEET NOT VALID WITHOUT SHEET TWO

SHEET 1 OF 2 SHEETS	SPECIFIC PURPOSE SURVEY	ROBAYNA AND ASSOCIATES INC. ENGINEERS - PLANNERS - SURVEYORS	
DATE 09-14-09	Subsurface Easement 122		
FILE No. 090015	MIAMI DADE COUNTY PUBLIC WORKS DEPARTMENT		

Attachment A
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Easement No. 41263

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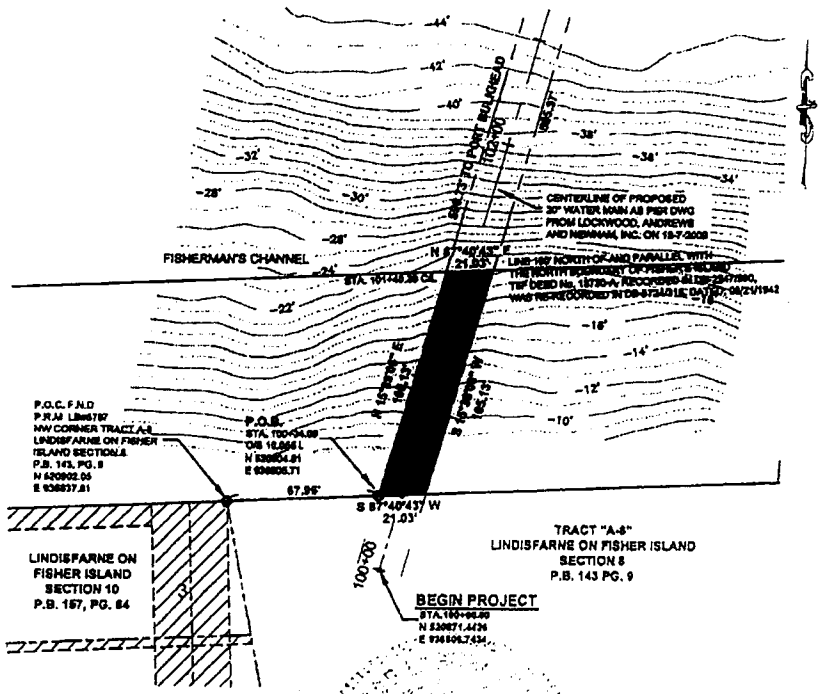
SPECIFIC PURPOSE SURVEY

SEC. 9, TWP. 54S, RGE. 42E



LEGEND AND ABBREVIATIONS:

P.O.C.	= POINT OF COMMENCE
S.I.P.	= SET IRON PIPE
LB	= LAND BUSINESS
SEC.	= SECTION
TWP.	= TOWNSHIP
RGE.	= RANGE
SQ. FT.	= SQUARE FEET
P.B.	= PLAT BOOK
PG	= PAGE
P.O.B.	= POINT OF BEGINNING
R.O.W	= RIGHT OF WAY
S.E.	= SUBSURFACE EASEMENT
P.R.M	= PERMANENT REFERENCE MONUMENT
O/S	= OFFSET
CONC	= CONCRETE
TIIF	= TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA
	= CENTERLINE WATERMAIN
	= LOT LINE PER RECORDED PLAT
	= LOT LINE PER TAX RECORDS
	= EXISTING EASEMENT
	= PARCEL LINE

GRAPHIC SCALE

40 0 20 40

SCALE: 1" = 40'

THIS SHEET NOT VALID WITHOUT SHEET ONE

SHEET 2 OF 3 SHEETS	SPECIFIC PURPOSE SURVEY	ROBAYNA AND ASSOCIATES INC. ENGINEERS • PLANNERS • SURVEYORS	
DATE 09-14-09	Subsurface Easement 122		
FILE NO. 090015	MIAMI DADE COUNTY PUBLIC WORKS DEPARTMENT		

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Attachment A
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Easement No. 41263