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

Financial Project ID: 431752-3-56-01	**Federal Project ID: D426 047 B**
Financial Project ID:	
Financial Project ID:	
Financial Project ID:	
County: St. Lucie	**State Road No.: N/A**
District Document No:	
Utility Agency/Owner (UAO): City of Port St. Lucie, a Florida Municipal Corporation	

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 Port St. Lucie, a Florida Municipal Corporation** , 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 Port St. Lucie Blvd. from Becker Road to Paar Drive, State Road No.: N/A, 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 N/A, year of ____.

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 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: Production. 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: Everything not specifically included in the scope of services. 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: TBD
(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 10 days from the date that the **UAO** is notified 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: General Engineering Inspection 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 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 $3,299,231.00. 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 forty-five (45) 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 5% for mobilization of equipment for the Utility Work, additional maintenance of traffic costs for the Utility Work, 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 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 Three Party Escrow 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 **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** 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** 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.

(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 **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**:
John Eason, PE, Assistant Director, Utility Systems Department
1001 SE Prineville Street, Port St Lucie FL 34983
Jeason@cityofpsl.com (772)873-6487

If to the **FDOT**:
Kadian McLean, District Utilities Administrator
3400 W. Commercial Blvd., Ft. Lauderdale, FL 33309
Kadian.McLean@dot.state.fl.us (954)777-4360

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.

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 Port St. Lucie, a Florida Municipal Corporation

BY:(Signature) _____ **DATE:** _____

(Typed Name: _____)

(Typed Title: _____)

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: John P. Krane, P.E.)

(Typed Title: Director of Transportation Development)

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

BY: _____ **DATE:** _____

(Typed Name: _____)

(Typed Title: _____)

Attachments

431752-3-56-01

1. Changes to Form Document
2. Exhibit A – Scope of Services
3. Appendix A of Assurances
4. Three Party Escrow Agreement

Utility Work by Highway Contractor Agreement

APPENDIX

Changes to Form Document

Financial Project ID: 431752-3-56-01
Utility Agency/Owner (UAO): City of Port St. Lucie

1. Subparagraph 3(e), the following phrase shall be deleted:

   "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."

EXHIBIT A
Scope of Services
431752-3-56-01

The utility work to be performed under this agreement consists of water and sewer infrastructure utility work for the City of Port St. Lucie, as itemized below per plans dated May 2, 2024, by R.J. Behar & Company.

Summary of Quantities

Category	Pay Item Number	Obsolete	Cat Alt Set	Cat Alt Member	Item Alt Set	Item Alt Member	Item Description	Supplemental Description	Fund	Unit	Quantity
0700 Utilities	0425 5 1						MANHOLE, ADJUST, UTILITIES			EA	1.000
0700 Utilities	0999 26						LOCAL AGENCY INITIAL CONTINGENCY AMOUNT (DO NOT BID)	43175235601	N	LS	1.000
0700 Utilities	1050 16002						UTILITY PIPE,REMOVE & DISPOSE, 2-4.9"			LF	1248.000
0700 Utilities	1050 16003						UTILITY PIPE,REMOVE & DISPOSE, 5-7.9"			LF	328.000
0700 Utilities	1050 16004						UTILITY PIPE,REMOVE & DISPOSE, 8-19.9"			LF	6658.000
0700 Utilities	1050 31202						UTILITY PIPE- POLY VINYL CHLORIDE, FURNISH & INSTALL, WATER/SEWER, 2"			LF	54.000
0700 Utilities	1050 31203						UTILITY PIPE- POLY VINYL CHLORIDE, FURNISH & INSTALL, WATER/SEWER, 3"			LF	1700.000
0700 Utilities	1050 31204						UTILITY PIPE- POLY VINYL CHLORIDE, FURNISH & INSTALL, WATER/SEWER, 4"			LF	289.000
0700 Utilities	1050 31206						UTILITY PIPE- POLY VINYL CHLORIDE, FURNISH & INSTALL, WATER/SEWER, 6"			LF	521.000
0700 Utilities	1050 31208						UTILITY PIPE- POLY VINYL CHLORIDE, FURNISH & INSTALL, WATER/SEWER, 8"			LF	1977.000
0700 Utilities	1050 31210						UTILITY PIPE- POLY VINYL CHLORIDE, FURNISH & INSTALL, WATER/SEWER, 10"			LF	40.000
0700 Utilities	1050 31212						UTILITY PIPE- POLY VINYL CHLORIDE, FURNISH & INSTALL, WATER/SEWER, 12"			LF	4426.000
0700 Utilities	1055 31108						UTILITY FITTINGS FOR PVC PIPE, FURNISH AND INSTALL, ELBOW, 8"			EA	123.000
0700 Utilities	1055 31110						UTILITY FITTINGS FOR PVC PIPE, FURNISH AND INSTALL, ELBOW, 10"			EA	4.000

Category	Pay Item Number	Obsolete	Cat Alt Set	Cat Alt Member	Item Alt Set	Item Alt Member	Item Description	Supplemental Description	Fund	Unit	Quantity
0700 Utilities	1055 31112						UTILITY FITTINGS FOR PVC PIPE, FURNISH AND INSTALL, ELBOW, 12"			EA	128.000
0700 Utilities	1055 31208						UTILITY FITTINGS FOR PVC PIPE, FURNISH AND INSTALL, TEE, 8"			EA	1.000
0700 Utilities	1055 31212						UTILITY FITTINGS FOR PVC PIPE, FURNISH AND INSTALL, TEE, 12"			EA	11.000
0700 Utilities	1055 31308						UTILITY FITTINGS FOR PVC PIPE, FURNISH AND INSTALL, REDUCER, 8"			EA	1.000
0700 Utilities	1055 31408						UTILITY FITTINGS FOR PVC PIPE, FURNISH AND INSTALL, UNION, 8"			EA	44.000
0700 Utilities	1055 31410						UTILITY FITTINGS FOR PVC PIPE, FURNISH AND INSTALL, UNION, 10"			EA	2.000
0700 Utilities	1055 31412						UTILITY FITTINGS FOR PVC PIPE, FURNISH AND INSTALL, UNION, 12"			EA	29.000
0700 Utilities	1080 21400						UTILITY FIXTURE, VALVE/METER BOX, RELOCATE			EA	6.000
0700 Utilities	1080 21500						UTILITY FIXTURE, VALVE/METER BOX, ADJUST			EA	31.000
0700 Utilities	1080 21600						UTILITY FIXTURE, VALVE/METER BOX, REMOVE			EA	29.000
0700 Utilities	1080 24106						UTILITY FIXTURE, VALVE ASSEMBLY, FURNISH AND INSTALL, 6"			EA	11.000
0700 Utilities	1080 24108						UTILITY FIXTURE, VALVE ASSEMBLY, FURNISH AND INSTALL, 8"			EA	4.000
0700 Utilities	1080 24112						UTILITY FIXTURE, VALVE ASSEMBLY, FURNISH AND INSTALL, 12"			EA	15.000

Category	Pay Item Number	Obsolete	Cat Alt Set	Cat Alt Member	Item Alt Set	Item Alt Member	Item Description	Supplemental Description	Fund	Unit	Quantity
0700 Utilities	1080 27103						UTILITY FIXTURE- LINE STOP ASSEMBLY, FURNISH AND INSTALL, 2.5"			EA	27.000
0700 Utilities	1080 27104						UTILITY FIXTURE- LINE STOP ASSEMBLY, FURNISH AND INSTALL, 4"			EA	11.000
0700 Utilities	1080 27106						UTILITY FIXTURE- LINE STOP ASSEMBLY, FURNISH AND INSTALL, 6"			EA	14.000
0700 Utilities	1080 27108						UTILITY FIXTURE- LINE STOP ASSEMBLY, FURNISH AND INSTALL, 8"			EA	44.000
0700 Utilities	1080 27110						UTILITY FIXTURE- LINE STOP ASSEMBLY, FURNISH AND INSTALL, 10"			EA	2.000
0700 Utilities	1080 27112						UTILITY FIXTURE- LINE STOP ASSEMBLY, FURNISH AND INSTALL, 12"			EA	33.000
0700 Utilities	1080 32106						UTILITY FIXTURE- SAMPLE POINT, FURNISH & INSTALL, 6"			EA	2.000
0700 Utilities	1080 32112						UTILITY FIXTURE- SAMPLE POINT, FURNISH & INSTALL, 12"			EA	18.000
0700 Utilities	1644112 06						FIRE HYDRANT, F&I, STANDARD, 2 HOSE, 6"			EA	10.000
0700 Utilities	1644900						FIRE HYDRANT, REMOVE			EA	10.000

REQUIRED CONTRACT PROVISIONS FOR FEDERAL AID CONTRACTS

(Appendix A of Assurances)

Financial Project ID: 43175235601	**Federal Project ID: D426 047 B**
County: St. Lucie	**State Road No.: N/A**
District Document No: N/A	
Utility Agency/Owner (UAO): City of Port St. Lucie, a Florida Municipal Corporation	

During the performance of this Agreement, the **Utility Agency Owner (UAO)**, for itself, its assignees and successors in interest **(hereinafter referred to as the UAO)**, agrees as follows:

(1) **Compliance with Regulations:** The **UAO** will comply with the Regulations of the **FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as the DEPARTMENT)** relative to nondiscrimination in Federally-assisted programs of the **DEPARTMENT** (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

(2) **Nondiscrimination:** The **UAO**, with regard to the work performed by it after award and prior to completion of the **UAO** work, will not discriminate on the ground of race, color or national origin in the selection and retention of subcontractors, including procurement of materials or leases of equipment. The **UAO** will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix A & B of the Regulations.

(3) **Solicitations:** In all solicitations either by competitive bidding or negotiation made by the **UAO** for work to be performed under a subcontract, including procurement of materials and leases of equipment, each potential subcontractor or supplier shall be notified by the **UAO** of the **UAO's** obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color or national origin.

(4) **"Buy America" Requirements:** The **UAO** will use domestic steel and/or iron products incorporated into the finished work in compliance with the Buy America provisions of 23 CFR 635.410 as amended. As used in this provision, "steel and/or iron products" means manufactured products that are predominately steel and/or iron products and that are not otherwise exempt from Buy America requirements pursuant to rules and regulations of the Federal Highway Administration. As used in this provision, "domestic" means products that are manufactured in the United States which have not undergone any manufacturing process outside of the United States that modified the chemical content, physical shape or size, or final finish of a product, beginning with the initial melting and continuing through final shaping and coating. If a steel and/or iron product is taken outside the United States for any manufacturing process, it becomes foreign source steel and/or iron products. The **UAO** may incorporate into the finished work foreign source steel and/or iron products as long as the actual cost of such foreign products does not exceed 0.1% of the total amount of this Agreement, or $2,500.00 whichever is greater. The **UAO** will retain documentation verifying compliance with the Buy America provision of this Agreement for a period of 3 years after final payment of the finished work. Upon request, the **UAO** will provide the documentation verifying compliance with the Buy America provision of this Agreement.

(5) **Additional "Buy America" Requirements:** The **UAO** will comply with 2 CFR 184 and 2 CFR 200.322, which includes the Buy America Preferences for Infrastructure Projects of the Build America, Buy America Act (BABA) and Domestic Preferences for Procurements. The **UAO** will use Manufactured Products that are consumed in, incorporated into, or affixed to an infrastructure project that are manufactured in the United States, in accordance with BABA requirements and applicable waivers. The **UAO** will use non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project that are manufactured in the United States, in accordance with BABA requirements.

As used in 2 CFR 184, "construction material" means materials that are predominately non-ferrous metals, plastic and polymer-based products, glass, optical fiber, fiber optic cable, lumber, and drywall articles, materials, and supplies that are not otherwise exempt from Buy America requirements pursuant to rules and regulations of the Federal Highway Administration. As used in this provision, "domestic" means construction materials that are manufactured in the United States which have not undergone any manufacturing process outside of the United States that modified the chemical content, physical shape or size, or final finish of a product, beginning with the initial melting and continuing through final shaping and coating or as defined in 2 CFR 184. If a construction material is taken outside the United States for any manufacturing process, it becomes foreign source construction material.

The UAO will retain documentation verifying compliance with the Build America, Buy America provision of this Agreement for a period of 3 years after final payment of the finished work. Upon request, the UAO will provide the documentation verifying compliance with the Build America, Buy America provision of this Agreement. The UAO will provide a certification with the invoice that states the following: "The UAO certifies that all products that are predominately steel and/or iron are domestic products in compliance with the Buy America provisions of 23 CFR 635.410. The UAO certifies that all products that are predominately construction materials are domestic products in compliance with the Buy America provisions of 2 CFR 184. The UAO certifies that all manufactured products are domestic products in compliance with the Buy America provisions of 2 CFR 184 and applicable waivers."

(6) **Information and Reports:** The **UAO** will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the **DEPARTMENT** or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the **UAO** is in the exclusive possession of another who fails or refuses to furnish this information, the **UAO** shall so certify to the **DEPARTMENT** or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

(7) **Sanctions for Noncompliance:** In the event of the **UAO's** noncompliance with the nondiscrimination provisions of paragraphs (1) through (4), the **DEPARTMENT** shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

(a) withholding of payments to the contractor under the Agreement until the **UAO** complies; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

(8) **Incorporation of Provisions:** The **UAO** will include the provisions of paragraph (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, order or instructions issued pursuant thereto. The **UAO** will take such action with respect to any subcontract, procurement or lease as the **DEPARTMENT** or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the **UAO** becomes involved in, or is threatened with, litigation with a subcontractor, supplier or lessor as a result of such direction, the **UAO** may request the State to enter into such litigation to protect the interests of the State, and, in addition, the **UAO** may request the United States to enter into such litigation to protect the interests of the United States.

THREE PARTY ESCROW AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Florida, Department of Transportation ("FDOT"), City of Port St. Lucie, a Florida Municipal Corporation (“Participant”), and the State of Florida, Department of Financial Services, Division of Treasury (“Escrow Agent”), and shall become effective upon the Agreement’s execution by Escrow Agent.

WHEREAS, FDOT and Participant are engaged in the following project (“Project”):

Project Name: Port St. Lucie Blvd. from Becker Road to Paar Drive.
Project #: 431752-3-56-01
County: St. Lucie

WHEREAS, FDOT and Participant desire to establish an escrow account for the project.

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

1. An initial deposit will be made into an interest bearing escrow account established hereunder for the purposes of the Project. The escrow account will be opened with the Escrow Agent on behalf of FDOT upon Escrow Agent’s receipt and execution of this Agreement.

2. Other deposits to the escrow account may be made during the life of this agreement.

3. Deposits will be delivered in accordance with instructions provided by the Escrow Agent to the FDOT for deposit into the escrow account. A wire transfer or ACH deposit is the preferred method of payment and should be used whenever possible.

4. FDOT's Comptroller or designee shall be the sole signatory on the escrow account with the Escrow Agent and shall have sole authority to authorize withdrawals from the account. Withdrawals will only be made to FDOT or the Participant in accordance with the instructions provided to the Escrow Agent by FDOT’s Comptroller or designee.

5. Moneys in the escrow account will be invested in accordance with section 17.61, Florida Statutes. The Escrow Agent will invest the moneys expeditiously. Income is only earned on the moneys while invested. There is no guaranteed rate of return. Investments in the escrow account will be assessed a fee in accordance with Section 17.61(4)(b), Florida Statutes. All income of the investments shall accrue to the escrow account.

6. Unless instructed otherwise by FDOT, all interest accumulated in the escrow account shall remain in the account for the purposes of the Project.

7. The Escrow Agent agrees to provide written confirmation of receipt of funds to FDOT. FDOT agrees to provide a copy of such written confirmation to Participant upon request.

8. The Escrow Agent further agrees to provide quarterly reports to FDOT concerning the escrow account. FDOT agrees to provide a copy of such quarterly reports to Participant upon request.

9. The Escrow Agent shall not be liable for any error of judgment or for any act done or omitted by it in good faith, or for anything which it may in good faith do or refrain from doing in connection herewith.

10. Escrow Agent shall have no liability for any claim, cost, expense, damage or loss due to the acts or omissions of FDOT and Participant, nor from any separate agreements between FDOT and Participant and shall have no responsibility to monitor or enforce any responsibilities herein or in any separate agreements associated with this Agreement between FDOT and Participant.

11. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.

12. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13. This Agreement shall terminate upon disbursement by the Escrow Agent of all money held by it in the escrow account in accordance with the instructions given by FDOT's Comptroller or designee and notification from FDOT to Escrow Agent that the account is to be closed.

The remainder of this page is blank.

IN WITNESS WHEREOF, the parties have duly executed the Agreement on the date(s) below.

For FDOT-OOC (signature)	For PARTICIPANT (signature)
Name and Title	Name and Title
59-3024028 Federal Employer I.D. Number	59-6000785-011 Federal Employer I.D. Number
Date	Date

FDOT Legal Review:

For Escrow Agent (signature)

Name and Title

Date