

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**MODIFIED UTILITY WORK AND DESIGN BY HIGHWAY CONTRACTOR AGREEMENT**  
(AT UTILITY EXPENSE)

<b>Financial Project ID: 447536-3-56-01</b>	<b>Federal Project ID: D721-040-B</b>
<b>Financial Project ID: 447536-3-52-01</b>	
<b>Financial Project ID: 447536-3-62-01</b>	
<b>Financial Project ID:</b>	
<b>County: 08-Hernando</b>	<b>State Road No.: 35</b>
<b>District Document No: N/A</b>	
<b>Utility Agency/Owner (UAO): Hernando County Utilities</b>	

**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 Hernando County Utilities Department, 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 US 301 FROM PASCO COUNTY LINE TO SR 50/CORTEZ BLVD, State Road No.: 35, 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, and

**WHEREAS**, the **FDOT** and the **UAO** desire to enter into a joint agreement pursuant to Section 337.403 (1)(b), Florida Statutes providing for the design of the Utility Work (hereinafter, the Plans Package) by the Design Build Firm designing the Project for the **FDOT** and utility construction, which design and construction to be referred to as the "Utility Work" to be accomplished by the **FDOT's** Design Build Firm 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. The Design Build Firm shall prepare, at the **UAO's** sole cost and expense, final engineering design, plans, technical special provisions, other necessary related design documents, and cost estimate for the Plans Package more specifically described in the **FDOT** Design Build Request for Proposal (RFP) package for the Project.
- b. The Plans Package shall be in the same format as the **FDOT's** Design Build contract documents for the Project.
- c. The Plans Package shall include any and all activities and work effort required to perform the utility construction, including but not limited to all clearing and grubbing and survey work.
- d. The Plans Package shall be prepared in compliance with the **FDOT's** Utility Accommodation Manual and the **FDOT's** Design Manual in effect at the time the Plans Package was prepared and the **FDOT's** Design Build contract documents for the Project. If the **FDOT's** Design Manual is updated and conflicts with the **FDOT's** Utility Accommodation Manual, the Utility Accommodation Manual shall apply where such conflicts exist.

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- e. The technical special provisions which are part of the Plans Package shall be prepared in accordance with the **FDOT's** guidelines on preparation of technical special provisions.
- f. The Design Build firm shall provide a copy of the proposed Plans Package to the **UAO** for review at the following stages: 60%, 90%, 100%. The **UAO** shall review the Plans Package to see that it complies with the requirements of this Agreement.
- g. In the event that the **UAO** finds any deficiencies in the Plans Package during the reviews performed pursuant to Subparagraph f. above, the **UAO** will notify the **FDOT** in writing of the deficiencies within the time specified in the plans review transmittal.
- h. The **UAO** shall furnish the **FDOT** such information from the UAO files as requested by the **FDOT**.
- i. 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

## **2. Performance of Utility Work**

- a. The **FDOT** shall procure a Design Build contract for design and construction of the Project in accordance with the **FDOT's** requirements and shall incorporate the Utility Work into its contract for construction of the Project.
- b. If the portion of the bid of the Design Build Firm selected by the **FDOT** which is for performance of the Utility Work exceeds the **UAO's** official estimate for the Utility Work (Design and Construction) 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 5 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** Design Build Firm.
- c. If the **UAO** elects to remove the Utility Work from the **FDOT's** Design Build contract in accordance with Subparagraph 2. b., 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 its Design Build Firm in constructing the Project.
- d. The Design Build Firm shall perform all engineering inspection, testing, and monitoring of the Utility Work to ensure that it is properly performed in accordance with the Plans Package, 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.
- e. The **FDOT** will perform all contract administration for its Design Build contract.
- f. The **UAO** shall fully cooperate with the **FDOT** and its Design Build Firm in all matters relating to the performance of the Utility Work.

## **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** Design Build Firm to be necessary, including but not limited to the cost of changing the Plans Package and any 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.

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- b. The **UAO's** official estimate of the cost of the Utility Work, provided by Hernando County and submitted to the Department on October 3<sup>rd</sup>, 2023 is \$3,282,482.00. The official estimate includes 10% for mobilization (provided for the 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) added to the estimated construction cost, 20% for design costs, and 10% of the total utility work 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).
- c. At least sixty days prior to award of the contract to the Design Build firm, the **UAO** will pay to the **FDOT** an amount equal to the **UAO's** official estimate. Award of this contract is scheduled for April 12, 2024 and payment shall be due on February 12, 2024.
- d. Payment of the funds pursuant to this paragraph will be made 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 Design Build Firm'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. 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. 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.

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- i. Upon final payment to the Design Build Firm, 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. 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 identify within the Plans Package any Facilities to be placed Out-of-Service and Deactivated in compliance with the UAM 3.16.10. The **UAO** shall provide estimates for cost associated with the removals or any other work pertaining to the **UAO's** Out-of-Service and Deactivated Facilities. The **UAO** shall remove or allow **FDOT's** Design Build contractor to remove at the request of the **FDOT** the **UAO's** Out-of-Service and Deactivated Facilities in the event that the **FDOT** determines that removal is necessary for **FDOT's** use of the right of way or that the **FDOT** determines that the 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

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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**.

## 5. 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) 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**.
  - (4) Pursue any other remedies legally available.
  - (5) 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) 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.

## 6. 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.

## 7. 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

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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.

## 8. 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 Design Build Firm 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 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**:

Hernando County Utilities Department  
ATTN: Ron Patel, P.E  
15365 Cortez Boulevard  
Brooksville, FL 34613

If to the **FDOT**:

FDOT District 7 Utility Administrator  
11201 N. McKinley Drive, MS 7 – 820  
Tampa FL, 33612

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**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement effective the day and year first written.

**UTILITY: Hernando County Utilities**

BY: (Signature) \_\_\_\_\_  
(Typed Name: \_\_\_\_\_)  
(Typed Title: \_\_\_\_\_)

DATE: \_\_\_\_\_

**Approved as to Form and Sufficiency**

BY: Victoria Anderson  
County Attorney

DATE: 09/29/23

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**Recommend Approval by the District Utility Office**

BY: (Signature) \_\_\_\_\_

DATE: \_\_\_\_\_

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**FDOT Legal review**

BY: (Signature) \_\_\_\_\_  
District Counsel

DATE: \_\_\_\_\_

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**STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION**

BY: (Signature) \_\_\_\_\_

DATE: \_\_\_\_\_

(Typed Name: Justin Hall)  
(Typed Title: Director of Development)