Utility Work by Highway Contractor Agreement (UWHCA), Three Party Escrow Agreement and Resolution with Florida Department of Transportation (FDOT) for Utility Relocations associated with the FDOT Local Agency Project Agreement (LAP) with the City of Largo for Roadway and Sidewalk Improvements.

FDOT Project No. 424532-9-56-02
County PID No. 002292A/2167

Department: Engineering and Technical Support
Staff Member Responsible: Kevin Recotte, P. E., Director

Recommended Action:
I RECOMMEND THE BOARD OF COUNTY COMMISSIONERS (BOARD) APPROVE THE UWHCA, THREE PARTY ESCROW AGREEMENT AND RESOLUTION WITH THE FDOT FOR UTILITY RELOCATION ASSOCIATED WITH THE FDOT LOCAL AGENCY PROJECT AGREEMENT (LAP) WITH THE CITY OF LARGO FOR ROADWAY AND SIDEWALK IMPROVEMENT PROJECT, AND AUTHORIZIZE THE CHAIRMAN TO SIGN THE AGREEMENT AND THE CLERK TO ATTEST.

IT IS FURTHER RECOMMENDED THE BOARD ADOPT THE RESOLUTION AUTHORIZING THE AGREEMENT.

Summary Explanation/Background:
This Agreement is for utility relocation associated with roadway and sidewalk improvements for Adrian Avenue from Indian Rocks Road to Trotter Road and Gladys Street from Hillside Avenue to Dryer Avenue. The FDOT has entered into a Local Project Agreement (LAP) with the City of Largo. The LAP covers construction activities that include roadway, sanitary sewer lines, drainage and sidewalk improvements. Pinellas County (County) has the responsibility for cost and relocation of water pipelines, service connections and appurtenances within the project.

Staff and the County Attorney have requested FDOT to revise the indemnification language contained in Section 8 of the Agreement. The FDOT will not allow the change, and staff has followed through with the appropriate action for the indemnification provision. Staff and the County Attorney agree that this does not increase the liability to the County beyond an acceptable level of risk.

The UWHCA and Three Party Escrow Agreement will be forwarded to FDOT for execution following Board approval.

Fiscal Impact/Cost/Revenue Summary:
Estimated Expenditure: $414,000.00

Funds to support this project are budgeted in the Water Enterprise Fund.

Exhibits/Attachments Attached:
Contract Review Transmittal
UWHCA with Three Party Escrow Agreement
Location Map
NON-PURCHASING CONTRACT REVIEW TRANSMITTAL SLIP

PROJECT: Utility Work by Highway Contractor Agreement, Three Party Escrow Agreement and Resolution with FDOT for Utility Relocation for the Largo Drainage & Sidewalk Improvements, Adrian Ave. from Indian Rocks Rd. to Trotter Rd. & Gladys St. from Hillside Ave. to Dryer Ave.

| CONTRACT NO: FDOT PID #424532-0-56-02, PCU PID #002292A/2167 | ESTIMATED EXPENDITURE / REVENUE: $414,000.00 |

In accordance with Contract Administration and its Review Process, the attached documents are submitted for your review and comment. Please complete this Non-Purchasing Contract Review Transmittal Slip below with your assessment, and forward to the next Review Authority on the list, skipping any authority marked "N/A." Indicate suggested changes by noting those in "Comments" column, or by revising, in RED, the appropriate section(s) of the document(s) to reflect the exact wording of the desired change(s).

OTHER SPECIFICS RELATING TO THE CONTRACT:

<table>
<thead>
<tr>
<th>REVIEW SEQUENCE</th>
<th>DATE</th>
<th>INITIAL/SIGNATURE</th>
<th>COMMENTS (IF ANY)</th>
<th>COMMENTS REVIEWED &amp; ADDRESSED OR INCORPORATED</th>
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<tr>
<td>Originator: E &amp; TS</td>
<td>4/21/15</td>
<td>J.W.</td>
<td>Change signor to Dennis S.</td>
<td>4/21/15</td>
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<td>Jeremy Waugh, P.E.</td>
<td>4/21/15</td>
<td>K.B.</td>
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<td>Dennis Simpson, P.E.</td>
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<td>Ivan Fernandez, P.E.</td>
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<td>Kevin Becotte, P.E. Director</td>
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<td>Risk Mgmt:</td>
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<td>Virginia Holscher</td>
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<td>See comments in CATS 4 attached</td>
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<td>Finance: Cassandra Williams</td>
<td>4/21/15</td>
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<td>OMB: Bill Berger</td>
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<td>Legal: Joe Morrissey</td>
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<td>Assistant County Administrator: David E. Scott, P.E.</td>
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Please return to Trina Shisler, Office of Engineering & Technical Support, ext. 45316
**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**

**UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT**

**(AT UTILITY EXPENSE)**

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<td>Financial Project ID: 424532-9-52-01</td>
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<td>Financial Project ID: 424532-9-61-01</td>
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<tr>
<td>County: Pinellas</td>
<td>State Road No.: N/A</td>
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<td>District Document No: N/A</td>
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<td>Utility Agency/Owner (UAO): Pinellas County</td>
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**THIS AGREEMENT,** entered into this day of , year of , by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "FOOT", and Pinellas County, 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 Adrian Ave. from Indian Rocks Rd. to Trotter Rd. and Gladys St. from Hillside Ave. to Dryer Ave., 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 June, year of 2015.
   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: Final. 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: N/A. 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: To be submitted at a later date.
(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 ten (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: Testing to be completed by the FDOT's contractor as specified in 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.

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 $414,000.00. 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 fourteen (14) 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 4% 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 Department of Financial Services and 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 in excess of the advance deposit amount that the UAO was obligated to pay.

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:
Pinellas County Utilities, Dennis Simpson, P.E., (727) 464-4223
14 South Ft. Harrison Ave., 6th Floor
Clearwater, FL 33756

If to the FDOT:
Ms. Katasha Cornwell, District 7
11201 N. McKinley Dr.
Tampa, FL 33612

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: Pinellas County Utilities, PID #002292A/2167

BY: (Signature) __________________________________________ DATE: ____

(Typed Name: John Morroni)

(Typed Title: Chairman, Board of County Commissioners)

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: _____)

(Typed Title: _____)

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

BY: ____________________________ DATE: ____

(Typed Name: _____)

(Typed Title: _____)
The above Agreement is amended with the addition of the following indemnification which replaces Section No. 8 of the Agreement:

8. INDEMNIFICATION

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, error, omission or negligent act by the UAO, its agents or employees during the performance of the Agreement, except that neither the UAO, its agents or employees will be liable under this paragraph for any claim, loss, damage, cost, charge or expense arising out of any act, error, omission, or negligent act by the FDOT or any of its officers, agents, or employees during the performance of the Agreement.

When either party receives notice of a claim for damages that may have been caused by the other party in the performance of services required under this Agreement, that party will immediately forward the claim to the other party. Each party will evaluate the claim and report its findings to each other within fourteen (14) working days and jointly discuss options in defending the claim. A party's failure to promptly notify the other of a claim will not act as a waiver of any right herein.

The parties recognize and accept the funding restrictions set forth in Section 339.135 (6)(a), and Section 129.07, Florida Statutes, which may affect each of the parties' obligations. Those provisions are as follows:

(a) The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amount budgeted as available of expenditure during fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contract for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Section 339.135(6)(a), Florida Statutes.

(b) It is unlawful for the Board of County Commissioners to expend or contract for the expenditure in any fiscal year more than the amount budgeted in each fund's budget, except as provided herein, and in no case shall the total appropriations of any budget be exceeded, except as provided in s. 129.06, and any indebtedness contracted for any purpose against either of the funds enumerated in this chapter or for any purpose, the expenditure for which is chargeable to either of said funds, shall be null and void, and no suit or suits shall be prosecuted in any court in this state for the collection of same, and the members of the Board of County Commissioners voting for and contracting for such amounts and the bonds of such members of said boards also shall be liable for the excess indebtedness so contracted for. Section 129.07, Florida Statutes.
THREE PARTY ESCROW AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Florida, Department of Transportation ("FDOT"), Pinellas County Utilities ("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: Largo Sidewalk Improvements, Adrian Ave. from Indian Rocks Rd. to Trotter Rd. and Gladys St. from Hillsdale Ave. to Dryer Ave.
Project #: 424532-9-56-02
County: Pinellas County

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-COC (signature)  

__________________________________________
Name and Title

59-3024028
Federal Employer I.D. Number

__________________________________________
Date

FDOT Legal Review:

__________________________________________

For Escrow Agent (signature)  

__________________________________________
Name and Title

__________________________________________
Date

For PARTICIPANT (signature)
John Morroni, Chairman
Pinellas County, Board of
County Commissioners

__________________________________________
Name and Title

59-600800-025
Federal Employer I.D. Number
& Sequence Number

__________________________________________
Date

Pinellas County Legal Review:

__________________________________________

John Morroni, Chairman
WHEREAS, the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the FDOT, proposes to construct or reconstruct a transportation facility identified above, hereinafter referred to as the Project; and

WHEREAS, in order for the FDOT to proceed with the Project, it is necessary for Pinellas County (the Utility Agency), hereinafter referred to as the UAO, to execute and deliver to the FDOT the agreements identified as *Utility Work by Highway Contractor Agreement (at Utility Expense)*, and *Three Party Excrow Agreement*, hereinafter referred to as the Agreements;

NOW, THEREFORE, BE IT RESOLVED BY THE UAO:

That *John Morroni, Chairman, Pinellas County Board of County Commissioners* be hereby authorized and directed to execute and deliver the Agreements to the FDOT.

A certified copy of this Resolution be forwarded to the FDOT along with the executed Agreements.

ON MOTION of ________________________________, seconded by ________________________________, the above resolution was introduced and passed by the UAO on the ___ day of ________, year of 2015.

NAME: PINELLAS COUNTY, FLORIDA

SIGNATURE: ________________________________

John Morroni

Title: Chairman, Pinellas County Board of County Commissioners

ATTEST: Ken Burke

Title: Clerk of the Circuit Court

By: ________________________________

Deputy Clerk

APPROVED AS TO FORM
OFFICE OF COUNTY ATTORNEY

By: ________________________________

Attorney