

18

**AGENDA ITEM  
ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS**

*Deadline for Submission - Wednesday 9 a.m. – Thirteen Days Prior to BCC Meeting*

**4/16/2024**

**BCC MEETING DATE**

**TO:** Joy Andrews, County Administrator

**DATE:** March 21, 2024

**FROM:** Neal Shinkre, Utility Director

**PHONE:** 904 209-2721

**SUBJECT OR TITLE:** Florida Department of Transportation Utility Relocation Agreements for the SR23 Highway Project

**AGENDA TYPE:** Consent Agenda, Contract, Resolution

**BACKGROUND INFORMATION:**

The Florida Department of Transportation (Department) is currently preparing to undertake a project, which involves constructing the SR23 Highway within St. Johns County (County), identified as financial project number FPID# 422938-8-52-01 and 422938-8-56-01. The County has determined that it is in its best interest to enter into two Utility Work by Highway Contractor Agreements with the Department to provide for utility relocation in association with this project. These agreements requires the Department's Highway Contractor to perform the utility work with a total estimated project cost of \$4,504.50 and \$11,870.00 paid by the County to the Department as a deposit pursuant to the Three Party Escrow Agreement also included in this item for approval. The County has determined it is best served to have the Department's Highway Contractor perform the work required within the agreements to avoid current and future conflicts with this project. Staff has reviewed the terms, provisions, conditions, and requirements of the agreements and is requesting their approval from the Board of County Commissioners.

**1. IS FUNDING REQUIRED?** Yes

**2. IF YES, INDICATE IF BUDGETED.** Yes

**IF FUNDING IS REQUIRED, MANDATORY OMB REVIEW IS REQUIRED:**

**INDICATE FUNDING SOURCE:** Utility Department Water transmission and Distribution - Other Maintenance (4413-54603)

**SUGGESTED MOTION/RECOMMENDATION/ACTION:**

Motion to adopt Resolution 2024-\_\_\_\_\_ approving the terms, provisions, conditions and requirements of the Utility Work by Highway Contractor Agreements between St. Johns County, Florida and the Florida Department of Transportation relating to the financial project numbers 422938-8-52-01 and 422938-8-56-01 in the amount of \$4,504.50 and \$11,870.00, respectively; approving the terms, provisions, conditions, and requirements of Three Party Escrow Agreement between St. Johns County Utilities, the Florida Department of Transportation, and the State of Florida, Department of Financial Services, Division of Treasury; and authorizing the Chair to execute the agreements on behalf of the County.

**For Administration Use Only:**

**Legal:** BB 4/2/2024

**OMB:** JN 4/3/2024

**Admin:** Colin Groff 4/3/2024

**RESOLUTION NO. 2024-\_\_\_\_\_**

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISION, CONDITIONS, AND REQUIREMENTS OF UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENTS BETWEEN ST. JOHNS COUNTY AND THE FLORIDA DEPARTMENT OF TRANSPORTATION RELATING FINANCIAL PROJECT NUMBERS 422938-8-52-01 AND 422938-8-56-01 TO MODIFY UTILITY FACILITIES FOR CONSTRUCTION ALONG STATE ROAD 23 IN THE AMOUNTS OF \$4,504.50 AND \$11,870.00, RESPECTIVELY, AND A THREE PARTY ESCROW AGREEMENT BETWEEN ST. JOHNS COUNTY UTILITIES, THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, AND STATE OF FLORIDA, DEPARTMENT OF FINANCIAL SERVICES, DIVISION OF TREASURY; AND AUTHORIZING THE CHAIR TO EXECUTE THE AGREEMENTS ON BEHALF OF THE COUNTY.**

**RECITALS**

**WHEREAS**, the Florida Department of Transportation (“Department”) is currently preparing to undertake a project, which involves constructing, reconstructing, or otherwise changing a public road and other improvements located on a public road or publicly owned rail corridor, identified as financial project numbers Financial Project ID 422938-2-52-01 and 422938-8-56-01, State Road 23; and

**WHEREAS**, St. Johns County, Florida (“County”) has determined that entering into two Utility Work By Highway Contractor Agreements with the Department for engineering and construction of utility relocations and improvements related to the State Road 23 project, as well as a related Three Party Escrow Agreement, is in the County’s best interest; and

**WHEREAS**, the County has reviewed copies of the above-referenced agreements (attached hereto as Exhibit A and incorporated herein) between the County and the Department; and

**WHEREAS**, the Chair of the Board of County Commissioners of St. Johns County, Florida with authorization of the Board, is authorized to execute these agreements with the Department; and

**WHEREAS**, the Board of County Commissioners authorizes the County Administrator, or designee, to execute any other documents or supplemental agreements for the purpose of Scope Changes and/or funding adjustments and all other documents as may be required in support of the projects, to include contract time extension(s), as may be required in support of this document.

**NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY**

**COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:**

Section 1. The above recitals are incorporated by reference into the body of this Resolution and such recitals are adopted as findings of fact.

Section 2. The Board of County Commissioners of St. Johns County, Florida hereby approves the terms, conditions, provisions, and requirements of the Utility Work by Highway Contractor Agreement 422938-8-52-01 for \$4,504.50, and the Utility Work by Highway Contractor Agreement 422938-8-56-01 for \$11,870.00, between St. Johns County and the Florida Department of Transportation, and authorizes the Chair to execute the agreements on behalf of the County in substantially in the same form and format as attached.

Section 3. The Board of County Commissioners of St. Johns County, Florida hereby approves the terms, conditions, provisions, and requirements of the Three Party Escrow Agreement between St. Johns County Utilities, the Florida Department of Transportation, and the State of Florida, Department of Financial Services, Division of Treasury, and authorizes the Chair to execute the agreement on behalf of the County in substantially in the same form and format as attached.

Section 4. The County Administrator, or designee, is authorized to execute any other documents or supplemental agreements for the purpose of Scope Changes and/or funding adjustments and all other documents as may be required in support of the projects to include contract time extension(s), as may be required in support of this document.

Section 5. To the extent that there are typographical, scriveners or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, Florida, this \_\_\_ day of \_\_\_\_\_, 2024.

**BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA**

By: \_\_\_\_\_  
Sarah Arnold, Chair

**ATTEST:** Brandon J. Patty,  
Clerk of the Circuit Court & Comptroller

By: \_\_\_\_\_  
Deputy Clerk

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT**  
(LUMP SUM)

Form No. 710-010-57  
UTILITIES  
07/14

3.

<b>Financial Project ID: 422938-8-52-01</b>	<b>Federal Project ID: D218-124-B</b>
<b>Financial Project ID:</b>	
<b>Financial Project ID:</b>	
<b>Financial Project ID:</b>	
<b>County: St. Johns</b>	<b>State Road No.: 23</b>
<b>District Document No: 1</b>	
<b>Utility Agency/Owner (UAO): St. Johns 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 **JE Water & Sewer**, hereinafter referred to as the "**UAO**";

**WITNESSETH:**

**WHEREAS**, the **UAO** owns certain utility facilities which are located on the public road or publicly owned rail corridor identified below, hereinafter referred to as the "Facilities" (said term shall be deemed to include utility facilities as the same may be relocated, adjusted, or placed out of service); and

**WHEREAS**, the **FDOT**, is currently engaging in a project which involves constructing, reconstructing, or otherwise changing a public road and other improvements located on a public road or publicly owned rail corridor identified as 422938-8-52-01, State Road No. 23, hereinafter referred to as the "Project"; and

**WHEREAS**, the Project requires minor modifications to the Facilities or the **FDOT's** design more particularly described in Exhibit A attached hereto and by this reference made a part hereof, hereinafter referred to as "Utility Work," and full plans and technical specifications for the Utility Work are not required; and

**WHEREAS**, the **FDOT** will perform the Utility Work as part of the Project; and

**WHEREAS**, the **UAO**, pursuant to the terms and conditions hereof, will bear certain costs associated with the Utility Work; and

**WHEREAS**, the **FDOT** and the **UAO** desire to enter into an agreement which establishes the terms and conditions applicable to 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. Performance of Utility Work**

- a. The **FDOT** will include the Utility Work in its plans and specifications for the Project and will include the Utility Work as part of the **FDOT's** construction of the Project. The preparation of the plans and specifications and the construction of the Project will be performed in such manner as the **FDOT**, in its discretion, deemed appropriate.
- b. All location, protection, relocation, adjustment, or removal of the **UAO's** Facilities which is not listed in Exhibit A shall be performed pursuant to a separate agreement.

**2. Cost of Utility Work**

- a. The **UAO** will, at least Thirty (30) calendar days prior to the date on which the **FDOT** advertises the Project for bids, pay the **FDOT** the amount of \$4,504.50 for the cost of the Utility Work. Said amount will be deposited into the State Transportation Trust Fund.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT**  
(LUMP SUM)

Form No. 710-010-57  
UTILITIES  
07/14

- b. The **FDOT** and the **UAO** acknowledge and agree that the amount stated above includes an additional ten percent (10%) to cover the **UAO's** obligation for the cost of the Utility Work as set forth in Section 337.403(1)(b), Florida Statutes.
- c. Except for costs associated with any changes or additions to the Utility Work, the **FDOT** and the **UAO** agree that the deposit shall be an asset of the **FDOT** and that it constitutes a full and final lump sum payment for the cost of the Utility Work, without any requirement for a subsequent accounting for the use of the deposit.
- d. Pursuant to Section 337.403(1)(b), Florida Statutes, no changes or additions to the Utility Work will be made during the construction of the Project unless the **UAO** has made an additional deposit to cover the cost of the changes or additions. To the extent that the amount stated in Subparagraph 2.a. above exceeds the amount of the **FDOT contractor's** bid that applies to the Utility Work, such excess may be applied to cover the cost of the changes or additions. All changes or additions shall be subject to the limitations on supplemental agreements and change orders contained in Section 337.11(8), Florida Statutes.

### 3. 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 60 days from written notice thereof from the **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 60 days from written notice thereof from **FDOT** until such time as the breach is cured.
  - (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 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 and from any statutory obligations that either party may have with regard to the subject matter hereof.

### 4. 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

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT**  
(LUMP SUM)

Form No. 710-010-57  
UTILITIES  
07/14

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 or 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.

**5. 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.

**6. Miscellaneous**

- a. To the Facilities shall at all times remain the property of and be properly protected and maintained by the **UAO** in accordance with the then current Utility Accommodation Manual and the current utility permit for the Facilities.
- b. Pursuant to Section 287.058, Florida Statutes, the **FDOT** may unilaterally cancel this Agreement for

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT**  
(LUMP SUM)

Form No. 710-010-57  
UTILITIES  
07/14

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.

- c. 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 shall be applicable at the time of the Project and the relocation of the Facilities and except that the **UAO** and the **FDOT** may have entered into other agreements for work not included in Exhibit A for Facilities located within the limits of the Project. Copies of **FDOT** manuals, policies, and procedures will be provided to the **UAO** upon request.
- d. 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.
- e. Time is of essence in the performance of all obligations under this Agreement.
- 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**:

Sam Schlessinger
St. Johns County Utilities
1205 State Road 16
St. Augustine, FL 32084

If to the **FDOT**:

Todd Hunt
Florida Department of Transportation
1109 S. Marion Ave. - MS 2024
Lake City, FL 32025

**7. 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."

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT**  
(LUMP SUM)

Form No. 710-010-57  
UTILITIES  
07/14

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

**UTILITY: St. Johns County Utilities**

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: **Robert L. Parks**)

(Typed Title: **Director of Transportation Development**)

---

**FEDERAL HIGHWAY ADMINISTRATION (if applicable)**

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

(Typed Name: \_\_\_\_\_)

(Typed Title: \_\_\_\_\_)



## Exhibit "A" Scope of Work

**FPID# 422938-8-56-01:** The cost within this Agreement reflects the construction costs for the following St. Johns County Utility facilities; pipe restraints for an existing 20 inch watermain, removal of existing fire hydrants, installation of new wire boxes and installation of gate valve stem extension to accommodate FDOT's construction along State Road 23 in the amount of \$11,870.

**FPID# 422938-8-52-01:** The cost within this Agreement reflects the construction costs for the St. Johns County Utility facility gate valve adjustments to accommodate FDOT's construction along State Road 23 in the amount of \$4,504.50.

### Schedule of Values for Both Projects

<u>Quantity</u>	<u>SJCUD Spec. No.</u>	<u>Description</u>
<b><u>POTABLE WATER</u></b>		
15	G-4	Restrain 16" WM Joints
2	W-1	Remove Fire Hydrant and Install Mechanical Joint Cap
6	G-1,G-2	Gate Valve Stem Extension
5	G-8	Wire Box Extension
6	G-1,G-2	Gate Valve Adjustment

### Utility Plans

See Utility Plans Dates 2/29/24 prepared by FDOT Engineer of Record.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT**  
(LUMP SUM)

Form No. 710-010-57  
UTILITIES  
07/14

3.

<b>Financial Project ID: 422938-8-56-01</b>	<b>Federal Project ID: D218-124-B</b>
<b>Financial Project ID:</b>	
<b>Financial Project ID:</b>	
<b>Financial Project ID:</b>	
<b>County: St. Johns</b>	<b>State Road No.: 23</b>
<b>District Document No: 1</b>	
<b>Utility Agency/Owner (UAO): St. Johns 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 **JE Water & Sewer**, hereinafter referred to as the "**UAO**";

**WITNESSETH:**

**WHEREAS**, the **UAO** owns certain utility facilities which are located on the public road or publicly owned rail corridor identified below, hereinafter referred to as the "Facilities" (said term shall be deemed to include utility facilities as the same may be relocated, adjusted, or placed out of service); and

**WHEREAS**, the **FDOT**, is currently engaging in a project which involves constructing, reconstructing, or otherwise changing a public road and other improvements located on a public road or publicly owned rail corridor identified as 422938-8-52-01, State Road No. 23, hereinafter referred to as the "Project"; and

**WHEREAS**, the Project requires minor modifications to the Facilities or the **FDOT's** design more particularly described in Exhibit A attached hereto and by this reference made a part hereof, hereinafter referred to as "Utility Work," and full plans and technical specifications for the Utility Work are not required; and

**WHEREAS**, the **FDOT** will perform the Utility Work as part of the Project; and

**WHEREAS**, the **UAO**, pursuant to the terms and conditions hereof, will bear certain costs associated with the Utility Work; and

**WHEREAS**, the **FDOT** and the **UAO** desire to enter into an agreement which establishes the terms and conditions applicable to 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. Performance of Utility Work**

- a. The **FDOT** will include the Utility Work in its plans and specifications for the Project and will include the Utility Work as part of the **FDOT's** construction of the Project. The preparation of the plans and specifications and the construction of the Project will be performed in such manner as the **FDOT**, in its discretion, deemed appropriate.
- b. All location, protection, relocation, adjustment, or removal of the **UAO's** Facilities which is not listed in Exhibit A shall be performed pursuant to a separate agreement.

**2. Cost of Utility Work**

- a. The **UAO** will, at least Thirty (30) calendar days prior to the date on which the **FDOT** advertises the Project for bids, pay the **FDOT** the amount of \$11,870.00 for the cost of the Utility Work. Said amount will be deposited into the State Transportation Trust Fund.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT**  
(LUMP SUM)

Form No. 710-010-57  
UTILITIES  
07/14

- b. The **FDOT** and the **UAO** acknowledge and agree that the amount stated above includes an additional ten percent (10%) to cover the **UAO's** obligation for the cost of the Utility Work as set forth in Section 337.403(1)(b), Florida Statutes.
- c. Except for costs associated with any changes or additions to the Utility Work, the **FDOT** and the **UAO** agree that the deposit shall be an asset of the **FDOT** and that it constitutes a full and final lump sum payment for the cost of the Utility Work, without any requirement for a subsequent accounting for the use of the deposit.
- d. Pursuant to Section 337.403(1)(b), Florida Statutes, no changes or additions to the Utility Work will be made during the construction of the Project unless the **UAO** has made an additional deposit to cover the cost of the changes or additions. To the extent that the amount stated in Subparagraph 2.a. above exceeds the amount of the **FDOT contractor's** bid that applies to the Utility Work, such excess may be applied to cover the cost of the changes or additions. All changes or additions shall be subject to the limitations on supplemental agreements and change orders contained in Section 337.11(8), Florida Statutes.

**3. 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 60 days from written notice thereof from the **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 60 days from written notice thereof from **FDOT** until such time as the breach is cured.
  - (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 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 and from any statutory obligations that either party may have with regard to the subject matter hereof.

**4. 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

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT**  
(LUMP SUM)

Form No. 710-010-57  
UTILITIES  
07/14

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 or 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.

**5. 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.

**6. Miscellaneous**

- a. To the Facilities shall at all times remain the property of and be properly protected and maintained by the **UAO** in accordance with the then current Utility Accommodation Manual and the current utility permit for the Facilities.
- b. Pursuant to Section 287.058, Florida Statutes, the **FDOT** may unilaterally cancel this Agreement for

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT**  
(LUMP SUM)

Form No. 710-010-57  
UTILITIES  
07/14

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.

- c. 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 shall be applicable at the time of the Project and the relocation of the Facilities and except that the **UAO** and the **FDOT** may have entered into other agreements for work not included in Exhibit A for Facilities located within the limits of the Project. Copies of **FDOT** manuals, policies, and procedures will be provided to the **UAO** upon request.
- d. 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.
- e. Time is of essence in the performance of all obligations under this Agreement.
- 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**:

Sam Schllesinger
St. Johns County Utilities
1205 State Road 16
St. Augustine, FL 32084

If to the **FDOT**:

Todd Hunt
Florida Department of Transportation
1109 S. Marion Ave. - MS 2024
Lake City, FL 32025

**7. 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."

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT**  
(LUMP SUM)

Form No. 710-010-57  
UTILITIES  
07/14

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

UTILITY: St. Johns County Utilities

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: Robert L. Parks)

(Typed Title: Director of Transportation Development)

---

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

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

(Typed Name: \_\_\_\_\_)

(Typed Title: \_\_\_\_\_)

## Exhibit "A" Scope of Work

**FPID# 422938-8-56-01:** The cost within this Agreement reflects the construction costs for the following St. Johns County Utility facilities; pipe restraints for an existing 20 inch watermain, removal of existing fire hydrants, installation of new wire boxes and installation of gate valve stem extension to accommodate FDOT's construction along State Road 23 in the amount of \$11,870.

**FPID# 422938-8-52-01:** The cost within this Agreement reflects the construction costs for the St. Johns County Utility facility gate valve adjustments to accommodate FDOT's construction along State Road 23 in the amount of \$4,504.50.

### Schedule of Values for Both Projects

<u>Quantity</u>	<u>SJCUD Spec. No.</u>	<u>Description</u>
<b><u>POTABLE WATER</u></b>		
15	G-4	Restrain 16" WM Joints
2	W-1	Remove Fire Hydrant and Install Mechanical Joint Cap
6	G-1,G-2	Gate Valve Stem Extension
5	G-8	Wire Box Extension
6	G-1,G-2	Gate Valve Adjustment

### Utility Plans

See Utility Plans Dates 2/29/24 prepared by FDOT Engineer of Record.

## THREE PARTY ESCROW AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Florida, Department of Transportation ("FDOT"), **St. Johns 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: SR23 (First Coast Expressway) from East of CR2209  
to East of CR16A Spur  
Project#: 422938-8-52-01  
County: St. Johns**

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

\_\_\_\_\_  
Manager-Project Management

592983007004  
\_\_\_\_\_  
Federal Employer I.D. Number

\_\_\_\_\_  
Federal Employer I.D. Number

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

FDOT Legal Review:  
  
\_\_\_\_\_

\_\_\_\_\_  
For Escrow Agent (signature)

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date