

**LEON COUNTY – CITY OF TALLAHASSEE JOINT PROJECT AGREEMENT
WATER AND WASTEWATER INFRASTRUCTURE RELOCATION OR INSTALLATION
FOR MAGNOLIA MULTI-PURPOSE TRAIL/SIDEWALK PROJECT PHASE II**

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between the **City of Tallahassee**, a Florida municipal corporation (“**City**”), and **Leon County, Florida** (“**County**”), a charter county and political subdivision of the State of Florida.

WITNESSETH:

WHEREAS, the County is constructing, reconstructing or otherwise improving the Magnolia Drive Multi-Purpose Trail/Sidewalk infrastructure Phase II (County Road 265), which has been designated by the County as Leon County Bid No. _____, (“**Project**”); and,

WHEREAS, completion of the Project requires the adjustment, relocation, upgrade or installation of certain City water distribution and wastewater collection infrastructure within the area of the Project (such work or portion thereof being hereafter referred to as “**Utility Work**”); and,

WHEREAS, the City has expressed its desire to have such Utility Work constructed by the County’s contractor for the Project, simultaneously with construction of the Project, and has agreed to pay all upgrade costs incurred for construction of such Utility Work; and,

WHEREAS, the City has requested the County to include, in its bid documents for the Project, both the plans and specifications for the Project (“**Project Plans**”) and the plans and specifications furnished by the City for construction of the Utility Work; and,

WHEREAS, the plans and specifications for the said Utility Work will be reviewed and approved by the County and the City; and

WHEREAS, the County and the City have determined that it would be in the best interest of the general public and to the economic advantage of both parties to enter into this Joint Project Agreement (“**JPA**”) to provide for completion of the Utility Work simultaneously with, and as part of the same contract as, the Project;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties agree as follows:

1. This JPA will apply to all Utility Work located within the limits of the Project, as included in the plans, specifications, and estimate for the Utility Work prepared by the City and approved by the County.

2. A. The City shall deliver to the County, in a form suitable for reproduction by the County, certain design documents, plans, and specifications for the Utility Work, which are more specifically identified as “Magnolia Drive Multi-Use Trail Water and Wastewater Replacement” (“Utility Work Plans”), including a Utility Work Schedule (“UWS”). Such Utility Work Plans shall include a summary of the unit price elements of work (“Pay Items”) and associated estimated quantities included within the Utility Work. The City shall pay for the quantities of all such Pay Items actually installed in construction of the Utility Work, except for certain costs of relocating water system and sewer system infrastructure.

B. The City shall pay a pro-rata share of the lump sum contract prices for mobilization and maintenance of traffic. Such share shall be determined by calculating the sum of the extended contract prices for the Upgrade Utility Pay Items, then dividing that result by the total contract price less mobilization and maintenance of traffic costs. The result shall be expressed as a percentage to the nearest one-hundredth percent. The City’s share of costs for mobilization and maintenance of traffic shall be equal to the total cost of mobilization and maintenance of traffic multiplied by the above computed percentage.

C. In lieu of County administration fees calculated as a percentage of the bid, the City shall pay the County a lump sum of \$40,000.00 for contract management services.

3. All of the work on the JPA shall be completed in accordance with the Project Plans and the Utility Work Plans, which are by reference made a part hereof. The City shall be responsible for verifying the accuracy of the County's underground survey information. The County and the City, as applicable, shall promptly notify the other of any errors or omissions discovered in such survey information. All errors, omissions and changes in the Utility Work Plans shall be the sole responsibility of the City, except for those changes resulting from or caused by errors, omissions or changes in the

Project Plans after completion of the 100% design documents, which changes shall be the sole responsibility of the County and shall be made by the City's design professional at the County's sole cost. In the event of conflict between the Utility Work Plans and the Project Plans, the Project Plans shall take precedence, except in the event of conflicts between the Utility adjustment plan sheets and the Utility Work Plans, the Utility Work Plans shall take precedence.

4. The City, at its sole expense, shall furnish all engineering inspection, testing and monitoring of the Utility Work and shall furnish the County's engineer, at her/his request, copies of log books and quantities of work performed by the Contractor. The County shall provide all necessary Project contract administration and enforcement. The coordination of the Utility Work with that of the County's Contractor, and with work by other utility owners or their contractors, shall be the responsibility of the County, and the City shall cooperate fully in this matter. The City, upon request of the County, shall promptly furnish to the County all information required for change orders or supplemental agreements pertaining to the Utility Work.

5. The County shall receive bids for the Utility Work at the same time as bids for the Project. All bids for said Utility Work shall be taken into consideration in the award of a contract for construction of the Project, which award shall be based on the lowest responsive, responsible bid for all work (i.e., both the Project and the Utility Work). The City shall have the right to review the bid for the Utility Work and to (i) proceed with construction, by the County's contractor, of all Utility Work, or (ii) reject the bid of the County's contractor and arrange, at its own expense, for the prompt construction of the Utility Work. In proceeding with the Project, the following shall apply:

(a) The City shall notify the County of its decision with respect to how to proceed with construction of the Utility Work.

(b) Upon the receipt of such notice, the County shall amend the contract documents for the Project, as appropriate, prior to award.

(c) The City, should it chose not to have the County contractor perform any of the Utility Work, shall cooperate with the County's contractor to schedule the sequence of the utility adjustments and relocations required for the Project.

(d) Should the City choose not to have the County's contractor construct any of the Utility Work, the City, or its contractor for the Utility Work, shall defend any legal claims asserted against the County by the County's contractor due solely to delays caused by the City's failure to comply with the UWS provided by the City to the County; provided, however, that neither the City nor its contractor for the Utility Work shall be responsible for delays in

construction of the Utility Work caused by circumstances beyond its reasonable control.

(e) In performance of the Utility Work, the City shall require its contractor to comply with all applicable laws and with the applicable maintenance of traffic plan. In addition, the City's contractor shall comply with the same conditions required of the County's contractor in paragraph 8 below including, but not limited to, the posting of a performance bond and the naming of the County as an additional insured.

6. All adjustments, relocations, repairs and other work required to be performed in relation to utility infrastructure, if any, within this Project which are owned by the City but not included in the Utility Work Plans shall be the sole responsibility of the City and shall be the subject of either a separate agreement and utility relocation schedule or a change order to the County's contract for construction of the Project. All such work shall be coordinated with the construction of this Project and performed in a manner that will not cause delay to the County's contractor.

7. All services and work under the construction contract for the Project shall be performed to the satisfaction of the Leon County Director of Public Works, or his designee; provided, however, that all Utility Work performed under that contract shall also be performed to the satisfaction the City's General Manager – Underground Utilities, or his designee. The said County and City representatives shall decide all questions, difficulties and disputes of whatever nature, which may arise under or by reason of such contract, the prosecution and fulfillment of the services thereunder, and the character, quality, amount and value thereof; and his decision upon all claims, questions and disputes thereunder, with the exception of those related to the Utility Work, shall be final and conclusive upon the parties hereto. All such questions, difficulties, claims, and disputes regarding the Utility Work Plans or the Utility Work shall be decided or resolved, in good faith, in accordance with the following process:

(a) The Parties shall attempt to resolve all disputes that arise under this Agreement in good faith and in accordance with this section. The provisions of the "Florida Governmental Conflict Resolution Act" shall not apply to disputes under this Agreement, as an alternative dispute resolution process is hereby set forth in this section. The aggrieved Party shall give notice to the other Party in writing, setting forth the name of the Party involved in the dispute, the nature of the dispute, the date of occurrence (if known), and the proposed resolution, hereinafter referred to as the "Dispute Notice."

(b) Should the parties be unable to reconcile any dispute, the City Manager and County Administrator, or their designees, shall meet at the earliest opportunity, but in any event within ten (10) days from the date that the Dispute Notice is received, to discuss and resolve the

dispute. If the dispute is resolved to the mutual satisfaction of the Parties, they shall report their decision, in writing, to the City Commission and the Board of County Commissioners. If the City Manager and County Administrator, or their designees, are unable to reconcile the dispute, they shall report their impasse to the City Commission and the Board of County Commissioners, who shall then convene a meeting at their earliest appropriate opportunity, but in any event within forty-five (45) days following receipt of a Dispute Notice, to attempt to reconcile the dispute.

(c) If a dispute is not resolved by the foregoing steps within forty-five (45) days after the receipt of the Dispute Notice, unless such time is extended by mutual agreement of the Parties, then either Party may require the dispute to be submitted to mediation by delivering written notice thereof (the "Mediation Notice") to the other Party. The mediator shall meet the qualifications set forth in Rule 10.100(d), Florida Rules for Mediators, and shall be selected by the Parties within ten (10) days following receipt of the Mediation Notice. The mediator shall also have sufficient knowledge and experience in the subject of the dispute. If agreement on a mediator cannot be reached in that ten (10) day period, then either Party can request that a mediator be selected by an independent conflict resolution organization, and such selection shall be binding on the Parties. The costs of the mediator shall be borne equally by the Parties.

(d) If an amicable resolution of a dispute has not been reached within sixty (60) calendar days following selection of the mediator, or by such later date as may be mutually agreed upon by the Parties, then, upon the agreement of both Parties, such dispute may be referred to binding arbitration; otherwise, each Party may pursue whatever remedies may be available at law, in equity, or otherwise. If the dispute is so referred, such arbitration shall be conducted in accordance with the Florida Arbitration Code (Chapter 682, Florida Statutes).

(1) Such arbitration shall be initiated by delivery, from one Party (the "Claimant") to the other Party (the "Respondent"), of a written demand therefore containing a statement of the nature of the dispute and the amount, if any, involved. The Respondent, within ten (10) days following its receipt of such demand, shall deliver an answering statement to the Claimant. After the delivery of such statements, either Party may make new or different claims by providing the other(s) with written notice thereof specifying the nature of such claims and the amount, if any, involved.

(2) Within ten (10) days following the delivery of such demand, each Party shall select an arbitrator and shall deliver written notice of that selection to the other. If either Party fails to select an arbitrator within such time, the other Party may make application to the court for such appointment in accordance with the Florida Arbitration Code. Within ten (10) days

following delivery of the last of such written notices, the two arbitrators so selected shall confer and shall select an additional arbitrator.

(3) The arbitration hearing shall be commenced in Leon County, Florida within sixty (60) days following selection of the additional arbitrator. Except as may be specifically provided herein, the arbitration shall be conducted in accordance with Rules R-23 – R-48 of the Commercial Arbitration Rules of the American Arbitration Association.

8. Following receipt of bids for the Project, the County will promptly notify the City of the proposed contract price and Pay Item prices, and the City, if it desires to proceed with the Utility Work, or portion thereof, as part of the County's contract for the Project, shall deposit with the County the proposed contract price payable by the City for such Utility Work and the contract management services fee as set forth in Section 2 of this Agreement, which amounts shall be held in escrow by the County and disbursed only in accordance with this Agreement. Said deposit must be made within 30 calendar days after the County delivers to the City a notice of proposed bid award. As required by Florida law, the County will require its contractor to post a performance and payment bond for all work on the Project, including the Utility Work, and will ensure that the City is named as a beneficiary or insured under such bond. The bond shall be issued by a surety and in a form reasonably acceptable to both the City and the County. The County shall also cause the City to be named as an additional insured with respect to insurance coverage, other than Workers' Compensation or Professional Liability, provided by the County's contractor and will provide the City with a copy of any certification of coverage received by the County from its contractor.

9. At any time after award of the contract for the construction of the Project, the County may request the City to make an additional deposit if it determines that the cost of the Utility Work will exceed the amounts previously deposited by the City as a result of an increase in the quantity of one or more Pay Items, or construction delay caused by the City, or changes in the Utility Work for which the City is responsible under Section 3 of this Agreement. The County shall request such additional deposit by delivery of invoices to the City. The City, subject to resolution of any disputes in accordance with Section 7 hereinabove, shall make such additional deposit within thirty (30) days following delivery of such invoice to the City. Should the total amount of all deposits for the Utility Work made by the City exceed the actual cost of the Utility Work, the County shall refund such difference to the City within ten (10) days following final payment for such work to the County's contractor.

10. The Utility Work shall be performed in accordance with the Utility Work Plans, which include the City's Technical Specifications for Water and Sewer Construction. The County shall neither accept nor make payment for any portion of the Utility Work that fails to meet such requirements unless the City consents, in writing, to such payment. All requests for payment for any portion of the Utility Work must be approved by the City before payment. Each month, the County's construction contractor shall submit to the County and the City a separate invoice for the Utility Work that has been completed and accepted. The City's project manager shall have seven (7) calendar days from receipt of an invoice to review the invoice and shall raise any objections or issues he or she may have with respect to the invoice. The County shall not pay any invoices of the County's contractor for which the City has raised objection or taken issue until said issues have been resolved to the City's satisfaction. Upon completion and acceptance of the Utility Work, the City shall own, control, maintain and be responsible for all such facilities, according to the terms of the applicable utility permit.

11. The City and County covenant and agree that each shall indemnify, defend, save and hold the other harmless from any and all legal actions, claims or demands by any person or legal entity caused by the negligent or wrongful act or omission of any employee of the party while acting within the scope of their employment or office. The liability of the parties, as set forth in this paragraph, is intended to be consistent with limitations of Florida law, including the state's waiver of sovereign immunity pursuant to Section 768.28, Florida Statutes. No obligation imposed by this paragraph shall be deemed to alter said waiver or to extend the liability of either party beyond such limits, nor shall any such obligation be deemed or construed as a waiver of any defense of sovereign immunity to which a party may be entitled.

12. Within one hundred eighty (180) days following the date of final payment under the contract for the Project, the County shall furnish the City with two (2) copies of its final and complete billing of all costs incurred in connection with the Utility Work, such statement to follow as closely as possible the order of the items contained in the job estimate. The final accounting will show the following with regard to the Project and the Utility Work: a description of the work and the site; the date on which the first work was performed and the date on which the last work was performed or the last item of billed expense was incurred; and the location where the records and accounts billed can be audited. All cost records and accounts maintained by the County or their consultant managing construction of the Project shall be subject to audit by a representative of the City within three (3) years after acceptance of the Project.

13. Should either party be required to file litigation to enforce any terms or provisions of this Agreement, the prevailing party in such litigation shall be entitled to an award of its reasonable attorneys' fees and court costs.

14. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

15. This Agreement shall be governed, interpreted and construed according to the laws of the State of Florida.

16. If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction, or by any other legally constituted body having the jurisdiction to make such determination, the remainder of this Agreement shall remain in full force and effect provided that the part of the Agreement thus invalidated or declared unenforceable is not material to the intended operation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers, and their official seals hereto affixed, the day and year first above written.

CITY OF TALLAHASSEE

Attest:

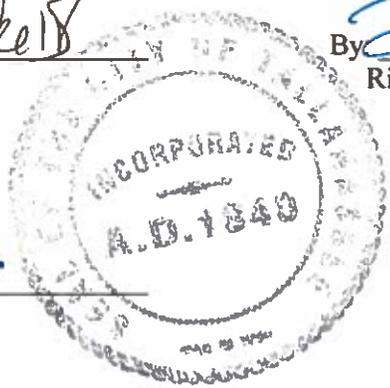
By: James D. Cooke, IV
James D. Cooke, IV
City Treasurer-Clerk

By: Ricardo Fernandez
Ricardo Fernandez, City Manager

Date: 5.25.16

Approved as to form:

By: [Signature]
City Attorney



LEON COUNTY, FLORIDA

By: _____
Vincent S. Long, County Administrator

Date: _____

ATTEST:
Bob Inzer, Clerk of the Circuit Court
And Comptroller, Leon County, Florida

By: _____

Approved as to Form:
Leon County Attorney's Office

By: _____
Herbert W.A. Thiele, Esq.
County Attorney