

**LEON COUNTY – CITY OF TALLAHASSEE JOINT PROJECT AGREEMENT
WATER AND WASTEWATER INFRASTRUCTURE RELOCATION OR INSTALLATION
FOR LAFAYETTE STREET STORMWATER CONVEYANCE PROJECT FROM CSX
OVERPASS TO SEMINOLE DRIVE**

THIS AGREEMENT is made and entered into this 17th day of DECEMBER, 2012, by and between the **City of Tallahassee**, a Florida municipal corporation (“**City**”), and **Leon County, Florida** (“**County**”), a Chartered County and Political Subdivision of the State of Florida.

WITNESSETH:

WHEREAS, the County is constructing, reconstructing or otherwise improving Lafayette Street (County Road 2196) from approximately the CSX overpass to Seminole Drive, which project has been designated by the County as Leon County Bid No. N/A, (“**Project**”); and,

WHEREAS, completion of the Project requires the adjustment, relocation, or installation of certain City water distribution and wastewater collection infrastructure within the Project (“**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 certain 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 such Utility Work; and

WHEREAS, the plans and specifications for the said Utility Work have been reviewed 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;

Leon County – City of Tallahassee Joint Project Agreement
 Water and Wastewater Infrastructure Relocation or Installation for Lafayette Street Stormwater
 Conveyance Project from CSX Overpass to Seminole Drive

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 prepared by the City and approved by the County.

2. A. The City has delivered to the County, in a form suitable for reproduction by the County, certain design documents, plans, and specifications for the Utility Work, which are dated August 29, 2012 and are more specifically identified as “Lafayette Street Water and Wastewater Utility Adjustment Contract Plans ” (“**Utility Work Plans**”). Such Utility Work Plans 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.

B. The City shall also pay for quantities of 10-inch limerock base (Pay Item No. 285-709) or an Optional Base with equal or better performance, and 3-inch asphaltic concrete (Pay item No. 334-1) to the extent that such materials are placed above the excavation for the Utility Work. The estimated quantities for such pay items, including all longitudinal and lateral trenches, are shown in the following table:

Pay Item Number	Item Description	Unit of Measure	Estimated Quantity
285-709	10” Limerock Base	Square Yard	1386
334-1	3” Asphaltic Concrete SP9.5	Tons	248

C. The City shall also 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 Utility Work pay items and the extended contract prices for the City’s share of Pay Items 285-709 or equivalent Optional Base and 334-1, then dividing that result by the sum of the extended contract prices for all roadway items except 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.

D. The City shall also pay a Project administration fee to the County in the amount of 2% of the total of all other costs paid by the City in accordance with Sections 2.A, 2.B, and 2.C.

3. All of the work on the JPA is to be done in accordance with the plans and specifications for the Project, including 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 Plan sheets shall be the sole responsibility of the City, except for those changes resulting from or caused by errors, omissions or changes in the design of the Project 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 will 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, will 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 will be based on the lowest responsive, responsible bid for all work (i.e., both the Project and the Utility Work), and the City shall have the right to review and reject any and all bids on the Utility Work. If the City decides not to have the Utility Work constructed as part of the contract for construction of the Project, then the City shall arrange, at its own expense, for the prompt construction of the Utility Work in accordance with the relocation schedule submitted by the City. In the event the City elects this option, the following shall apply:

- (a) City shall notify the County of its intent to so proceed.
- (b) Upon the receipt of such notice, the County shall amend the contract documents

for the Project prior to award.

(c) The City shall cooperate with the County's contractor to schedule the sequence of the Utility Work so as not to delay the work of the County's contractor.

(d) 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 relocation schedule 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 facilities, 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 will 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 is to 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 any 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 encompassed within this Section. The aggrieved Party shall give written notice to the other Party setting forth the nature of the dispute, date of occurrence (if known), and proposed resolution, hereinafter referred to as the "Dispute Notice".

(b) The appropriate City and County department heads shall meet at the earliest opportunity, but in any event within 10 calendar days from the date the Dispute Notice is received, to discuss and resolve the dispute. If the dispute is resolved to the mutual satisfaction of both, the department heads shall report their decision, in writing, to the City Manager and the County Administrator.

(c) If the department heads are unable to reconcile the dispute, they shall report their impasse to the City Manager and the County Administrator who shall then convene a meeting at their earliest opportunity, but in any event within 20 calendar days following receipt of the Dispute Notice, to attempt to reconcile the dispute.

(d) If a dispute is not resolved by the foregoing steps within thirty (30) days after 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 10.000(d), Florida Rules for Mediators, and shall be selected by the parties within 10 days following receipt of the Mediation Notice. If agreement on a mediator cannot be reached in that 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.

(e) If an amicable resolution of a dispute has not been reached within 60 calendar days following selection of the mediator, or by such later date as may be mutually agreed upon by the parties, then such dispute may be referred to binding arbitration by either party. 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 (the "Respondent"), of a written demand therefor 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 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 a third arbitrator. Each of the arbitrators so appointed shall have experience in local government public works and utility issues.

(3) The arbitration hearing shall be commenced in Leon County, Florida within sixty (60) days following selection of the third 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 the City, if it desires to proceed with the Utility Work as part of the County's contract for the Project, shall deposit with the County the proposed contract price for the Utility Work, the estimated total City costs for Pay Item No. 285-709 or equivalent Optional Base, Pay Item No. 334-1, and the fee for administration of the Project, all calculated in accordance with Section 2 hereof, which amounts shall be held in escrow by the County and disbursed only in accordance with this Agreement. 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 hereof. 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, 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, plus the City's share of 10-inch limerock base or equivalent Optional Base, and 3-inch asphaltic concrete, and the 2% County administration fee, 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 standard specifications. The County will 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 will have ten (10) working days from receipt of an invoice to review the invoice and 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.

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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 O. Cooke, IV
James O. Cooke, IV
City Treasurer-Clerk

By: Anita Favors Thompson
Anita Favors Thompson, City Manager

Approved as to form:

By: [Signature]
City Attorney



LEON COUNTY, FLORIDA

By: [Signature]
Vincent S. Long, County Administrator

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

By: [Signature]

Approved as to Form:
Leon County Attorney's Office

By: [Signature] Daniel J. Rigo, for
Herbert W.A. Thiele, Esq. 11/29/12
County Attorney