



City of South Daytona

Department of Public Works

1770 Segrave Street • South Daytona, FL 32119 • 386/322-3080

MEMORANDUM

To: James L. Gillis, Jr., City Manager

From: Brian Peek, P.E., Public Works Director

Re: Consideration of approving Resolution No. 2022-12 involving a Florida Department of Transportation Utility Work Agreement for the relocation of nine fire hydrants to accommodate their SunTrail Shared Use Path project.

Date: June 27, 2022

The Florida Department of Transportation (FDOT) has prioritized a statewide project involving the construction of a concrete path from Jacksonville to Key West wide enough to allow pedestrians and bicyclists to share. This “shared use path” has been identified by the FDOT as their SunTrail project.

The portion of this path that traverses South Daytona starts at the very north end of South Palmetto Avenue and continues to Ridge Boulevard (Segment 1). The path continues down Ridge Boulevard to Carmen Drive (Segment 2 which is complete). The path runs down Carmen Drive and then turns west on Reed Canal Road to Sauls Street before terminating at Madeline Avenue (Segment 3 - currently under design).

The FDOT has indicated that they will begin construction on Segment 1 (South Palmetto Avenue) beginning in January 2023. The shared use path planned for South Palmetto Avenue involves the removal of the existing six-foot-wide concrete sidewalk on the east side of the road and replacing it with a 12-foot-wide shared use path to Ridge Boulevard. The 12-foot width planned for this path is an FDOT requirement. The path’s width can only be reduced if a physical obstruction exists which cannot be moved, such as a large tree.

To accommodate this width, nine fire hydrants will have to be relocated to accommodate the construction. Since this is an FDOT project, they have asked the city if we would relocate the hydrants at their expense. An estimate was developed summarizing the entire relocation expense including labor and material costs. The city estimates that it will cost \$43,521.40 to relocate the nine fire hydrants. To get reimbursed by the FDOT for the work, the city will have to execute a Utility Work Agreement.

Attached to this memorandum is Resolution No. 2022-12 approving the proposed Utility Work Agreement with the FDOT and authorizes the City Manager to execute it and all associated documents related to the project. The Utility Work Agreement will ensure that the city will get reimbursed for our work relocating these hydrants.

The Public Works Department is capable of relocating the hydrants as requested. If our staff performs these relocations, it will guarantee that they are done properly. Therefore, staff is requesting that Resolution No. 2022-12 be approved and the Utility Work Agreement executed as requested. If approved, the work is estimated to be completed by October 31, 2022.

RESOLUTION NO. 2022-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA, APPROVING A FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) UTILITY WORK AGREEMENT FOR THE RELOCATION OF NINE FIRE HYDRANTS ALONG SOUTH PALMETTO AVENUE TO ACCOMMODATE THEIR SUNTRAIL SHARED USE PATH; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND ASSOCIATED DOCUMENTS RELATED TO THE PROJECT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida Department of Transportation (FDOT) is performing a sidewalk improvement project along South Palmetto Avenue from Beville Road to Ridge Blvd; and

WHEREAS, the FDOT has requested assistance from the city for relocation of nine fire hydrants along the section of South Palmetto Avenue for this improvement project; and

WHEREAS, the FDOT will reimburse the city for all costs associated with this relocation; and

WHEREAS, the City Council of the South Daytona determines providing assistance for the project is in the best interest of the citizens of South Daytona.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA:

Section 1. The City Manager of the City of South Daytona is hereby authorized to execute the agreements and other items necessary to implement this Resolution and the FDOT Utility Work Agreement.

Section 2. That this Resolution shall become effective immediately upon its adoption.

THIS RESOLUTION APPROVED ON FIRST AND ONLY READING this 26th day of July 2022 by the City Council of the City of South Daytona, Florida.

CITY OF SOUTH DAYTONA, FLORIDA

William C. Hall, Mayor

ATTEST: _____
James L. Gillis Jr, City Manager

APPROVED AS TO FORM AND LEGALITY:

Wade C. Vose, City Attorney

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK AGREEMENT
(FDOT PARTICIPATING IN EXPENSE)

Financial Project ID: 439865-2-56-01	Federal Project ID: N/A
County: Volusia	State Road No.: N/A
District Document No: 1	
Utility Agency/Owner (UAO): City of South Daytona	

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 **City of South Daytona Beach**, hereinafter referred to as the "**UAO**";

WITNESSETH:

WHEREAS, the **UAO** owns or desires to install 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 Palmetto Ave. from Ridge Blvd. to Beville Rd., State Road No. N/A, hereinafter referred to as the "Project"; 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 **UAO**, in accordance with and subject to the limitations of the terms and conditions of this Agreement, is entitled to be reimbursed for some portion or all of 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 **UAO** shall perform the Utility Work in accordance with the utility relocation schedule attached hereto as Exhibit A and by this reference made a part hereof (the "Schedule"), the plans and specifications for the Utility Work which have been previously approved by the **FDOT** (the "plans"), said Plans being incorporated herein and made a part hereof by this reference, and the detailed cost breakdown for the Utility Work (the "estimate") previously prepared. If the Schedule, the Plans, and the Estimate have not been prepared as of the date of the execution of this Agreement, then the Utility Work shall be performed in accordance with the Plans, the Schedule, and the Estimate that are hereafter prepared in compliance with the notice previously sent to the **UAO** which established the terms and conditions under which those documents are to be prepared. The **FDOT's** approval of the Plans shall not be deemed to be an adoption of the Plans by the **FDOT** nor a substitution for the proper exercise of engineering judgment and the **UAO** shall at all times remain responsible for any errors or omissions in the Plans. The Utility Work shall include all Facilities located on the Project and neither the failure of the **UAO** to include all of the Facilities in the Schedule nor the Plans nor the failure of the **FDOT** to identify this omission during its review of the Plans shall relieve the **UAO** of the obligation to make those Facilities part of the Utility Work. Time shall be of the essence in complying with the total time shown by the Schedule for the Utility Work as well as any and all interim time frames specified therein. The Utility Work shall be performed in a manner and using such

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK AGREEMENT
(**FDOT PARTICIPATING IN EXPENSE**)

methods so as to not cause a delay to the **FDOT** or its contractors in the prosecution of the Project. 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, Schedule, or Estimate (including location of the Facilities and the proper inclusion of all Facilities as part of the Utility Work as stated above); failure to perform the Utility Work in accordance with the Plans and Schedule; or failure of the **UAO** to comply with any other obligation under this Agreement or under the law.

- b. All Utility Work shall be performed by the **UAO's** own forces or its contractor. The **UAO** shall be responsible for obtaining any and all permits that may be necessary to perform the Utility Work. The **FDOT's** Engineer (as that term is defined by the **FDOT's** Standard Specifications for Road and Bridge Construction) 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 and Schedule as the **FDOT's** engineer shall determine are necessary for the prosecution of the Project and shall stop work or modify work upon order of the **FDOT's** engineer as determined by the **FDOT's** engineer to be necessary for public health, safety or welfare. 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 1 a.
- c. After the **FDOT** has received a proper Schedule, Estimate and Plans, the **FDOT** will issue a notice to the **UAO** which authorizes the Utility Work to proceed. The **UAO** shall notify the appropriate **FDOT** office in writing prior to beginning the Utility Work and when the **UAO** stops, resumes, or completes the Utility Work. The Utility Work shall be performed under the conditions of, and 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 _____ (Note: Intent of this line is to allow either attachment of or separate reference to the permit).

2. Claims Against UAO

- a. 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, in accordance with the **FDOT's** procedure, 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.
- b. 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**.
- c. The **FDOT** may withhold reimbursement 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 **FDOT** to **FDOT's** contractor.

3. Reimbursement for Utility Work

- a. The **FDOT** agrees to reimburse the **UAO** for a portion of the cost of the Utility Work, hereinafter referred to as the "**FDOT Participating Amount.**" The **FDOT Participating Amount** is established by the **FDOT's** Utility Estimate Summary form or similar form submitted to and accepted by the **FDOT** and the forms supporting documentation. The **FDOT Participating Amount** is estimated to be \$43,521.40. Any costs not included in the approved Plans and Estimate and any location work (vertically or horizontally) or other engineering work performed to determine the compensability of the Utility Work shall not be reimbursed by the **FDOT**. The **UAO** shall obtain written approval from the **FDOT** prior to performing Utility Work which exceeds the Estimate or which is not in the Plans.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK AGREEMENT
(**FDOT PARTICIPATING IN EXPENSE**)

- b. The method to be used in calculating the cost of the Utility Work shall be one of the following (check which option applies):
- Actual and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by the applicable Federal or State regulatory body.
 - Actual and related indirect costs accumulated in accordance with an established accounting procedure developed by the **UAO** and approved by the **FDOT's**. (If this option is selected, the **UAO** shall provide written evidence of such approval).
 - An agreed lump sum as supported by a detailed analysis of estimated costs prepared prior to the execution of this Agreement.
- c. In determining the amount of the cost of the Utility Work to be reimbursed, a credit will be required for any increase in the value of the new Facility and for any salvage derived from the old Facility. These credits shall be determined as follows:
- (1) Increase in value credit.
 - (a) Expired Service Life. If an entirely new Facility is constructed and the old Facility retired, credit for the normally-expected service life of the old Facility applies, and will be determined as of the time of the issuance of the work order. This credit shall be deducted proportionally from each invoice for the Utility Work.
 - (b) Upgrading. A percentage of the total cost of the Utility Work, based on the extent of the betterment obtained from the new Facilities, to be determined as of the time of the issuance of the work order, will be applied equally to each billing for the Utility Work.
 - (2) Salvage Value. The **FDOT** shall receive salvage value credit for any salvage which shall accrue to the **UAO** as a result of the above Utility Work. It is the **UAO's** responsibility to ensure recovery of salvageable materials and to report the salvage value of same to the **FDOT**. This Salvage Value credit shall be applied as provided in Paragraph 4 c.

4. Invoice Procedures for FDOT Participating Amount

The following terms and conditions apply to all invoices submitted pursuant to this Agreement for reimbursement of the **FDOT** Participating Amount:

- a. The **UAO** may, unless reimbursement is on a lump sum basis pursuant to Subparagraph 3. b. hereof, at monthly intervals, submit progress invoices for all costs incurred for the period covered by the invoice. In addition to deductions for applicable credits, which deductions shall be shown on the invoice, the **FDOT** will retain ten (10%) percent of such progress invoices. Retainage will be paid with the final invoice. If reimbursement is on a lump sum basis pursuant to Subparagraph 3.b. hereof, the lump sum invoice shall be submitted as a final invoice pursuant to Subparagraph 4.b. below.
- b. The **UAO** shall submit a final invoice to the **FDOT** for payment of all Utility Work within one hundred and eighty (180) days after written notification from the **FDOT** of final acceptance of the Utility Work. The **UAO** waives all right of reimbursement for invoices submitted more than one hundred eighty (180) days after written notification of final acceptance of the Utility Work. The **FDOT** does not waive its right to reject future untimely invoices by acceptance and payment of any invoices not submitted within one hundred eighty (180) days after written notification of final acceptance of the Utility Work.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK AGREEMENT
(FDOT PARTICIPATING IN EXPENSE)

- c. All invoices shall be arranged in the order of items contained in the Estimate referred to in Paragraph 1. The totals for labor, overhead, travel expenses, transportation, equipment, materials and supplies, handling costs and all other services shall be shown in such a manner as will allow ready comparison with the approved Plan and Estimate. Materials shall be itemized where they represent major components. Salvage credits from recovered and replaced permanent and recovered temporary materials shall be reported in relative position with the charge for the replacement or the original charge for temporary use.
- d. All invoices shall be submitted in triplicate and shall show the description and site of the project and the location where the records and accounts invoiced can be audited. Adequate reference shall be made in the invoicing to the **UAO's** records, accounts, and other relevant documents.
- e. All cost records and accounts shall be maintained in the auditable condition for a period of eight hundred twenty (820) days after final payment is received by the **UAO** and shall be subject to audit by a representative of the **FDOT** at any reasonable time during this eight hundred twenty (820) day period.
- f. Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Such detail shall include, but not be limited to, a separation of costs for work performed by **UAO's** employees and work performed by **UAO's** contractor.
- g. Invoices for any travel expenses shall be submitted in accordance with Section 112.061, Florida Statutes. A state agency may establish rates lower than the maximum provided in Section 112.061, Florida Statutes.
- h. Upon receipt of an invoice, the **FDOT** has thirty (30) days to inspect and approve the goods and services. The **FDOT** has twenty (20) days from the latter of the date the invoice is received or the goods or services are received, inspected and approved to deliver a request for payment (voucher) to the Department of Financial Services or to return the invoice to the **UAO**.
- i. If a warrant in payment of an invoice is not issued within forty (40) days from the latter of the date the invoice is received or the goods or services are received, inspected and approved, a separate interest penalty, as established pursuant to Section 215.422, Florida Statutes, will be due and payable in addition to the invoice amount, to the **UAO**. Interest penalties of less than one (1) dollar will not be enforced unless the **UAO** requests payment. Invoices which have to be returned to the **UAO** because of **UAO's** preparation errors, will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the **FDOT**. In the event of a bona fide dispute, the **FDOT's** voucher shall contain a statement of the dispute and authorize payment only of the undisputed amount.
- j. In accordance with Section 287.0582, Florida Statutes, the State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the legislature.
- k. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 410-9724 or by calling the Chief Financial Officer's Hotline, 1-800-848-3792.
- l. In accordance with the Florida Statutes, the **FDOT**, 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 amounts budgeted as available for expenditure during such 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 **FDOT** shall require a statement from the comptroller of the **FDOT** that funds are

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK AGREEMENT
(FDOT PARTICIPATING IN EXPENSE)

available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts 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; and this Paragraph shall be incorporated verbatim in all contracts of the **FDOT** which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year. For this purpose, the individual work orders shall be considered to be the binding commitment of funds.

- m. **PUBLIC ENTITY CRIME INFORMATION STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- n. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

5. Out of Service Facilities

No Facilities shall be left in place on **FDOT's** Right of Way after the Facilities are no longer active (hereinafter "Placed out of service/Deactivated") unless specifically identified as such in the Plans. The following terms and conditions shall apply to Facilities Placed out of service/Deactivated, but only to said Facilities Placed out of service/Deactivated:

- a. The **UAO** acknowledges its present and continuing ownership of and responsibility for Facilities Placed out of service/Deactivated.
- 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 **UAO**. In the event of a breach of this Agreement by **UAO**, the Facilities shall be removed upon demand from the **FDOT** in accordance with the provisions of Subparagraph 5. 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 concerning the Facilities that are Placed out of service/Deactivated of the **FDOT** or other permittees using or seeking use of the right of way.
- e. The **UAO** shall remove the Facilities upon 30 days prior written 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

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK AGREEMENT
(FDOT PARTICIPATING IN EXPENSE)

otherwise accommodated in the right of way. In the event that the Facilities that are Placed out of Service/Deactivated would not have qualified for reimbursement under this Agreement, 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. In the event that the Facilities that are Placed out of service/Deactivated would have qualified for reimbursement only under Section 337.403 (1)(a), Florida Statutes, 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 because such a removal would be considered to be a separate future relocation not necessitated by the construction of the project pursuant to which they were Placed out of service/Deactivated, and would therefore not be eligible and approved for reimbursement by the Federal Government. In the event that the Facilities that are Placed out of service/Deactivated would have qualified for reimbursement for other reasons, removal of the out of service Facilities shall be reimbursed by the **FDOT** as though the Facilities had not been Placed out of service/Deactivated. 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 the Facilities or the discharge of hazardous substances or materials 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 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 60 days from written notice thereof from the **FDOT** until such time as the breach is cured.
 - (6) Pursue any other remedies legally available.
 - (7) Perform any work with its own forces or through contractors and seek repayment for the

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK AGREEMENT
(FDOT PARTICIPATING IN EXPENSE)

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) 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 and from any statutory obligations that either party may have with regard to the subject matter hereof.

7. Indemnification

FOR GOVERNMENT-OWNED UTILITIES:

To the extent provided by law, the **UAO** shall indemnify, defend, and hold harmless the **FDOT** and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by the **UAO**, its agents, employees, or contractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which **FDOT** or said parties may be subject, except that neither the **UAO**, its agents, employees, or contractors will be liable under this section for damages arising out of the injury or damage to persons or property 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.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK AGREEMENT
(**FDOT PARTICIPATING IN EXPENSE**)

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.

8. 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 estimated duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible.

9. Miscellaneous

- a. If the Utility Work is reimbursable under this Agreement, the **UAO** shall fully comply with the provisions of Title VI of the Civil Rights Act of 1964 and any subsequent revisions thereto in connection with the Utility Work covered by this agreement, and such compliance will be governed by the method marked below:
- The **UAO** will perform all or part of such Utility Work by a contractor paid under a contract let by the **UAO**, and the Appendix "A" of Assurances transmitted with the issued work order will be included in said contract let by the **UAO**.
 - The **UAO** will perform all of its Utility Work entirely with **UAO's** forces, and Appendix "A" of Assurances is not required.
 - The Utility Work involved is agreed to by way of just compensation for the taking of the **UAO's** facilities on right-of-way in which the **UAO** holds a compensable interest, and Appendix "A" of Assurances is not required.
 - The **UAO** will perform all such Utility Work entirely by continuing contract, which contract to perform all future Utility Work was executed with the **UAO's** contractor prior to August 3, 1965, and Appendix "A" of Assurances is not required.
- b. 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.
- c. Pursuant to Section 287.058, Florida Statutes, 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

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK AGREEMENT
(FDOT PARTICIPATING IN EXPENSE)

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 joint agreements for Utility Work to be performed by **FDOT's** highway contractor. To the extent that such a joint agreement exists, this Agreement shall not apply to Facilities covered by the joint agreement. Copies of **FDOT** manuals, policies, and procedures will be provided to the **UAO** upon request.

- 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 provisions hereof.
- f. Time is of the essence in the performance of all obligations under this Agreement.
- g. 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**:

James L. Gillis, Jr., City Manager

P.O. Box 214960

South Daytona, FL 32121-4960

If to the **FDOT**:

Staci Nester, District Five Utility Administrator

719 S. Woodland Boulevard MS 2-546

DeLand, FL 32720

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: City of South Daytona

BY: (Signature) _____
(Typed Name: James L. Gillis, Jr.) (Typed Title: City Manager)

DATE: _____

City of South Daytona

Department of Public Works

1770 Segrave Street • South Daytona, FL 32121 • 386/322-3080



To Whom it May Concern,

In January 2023 FDOT intends to install a shared use path (sun trail) along Palmetto Avenue. The Financial Project ID for this work is 439865-2-52-01. To complete the design, multiple water valves and hydrants must be adjusted. FDOT has agreed to adjust all valves at the time of construction. However, due to the nature of the work associated with relocating the hydrants, South Daytona’s utility department will be responsible for the nine (9) hydrants in conflict with the trail. The cost estimate associated with relocation is reflected in the following table and is requested for a total reimbursement of \$43,521.40 from FDOT to the City of South Daytona:

Item	Item Cost	Quantity	Line Total
Hydrant	\$ 2,500.00	9	\$ 22,500.00
Valve	\$ 800.00	9	\$ 7,200.00
Pipe	\$ 100.00	9	\$ 900.00
Valve Box Riser	\$ 145.00	37	\$ 5,365.00
Labor (/install)	\$ 839.60	9	\$ 7,556.40
	\$ 4,384.60		\$ 43,521.40

Supporting documentation of the item costs is included for review on the following page. Labor cost was calculated for four (4) employees at eight (8) hours per installation. The following table outlines each employee’s hourly cost to the city (fringe included):

LAST NAME	TOTAL RATE
MONICO	\$27.73
ROTH	\$30.25
WAIGAND	\$26.86
GRAZIANO	\$20.11

The following timeline for installation of the nine (9) hydrants has been set based on a July 26, 2022 South Daytona Council approval of the utility work agreement. Any delay of the start date will result in an equal delay of the end date.

Item	Date
Start Date	8/15/2022
Hydrant 1	8/22/2022
Hydrant 2	8/29/2022
Hydrant 3	9/5/2022
Hydrant 4	9/12/2022
Hydrant 5	9/19/2022
Hydrant 6	9/26/2022
Hydrant 7	10/3/2022
Hydrant 8	10/10/2022
Hydrant 9	10/17/2022
End Date	10/31/2022

Thank you for your review and consideration of cost and scheduling.

Sincerely,



Brian Peek, PE
Director of Public Works

FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK ESTIMATE

FDOT PROJECT INFORMATION

Financial Project ID: 439865-2-52-01	Federal Project ID: N/A
State Road Number: SJR2C Loop Trail	County: Volusia
FDOT Plans Dated: March 1, 2022	District Document No.: 01

UTILITY AGENCY/OWNER (UAO)

Utility Company: City of South Daytona	Job No. or Work Order No.:	
UAO Project Rep: Brian Peek	Phone: 386-322-3080	E-mail: bpeek@southdaytona.org
UAO Field Rep: Fred Waigand	Phone: 386-322-3080	E-mail: fwaigand@southdaytona.org

SECTION A: ITEMIZED COST ESTIMATE

Item	Item Cost (\$)	Overhead (%) <small>(Must use "%" or "." i.e. 10% or .10)</small>	Item Cost + Overhead (\$)
Preliminary Engineering			0
Right of Way Acquisition			0
Construction Engineering			0
Construction Labor	\$7,556.40	0%	\$7,556.40
Materials and Supplies	\$35,965.00	0%	\$35,965.00
Transportation & Equipment			0
Contract Construction			0
Miscellaneous Expenses			0
Total Cost Estimate =>			\$43,521.40

SECTION B: DEDUCTIONS

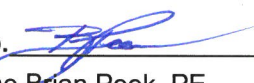
Item	Item Value (\$)
Salvage Value	\$0.00
Betterment	
Extended Service Life	
Total Deductions =>	\$0.00

SECTION C: REIMBURSEMENT

Total Cost Estimate from SECTION A =>	\$43,521.40
Total Deductions from SECTION B =>	\$0.00
Total Reimbursement* =>	\$43,521.40

*Update the estimated Total Reimbursement for changes in excess of 10%

UTILITY SIGNATURE

UAO Rep. 	Date <u>6 / 27 / 2022</u>
Name <u>Brian Peek, PE</u>	
Title <u>Public Works Director</u>	

FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK SCHEDULE

Pursuant to Section 337.403 F.S., the UAO and FDOT agree to the UAO's need for relocation or adjustment to its utilities and FDOT's need for a schedule for the UAO to effect the relocation or adjustment. This utility work schedule is based on FDOT plans dated in the project information box below. Any deviation by FDOT or its contractor from these plans, may void this utility work schedule. Upon notification by FDOT of a change to these plans, the UAO may negotiate a new utility work schedule. The UAO agrees to notify FDOT and the contractor in writing prior to starting, stopping, resuming, and completing work in accordance with this utility work schedule. The UAO shall obtain a utility permit and comply with requirements of the 2017 Utility Accommodation Manual (UAM) for all work done under this utility work schedule. The UAO is not responsible for events beyond the control of the UAO that could not be reasonably anticipated by the UAO and which could not be avoided by the UAO with exercise of due diligence at the time of the occurrence.

FDOT PROJECT INFORMATION

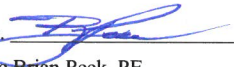
Financial Project ID: 439865-2-52-01	Federal Project ID:
State Road Number: SJR2C Loop Trail	County: Volusia
FDOT Plans Dated: 3/1/2022	District Document No.: 01

UTILITY AGENCY/OWNER (UAO)

Utility Company: City of South Daytona			
UAO Project Rep: Brian Peek	Phone: 386-322-3080	E-mail: bpeek@southdaytona.org	
UAO Field Rep: Fred Waigand	Phone: 386-322-3080	E-mail: fwaigand@southdaytona.org	

UTILITY SIGNATURE

I have reviewed the FDOT plans referenced above and submit this utility work schedule in compliance with UAM Section 5 and agree to be bound by the terms of this utility work schedule.

UAO Rep.  _____ Date 6 / 27 / 2022
 Name Brian Peek, PE
 Title Director of Public Works

ENGINEER OF RECORD SIGNATURE

I attest this utility work schedule is compatible with the FDOT plans referenced above.

EOR. _____ Date / /
 Name Henri Belrose, PE
 Title Engineer of Record

APPROVAL BY DISTRICT UTILITIES

This utility work schedule is complete and acceptable to FDOT.

FDOT Rep. _____ Date / /
 Name Staci Nester
 Title District Utility Administrator

SECTION A: SUMMARY OF UTILITY WORK

The below days are the total numbers of days shown for all activities in Section C of this utility work schedule. The breakdown of how these days are to be incorporated into the FDOT project and the dependence of these days upon the completion of other activities by the UAO or others is shown in Section C.

Days prior to FDOT project construction: 9 Days during FDOT project construction: 0

Financial Project ID: 439865-2-52-01
Utility Company: City of South Daytona
FDOT Plans Dated: 3/1/2022

SECTION B: UAO SPECIAL CONDITIONS/CONSTRAINTS

Relocation of all hydrants is expected to be completed 65 days prior to the letting date. Should any changes occur on the scheduling please notify the City of South Daytona at least 24 hours prior to construction. Section C shows all the same from and to station/offsets. This is due to all hydrants are relocating in the east/west direction only.

