

RESOLUTION NO. 2022- 2925

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT WITH THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) FOR UTILITY VALVE ADJUSTMENTS TO TOWN-OWNED UTILITY FACILITIES ON STATE ROAD A1A IN CONNECTION WITH FDOT PROJECT NO. 443899; AUTHORIZING EXPENDITURE OF FUNDS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (the "Town") owns certain utility facilities, including meter boxes, manholes, and valves, which are located on the public road on State Road A1A, Harding Avenue, within the Town limits (the "Town Utility Facilities"); and

WHEREAS, the State of Florida Department of Transportation ("FDOT") is currently engaging in FDOT Project No. 443899 which involves milling, resurfacing, and other improvements located on Harding Avenue (the "Project"); and

WHEREAS, as a result, the Town Utility Facilities will need to be adjusted to the new roadway elevations (the "Utility Work"); and

WHEREAS, FDOT requires that the Town enter into the Utility Work By Highway Contractor Agreement, in substantially the form attached hereto as Exhibit "A," for the Utility Work (the "Agreement"); and

WHEREAS, pursuant to the Agreement, FDOT requires that the Town pay for the cost of the Utility Work in the amount of \$53,240; and

WHEREAS, the Town Commission finds that this Resolution is in the best interest and welfare of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above-stated recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval and Authorization to Expend Funds. The Town Commission approves and authorizes the Agreement in substantially the form attached hereto as Exhibit "A," together with such changes as may be acceptable to the Town Manager and Town Attorney. The expenditure in the amount of \$53,240 is hereby authorized.

Section 3. Authorization to Execute Agreement. The Town Manager is authorized to execute the Agreement, in substantially the form attached hereto as Exhibit "A," with FDOT on behalf of the Town, subject to the approval as to form and legal sufficiency by the Town Manager and Town Attorney.

Section 4. Implementation. The Town Manager and Town Officials are hereby authorized to take any and all actions which are necessary to implement the Agreement and the purposes of this Resolution.

Section 5. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED this 12th day of October, 2022.

Motion By: Commissioner Landsman
Second By: Vice Mayor Rose

FINAL VOTE ON ADOPTION:

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meisheid	<u>Absent</u>
Commissioner Nelly Velasquez	<u>Absent</u>
Vice Mayor Jeffrey Rose	<u>Yes</u>
Mayor Shlomo Danzinger	<u>Yes</u>



Shlomo Danzinger, Mayor

ATTEST:



Sandra McCreedy, MMC
Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney

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

Form No. 710-010-57
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Financial Project ID: 443899-1-56-02	Federal Project ID: D622 036 b
Financial Project ID: 443899-1-52-01	
Financial Project ID:	
Financial Project ID:	
County: Miami-Dade	State Road No.: A1A
District Document No: N/A	
Utility Agency/Owner (UAO): Town of Surfside	

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 **Town of Surfside**, 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 _____, State Road No. _____, 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 \$ 53,240.00 for the cost of the Utility Work. Said amount will be deposited into the State Transportation Trust Fund.

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- 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

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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 refusal by the **UAO** to allow public access to all documents, papers, letters, or other material subject to

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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**:

Hector Gomez
Town of Surfside Public Works Director
9293 Harding Ave.
Surfside, FL 33154

If to the **FDOT**:

Xenia Rodriguez
District Utility Administrator
1000 NW 111 Ave.
Miami, FL 33172

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."

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

UTILITY: Town of Surfside

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: Daniel Iglesias, PE)

(Typed Title: Director of Transportation Development)

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

BY: _____

DATE: _____

(Typed Name: _____)

(Typed Title: _____)

EXHIBIT A

**UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT FOR LUMP SUM VALVE
AND MANHOLE PAYMENT CALCULATION**

DATE: 07/26/2022

UTILITY AGENCY OWNER: TOWN OF SURFSIDE

PROJECT FPID: 443899-1-52-01

PROJECT LIMITS: SR A1A HARDING AVE/ABBOTT AVE FROM N OF 96TH ST TO INDIAN CREEK DR

PLANS DATED: 11/05/2021

Please refer to sheet 2 for a detailed listing of facilities to be adjusted as required

<u>Quantity</u>	<u>Description (Pay Item #)</u>	<u>Unit Price</u>	<u>Total Price</u>
30	Valves (1080-24-500)	\$850.00	\$25,500.00
18	Manholes (1060-15)	\$1,200.00	\$21,600.00
2	Water Meter Boxes (1080-21-500)	\$650.00	\$1,300.00

Sub-Total	\$ 48,400.00
Contingency (10%)	<u>\$ 4,840.00</u>
Total:	\$ 53,240.00

EXHIBIT A

PROJECT FPID: 443899-1-52-01

PROJECT LIMITS: SR A1A HARDING AVE/ABBOTT AVE FROM N OF 96TH ST TO INDIAN CREEK DR

PLANS DATED: 11/05/2021

UAO REVIEWER: HECTOR GOMEZ

ITEM	SHEET	STATION	OFFSET	TYPE OF FACILITY	COMMENTS
1	31	130+90	LT	Meter box	
1A	31	130+83	LT	Sanitary manhole	
2	32	132+45	LT	Water valve	
3	32	132+50	LT	Water valve	
4	32	132+50	RT	Sanitary manhole	
5	32	132+80	LT	Water valve	
6	32	133+05	LT	Sanitary manhole	
7	32	135+05	LT	Sewer cleanout valve	
8	32	135+60	LT/RT	Sanitary manhole	
9	32	137 +00	LT	Sewer cleanout valve	
10	33	137+60	RT	Meter box	
11	33	138+00	LT	Water valve	
12	33	138+30	LT	Water valve	
13	33	138+30	LT	Water valve	
14	33	138+40	RT	Sanitary manhole	
15	33	138+60	RT	Water valve	
16	33	141+20	RT	Sanitary valve	
17	33	142+25	LT	Sanitary manhole	
18	34	145+15	RT	Sanitary valve	
19	34	145+45	RT	Sanitary manhole	
20	34	146+15	LT	Water valve	
21	34	148+00	LT	Sanitary valve	
22	35	148+70	RT	Sanitary manhole	
23	35	150+40	LT	Water valve	
24	35	150+60	RT	Water valve	
28	35	152+05	LT/RT	Sanitary manhole	
29	36	155+50	LT	Sanitary manhole	
30	36	157+40	RT	Water valve	
31	36	158+20	LT	Sanitary valve	
32	36	159+30	LT	Sanitary valve	
33	36	159+55	LT/RT	Sanitary manhole	

34	37	161+20	RT	Sanitary valve	
35	37	163+40	RT	Water valve	
36	37	163+40	LT	Water valve	
37	37	163+55	LT/RT	Sanitary manhole	
38	37	163+70	RT	Water valve	
39	38	167+55	LT/RT	Sanitary manhole	
40	38	170+20	RT	Water valve	
41	38	170+23	RT	Water valve	
42	38	170+25	RT	Water valve	
42A	38	170+45	LT	Sanitary manhole	
43	38	171+55	RT/LT	Sanitary manhole	
44	39	174+00	LT	Sanitary valve	
44A	39	175+53	RT/LT	Sanitary manhole	
45	39	176+85	RT	Water valve	
45A	70	179+54	RT/LT	Sanitary manhole	
46	40	179+80	RT	Sanitary valve	
47	40	182+55	RT	Sanitary manhole	
48	40	183+20	RT	Water valve	
49	40	183+45	RT	Water valve	