

CITY OF MARATHON, FLORIDA  
RESOLUTION 2013-07

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA APPROVING A JOINT PARTICIPATION AGREEMENT BETWEEN THE CITY AND THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR WASTEWATER VALVE ADJUSTMENTS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the State of Florida Department of Transportation (the "FDOT") has jurisdiction and maintenance responsibilities for State Road 5 also known as the Overseas Highway/U.S. Highway 1; and

**WHEREAS**, the FDOT will construct road improvements from Mile Marker 47 (Knights Key Boulevard) to Mile Marker 48 (Coast Guard Station) that will require adjustments to the City's wastewater valves; and

**WHEREAS**, the City of Marathon (the "City") has requested that FDOT's contractor make the required wastewater valve adjustments during construction of the FDOT road improvements; and

**WHEREAS**, the City and FDOT desire to enter into a Joint Participation Agreement wherein the City agrees to pay for the wastewater valve adjustments at the FDOT's rate in an amount not to exceed \$2,000.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:**

**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** The Joint Participation Agreement (JPA) between the City and the Florida Department of Transportation for wastewater valve adjustments, a copy of which is attached hereto as Exhibit "A," is hereby approved. The City Manager is authorized to execute the JPA and expend budgeted funds on behalf of the City.

**Section 3.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 8<sup>th</sup> DAY OF JANUARY, 2013.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Michael Cinque, Mayor**

AYES: Snead, Bull, Keating, Ramsay, Cinque  
NOES: None  
ABSENT: None  
ABSTAIN: None

**ATTEST:**

  
\_\_\_\_\_  
Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

  
\_\_\_\_\_  
City Attorney

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

Form No. 710-010-57  
UTILITIES  
10/04

Financial Project ID: 425600-5-56-01	Federal Project ID:
County: MONROE COUNTY	State Road No.: 5
District Document No:	
Utility Agency/Owner (UAO): CITY OF MARATHON	

THIS AGREEMENT, entered into this 22 day of January, year of 2013 by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as the "FDOT," and **CITY OF MARATHON**, 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 Adjustment of Marathon Wastewater Utility valves along US 1 from mile marker 47 to mile marker 48, State Road No. 5, 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 \$ 1,320.00 for the cost of the Utility Work. Said amount will be deposited into the State Transportation Trust Fund.
- 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.

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- 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 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

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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 the provisions of Chapter 119, Florida Statutes, and made or received by the **UAO** in conjunction with this Agreement.

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- 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:

Roger T. Hernstadt, City Manager
City of Marathon
9805 Overseas Highway
Marathon, FL 33050

If to the FDOT:

Tony Soto, District 6 Utility Administrator
Florida Department of Transportation
1000 NW 111 Avenue
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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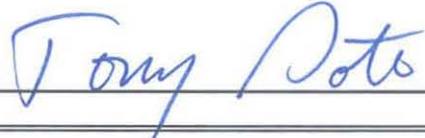
IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first written.

UTILITY: CITY OF MARATHON

BY: (Signature)   
(Typed Name: Roger T. Hernstadt)  
(Typed Title: City Manager, City of Marathon)

DATE: 1/9/2013

Recommend Approval by the District Utility Office

BY: (Signature)   
(Typed Name: \_\_\_\_\_)  
(Typed Title: \_\_\_\_\_)


DATE: 1/17/13

FDOT Legal review

BY: (Signature)   
(Typed Name: \_\_\_\_\_)  
(Typed Title: District Counsel)

DATE: JAN 17 2013

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

BY: (Signature)   
(Typed Name: \_\_\_\_\_) Harold A. Desdunes, P.E.  
(Typed Title: \_\_\_\_\_) District Director of Transportation Development

DATE: 1/22/13

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

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

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

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

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

EXHIBIT A

CITY OF MARATHON  
JOINT PARTICIPATION AGREEMENT WITH  
FLORIDA DEPARTMENT OF TRANSPORTATION DISTRICT 6

PROJECT NO: 425600-56-01

*REFER TO SHEET 2 OF THE UTILITY WORK SCHEDULE  
FOR THE CITY OF MARATHON FOR DETAILS*

QUANTITY	DESCRIPTION	UNIT PRICE/EA	TOTAL PRICE
4	Valve Adjustments	\$300.00	\$1,200.00
		SUBTOTAL	\$1,200.00
		CONTINGENCY (10%)	\$ 120.00
		TOTAL	\$1,320.00



ATTORNE		Corp. By: RAC
SR 5 (Overseas Highway)		Date: 1/7/2013
From MM 47 to MM 46 (Monroe County)		Chk. By: JJB
FPID: 425600-5-52-01		Date: 1/7/2013
PAY ITEM No.: 425-6		
PAY ITEM DESCRIPTION: VALVE BOX - ADJUST		

CITY OF MARATHON (SEWER)				
SUMMARY OF MANHOLES / VALVE BOXES TO BE ADJUSTED				
STATION	OFFSET	SIDE	QUANTITY	
			P	F
STA 39+19.00	26.00	RT	1	
STA 51+72.55	21.31	LT	1	
STA 51+81.10	19.98	LT	1	
STA 59+43.00	30.02	LT	1	
TOTAL:			4	