

**State of Florida Department of Transportation
Deferred Utility Relocation Expense Reimbursement (including interest) Agreement**

THIS AGREEMENT is made and entered into this ____day of _____, 2011, by and between CITY of KEY WEST, FL, hereinafter called the "City," and the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, a state agency, hereinafter called the "Department."

WHEREAS, the Department is authorized to enter into contracts and agreements and accept reimbursements for costs associated with the relocation of utilities located in the Department right-of-way;

WHEREAS, the Department proposes to engage in a certain project for construction, reconstruction, or other change of portions of public roads, described as SR 5 and N. Roosevelt from Eisenhower Drive to SR 5 and US-1 (Financial Project ID No. 250548-3-56-02, hereinafter Project). The Project calls for the relocation of the City's utilities or facilities along, over and/or under the public roads on said Project (hereinafter the "Relocation Work" and described more fully in Exhibit A "Plans");

WHEREAS, under the laws of the State of Florida the Relocation Work must be accomplished at the sole expense of the City, pursuant to Section 337.403, Florida Statutes;

WHEREAS, the original estimated cost of the City's share of this project was \$2,153,227.22 and this amount was deposited by the City with the Department in January 2011.

WHEREAS, the bid price of the City's share of project costs has come in at \$4,142,248.10 which is higher than originally estimated and deposited with the Department.

WHEREAS, the City is prepared to reimburse the Department for the actual costs of the Relocation Work and needs additional time to secure the full funding for the Relocation Work associated with the accelerated Project, and is authorized to enter into this Agreement;

NOW THEREFORE, THE PARTIES AGREE:

1. The recitals set forth above are true and correct and are deemed incorporated herein.
2. The Department will undertake the Relocation Work. The estimated cost is \$4,142,248.10 dollars (see attached Estimate). The Relocation Work will be performed in accordance with the schedule and plans and specifications ("Plans") for the Relocation Work which have been previously approved by the parties, and the detailed cost breakdown (Estimate). The failure to meet the schedule and plans and specifications shall not affect the rest of this Agreement.
3. The Department has received in January 2011, an initial payment of \$2,153,227.22 from the City. The payment has been deposited by the Department into an interest

bearing escrow account as provided in the attached Memorandum of Agreement between the City, Department, and the State of Florida, Department of Financial Services, Division of Treasury. Interest earned on the account will accrue to the credit of the City and will be used for project costs.

4. For value received, the City agrees to reimburse the Department for the entire actual costs of the Relocation Work, less the initial payment of \$2,153,227.22 (plus accrued interest earnings) received in January 2011, plus any interest as described below, associated with the costs of the Relocation Work. Reimbursement shall occur in three equal payments of principal, plus accrued interest. The Department will provide the City an invoice for processing and payment. The City shall pay the amount, which shall include any interest accrued in accordance with paragraph five (5) of this Agreement, on or before October 15, 2014, 2015, and 2016.
5. Interest shall accrue at the monthly State Treasury interest earnings rate (net of Treasury fees). Interest shall begin to accrue at the time of Relocation Work on the amounts expended and will continue until final payment is received by the Department from the City. The City shall make the payment by check payable to FLORIDA DEPARTMENT OF TRANSPORTATION. The City may prepay the actual reimbursement amount without penalty. Any prepayment shall include any interest accrued in accordance with this paragraph. Prepayment by the City to the Department may occur any time after the contract award but before the Due Date and shall be based on the actual expenses related to the Utility Work and any unincurred expenses based on the contractor's bid prices. Prepayments received for unincurred expenses will be deposited by the Department with the Florida Treasury in an interest bearing escrow account for the benefit of the Utility Work. The Department has the right to use any refunds due the UAO on other projects as payment towards the actual costs for the Utility Work owed on this Project. In the event the final accounting of the Utility Work costs is less than the total deposits made by the City to Department, a refund of the excess including any interest earned will be made by the Department to the City in accordance with Section 215.422, Florida Statutes.
6. The City agrees to remain fully bound until this Agreement shall be fully paid and waives presentment and demand for payment, notice of dishonor, protest, and any and all notice and contest rights under Sections 337.403 and 337.404, Florida Statutes.
7. In the event payment is not made in accordance with this Agreement, the City shall pay all costs, expenses, attorneys' fees and other fees paid or incurred by the Department in the enforcement of this Agreement.
8. No delay by the Department in enforcing any covenant or right under this Agreement shall be deemed a waiver of any covenant or right and no waiver by the Department of any particular provision of this Agreement shall be deemed a waiver of any other provision or a continuing waiver of the particular provision, and except as so expressly waived, all provisions of this Agreement shall continue in full force and effect.

9. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida and City expressly submits to the jurisdiction and venue of the Circuit Court in Leon County, Florida.
10. In the event that, for any reason, one or more of the provisions of this Agreement or their application to any person or circumstances shall be held to be invalid, illegal, or unenforceable in any respect or to any extent, such provision(s) shall, to such extent, be held for naught as though not contained in this Agreement, but the Agreement shall nevertheless remain valid, legal, and enforceable in all other respects and to such an extent as may be permissible. In addition, any such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if the invalid, illegal or unenforceable provisions had never been contained in this Agreement.
11. The Department's obligations herein are contingent upon an annual appropriation of the Florida Legislature.
12. This Agreement incorporates and includes all prior negotiations, correspondence, agreements, or understandings on the matters contained herein; however, this Agreement shall not act to modify any terms of the UWBHCA FPID 250548-3-56-02 between FDOT and UAO. To the extent the terms of this Agreement are inconsistent with the UWBHCA FPID 250548-3-56-02, the terms of this Agreement shall apply to the relocation and reimbursement of the Relocation Work addressed herein. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. No modification, amendment, or alteration in the terms and conditions herein shall be effective unless contained in a written document duly executed by both parties.

WITNESS:

STATE OF FLORIDA DEPARTMENT
OF TRANSPORTATION

BY: _____
Ananth Prasad, P.E., Secretary

ATTEST: _____

Office of Comptroller Review:

FDOT Legal Review:

BY: _____

BY: _____
Attorney -DOT

WITNESS:

CITY OF KEY WEST, FLORIDA

BY: _____
(Authorized Signature and Title)

ATTEST: _____