

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT**  
 (AT UTILITY EXPENSE)

710-010-22  
 UTILITIES  
 OGC - 06/19

<b>Financial Project ID: 446182-1-52-03</b>	<b>Federal Project ID: D424 057 B</b>
<b>Financial Project ID:</b>	
<b>Financial Project ID:</b>	
<b>Financial Project ID:</b>	
<b>County: Broward</b>	<b>State Road No.: 870</b>
<b>District Document No: N/A</b>	
<b>Utility Agency/Owner (UAO): City of Fort Lauderdale</b>	

THIS AGREEMENT, entered into this 11th day of March, year of 2024, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "FDOT", and City of Fort Lauderdale, hereinafter referred to as the "UAO";

**WITNESSETH:**

**WHEREAS**, the FDOT, is constructing, reconstructing, or otherwise changing a portion of a public road or publicly owned rail corridor, said project being identified as SR-870/Commercial Blvd. from SR-845/Powerline Rd. to E. of A1A/N. Ocean Drive, State Road No.: 870, hereinafter referred to as the "Project"; and

**WHEREAS**, the UAO owns or desires to install certain utility facilities which are located within the limits of the Project hereinafter referred to as the "Facilities" (said term shall be deemed to include utility facilities as the same may be relocated, adjusted, installed, or placed out of service pursuant to this Agreement); 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 FDOT and the UAO desire to enter into a joint agreement pursuant to Section 337.403(1)(b), Florida Statutes for the Utility Work to be accomplished by the FDOT's contractor as part of the construction of the Project; and

**WHEREAS**, the UAO, pursuant to the terms and conditions hereof, will bear certain costs associated with 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. **Design of Utility Work**
  - a. UAO shall prepare, at UAO's sole cost and expense, a final engineering design, plans, technical special provisions, a cost estimate, and a contingency Utility Work Schedule (said contingency schedule to be used in the case of a bid rejection) for the Utility Work (hereinafter referred to as the "Plans Package") on or before N/A, year of     .
  - b. The Plans Package shall be in the same format as the FDOT's contract documents for the Project and shall be suitable for reproduction.
  - c. Unless otherwise specifically directed in writing, the Plans Package shall include any and all activities and work effort required to perform the Utility Work, including but not limited to, all clearing and grubbing, survey work and shall include a traffic control plan.
  - d. The Plans Package shall be prepared in compliance with the FDOT's Utility Accommodation Manual and the FDOT's Plans Preparation Manual in effect at the time the Plans Package is prepared, and the FDOT's contract documents for the Project. If the FDOT's Plans Preparation Manual has been updated and conflicts with the Utility Accommodation Manual, the Utility Accommodation Manual shall apply where such conflicts exist.

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- e. The technical special provisions which are a part of the Plans Package shall be prepared in accordance with the FDOT's guidelines on preparation of technical special provisions and shall not duplicate or change the general contracting provisions of the FDOT's Standard Specifications for Road and Bridge Construction and any Supplemental Specifications, Special Provisions, or Developmental Specifications of the FDOT for the Project.
- f. UAO shall provide a copy of the proposed Plans Package to the FDOT, and to such other right of way users as designated by the FDOT, for review at the following stages: Production. Prior to submission of the proposed Plans Package for review at these stages, the UAO shall send the FDOT a work progress schedule explaining how the UAO will meet the FDOT's production schedule. The work progress schedule shall include the review stages, as well as other milestones necessary to complete the Plans Package within the time specified in Subparagraph a. above.
- g. In the event that the FDOT finds any deficiencies in the Plans Package during the reviews performed pursuant to Subparagraph f. above, the FDOT will notify the UAO in writing of the deficiencies and the UAO will correct the deficiencies and return corrected documents within the time stated in the notice. The FDOT's review and approval of the documents shall not relieve the UAO from responsibility for subsequently discovered errors or omissions.
- h. The FDOT shall furnish the UAO such information from the FDOT's files as requested by the UAO; however, the UAO shall at all times be and remain solely responsible for proper preparation of the Plans Package and for verifying all information necessary to properly prepare the Plans Package, including survey information as to the location (both vertical and horizontal) of the Facilities. The providing of information by the FDOT shall not relieve the UAO of this obligation nor transfer any of that responsibility to the FDOT.
- i. The Facilities and the Utility Work will include all utility facilities of the UAO which are located within the limits of the Project, except as generally summarized as follows: Everything not specifically included in the Scope of Services. These exceptions shall be handled by separate arrangement.
- j. If any facilities of the UAO located within the project limits are discovered after work on the project commences to be qualified for relocation at the FDOT's expense, but not previously identified as such, the UAO shall file a claim with the FDOT for recovery of the cost of relocation thereof. The filing of the claim shall not necessarily entitle the UAO to payment, and resolution of the claim shall be based on a determination of fault for the error. The discovery of facilities not previously identified as being qualified for relocation at the FDOT's expense shall not invalidate this Agreement.
- k. The UAO shall fully cooperate with all other right of way users in the preparation of the Plans Package. Any conflicts that cannot be resolved through cooperation shall be resolved in the manner determined by the FDOT.
- l. 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: TBD  
(Note: It is the intent of this line to allow either attachment of or separate reference to the permit).

**2. Performance of Utility Work**

- a. The FDOT shall incorporate the Plans Package into its contract for construction of the Project.
- b. The FDOT shall procure a contract for construction of the Project in accordance with the FDOT's requirements.
- c. If the portion of the bid of the contractor selected by the FDOT which is for performance of the Utility Work exceeds the FDOT's official estimate for the Utility Work by more than ten percent (10%) and

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the FDOT does not elect to participate in the cost of the Utility Work pursuant to Section 337.403(1)(b), Florida Statutes, the UAO may elect to have the Utility Work removed from the FDOT's contract by notifying the FDOT in writing within 10 days from the date that the UAO is notified of the bid amount. Unless this election is made, the Utility Work shall be performed as part of the Project by the FDOT's contractor.

- d. If the UAO elects to remove the Utility Work from the FDOT's contract in accordance with Subparagraph 2. c., the UAO shall perform the Utility Work separately pursuant to the terms and conditions of the FDOT's standard relocation agreement, the terms and conditions of which are incorporated herein for that purpose by this reference, and in accordance with the contingency relocation schedule which is a part of the Plans Package. The UAO shall proceed immediately with the Utility Work so as to cause no delay to the FDOT or the FDOT's contractor in constructing the Project.
- e. The UAO shall perform all engineering inspection, testing, and monitoring of the Utility Work to insure that it is properly performed in accordance with the Plans Package, except for the following activities: General Engineering Inspection and will furnish the FDOT with daily diary records showing approved quantities and amounts for weekly, monthly, and final estimates in accordance with the format required by FDOT procedures.
- f. Except for the inspection, testing, monitoring, and reporting to be performed by the UAO in accordance with Subparagraph 2. e., the FDOT will perform all contract administration for its construction contract.
- g. The UAO shall fully cooperate with the FDOT and the FDOT's contractor in all matters relating to the performance of the Utility Work.
- h. The FDOT's engineer 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 Package as the FDOT's engineer shall determine are necessary for the prosecution of the Project.
- i. The UAO shall not make any changes to the Plans Package after the date on which the FDOT's contract documents are mailed for advertisement of the Project unless those changes fall within the categories of changes which are allowed by supplemental agreement to the FDOT's contract pursuant to Section 337.11, Florida Statutes. All changes, regardless of the nature of the change or the timing of the change, shall be subject to the prior approval of the FDOT.

**3. Cost of Utility Work**

- a. The UAO shall be responsible for all costs of the Utility Work and all costs associated with any adjustments or changes to the Utility Work determined by the FDOT's engineer to be necessary, including, but not limited to the cost of changing the Plans Package and the increase in the cost of performing the Utility Work, unless the adjustments or changes are necessitated by an error or omission of the FDOT. 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 4.a.
- b. The initial estimate of the cost of the Utility Work is \$121,464.00. At such time as the FDOT prepares its official estimate, the FDOT shall notify the UAO of the amount of the official estimate for the Utility Work. Upon being notified of the official estimate, the UAO shall have five (5) working days within which to accept the official estimate for purposes of making deposits and for determining any possible contribution on the part of the FDOT to the cost of the Utility Work, or to elect to have the Utility Work removed from the FDOT's contract and performed separately pursuant to the terms and conditions set forth in Subparagraph 2. d. hereof.
- c. At least Forty Five (45) calendar days prior to the date on which the FDOT advertises the Project for

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bids, the UAO will pay to the FDOT an amount equal to the FDOT's official estimate; plus 2% for mobilization of equipment for the Utility Work, additional maintenance of traffic costs for the Utility Work, administrative costs of field work, tabulation of quantities, Final Estimate processing and Project accounting (said amounts are to be hereinafter collectively referred to as the Allowances); plus 10% of the official estimate for a contingency fund to be used as hereinafter provided for changes to the Utility Work during the construction of the Project (the Contingency Fund).

- d. Payment of the funds pursuant to this paragraph will be made (choose one):
  - directly to the FDOT for deposit into the State Transportation Trust Fund.
  - as provided in the attached Three Party Escrow Agreement between UAO, FDOT and the State of Florida, Department of Financial Services, Division of Treasury. Deposits of less than \$100,000.00 must be pre-approved by the FDOT Comptroller's Office prior to execution of this agreement.
- e. If the portion of the contractor's bid selected by the FDOT for performance of the Utility Work exceeds the amount of the deposit made pursuant to Subparagraph c. above, then subject to and in accordance with the limitations and conditions established by Subparagraph 2. c. hereof regarding FDOT participation in the cost of the Utility Work and the UAO's election to remove the Utility Work from the Project, the UAO shall, within fourteen (14) calendar days from notification from the FDOT or prior to posting of the accepted bid, whichever is earlier, pay an additional amount to the FDOT to bring the total amount paid to the total obligation of the UAO for the cost of the Utility Work, plus Allowances and 10% Contingency Fund. The FDOT will notify the UAO as soon as it becomes apparent the accepted bid amount plus allowances and contingency is in excess of the advance deposit amount; however, failure of the FDOT to so notify the UAO shall not relieve the UAO from its obligation to pay for its full share of project costs on final accounting as provided herein below. In the event that the UAO is obligated under this Subparagraph 3.e. to pay an additional amount and the additional amount that the UAO is obligated to pay does not exceed the Contingency Fund already on deposit, the UAO shall have sixty (60) calendar days from notification from the FDOT to pay the additional amount, regardless of when the accepted bid is posted.
- f. If the accepted bid amount plus allowances and contingency is less than the advance deposit amount, the FDOT will refund the amount that the advance deposit exceeds the bid amount, plus allowances and contingency if such refund is requested by the UAO in writing and approved by the Comptroller of the FDOT or his designee.
- g. Should contract modifications occur that increase the UAO's share of total project costs, the UAO will be notified by the FDOT accordingly. The UAO agrees to provide, in advance of the additional work being performed, adequate funds to ensure that cash on deposit with the FDOT is sufficient to fully fund its share of the project costs. The FDOT shall notify the UAO as soon as it becomes apparent the actual costs will overrun the award amount; however, failure of the FDOT to so notify the UAO shall not relieve the UAO from its obligation to pay for its full share of project costs on final accounting as provided herein below.
- h. The FDOT may use the funds paid by the UAO for payment of the cost of the Utility Work. The Contingency Fund may be used for increases in the cost of the Utility Work which occur because of quantity overruns or because of adjustments or changes in the Utility Work made pursuant to Subparagraph 2. h. Prior to using any of the Contingency Fund, the FDOT will obtain the written concurrence of the person delegated that responsibility by written notice from the UAO. The delegatee shall respond immediately to all requests for written concurrence. If the delegatee refuses to provide written concurrence promptly and the FDOT determines that the work is necessary, the FDOT may proceed to perform the work and recover the cost thereof pursuant to the provisions of Section 337.403(3), Florida Statutes. In the event that the Contingency Fund is depleted, the UAO shall, within fourteen (14) calendar days from notification from the FDOT, pay to the FDOT an additional 10% of the total obligation of the UAO for the cost of the Utility Work established under

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Subparagraph 3. e. for future use as the Contingency Fund.

- i. Upon final payment to the Contractor, the **FDOT** intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred sixty (360) days. All project cost records and accounts shall be subject to audit by a representative of the **UAO** for a period of three (3) years after final close out of the Project. The **UAO** will be notified of the final cost. Both parties agree that in the event the final accounting of total project costs pursuant to the terms of this agreement is less than the total deposits to date, a refund of the excess will be made by the **FDOT** to the **UAO** in accordance with Section 215.422, Florida Statutes. In the event said final accounting of total project costs is greater than the total deposits to date, the **UAO** will pay the additional amount within forty (40) calendar days from the date of the invoice. The **UAO** agrees to pay interest at a rate as established pursuant to Section 55.03, Florida Statutes, on any invoice not paid within the time specified in the preceding sentence until the invoice is paid.

**4. Claims Against UAO**

- a. 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 Package (including inaccurate location of the Facilities) or by failure of the **UAO** to properly perform its obligations under this Agreement in a timely manner.
- b. 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 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.
- c. 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**.
- d. The **FDOT** may withhold payment of surplus funds 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 the **FDOT** to the **FDOT's** contractor.

**5. Out of Service Facilities**

No Facilities shall be placed out of service unless specifically identified as such in the Plans. The following terms and conditions shall apply to Facilities placed Out-of-Service:

- a. The **UAO** acknowledges its present and continuing ownership of and responsibility for out of service Facilities.
- 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 the **UAO**. In the event of a breach of this Agreement by the **UAO**, the Facilities shall be removed upon demand from the **FDOT** in accordance with the provisions of Subparagraph 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 of the **FDOT** or other permittees using or seeking use of the right of

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way.

- e. The **UAO** shall remove the Facilities at the 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 otherwise accommodated in the right of way. 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. 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 or discharging 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 sixty (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 sixty (60) days from written notice thereof from **FDOT**.
  - (6) Pursue any other remedies legally available.
  - (7) 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 sixty (60) days from written notice thereof from the **UAO**.



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- (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 nor from any statutory obligations that either party may have with regard to the subject matter hereof.

**7. 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.

**8. 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.

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

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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 of 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.

9. Miscellaneous

- a. Time is of essence in the performance of all obligations under this Agreement.
- b. The Facilities shall at all times remain the property of and be properly protected and maintained by the UAO in accordance with the current Utility Accommodation Manual in effect at the time the Plans Package is prepared and the current utility permit for the Facilities; provided, however, that the UAO shall not be obligated to protect or maintain any of the Facilities to the extent the FDOT's contractor has that obligation as part of the Utility Work pursuant to the FDOT's specifications.
- c. 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 policies and procedures which may be applicable at the time of the Project and the relocation of the Facilities.
- 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 portions hereof.
- 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:  
 Garry Brandy  
 Distribution and Collection Manager, Public Works Department  
 100 N. Andrews Ave., Fort Lauderdale, FL 33301  
 gbrandy@fortlauderdale.gov 954-828-7682

If to the FDOT:  
 Kadian McLean, District Utilities Administrator  
 3400 W. Commercial Blvd., Ft. Lauderdale, FL 33309  
 Kadian.McLean@dot.state.fl.us (954)777-4360

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



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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 Fort Lauderdale

BY: (Signature) \_\_\_\_\_ DATE: \_\_\_\_\_

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

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

SEE ATTACHED

Recommend Approval by the District Utility Office

BY: (Signature) DocuSigned by:  
Kadian McLean DATE: 03/08/2024 | 2:59 PM EST  
45CA9F2018E949D...

FDOT Legal review

BY: (Signature) DocuSigned by:  
Elizabeth Quintana DATE: 03/08/2024 | 3:24 PM EST  
1A3D08703877489

District Counsel

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

BY: (Signature) DocuSigned by:  
John P. Krane, P.E. DATE: 03/10/2024 | 5:02 PM EDT  
A534C9FDF7084A5

(Typed Name: John P. Krane, P.E.)

(Typed Title: Director of Transportation Development)

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

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


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

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

CITY OF FORT LAUDERDALE, a Florida  
municipal corporation

By:   
GREG CHAVARRIA  
City Manager

ATTEST:

By:   
DAVID R. SOLOMAN  
City Clerk



Approved as to Legal Form and Correctness:  
Thomas J. Ansbro, City Attorney

By:   
RHONDA MONTÓYA HASAN  
Senior Assistant City Attorney



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## **Attachments**

1. Exhibit A – Scope of Services
2. Appendix A of Assurances
3. Three-Party Escrow Agreement

**EXHIBIT A**  
**Scope of Services**  
**446182-1-52-03**

The utility work to be performed under this agreement consists of Manhole, Valve boxes, Fire hydrants, and Meter boxes adjustments for the City of Fort Lauderdale, as itemized below per plans dated October 16, 2023.

**Summary of Quantities**

<b>Pay Item No.</b>	<b>Description</b>	<b>Unit</b>	<b>Quantity</b>
425-5-1	MANHOLE, ADJUST, UTILITIES	EA	46
425-6	VALVE BOXES, ADJUST	EA	65
425-6-1	METER BOXES, ADJUST	EA	16
1644-700	FIRE HYDRANT, ADJUST	EA	2



STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**REQUIRED CONTRACT PROVISIONS FOR FEDERAL AID CONTRACTS**  
 (Appendix A of Assurances)

710-010-08  
 UTILITIES  
 OGC-04/17

<b>Financial Project ID: 446182-1-52-03</b>	<b>Federal Project ID:</b> D424 057 B
<b>County: Broward</b>	<b>State Road No.: 870</b>
<b>District Document No: N/A</b>	
<b>Utility Agency/Owner (UAO): City of Fort Lauderdale</b>	

During the performance of this Agreement, the **Utility Agency Owner (UAO)**, for itself, its assignees and successors in interest (**hereinafter referred to as the UAO**), agrees as follows:

(1) **Compliance with Regulations:** The **UAO** will comply with the Regulations of the **FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as the DEPARTMENT)** relative to nondiscrimination in Federally-assisted programs of the **DEPARTMENT** (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

(2) **Nondiscrimination:** The **UAO**, with regard to the work performed by it after award and prior to completion of the **UAO** work, will not discriminate on the ground of race, color or national origin in the selection and retention of subcontractors, including procurement of materials or leases of equipment. The **UAO** will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix A & B of the Regulations.

(3) **Solicitations:** In all solicitations either by competitive bidding or negotiation made by the **UAO** for work to be performed under a subcontract, including procurement of materials and leases of equipment, each potential subcontractor or supplier shall be notified by the **UAO** of the **UAO's** obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color or national origin.

(4) **"Buy America" Requirements:** The **UAO** will use domestic steel and/or iron products incorporated into the finished work in compliance with the Buy America provisions of 23 CFR 635.410 as amended. As used in this provision, "steel and/or iron products" means manufactured products that are predominately steel and/or iron products and that are not otherwise exempt from Buy America requirements pursuant to rules and regulations of the Federal Highway Administration. As used in this provision, "domestic" means products that are manufactured in the United States which have not undergone any manufacturing process outside of the United States that modified the chemical content, physical shape or size, or final finish of a product, beginning with the initial melting and continuing through final shaping and coating. If a steel and/or iron product is taken outside the United States for any manufacturing process, it becomes foreign source steel and/or iron products. The **UAO** may incorporate into the finished work foreign source steel and/or iron products as long as the actual cost of such foreign products does not exceed 0.1% of the total amount of this Agreement, or \$2,500.00 whichever is greater. The **UAO** will retain documentation verifying compliance with the Buy America provision of this Agreement for a period of 3 years after final payment of the finished work. Upon request, the **UAO** will provide the documentation verifying compliance with the Buy America provision of this Agreement. The **UAO** will provide a certification with the invoice that states the following: "The UAO certifies that all manufactured products that are predominately steel and/or iron are domestic products in compliance with the Buy America provisions of 23 CFR 635.410 as amended except for the foreign source steel and/or iron allowance of 0.1% of the total amount of the agreement between the Florida Department of Transportation and the UAO, or \$2,500.00 whichever is greater."

(5) **Information and Reports:** The **UAO** will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the **DEPARTMENT** or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the **UAO** is in the exclusive possession of another who fails or refuses to furnish this information, the **UAO** shall so certify to the **DEPARTMENT** or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**REQUIRED CONTRACT PROVISIONS FOR FEDERAL AID CONTRACTS**  
(Appendix A of Assurances)

710-010-08  
UTILITIES  
OGC-04/17

(6) **Sanctions for Noncompliance:** In the event of the **UAO's** noncompliance with the nondiscrimination provisions of paragraphs (1) through (4), the **DEPARTMENT** shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the contractor under the Agreement until the **UAO** complies; and/or
- (b) cancellation, termination or suspension of the Agreement, in whole or in part.

(7) **Incorporation of Provisions:** The **UAO** will include the provisions of paragraph (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, order or instructions issued pursuant thereto. The **UAO** will take such action with respect to any subcontract, procurement or lease as the **DEPARTMENT** or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the **UAO** becomes involved in, or is threatened with, litigation with a subcontractor, supplier or lessor as a result of such direction, the **UAO** may request the State to enter into such litigation to protect the interests of the State, and, in addition, the **UAO** may request the United States to enter into such litigation to protect the interests of the United States.

### THREE PARTY ESCROW AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Florida, Department of Transportation ("FDOT"), City of Fort Lauderdale ("Participant"), and the State of Florida, Department of Financial Services, Division of Treasury ("Escrow Agent"), and shall become effective upon the Agreement's execution by Escrow Agent.

WHEREAS, FDOT and Participant are engaged in the following project ("Project"):

Project Name: SR-870/COMMERCIAL BLVD. FR SR-845/POWERLINE RD TO  
E. OF A1A/N OCEAN DRIVE  
Project #: 446182-1-52-03  
County: Broward

WHEREAS, FDOT and Participant desire to establish an escrow account for the project.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties agree to the following:

1. An initial deposit will be made into an interest-bearing escrow account established hereunder for the purposes of the Project. The escrow account will be opened with the Escrow Agent on behalf of FDOT upon Escrow Agent's receipt and execution of this Agreement.
2. Other deposits to the escrow account may be made during the life of this agreement.
3. Deposits will be delivered in accordance with instructions provided by the Escrow Agent to the FDOT for deposit into the escrow account. A wire transfer or ACH deposit is the preferred method of payment and should be used whenever possible.
4. FDOT's Comptroller or designee shall be the sole signatory on the escrow account with the Escrow Agent and shall have sole authority to authorize withdrawals from the account. Withdrawals will only be made to FDOT or the Participant in accordance with the instructions provided to the Escrow Agent by FDOT's Comptroller or designee.
5. Moneys in the escrow account will be invested in accordance with section 17.61, Florida Statutes. The Escrow Agent will invest the moneys expeditiously. Income is only earned on the moneys while invested. There is no guaranteed rate of return. Investments in the escrow account will be assessed a fee in accordance with Section 17.61(4)(b), Florida Statutes. All income of the investments shall accrue to the escrow account.
6. Unless instructed otherwise by FDOT, all interest accumulated in the escrow account shall remain in the account for the purposes of the Project.

7. The Escrow Agent agrees to provide written confirmation of receipt of funds to FDOT. FDOT agrees to provide a copy of such written confirmation to Participant upon request.
8. The Escrow Agent further agrees to provide quarterly reports to FDOT concerning the escrow account. FDOT agrees to provide a copy of such quarterly reports to Participant upon request.
9. The Escrow Agent shall not be liable for any error of judgment or for any act done or omitted by it in good faith, or for anything which it may in good faith do or refrain from doing in connection herewith.
10. Escrow Agent shall have no liability for any claim, cost, expense, damage or loss due to the acts or omissions of FDOT and Participant, nor from any separate agreements between FDOT and Participant and shall have no responsibility to monitor or enforce any responsibilities herein or in any separate agreements associated with this Agreement between FDOT and Participant.
11. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.
12. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
13. This Agreement shall terminate upon disbursement by the Escrow Agent of all money held by it in the escrow account in accordance with the instructions given by FDOT's Comptroller or designee and notification from FDOT to Escrow Agent that the account is to be closed.

*The remainder of this page is blank.*

IN WITNESS WHEREOF, the parties have duly executed the Agreement on the date(s) below.

DocuSigned by:  
Ceryl Morgan  
For FDOT-OOC (signature)

Ceryl Morgan, Deputy Comptroller, GAO  
Name and Title

59-3024028  
Federal Employer I.D. Number

03/14/2024 | 4:28 PM EDT  
Date

Susan Grant  
For PARTICIPANT (signature)

Susan Grant,  
Name and Title  
Assistant City Manager

F596000319  
Federal Employer I.D. Number

3/16/24  
Date

FDOT Legal Review:

DocuSigned by:  
Michael Hardy

Tanner Collins  
For Escrow Agent (signature)

Tanner Collins, Director  
Name and Title

3/15/24  
Date



**CITY OF FORT LAUDERDALE  
City Commission Agenda Memo  
REGULAR MEETING**

**#24-0229**

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**TO:** Honorable Mayor & Members of the  
Fort Lauderdale City Commission

**FROM:** Greg Chavarria, City Manager

**DATE:** February 20, 2024

**TITLE:** Resolution Approving a Utility Work by Highway Contractor Agreement with the Florida Department of Transportation for adjustments on City owned utility infrastructure on State Road-870/Commercial Boulevard from State Road-845/Powerline Road to East of A1A/North Ocean Drive - \$121,464 - **(Commission District 1)**

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**Recommendation**

Staff recommends the City Commission adopt a resolution authorizing the proper City Officials to execute a Utility Work By Highway Contractor Agreement (UWBHCA - At Utility Expense) with the Florida Department of Transportation (FDOT) under the project number 446182-1-52-03, in substantially the form attached, authorizing FDOT to adjust City owned utility roadway infrastructure in conjunction with road restoration work on State Road-870/Commercial Boulevard from State Road-845/Powerline Road to East of A1A/North Ocean Drive in the amount of \$121,464.

**Background**

When FDOT performs resurfacing and rehabilitation work on State Roads the utility infrastructure (sewer manholes, valves, manholes, fire hydrants, and meters) must be adjusted to the new roadway grade level to ensure an even roadway surface. It is the City's responsibility to adjust and maintain the roadway infrastructure, however it is more efficient that the adjustments are made by FDOT at the time they are performing the roadway work. The City and FDOT agree on the scope of work and cost via a UWHCA, where the City authorizes FDOT and their subcontractors to perform the necessary work on behalf of the City, at the City's expense. The execution of UWHCAs between the City and FDOT is common for amounts below the procurement threshold for Commission approval.

**Resource Impact**

There will be a current fiscal year impact of \$121,464 for this agreement. Funds for this agreement in the amount of \$121,464 are available in the FY 2024 Operating Budget in the account(s) listed below.



Funds available as of February 7, 2024					
ACCOUNT NUMBER	COST CENTER NAME (Program)	CHARACTER/ACCOUNT NAME	AMENDED BUDGET (Character)	AVAILABLE BALANCE (Character)	AMOUNT
10-450-7301-536-30-3199	Distribution and Collections Operations	Services & Materials/ Other Professional Services	\$2,680,168	\$304,134	\$121,464
<b>TOTAL AMOUNT ►</b>					<b>\$121,464</b>

**Strategic Connections**

This is a *FY2024 Commission Priority*, advancing the Infrastructure and Resilience initiative.

This item supports the *Press Play Fort Lauderdale 2024 Strategic Plan*, specifically advancing:

- The Infrastructure Focus Area
- Goal 1: Build a sustainable and resilient community.

This item advances the *Fast Forward Fort Lauderdale 2035 Vision Plan: We Are Ready*

This item supports the *Advance Fort Lauderdale 2040 Comprehensive Plan* specifically advancing:

- The Infrastructure Focus Area
  - The Sanitary Sewer, Water & Stormwater Element
    - Goal 2: To develop and maintain an adequate wastewater collection and treatment system, which meets existing and projected needs of the City and adjacent users in the Central Wastewater Region.

**Attachment**

- Exhibit 1 - Utility Work By Highway Contractor Agreement
- Exhibit 2 - Cost Estimate
- Exhibit 3 - Utility Work Schedule
- Exhibit 4 - Resolution

Prepared by: Ingrid Kindbom, Program Manager I, Public Works

Department Director: Alan Dodd, P.E., Public Works

02/20/2024  
CAM #24-0229

**Sec. 2-61. - Powers and duties.**

**The city manager** shall be responsible to the city commission for the proper administration of all affairs of the city coming under his jurisdiction, and to that end he shall:

- (1) See that the laws and ordinances of the city are enforced.
- (2) Appoint, suspend, demote and/or remove any subordinate officers and employees under his jurisdiction, in accordance with the charter and applicable rules.
- (3) Exercise control, direct and supervise all activities of the municipal government, except as otherwise provided in the charter.
- (4) See that all terms and conditions imposed in favor of the city or its inhabitants in all contracts, including leases and public utility franchises, are faithfully kept and performed and, upon knowledge of any violation thereof, call the same to the attention of the city attorney and the city commission, and it is hereby made the duty of the city attorney to take such legal steps as may be necessary to enforce the same when so directed by the city commission.
- (5) Attend all meetings of the city commission, with right to take part in the discussions, but without having a vote.
- (6) Recommend to the city commission for consideration such measures as he may deem necessary or expedient in the interests of the city.
- (7) Keep the city commission fully advised as to the financial conditions and needs of the city and, at such times and in such detail as may be specified, submit to the city commission for its consideration an annual budget.
- (8) Advise and consult with all officers and official heads of the several departments of the city relative to the affairs of such departments and make recommendations to the city commission respecting such department.
- (9) Investigate and determine whether purchases of current supplies and contractual services are made in accordance with regulations prescribed by charter and ordinance and whether competitive conditions are maintained in a fair and impartial manner.
- (10) Permit no contract to be let for the construction of public improvements, unless same is approved by the city commission after public advertisement for bids.
- (11) Along with the proposed budget submitted during the month of July each year, city manager shall submit a financial forecast based on recurring revenues and expenditures, projected five (5) years into the future. Proposed new revenues and expenditures will include optional variables. The forecast will include a discussion of underlying assumptions and methodology.
- (12) Prepare and submit to the city commission, after the close of each fiscal year, a complete report of the operation and business of the city for the preceding fiscal year.
- (13) Sign all bonds, contracts and agreements of the city.**
- (14) Perform such other duties as may be prescribed under the charter or may be required of him

by motion, direction, ordinance or resolution of the city commission.

(Laws of Fla. Ch. 57-1322, § 61; Laws of Fla. Ch. 59-1281, § 6; Laws of Fla. Ch. 63-1335, §§ 12—15; Laws of Fla. Ch. 65-1540, § 16; Laws of Fla. Ch. 67-1384, § 9; Ord. No. C-10-42, § 1, 12-7-10)

**Editor's note**— Laws of Florida chapter 57-1322 is the former city charter. To the extent not inconsistent with the current charter, section 11.01 of the current charter converted the former city charter into an ordinance.

**Charter reference**— Powers of city manager, §§ 4.09, 9.2.

Sec. 2-62. - Authority to execute indemnification and hold harmless agreements.

The city manager is hereby authorized and empowered to execute indemnification and hold harmless agreements with other municipalities and county or state agencies in order to provide that the city will appear, defend, indemnify and hold harmless any such municipalities and county or state agencies and their authorized agents or employees as a result of any litigation which might arise because of the participation of such authorized agents or employees upon oral interview panels of the city.

(Code 1953, § 2-5.3; Ord. No. C-77-42, § 1, 4-5-77)

Sec. 2-176. - Application and exclusions.

- (a) *Unauthorized purchases.* No officer of the city shall, except in cases of emergency as specified herein, issue any oral or written purchase order, contract, or conduct open market purchases in any manner unless specifically authorized by this article.

The city shall not be bound by purchases made without proper authorization or in any unauthorized manner.

Except as provided in this division, it shall be unlawful for any city officer or employee under the supervision of the city manager to order the purchase of any materials or supplies or make any contract for municipal materials or supplies or services within the purview of this division other than through the central purchasing organization, and the city shall not be bound by any purchase order or contract made contrary to the provisions of this division.

- (b) *Requisition-purchase authorization.* Except in cases of emergency, no request and process of any requisition-purchase authorization (RPA) for any order shall be made if there are insufficient unencumbered funds in the appropriate account to be charged, and the city's shall not pay any RPA when there are insufficient unencumbered appropriation balances, in excess of all unpaid obligations.
- (c) *Prohibition against subdivision.* No contract or purchase shall be subdivided to avoid the requirements of this article and the Procurement Manual.
- (d) *Competitive solicitation and selection.* The competitive solicitation and selection process

provisions of this article shall apply to every purchase by the city commission and the departments that are under the control of the city commission, irrespective of their fund source, including state and federal assistance monies and grants, except as otherwise specified in this article, or by federal, state or local laws or grant terms and conditions, or as follows:

- (1) Emergency procurements as defined herein.
- (2) Sole source and proprietary procurements as defined herein.
- (3) Real property (land or buildings) purchase, lease or rental.
- (4) Insurance and insurance-related products.
- (5) Works of art for public places.
- (6) Goods and/or services accepted by the city via grant, gift, or bequest.

(e) *Exclusions.* The mandatory commission approval amount and the competitive solicitation and selection processes set forth in this article shall not apply to the following:

- (1) Contracts with, and purchases from, other public entities, i.e.: public state colleges, public state universities, federal government agencies, state governments, county governments, city governments, government school boards, county sheriff's offices, and other government entities.
- (2) Utilities, including water, wastewater, sewer, gas, electric, or other utilities as defined by law.
- (3) Cable and satellite television services.
- (4) Magazine subscriptions, periodicals, and publications.
- (5) Membership dues for trade or professional organizations.
- (6) Travel and training expenses for employees.
- (7) Items purchased for resale.
- (8) Advertisement: radio, newspapers, magazines, professional organizations, trade shows, television, and any other related media.
- (9) Shipping services, including postage, overnight delivery, and courier services.
- (10) Copyrighted materials or patented works, including books, maps, periodicals, testing or instructional materials.
- (11) Governmental fees.
- (12) Regulatory or government licenses and permits.
- (13) Real estate transaction-related costs, including:
  - a. Closing/processing fees.
  - b. Abstracts of titles.
  - c. Title insurance.
- (14) Durable medical equipment (DME).
- (15) Professional services, including:

- a. Court reporter services.
  - b. Medical services, including wellness activities and pharmacy services.
  - c. Animal services, including veterinary services and the acquisition or training of animals.
  - d. Legal services.
  - e. Expert witnesses.
  - f. Entertainers.
  - g. Teaching, training and specialized services.
  - h. Recreational program instructors.
  - i. Professional services when used by the city in the settlement and administration of workers' compensation and liability claims, such as:
    1. Private investigators and workplace investigators.
    2. Claim adjusting services.
- (16) On-going maintenance and support of existing software/hardware and on-going maintenance, monitoring, and support of existing security software and hardware and alarm software and hardware.
- (17) Purchases of goods or services for which the provisions of this article are waived by the city commission by resolution.
- (18) Direct material purchases. Purchases of materials, equipment, prefabricated elements and components, appliances, fixtures, and other goods, pursuant to a program contained in a construction contract that has been awarded in accordance with any provision of this article, whereby the city makes such purchases directly.
- (19) Services provided by, or in partnership with, institutions of higher learning, not-for-profit organizations, state sponsored institutions, and other governmental and public agencies.
- (20) Purchases from contracts established by local, state, or national cooperative procurement organizations, Federal General Services Administration, and the State of Florida contracts.
- (21) Purchase for services and facilities at hotels, motels, restaurants and similar facilities for city sponsored events.
- (22) Products purchased from the blind, and other severely impaired persons (RESPECT) in accordance with F.S. §§ 413.032, 413.033 and 413.036.
- (23) Products purchased from the Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE), in accordance with F.S. § 946.515.
- (24) Publications from publishers or exclusive distributors of such publications.
- (25) Media such as movies, slides, videos, and similar forms of media.
- (26) Banking, financial custodial, merchant card, and other related services.
- (27) Cemetery merchandise including markers, temporary markers, granite base, inscriptions,

vaults, urns, monuments, benches, vases, mausoleum light kits, cameos, and cemetery mausoleums.

( Ord. No. C-17-26, § 4, 9-6-17; Ord. No. C-19-11, §§ 3, 4, 6-4-19; Ord. No. C-20-46, § 9, 1-5-21)