

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

710-010-22
UTILITIES
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Financial Project ID: 429958-1-56-01	Federal Project ID:
Financial Project ID:	
Financial Project ID:	
Financial Project ID:	
County: Broward	State Road No.: 842
District Document No:	
Utility Agency/Owner (UAO): City of Fort Lauderdale	

THIS AGREEMENT, entered into this 19 day of Nov., year of 2015, 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 Broward Blvd from NW 18th Ave to NW 15th Ave, Bridge #860063 & #860284, State Road No.: 842, 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

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apply where such conflicts exist.

- 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: N/A. 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: Replacement of water mains & sanitary lines that do not conflict with proposed bridge work and for utility improvements that are within City ROW. 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: _____.
(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

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Work exceeds the **FDOT's** official estimate for the Utility Work by more than ten percent (10%) and 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 \$1,080,909.70. 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.

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- c. At least thirty (30) calendar days prior to the date on which the **FDOT** advertises the Project for 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 Department of Financial Services and **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

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additional 10% of the total obligation of the **UAO** for the cost of the Utility Work established under 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

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respond to information requests of the **FDOT** or other permittees using or seeking use of the right of 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)

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days from written notice thereof from the **UAO**.

- (2) If the breach is a failure to pay an invoice for Utility Work which is reimbursable under this Agreement, pursue any statutory remedies that the **UAO** may have for failure to pay invoices.
 - (3) Pursue any other remedies legally available.
- c. Termination of this Agreement shall not relieve either party from any obligations it has pursuant to other agreements between the parties 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 negotiations, shall arise within fourteen (14) days of receipt by the **UAO** of the **FDOT's** notice of claim for

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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**:

Stan Edwards, Project Manager II
100 N. Andrews Ave, 4th Floor, Ft. Lauderdale, FL 33301
954-828-5071 SEdwards@fortlauderdale.gov

If to the **FDOT**:

Tim Brock, FDOT District Utility Engineer
3400 W. Commercial Blvd, Ft. Lauderdale, FL 33309
954-777-4125 Tim.Brock@dot.state.fl.us

10. Certification

This document is a printout of an **FDOT** form maintained in an electronic format and all revisions thereto by the **UAO** in the form of additions, deletions, or substitutions are reflected only in an Appendix entitled Changes To Form Document and no change is made in the text of the document itself. Hand notations on affected portions of this document may refer to changes reflected in the above-named Appendix but are for reference purposes only and do not change the terms of the document. By signing this document, the **UAO** hereby

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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) _____

See Attached

DATE: _____

(Typed Name: _____)

(Typed Title: _____)

Recommend Approval by the District Utility Office

BY: (Signature) _____

Timothy W. Bank

DATE: 11-17-2015

FDOT Legal review

BY: (Signature) _____

Dawn Radu

DATE: 11/18/2015

District Counsel

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: (Signature) _____

Stacy L. Miller

DATE: 11/10/15

(Typed Name: Stacy L. Miller, P.E.)

(Typed Title: Director of Transportation Development)

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

BY: _____

DATE: _____

(Typed Name: _____)

(Typed Title: _____)

IN WITNESS OF THE FOREGOING, the parties hereto have executed this Agreement effective the day and year first written:

UTILITY

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida:

By 
LEE R. FELDMAN, City Manager

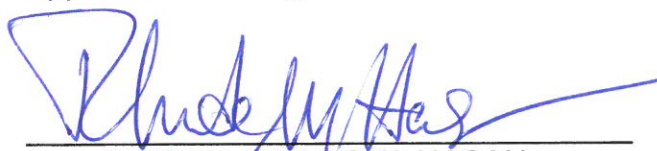
Date: 10/23/15

(CORPORATE SEAL)

ATTEST:


JEFFREY A. MODARELLI, City Clerk

Approved as to Legal Form:


RHONDA MONTOYA HASAN
Assistant City Attorney

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

710-010-22
UTILITIES
OGC – 11/14

ATTACHMENTS

1. Appendix – Changes to Form Document
2. Exhibit A – Scope of Services
3. Exhibit B – Summary of Quantities
4. Appendix A of Assurances – Required Contract Provisions for Federal Aid Contracts

APPENDIX

Changes to Form Document

In accordance with section # 10 in the basic agreement the following sections shall be modified;

The following Whereas paragraphs shall be added after the third Whereas paragraph:

WHEREAS, on November 12, 2014 the FDOT and UAO entered into a “Locally Funded Agreement” (LFA) for utility design by FDOT consultant that required delivery to the FDOT of final engineering design, plans, other necessary related design documents, and cost estimate for the construction of the utility, hereinafter referred to as the “Plans Package”; and

WHEREAS, as part of the Plans Package, UAO has (or shall) provide FDOT a contingency schedule that would be used in the event bids are rejected (as described in Subparagraphs 2b and 2c of this AGREEMENT), hereinafter referred to as “Utility Work Schedule”; and

WHEREAS, the FDOT has (or shall have) reviewed and accepted the Plans Package and Utility Work Schedule; and

Section 1a through 1h shall be deleted.

Section 2d shall be deleted and the following substituted:

If the UAO elects to remove the Utility Work from the FDOT’s contract in accordance with Subparagraph 2c, the UAO shall perform the Utility Work separately pursuant to the contingency Utility Work schedule, the terms and conditions of which are incorporated herein for that purpose by this reference, and in accordance with the Utility Work Schedule which is 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.

Section 2e, the following sentences shall be added:

FDOT’s Consultant shall provide one copy of the material shop drawings to UAO for comment. The UAO shall provide comments within 14 calendar days.

Section 3a, the first sentence shall be deleted and the following substituted:

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 and/or FDOT's Consultant and/or FDOT Contractor.

Section 3f, the following sentence shall be added:

Payment shall be subject to Florida Chapter 215.

Section 3g, the second sentence shall be deleted and the following substituted:

The UAO agrees to provide, in advance of the additional work requested by the UAO being performed, adequate funds to ensure that cash on deposit with the FDOT is sufficient to fully fund the UAO's share of total project costs.

Section 4a, shall be deleted and the following substituted:

The UAO shall be responsible for all costs incurred as a result of any delay to the FDOT or its contractors by failure of the UAO to properly perform its obligations under this Agreement in a timely manner.

EXHIBIT A SCOPE OF SERVICES

**SR-842/Broward Blvd from NW 18th Ave to NW 15th Ave, Bridge#860063 & #860284
429958-1-56-01 -- City of Fort Lauderdale UWHCA**

The utility work to be performed under this agreement is the relocation of the existing 30 inch water main that is currently attached to the SR-842/Broward Blvd. Bridge over the North Fork of the New River Canal. The project includes the installation of a new 30" Water Main from the west side to the east side of the existing bridge, which are approximately 780 LF of pipe (including 220' of steel pipe attached to the bridge). The project also includes the installation of 30" valves and fittings as needed. In addition a temporary bypass will be installed during construction to maintain the existing pipe in service all the time. The temporary bypass includes two 30"x24" line stop valves and approximately 560 LF of 24" PVC pipe.

FDOT design consultant will be preparing the plans package for the above utility work, and related post design services.

EXHIBIT B
SUMMARY OF PRELIMINARY QUANTITIES

SR-842/Broward Blvd from NW 18th Ave to NW 15th Ave, Bridge #860063 & #860284
429958-1-56-01 -- City of Fort Lauderdale UWHCA

Pay Item	Description	Unit	Quantity
1050- 11-425	Utility Pipe (F&I) (D.I.) (Water) (24")	LF	40
1050- 11-425	Utility Pipe (F&I) (D.I.) (Water) (30")	LF	550
1050- 11-525	Utility Pipe (F&I) (Steel) (Water) (30")	LF	220
1050- 16-005	Utility Pipe (Removed and Dispose) (30")	LF	520
1050- 19-225	Utility Pipe (Temporary) (PVC) (Water) (24")	LF	560
1055- 11-215	Utility Fittings (F&I) (PVC) (Elbow) (24") (90°)	EA	2
1055- 11-415	Utility Fittings (F&I) (D.I.) (Elbow) (30") (45°)	EA	6
1055- 11-455	Utility Fittings (F&I) (D.I.) (Plug) (30")	EA	2
1055- 11-515	Utility Fittings (F&I) (Steel) (Elbow) (30") (45°)	EA	2
1080- 11-206	Utility Fixture (F&I) (2") (Air Release Assembly)	EA	2
1080- 11-503	Utility Fixture (F&I) (30") (Solid Sleeve)	EA	2
1080- 11-504	Utility Fixture (F&I) (30") (Valve Assembly)	EA	2
1080- 11-507	Utility Fixture (F&I) (30"x24") (Line Stop)	EA	2
	Maintenance of Traffic [M.O.T.] (5%)	LS	1
	Mobilization (10%)	LS	1
	Contingency Fund (10%)	LS	1
	Construction Engineering Inspection (CEI) (2%)	LS	1

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

710-010-08
UTILITIES
OGC-08/15

Financial Project ID: 429958-1-56-01	Federal Project ID:
County: Broward	State Road No.: 842
District Document No:	
Utility Agency/Owner (UAO): City of Fort Lauderdale	

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" Material Certification Requirements:** The **UAO** will only use steel and iron produced in the United States, in accordance with the Buy America provisions of 23 CFR 635.410, as amended. The **UAO** will ensure that all manufacturing processes for this material occur in the United States. As used in this provision, a manufacturing process is any process that modifies the chemical content, physical shape or size, or final finish of a product, beginning with the initial melding and mixing and continuing through the bending and coating stages. A manufactured steel or iron product is complete only when all grinding, drilling, welding, finishing and coating have been completed. If a domestic product is taken outside the United States for any process, it becomes foreign source material. These requirements are applicable to all steel and iron materials incorporated into the finished work, but are not applicable to steel and iron items that are not incorporated into the finished work. The Florida Department of Transportation's "Guidelines for the Implementation of Buy America Requirements for Utility Relocations" "UAO Guidelines" signed by FHWA Florida Division Administrator are attached hereto. The **UAO** may rely on the Guidance contained in the UAO Guidelines. The **UAO** shall comply with the Certification contained in the UAO Guidelines in certifying the **UAO's** compliance with the Buy America provisions of 23 CFR 635.410, as amended, and the **UAO** shall select either the UAO Self-Certification Method or the Vendor/Manufacture Certification Method by designating one of the boxes below in this Section 4. If the **UAO** elects to use the Vendor/Manufacture Certification Method, the **UAO** shall furnish each such certification to the Florida Department of Transportation prior to incorporating the material into the project.

☐ **UAO Self-Certification Method**

☒ **Vendor/Manufacture Certification Method**

(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-08/15

(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.

UAO GUIDELINES



Florida Department of Transportation

RICK SCOTT
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

ANANTH PRASAD, P.E.
SECRETARY

January 16, 2014

Mr. James Christian, FHWA Division Administrator
Federal Highway Administration
545 John Knox Road, Suite 200
Tallahassee, Florida 32303

Re: Florida - Guidelines for the Implementation of Buy America Requirements for Utility Relocations

Dear Mr. Christian:

The Florida Department of Transportation (Department) is pleased to offer guidelines to be used by utility agency/owners (UAOs) for the purpose of clarifying and defining Buy America (BA) requirements for utility relocations or adjustments within the State of Florida. The use of these guidelines is strictly limited to relocation or adjustments of UAO facilities and will not impact or modify how the Department applies BA requirements to transportation materials.

These guidelines are applicable for all federally eligible transportation projects where the Federal Highway Administration (FHWA) is the lead federal agency; it does not take precedence over projects where the Federal Transit Administration or the Federal Railroad Administration is the lead federal agency. These guidelines are intended to supplement and to be implemented in conjunction with the Federal Highway Administration's memorandum issued Dec. 21, 2012 (the Baxter memo) and July 11, 2013, (the Shepherd memo).

The Department intends to utilize the following definitions and documented decisions to provide clarity and to assist UAOs as they strive to develop internal processes to discern and track materials that are subject to BA in the field.

It should be noted that these guidelines were reviewed by the Florida Utility Coordinating Committee's Subcommittee on "Buy America" whose members represent major Florida utility companies. These members have indicated that, without the clear guidance provided herein, the successful application of BA would be questionable. Therefore, the Florida Department of Transportation will implement BA utility relocation activities required for highway projects funded under Title 23 of the US Code as follows:

Guidance:

- The following materials, when comprised of more than 90% steel or iron, are subject to BA compliance:
 - Poles and cross arms;
 - Pipes and valves (except as stated below);
 - High-strength bolts, anchor bolts and anchor rods;
 - Girders used to comprise transmission towers and stand-alone structures;
 - Rebar and other reinforcing iron/steel for all precast and cast-in-place installations;
 - Conduit and duct work;
 - Fire hydrants; and

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- o Manhole covers and rims, and drop-inlet grates.

The Department will review utility relocation projects to determine that the above categories are adequate to comply with BA. These reviews may result in the addition of categories.

- All Utility Agreements (UA) executed before December 31, 2013, that will not have federal funding for utility materials or relocations are not subject to BA (even if other contracts associated with the project were reimbursed with federal funds).
- The date of the original UA will be used as the date to determine BA compliance even if the UA is amended after December 31, 2013.
- BA does not apply to items that are not 90% iron or steel (i.e. wood poles, copper wire, etc.).
- BA does not apply to items that are not permanently incorporated into the project and are not a functional part of the project (i.e., scaffolding, sheet piles left in place after construction that are not an integral part of the finished project). This includes equipment that was placed in a temporary location to facilitate construction of the project.
- BA does not apply to existing materials that are relocated from one location to another within the project limits.
- If the UAO does not wish to subject betterment materials (as defined below) to BA provisions then the betterments must be excluded from the UA or contract that includes work eligible for federal aid.
- BA does not apply to assembly materials, attachment materials, miscellaneous electronics, or encasements, as defined below.
- BA does not apply to any associated materials (including spare materials) required for maintenance.
- BA does not apply to any materials necessary to repair equipment that was discovered or damaged during construction which required immediate action to restore to safe conditions or to minimize adverse public impacts.
- BA does not apply to associated materials necessary for a temporary utility relocation.
- Minimal use threshold exclusion: Non-domestic iron and steel material may be used provided the cost of such materials do not exceed one-tenth of one percent (0.1%) of the individual UA amount, or \$2,500.00, whichever is greater using the following equation:

$$\text{Percentage of non-compliant materials} = \frac{\text{Combined cost of only those materials that are subject to BA and are non-compliant (limited to the individual UA) times 100.}}{\text{Total utility relocation costs (cited in the individual UA)}}$$

- BA does not apply if the utility relocation effort is not eligible for reimbursement with federal funds because the State is legally unable to pay the utility. However, all such work must remain separate from and cannot be accomplished under a UA or contract that includes work eligible for federal aid.
- Per 23 CFR 635.410, the work to be performed under the UA may include foreign iron and steel products if the cost of BA compliant materials will cause the cost of the work to increase by at least 25%. To determine applicability of this provision, one of the following two procedures shall be used:
 - 1) If the UAO will use a contractor to perform the work included in the UA, the following procedures apply: Demonstration of meeting the 25% excess costs requirement must be accomplished by receiving two separate bids each from at least two qualified contractors for the work. Requests for bids from the qualified contractors must conform to 23 CFR 635.410 (b)(3). One bid from each contractor will include a cost of performing the work described in the UA using BA compliant materials and the other bid will include a cost for

- the same work assuming foreign materials. If the bid with the BA compliant materials is at least 25% greater than the bid that includes foreign materials, then the contract can be awarded to the lowest bid based on materials that are not compliant with BA.
- 2) If the UAO will perform work in the UA with its own forces, the following procedures apply: Demonstration of meeting the 25% excess cost requirement must be accomplished by receiving two separate bids from vendors or manufacturers listing the cost of BA compliant materials on one bid document and listing the cost of non-compliant materials on a separate bid document. The UAO will take the cost of the BA compliant materials and use it to create the total estimated cost of the work included in the UA. The UAO will do the same with the costs of the non-compliant materials. If the costs of the work included in the UA with BA compliant materials is at least 25% greater than the costs using the non-compliant materials, then the non-compliant materials may be used.

Definitions:

Anchor and High-Strength Bolts - Anchor and high-strength bolts will be distinguished in one of three methods to be selected and consistently applied by the UAO:

- 1) The UAO may identify anchor and high-strength bolts in the specifications or plans as necessary for the safe and functional design of the utility relocation. If a bolt is not called out as anchor or high-strength, it stands that the design did not require that level of performance and the supplied bolt is not subject to BA;
- 2) The UAO may identify anchor and high-strength bolts through the application of a strength rating. Any bolt possessing a yield strength of fifty-thousand pounds per square inch (50-ksi) or greater will be considered an anchor or high-strength bolt.
- 3) The UAO may identify anchor and high-strength bolts through the application of a weight measurement. Any bolt possessing a weight of 15 pounds or greater will be considered an anchor or high-strength bolt.

Assembly Materials (miscellaneous steel) - The collection of miscellaneous materials used to fasten, hold, attach, secure and/or assemble materials including, but not limited to, nuts, bolts, U-bolts, screws, washers, clips, fittings, sleeves, lifting hooks, mounting brackets, pole steps, clamps, brackets, mountings, straps, fasteners, hooks, pins, braces, disks, clevises, couplers, swivels, snaps, crimps, trunnions, dead-ends, compression swages, and other miscellaneous materials used to assemble.

Attachment Materials - An item or material that is not an integral part or permanently attached to the pole, pipe or valve. Cross arms are an exception to this definition and do not qualify as attachment materials. Attachment materials include, but are not limited to, cross arm bracing, insulators, avian equipment, miscellaneous hardware (defined below), fittings, racks, ladders, encasements, guy wire, strand, conductors and tubing 0.75-inch diameter or less.

Betterments - Any upgrading of the facility being relocated that is not attributable to the highway construction and is made solely for the benefit of and at the election of the UAO (23 CFR 645.105). As such, betterments are not eligible for federal aid.

Conductor - A material (specifically wires and cables) that allows the flow of energy, including electricity, heat, data, audio/video transmission, etc.

Encasements - Include cabinets, housings, boxes, vaults, covers, shelves, and other items used to protect or house equipment or miscellaneous electronics.

Fittings - Individual parts used to join, adjust or adapt a system of pipes including, but not limited to, elbows, tees, wyes, crosses, nipples, reducers, end caps, couplers, o-lets, transitions, connectors (steady state, seismic and flexible), unions, mechanical flanges (not permanently affixed to the pipe), bushings, ferrules, gaskets, O-rings, plugs or taps.

Girders - A load bearing beam or strut commonly taking the cross-sectional shape of a circle, square, rectangle, or an: I, C, L, or Z, and assembled for the purpose of creating lattice towers, stand-alone platforms or transmission towers.

Lattice Towers - A structure that is compiled of girders and is typically used in series to support conductor cables.

Maintenance - An action or application of materials necessary to keep a system functioning safely and at optimal capacity, general up-keep.

Miscellaneous Electronics - Manufactured products or assemblies consisting of many components such as electronic equipment, routers, transformers, switches, radios, processors, power supplies, batteries, antennas, splice cases, pre-connectorized hubs and terminals, and cross-boxes.

Miscellaneous Hardware - An assembly of small parts that are compiled to form a finished product that is often used independently or as an attachment material, including, but not limited to: locks, switches, cutouts, regulators, gauges, meters, barometers, strainers, filters, pilots, arrestors, insulators, ball bearings, dampeners, needle valves, braces, pipe supports, actuators, motors and pumps.

Permanent Installation - The final location and final installation of the materials as defined on the plans or in the specifications. No further adjustments or relocations are necessary to accommodate the final transportation project improvements.

Stand-Alone Platform - A structure that is compiled of girders and is used to permanently hold or support large equipment.

Temporary Utility Relocation - A temporary utility relocation is generally subject to the schedule necessary to accomplish the scope as defined by the NEPA document. A temporary utility relocation is one that is needed to allow the roadway construction to proceed, but is not required to remain in its relocation as a result of the ultimate roadway improvement. For example, if the scope requires the sequential completion of six separate construction contracts, theoretically a temporary utility relocation could remain in place prior to commencement of the first construction contract and extend beyond completion of the sixth construction contract prior to its final placement. A temporary utility relocation can also be established if the contract specification or plans require that the steel or iron material used on the project either must be removed at the end of the project or may be removed at the contractor's convenience.

Certification:

The Department desires a process that provides reasonable assurance that utility materials subject to BA requirements are compliant prior to permanent installation. The Department will accept either of the following two certification methods: 1) UAO Self Certification and 2) Vendor/Manufacturer Certification. Each provides sufficient demonstration of BA compliance for utility relocations.

1) UAO Self Certification Method:

The Department will enter into a legally binding UA with each UAO on a project by project basis. The UA will include the following provisions:

- a) The UAO will source materials that comply with BA requirements.
- b) The UAO will certify compliance via a contract provision in the UA as follows:

"[UAO] understands and acknowledges that this project is subject to the requirements of the Buy America Law (23 USC § 313) and applicable regulations, including 23 CFR 635.410 and Federal Highway Administration guidance. [UAO] hereby certifies that in the performance of this Agreement,

for products where Buy America requirements apply, it shall use only such products for which it has received a certification from its supplier, or provider of construction services that procures the product certifying Buy America compliance. This does not include products for which waivers have been granted under 23 CFR, § 635.410 or other applicable provisions or excluded materials cited in the Florida Department of Transportation's "Guidelines for the Implementation of Buy America Requirements for Utility Relocations."

The UAO will not be required to provide copies of supplier certifications or other UAO signed certifications as part of this Agreement or with the final invoice.

- c) All documents obtained to demonstrate BA compliance will be held by the UAO for a period of three years from the date the final payment was received by the UAO and will be made available to the Department or FHWA upon request.

2) Vendor/Manufacturer Certification Method:

The Department will enter into a legally binding UA with each UAO on a project by project basis. The UA will include the following provisions:

- a) The UAO will source materials that comply with BA requirements.
- b) The UAO will demonstrate BA compliance by one of the two following methods (or a combination of both):
1. The UAO will collect written certifications from the vendor(s):
The written certification will be signed by the vendor on company letterhead, or other acceptable documentation, signed by an authorized representative of the vendor and will declare that all supplied materials subject to the BA provisions are fully compliant.
 2. The UAO will collect written certifications from the factory(s):
 - i) The Mill Test Report (MTR) issued and signed by the initial fabricator stating that the materials subject to BA were melted and manufactured in the United States.
 - ii) Other written statements on company letterhead, or other acceptable documentation, signed by an authorized representative, from the manufacturers providing any additional treatment to the fabricated material (such as blasting, galvanizing or painting) will state that all treatment processes occurred in the United States in accordance with FHWA guidelines.
- c) All documents obtained to demonstrate BA compliance will be held by the UAO for a period of three years from the date the final payment was received by the UAO and will be made available to the Department or FHWA upon request.
- d) One set of copies of all documents obtained to demonstrate BA compliance will be attached to, and submitted with, the final invoice.
- e) If no materials were subject to BA, the UAO will indicate that as part of the final invoice submittal (i.e., with a separate memo, rubber stamp on the invoice or other reasonable method).

Additional Provisions Common To Both Certification Methods:

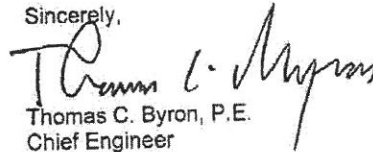
- 1) No certification (demonstration of BA compliance) is required for any materials or parts that are not subject to BA requirements for any reason, including, but not limited to application, material composition and the "minimal use threshold exclusion".
- 2) It will be up to the UAO to declare compliance with the "minimal use threshold exclusion" as defined in the guidance above.
- 3) The UAO will bear responsibility to ensure all materials permanently incorporated into their utility relocations are either compliant or not required to be compliant.

Mr. James Christian, FHWA Division Administrator
January 16, 2014
Page 6 of 6

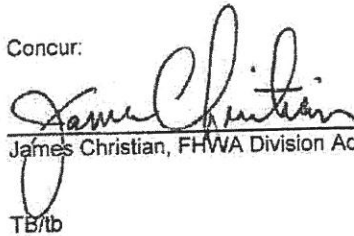
- 4) Where the UAO purchases manufactured products from a vendor for use by the UAO in its relocation activities, a certification from the vendor to the UAO that the materials meet BA requirements shall be deemed to constitute compliance by the UAO.
- 5) Where the UAO obtains construction services in connection with utility relocation work and the provider of those construction services is also responsible for provision of manufactured products used in connection with that project, a certification from the provider of construction services that the materials provided for that project meet BA requirements shall be deemed to constitute compliance by the UAO.

I am hopeful you will find this satisfactory and able to offer concurrence. Should you have any questions or require additional information, please do not hesitate to contact me at 850-414-5240. Thank you for your assistance in this matter.

Sincerely,


Thomas C. Byron, P.E.
Chief Engineer

Concur:


James Christian, FHWA Division Administrator
TB/tb

1/28/14
Date