**LEON COUNTY – CITY OF TALLAHASSEE JOINT PROJECT AGREEMENT WATER FACILITIES RELOCATION OR INSTALLATION BY HIGHWAY CONTRACTOR FOR ORANGE AVENUE WIDENING FROM SOUTH MONROE STREET TO BLAIR STONE ROAD**

THIS AGREEMENT is made and entered into this _____ day of _____, 20___, by and between the **City of Tallahassee**, a Florida municipal corporation (**"City"**), and **Leon County, Florida** (**"County"**).

WITNESSETH:

WHEREAS, the County is constructing, reconstructing or otherwise improving Orange Avenue, which project has been designated by the County as Leon County Project No._____, between South Monroe Street and Blair Stone Road, (**"Project"**) and completion of such work requires the adjustment, relocation, or installation of certain City water facilities along or under said County road (**"Utility Work"**); and

WHEREAS, the City has expressed its desire to have such Utility Work performed by the County's contractor for the Project, has agreed to assume all costs incurred for completion of such Utility Work, and has requested the County to include in said Project plans and specifications furnished by the City for completion of such Utility Work; and

WHEREAS, the plans for the said Utility Work have been reviewed by the County and the City; and

WHEREAS, the County and the City have determined that it would be in the best interest of the general public and to the economic advantage of both parties to enter into this Joint Project Agreement (**"JPA"**) providing for completion of the Utility Work;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties agree as follows:

1. This JPA will cover only that portion of the Utility Work within the limits of the Project,

as described above and as included in the plans and estimate prepared by the City and approved by the County, including a fee for administering the Project in the amount of two percent (2%) of the construction cost for the Utility Work. The method of payment is specified in Paragraphs 8 and 9.

2. The City has prepared, at its expense, the design documents and plans (Exhibit A), and the construction specifications (Exhibit B) for the Utility Work (**"Utility Work Plans"**) and has furnished the same to the County, in a form suitable for reproduction by the County. Final Utility Work Plans shall be complete in every detail and will include a summary of quantities sheet (Exhibit C). It will be the responsibility of the City to coordinate the development of the Utility Work Plans with development of the plans for the Project. The County, upon request by the City, will furnish all available highway information required by the City for development of the Utility Work Plans; and the County shall cooperate fully with the City in the development of such Plans.

3. All of the work on the JPA is to be done in accordance with the plans and specifications for the Project, including the Utility Work Plans, which are by reference made a part hereof. The City will be responsible for verifying the accuracy of the County's underground survey information and will be responsible for any changes to the Utility Work Plans made necessary by errors or omissions in the County's survey information as furnished to the City. The County and the City, as applicable, shall promptly notify the other of any errors or omissions discovered in such survey information. All errors, omissions and changes in the Utility Work Plans will be the sole responsibility of the City, except for those changes resulting from or caused by errors, omissions or changes in the design of the Project after completion of the 100% design documents, which changes shall be the County's responsibility and made at the County's cost. In any conflict between the Utility Work Plans and the Project plans and specifications, the Project plans and specifications will govern.

4. The City, at its expense, will furnish all engineering inspection, testing and monitoring of the Utility Work and will furnish the County's engineer with progress reports for diary records, approved quantities and amounts for weekly, monthly and final estimates. The coordination of the Utility Work with that of the County contractor, and with work by other utility owners or their contractors, will be the responsibility of the County, and the City shall cooperate fully in this matter. The City, upon request of the County, will promptly furnish to the County all information required for change orders or supplemental agreements pertaining to the Utility Work.

5. The County will provide the necessary engineering supervision to assure construction is in compliance with the plans and specifications hereinafter referred to, including the Utility Work, and shall receive all bids for and let all contracts for said Utility Work. All bids for said Utility Work shall be taken into consideration in the award of a contract for construction of the Project, which award will be based on the lowest responsive, responsible bid for all work (including the Utility Work), and the City shall have the right to review and reject any and all bids on the Utility Work. If the City decides not to have the Utility Work performed as part of the contract for construction of the Project, then the City shall arrange, at its own expense, for the prompt construction of the Utility Work in accordance with the relocation schedule submitted by the City. In the event the City elects this option, the following shall apply:

(a) City shall notify the County of its intent to so proceed.

(b) Upon the receipt of such notice, the County shall amend the contract documents for the Project prior to award.

(c) The City shall cooperate with the County's contractor to schedule the sequence of the Utility Work so as not to delay the work of the County's contractor.

(d) The City, or its contractor for the Utility Work, shall defend any legal claims asserted against the County by the County's contractor due solely to delays caused by the City's failure to comply with the relocation schedule provided by the City to the County; provided, however, that neither the City nor its contractor for the Utility Work shall be responsible for delays in construction of the Utility Work caused by circumstances beyond its reasonable control.

(e) In performance of the Utility Work, the City shall require its contractor to comply with all applicable laws and with the applicable Maintenance of Traffic Plans.

6. All adjustments, relocations, repairs and other work required to be performed in relation to utility facilities, if any, within this Project which are owned by the City but not included in the Utility Work will be the sole responsibility of the City and will be the subject of a separate agreement and utility relocation schedule. All such work is to be coordinated with the construction of this Project and performed in a manner that will not cause delay to the County contractor.

7. All services and work under the construction contract for the Project shall be performed to the satisfaction of the Leon County Director of Public Works, or his designee; provided, however, that all Utility Work performed under that contract shall also be performed to the satisfaction the City's General Manager – Water Operations, or his designee. The said Director shall decide all questions, difficulties and disputes of whatever nature, which may arise under or by reason of such contract, the prosecution and

fulfillment of the services thereunder, and the character, quality, amount and value thereof; and his decision upon all claims, questions and disputes thereunder, with the exception of those related to the Utility Work, shall be final and conclusive upon the parties hereto. All such questions, difficulties, claims, and disputes regarding the Utility Work Plans or the Utility Work shall be decided or resolved, in good faith, in accordance with the following process:

(a) The party seeking resolution of a particular question, difficulty, claim, or dispute shall give written notice to the other party. The City and County shall each designate project coordinators who shall meet at the earliest opportunity to discuss and resolve the dispute. If the matter is resolved to the mutual satisfaction of both, they shall report their decision to both the City and the County in writing.

(b) If the project coordinators are unable to reconcile the matter, they shall report their impasse to both the City Manager and the County Administrator, or their designees, who shall then convene a meeting at their earliest opportunity to attempt to resolve the matter.

(c) If the parties are not able to amicably resolve the matter within twenty (20) days after the initial notice thereof is received by the applicable project coordinator, then the parties can pursue any other forms of relief that may be available to them under this Agreement, at law, or in equity.

8. Following receipt of bids for the Project, the County will promptly notify the City of the proposed contract price, and the City, if it desires to proceed with the Utility Work as part of the County's contract for the Project, shall deposit with the County the proposed contract price for the Utility Work, a fee for administration of the Project in the amount of two percent (2%) of the contract price for the Utility Work, which amounts shall be held in escrow by the County and disbursed only in accordance with this Agreement. As required by Florida law, the County will require its contractor to post a performance and payment bond for all work on the Project, including the Utility Work, and will ensure that the City is named as a beneficiary or insured under such bond. The bond shall be issued by a surety and in a form reasonably acceptable to both the City and the County.

9. At any time after award of the contract for the construction of the Project, the County may request the City to make an additional deposit if it determines that the cost of the Utility Work will exceed the amounts previously deposited by the City as a result of delay by the City or changes in the Utility Work by the City. The County shall request such additional deposit by delivery of invoices to the City. The City, subject to resolution of any disputes in accordance with Section 7, shall make such additional deposit

within thirty (30) days following delivery of such invoice to the City.

10. Upon completion and acceptance of the Utility Work, the City shall own, control, maintain and be responsible for all such facilities, according to the terms of the applicable utility permit. The Utility Work shall be performed in accordance with the City's standard specifications, which are incorporated herein by reference, and the Utility Work Plans. The County will neither accept nor make payment for any portion of the Utility Work that fails to meet such requirements unless the City consents, in writing, to such payment. All requests for payment of any portion of the Utility Work must be approved by the City before payment.

11. The City and County covenant and agree that each shall indemnify, defend, save and hold the other harmless from any and all legal actions, claims or demands by any person or legal entity caused by the negligent or wrongful act or omission of any employee of the party while acting within the scope of their employment or office. The liability of the parties, as set forth in this paragraph, is intended to be consistent with limitations of Florida law, including the state's waiver of sovereign immunity pursuant to Section 768.28, Florida Statutes. No obligation imposed by this paragraph shall be deemed to alter said waiver or to extend the liability of either party beyond such limits, nor shall any such obligation be deemed or construed as a waiver of any defense of sovereign immunity to which a party may be entitled.

12. Within one hundred eighty (180) days following the date of final payment under the contract for the Project, the County shall furnish the City with two (2) copies of its final and complete billing of all costs incurred in connection with the Utility Work, such statement to follow as closely as possible the order of the items contained in the job estimate. The final billing will show the following with regard to the Project and the Utility Work: a description of the work and the site; the date on which the first work was performed and the date on which the last work was performed or the last item of billed expense was incurred; and the location where the records and accounts billed can be audited. All cost records and accounts maintained by the County or their consultant managing construction of the Project shall be subject to audit by a representative of the City within three (3) years after acceptance of the Project.

13. Should either party be required to file litigation to enforce any terms or provisions of this Agreement, the prevailing party in such litigation shall be entitled to an award of its reasonable attorneys' fees and court costs.

14. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

15. This Agreement shall be governed, interpreted and construed according to the laws of the State of Florida.

16. If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction, or by any other legally constituted body having the jurisdiction to make such determination, the remainder of this Agreement shall remain in full force and effect provided that the part of the Agreement thus invalidated or declared unenforceable is not material to the intended operation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers, and their official seals hereto affixed, the day and year first above written.

**CITY OF TALLAHASSEE**

Attest:

By:_____
Gary Herndon
City Treasurer-Clerk

By:_____
Anita R. Favors, City Manager

Approved as to form:

_____
City Attorney

**LEON COUNTY, FLORIDA**

By:_____
Jane G. Sauls, Chairman
Board of County Commissioners

Attest: Bob Inzer, Clerk of Circuit Court
Leon County, Florida

By:_____
Deputy Clerk

Approved as to Form:
Leon County Attorney's Office

_____
Herbert W. A. Thiele, Esq.
County Attorney

# EXHIBIT A

Orange Avenue Water Main Relocation Construction Plans
From South Monroe Street to Blair Stone Road

The plans are available for review at Leon County Public Works Department.

# EXHIBIT B

Technical Specifications for Orange Avenue Water Main Relocation
From South Monroe Street to Blair Stone Road

The Specifications are available for review at Leon County Public Works Department.

# EXHIBIT C

Leon County – City of Tallahassee Joint Project Agreement for Water Facilities Relocation or Installation for Orange Avenue Widening from South Monroe Street to Blair Stone Road
Quantity Summary Sheet

The Quantity Summary Sheet is available for review at Leon County Public Works Department.