

**JOINT PROJECT AGREEMENT
UTILITY INSTALLATION BY ROADWAY CONTRACTOR**

PROJECT NAME: Hercules Avenue Sidewalk Phase 2

PROJECT LIMITS: Sherwood Street to Sunset Point Road

COUNTY PROJECT IDENTIFICATION NO.: 002686A

THIS JOINT PROJECT AGREEMENT (Agreement) made and entered into on the ____ day of _____, 2018, by and between Pinellas County, a political subdivision of the State of Florida, hereinafter called the "County", and the City of Clearwater, Florida, a municipal corporation of the State of Florida, hereinafter called the "City" (collectively, Parties).

WITNESSETH, That:

WHEREAS, the County intends to construct drainage improvements on Hercules Avenue (County Project No. 002686A or Project), which will call for the adjustment, relocation and/or installation of the City's utility facilities along, over and/or under the Project (Utility Work); and

WHEREAS, the County's plans for the Project have been reviewed by the City and the City has had the opportunity for input into said plans; and

WHEREAS, the County and the City have determined that it would be to the best interest of the general public and to the economic advantage of both Parties to enter into this Joint Project Agreement for the Utility Work to be accomplished by the County's contractor as part of the construction of the Project; and

WHEREAS, the City has expressed its desire to assume all reasonable and necessary costs to be incurred for this Utility Work and has requested the County to include in said Project certain plans and specifications to meet the City's needs.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) each to the other in hand paid, the receipt whereof is hereby acknowledged, and in further consideration of the mutual covenants hereinafter contained, it is agreed by the Parties as follows:

1. Utility Work

The City's Utility Work within the limits of the Project is more specifically described as the replacement, relocation or adjustment of approximately 260 linear feet of twelve inch (12") water main, approximately 60 linear feet of eight inch (8") water main, and approximately 400 linear feet of eight inch (8") gravity sanitary sewer pipe and associated manholes that are in conflict with the proposed intersection construction improvements as part of County PID No. 002686A, located on Hercules Avenue from Sherwood Street to Sunset Point Road.

2. Funding

2.1 The County will be responsible for the bidding and award of the construction contract for the Project and will include the Utility Work as a separate option item in its bidding document. After the County receives, opens, and evaluates the bids, the County will notify the City, in writing, of the County's intent to award the contract ("Notification"). This Notification will include the amount for the Utility Work option. The bid will be awarded based upon the bids received for the Project excluding the Utility Work option. The City will have fifteen (15) days from receipt of the County's notification to request, in writing, that the County delete the Utility Work option from the County's award of bid/construction contract, and to notify the County of the City's intent to perform the Utility Work with the City's own forces or its own contractor. In order not to delay the construction of the Project, the City must show that it is ready and able to perform all Utility Work prior to requesting that the County delete the Utility Work option from the contract award. The City does not have the right to delay or affect, in any way, the award of the contract. In the event the City, in performing the Utility Work causes a compensable delay to the County's construction of this Project, the City will pay all claims and costs incurred due to its delay.

2.2 The City hereby certifies that funding for the preliminary estimated Utility Work cost (Exhibit A) of Four Hundred and Ninety Five Thousand Five Hundred and Forty and 00/100 Dollars (\$495,540), plus 5% for County construction/contract administration/compaction and backfill testing costs of Twenty Four Thousand Seven Hundred Seventy Seven and 00/100 Dollars (\$24,777), for a total cost of Five Hundred and Twenty Thousand Three Hundred and Seventeen and 00/100 Dollars (\$520,317), has been appropriated and is available for deposit into an interest bearing escrow account for the purpose of payments by the County to the contractor on the City's behalf. The deposit will be due to the County no later than thirty (30) days from the date of Notification of the County's intent to award the construction contract. If the Utility Work option portion of the contractor's bid selected by the County for performance of the Utility Work exceeds the amount of the preliminary estimated Utility Work, then subject to and in accordance with the limitations and conditions established by Subparagraph 2.1 hereof regarding the City's option to remove the Utility Work, the City will deposit an amount with the County which equals the total option item plus 5% of that amount for County construction/contract administration/compaction and backfill testing. Interest will accrue on the deposit balance and be used toward the cost of the Utility Work. In the event the final, actual cost of the Utility Work is less than the amount the City deposited, including all interest earned, but excluding the 5% for County construction/contract administration/compaction and backfill testing of the actual construction costs, the County will reimburse the City any excess escrow account funds. Should contract modifications occur that increase the cost of the Utility Work, or the estimated quantities of items provided by the City in Exhibit A are exceeded, the City will be notified by the County accordingly. The City will pay the County within thirty (30) calendar days of notification by the County to ensure that cash on deposit with the County is sufficient to fully fund the cost of the Utility Work. The County shall notify the City as soon as it becomes apparent the actual costs will overrun the award amount, and the City shall pay for the cost overruns (plus 5% administrative fee) within thirty (30) calendar days of notification by the County. However, failure of the County to so notify the City shall not relieve the City from its obligation to pay for the full cost of the Utility Work.

All deposits due to the County referenced in Section 2.2 above shall be mailed to:

Finance Division Accounts Receivable
Pinellas County Board of County Commissioners
P. O. Box 2438
Clearwater, FL 33757

2.3 The County will require the successful contractor to comply with the following conditions. The City shall be responsible for the costs attributed to said compliance with these conditions as part of the Utility Work:

(A) Indemnify, hold harmless, pay the costs of defense on behalf of and defend the County and its agents and employees and the City and its agents and employees from and against all claims, damages, losses and expenses arising out of or resulting from the performance of the Project or the Utility Work;

(B) Provide a dual obligee bond in the full amount of the Project, naming the City and the County as obligees; and

(C) Provide insurance coverage per the requirements in the insurance section of the invitation to bid as well as in the executed contract with the successful contractor. Both the County's invitation to bid and the construction contract will require that the Contractor name the County and the City as additional insured entities and certificate holders.

3. Joint Project Activities

3.1 The City will prepare, at its expense, the design of plans and specifications for all the City's necessary Utility Work and reimbursable Utility Work described above and will furnish to the County no later than **October 31, 2018**, complete and reproducible plans on standard size sheets (11" x 17" and 24" x 36"), together with a complete set of specifications covering all construction requirements for the Utility Work. These plans and specifications will be complete in every detail and will include a "Summary of Quantities" sheet and/or "Bill of Materials" identifying the items of work, with a final estimate of cost (Engineer's Estimate), required to accomplish the Utility Work said estimate to be satisfactory to the County. The plans and specifications will be signed and sealed by a Registered Professional Engineer in the State of Florida.

3.2 The City will coordinate the development of the Utility Work plans with the County's plans for the Project. The County, upon request by the City, will furnish all available roadway information required by the City for the coordination and development of the Utility Work plans, and the County will cooperate with the City to this end.

3.3 The City will obtain all necessary Florida Department of Transportation or other jurisdiction permits required for construction of the Utility Work. A copy of all permits required for said Utility Work will be provided to the County no later than **October 31, 2018**.

3.4 The County will issue a “Utilization Permit” to the City following execution of this Agreement by both Parties and prior to award of the County’s construction contract to successful contractor. This permit will not be subject to any required fees.

3.5 All surveys for construction of the Utility Work will be furnished by the successful contractor, or County Survey staff, as determined by the County per individual project, and in accordance with the plans and specifications provided by the City.

3.6 The coordination of the City’s Utility Work with that of the roadway contractor and other utilities and/or their contractors will be the responsibility of the County. The City will cooperate fully and immediately to resolve any delays in the construction of the project occurring as the result of the City’s Utility Work.

3.7 All of the Utility Work done pursuant to this Agreement shall be done in substantial accordance with the City’s plans and specifications, which plans and specifications are incorporated hereto by reference. All information required for field changes, change orders or supplemental agreements pertaining to the City’s Utility Work will be promptly furnished to the County.

3.8 During construction of the City’s Utility Work, the City will provide the necessary construction and engineering inspection for the City’s Utility Work to determine if the Utility Work is in substantial compliance with the plans and specifications, and provide all required testing associated with the City’s Utility Work, excluding backfill and compaction testing in accordance with Pinellas County Minimum Testing Frequency Requirements, and provide results to the County for same. The contractor shall contact the **City’s Engineering Inspection Division at 727-562-4591 within 24 hours** prior to commencement of any City Utility Work to schedule the appropriate inspection and pressure testing. The City’s inspector will immediately notify the County inspector of any objections to the Utility Work.

3.9 The City will participate in the design, utility coordination, pre-construction and other meetings as necessary for Project coordination.

3.10 All adjustment, relocations, repairs, maintenance, and incidental work (“Incidentals”) required to be performed to the City’s existing utilities for the Joint Project, not included in the Utility Work, will be the sole responsibility of the City. All such work is to be coordinated with the construction of this Joint Project and in a manner that will not cause delay to the County’s Project contractor.

3.11 The City’s comments and suggestions are invited and will be considered by the County; however, all services and work under the construction contract will be performed to the satisfaction of the County’s Director of Public Works, who will decide all questions, difficulties and disputes of whatever nature which may arise under or by reason of such contract for Utility Work, the prosecution and fulfillment of the services thereunder, and the character, quality, amount and value thereof; and who’s decision upon all claims, questions and disputes thereunder are final and conclusive upon the Parties hereto.

3.12 Upon completion of the entire Project, which will be determined jointly by the County and the City, the City will own, control, maintain and be responsible for all City utility facilities in accordance with the terms of the County issued Utilization Permit. The City will maintain and keep in repair, or cause to be maintained and kept in repair, all of such constructed utilities facilities.

3.13 The County will forward any accounting records, if requested, to the following City representative:

City's Project Manager
City of Clearwater
100 S. Myrtle Avenue
Clearwater, Florida 33756

3.14 Upon final payment to the contractor, the County 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 costs records and accounts shall be subject to audit by a representative of the Company for a period of three (3) years after final close out of the Project.

3.15 Upon completion of the entire Project, the Contractor will supply "as built" ("Record") standard size sheet (11" x 17" or 24" x 36") Utility Work plans to the County, who in turn will within ninety (90) days, furnish the City with one (1) set.

3.16 Upon completion of the entire Project, the County will ensure that any warranty, including materials, equipment, workmanship and closeout documents, by the contractor constructing and/or installing facilities related to the Utility Work in accordance with this Agreement, is assigned to the City.

4. Project Managers

The primary contact for each of the Parties is:

4.1 The Project Manager for the City shall be Lan-Anh Nguyen or their designee ("City's Project Manager"), whose current telephone number is 727-562-4581, email address is Lan-Anh.Nguyen@MyClearwater.com and whose office address is 100 S. Myrtle Avenue, FL 33756.

4.2 The Project Manager for Pinellas County shall be Deborah Terry or their designee ("County's Project Manager"), whose telephone number is 727-464-3744, email address is dterry@pinellascouty.org and whose office address is 14 S. Fort Harrison Avenue, Clearwater, FL 33756.

4.3 Each Party may designate a replacement Project Manager by giving written notice of such designation, and the telephone number, e-mail address, and mailing address to the other party in accordance with this Agreement.

5. Records, Reports, and Inspection

The County shall maintain financial records, accounting and purchasing information, and books and records for the Project. These books, records, and information shall comply with general accounting procedures. All documents related to the Project are public records and shall be retained and provided as required by law.

6. Compliance with Federal, State, County, and Local Laws

Both Parties shall comply with all federal, state, county, and local laws, regulations, and ordinances at all times.

7. Responsibilities of the Parties

The County and the City shall be fully responsible for their own acts of negligence and their respective employees' and/or agents' acts of negligence, when such employees' and/or agents' are acting within the scope of their employment; and shall be liable for any damages resulting from said negligence to the extent permitted by Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by either the County or the City. Nothing herein shall be construed as consent by the County or City to be sued by third Parties in any matter arising out of this Agreement.

8. Discrimination

The County and the City shall, during the performance of this Agreement, comply with all applicable provisions of federal, state and local laws and regulations pertaining to prohibited discrimination.

9. Assignment

This Agreement may not be assigned.

10. Severability

Should any section or part of any section of this Agreement be rendered void, invalid, or unenforceable by any court of law, for any reason, such a determination shall not render void, invalid, or unenforceable any other section or any part of any section of this Agreement.

11. Entire Agreement

This Agreement constitutes the entire agreement between the Parties, and no change will be valid unless made by supplemental written agreement executed by both Parties.

12. Notification

All notices, requests, demands, or other communications required by law, or this Agreement shall be in writing and shall be deemed to have been served as of the delivery date appearing upon the return receipt if sent by certified mail, postage prepaid with return receipt requested, or, if hand delivered, upon the actual date of delivery to the Project Manager, whose address is set forth in Section 4 above.

13. Waiver

No act of omission or commission of either Party, including without limitation, any failure to exercise any right, remedy, or recourse, shall be deemed to be a waiver, release, or modification of the same. Such a waiver, release, or modification is to be effected only through a written modification to this Agreement.

14. Due Authority

Each Party to this Agreement represents and warrants to the other Party that (i) it is duly organized, qualified and existing entities under the laws of the State of Florida, and (ii) all appropriate authority exists so as to duly authorize the persons executing this Agreement to so execute the same and fully bind the party on whose behalf they are executing.

15. Headings

The paragraph headings are inserted herein for convenience and reference only, and in no way define, limit, or otherwise describe the scope or intent of any provisions hereof.

16. Fiscal Funding

The obligations of the Parties are subject to appropriate budgeted funds being available in each budget year to achieve the purposes of this Agreement. In the event that sufficient budgeted funds are not available in a subsequent fiscal year, this Agreement shall terminate on the last day of the fiscal year for which sufficient budgeted funds are available without penalty to either of the Parties.

17. Term

The term of this Agreement shall commence upon execution of this Agreement by the Parties and shall terminate after completion and acceptance of the Utility Work and upon final payment in accordance with the provisions of Paragraph 3.14 of this Agreement. If the County fails to issue a Notice to Proceed to a contractor for the Project within **seven hundred twenty (720)** days from the date of full execution of this Agreement by the Parties, this Agreement shall be deemed terminated and any payments made by the City to the County shall be refunded in full by the County within thirty (30) days.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the day and date first above written.

CITY OF CLEARWATER, FLORIDA,
A municipal corporation and
political subdivision of the State of Florida

PINELLAS COUNTY, FLORIDA by and
through its Board of County Commissioners

By: _____

Mayor

By: _____
Kenneth T. Welch
Chairman

By: _____

City Manager

ATTEST:

ATTEST: Ken Burke, Clerk of the Circuit
Court

By: _____

City Clerk

By: _____
Deputy Clerk

Approved as to form:

By: _____
City Attorney

OFFICIAL CITY SEAL