

RESOLUTION 11-R68

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ST. LUCIE, FLORIDA, AUTHORIZING THE EXECUTION OF A CONSTRUCTION AGREEMENT WITH THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION CONCERNING THE CONSTRUCTION OF CERTAIN HAZARD MITIGATION IMPROVEMENTS FOR ENHANCED FLOOD PROTECTION WITHIN THE STATE'S RIGHT OF WAY ON STATE ROAD 5 (U.S. HIGHWAY ONE) THAT IS ADJACENT TO HOGPEN SLOUGH (H-16 CANAL); PROVIDING AN EFFECTIVE DATE

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**WHEREAS**, the City desires to construct, install and maintain certain hazard mitigation improvements for flood protection as part of the Hogpen Slough Improvement Project ("Hogpen Slough"); and

**WHEREAS**, the proposed Hogpen Slough improvements that will require construction work within the right-of-way on State Road 5 (U.S. Highway One) include the installation of fiber optic cables, refurbishing existing rip rap East of the existing box culvert, repairing incidental sidewalk damage, and sodding any disturbed areas; and

**WHEREAS**, the City and the State of Florida Department of Transportation ("FDOT") desire to enter into a Construction Agreement concerning said Hogpen Slough improvements as the proposed improvements will not only be constructed within FDOT'S right of way, North of Walton Road, on State Road 5 (U.S. Highway One), but will also become the property of FDOT upon acceptance of the work.

**NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF PORT ST. LUCIE, FLORIDA, THAT:**

1. This City Council adopts and ratifies those matters set forth in the foregoing recitals.
2. The City Manager, or his designee, are hereby authorized to enter into, execute and deliver to FDOT a Construction Agreement, in substantially the same form

RESOLUTION 11-R68

that is attached hereto and incorporated herein as Exhibit "A," and such other documents necessary to implement the terms of said Agreement.

3. The City Manager and City Engineer, and their designees, are hereby authorized to take all actions necessary to implement the terms and conditions of the Construction Agreement and accomplish the purposes set forth therein.

**BE IT FURTHER RESOLVED** that this Resolution becomes effective immediately upon its adoption.

**PASSED AND APPROVED** by the City Council of the City of Port St. Lucie, Florida, this 10<sup>th</sup> day of October, 2011.

ATTEST:

CITY COUNCIL  
CITY OF PORT ST. LUCIE

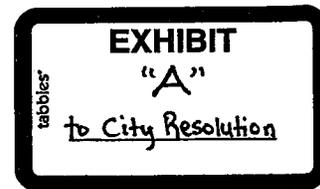
\_\_\_\_\_  
Karen A. Phillips, City Clerk

By: \_\_\_\_\_  
JoAnn M. Faiella, Mayor

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Roger G. Orr, City Attorney

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**CONSTRUCTION AGREEMENT**



850-040-89  
MAINTENANCE  
0GC - 02/11  
Page 1 of 4

**THIS CONSTRUCTION AGREEMENT (this "Agreement")** is made and entered into by and between the State of Florida, Department of Transportation, 3400 WEST COMMERCIAL BLVD, FT LAUDERDALE, FL 33309 (hereinafter referred to as the "DEPARTMENT") and CITY OF PORT ST LUCIE 121 SW PORT ST LUCIE BLVD, PORT ST LUCIE, FL 34984 (hereinafter referred to as the "Construction Coordinator").

**WITNESSETH:**

**WHEREAS**, the DEPARTMENT is authorized and required by Section 334.044(13), Florida Statutes, to coordinate the planning, development, and operation of the State Highway System; and

**WHEREAS**, pursuant to Section 339.282, Florida Statutes, the DEPARTMENT may contract with a property owner to finance, construct, and improve public transportation facilities; and

**WHEREAS**, the Construction Coordinator proposes to construct certain improvements to SR 5 Section 94010 Subsection 2533 from Begin MP 3.11 to End MP \_\_\_\_\_ Local Name FEDERAL HIGHWAY / US NO 1 located in ST LUCIE County (hereinafter referred to as the "Project"); and

**WHEREAS**, the parties desire to enter into this Agreement for the Construction Coordinator to make improvements within the DEPARTMENT'S right of way to construct the Project, which will become the property of the Department upon acceptance of the work.

**NOW, THEREFORE**, based on the premises above, and in consideration of the mutual covenants contained herein, the parties hereby agree that the construction of the Project shall proceed in accordance with the following terms and conditions:

1. The recitals set forth above are specifically incorporated herein by reference and made a part of this Agreement. The Construction Coordinator is authorized, subject to the conditions set forth herein, to enter the DEPARTMENT'S right of way to perform all activities necessary for the construction of **See attached exhibit A scope of services/special provisions.**

2. The Project shall be designed and constructed in accordance with the latest edition of the DEPARTMENT'S Standard Specifications for Road and Bridge Construction and DEPARTMENT Design Standards and Manual of Uniform Traffic Control Devices ("MUTCD"). The following guidelines shall apply as deemed appropriate by the DEPARTMENT: the DEPARTMENT Structures Design Manual, AASHTO Guide Specifications for the Design of Pedestrian Bridges, AASHTO LRFD Bridge Design Specifications, the DEPARTMENT Plans Preparation Manual ("PPM") Manual for Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (the "Florida Green Book") and the DEPARTMENT Traffic Engineering Manual. The Construction Coordinator will be required to submit any construction plans required by the DEPARTMENT for review and approval prior to any work being commenced. Should any changes to the plans be required during construction of the Project, the Construction Coordinator shall be required to notify the DEPARTMENT of the changes and receive approval from the DEPARTMENT prior to the changes being constructed. The Construction Coordinator shall maintain the area of the project at all times and coordinate any work needs of the DEPARTMENT during construction of the project.

3. The Construction Coordinator shall notify the DEPARTMENT a minimum of 48 hours before beginning construction within DEPARTMENT right of way. The Construction Coordinator shall notify the DEPARTMENT should construction be suspended for more than 5 working days.

4. Pursuant to Section 7-13 of the DEPARTMENT Standard Specifications, the Construction Coordinator is required to possess a general liability insurance naming the DEPARTMENT as an additional insured and insuring the DEPARTMENT and the Construction Coordinator against any and all claims for injury or damage to persons and property, and for the loss of life or property that may occur (directly or indirectly) by reason of the Construction Coordinator accessing DEPARTMENT right of way and the Construction Coordinator's performance of the Project. Such amount shall be carried in a minimum amount of not less than N/A and 00/100 Dollars (\$ 0.00) for bodily injury or death to any one person or any number of persons in any one occurrence, and not less than N/A and 00/100 Dollars (\$ 0.00) for property damage, or a combined coverage of not less than 0.00 and 00/100 Dollars (\$ 0.00). Additionally, the Construction Coordinator shall supply the DEPARTMENT with a payment and performance bond in the amount of the estimated cost of construction, provided by a surety authorized to do business in the State of Florida, payable to the DEPARTMENT. The bond and insurance shall remain in effect until completion of construction and acceptance by the DEPARTMENT. Prior to commencement of the Project and on such other occasions as the DEPARTMENT may reasonably require, the Construction Coordinator shall

provide the DEPARTMENT with certificates documenting that the required insurance coverage is in place and effective. If the Construction Coordinator is a local governmental entity they will be exempt from these requirements.

5. The Construction Coordinator shall be responsible for monitoring construction operations and the maintenance of traffic ("MOT") throughout the course of the project in accordance with the latest edition of the DEPARTMENT Standard Specifications, section 102. The Construction Coordinator is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of the DEPARTMENT Design Standards, Index 600 series. Any MOT plan developed by the Construction Coordinator that deviates from the DEPARTMENT Design Standards must be signed and sealed by a professional engineer. MOT plans will require approval by the DEPARTMENT prior to implementation.

6. The Construction Coordinator shall be responsible for locating all existing utilities, both aerial and underground, and for ensuring that all utility locations be accurately documented on the construction plans. All utility conflicts shall be fully resolved directly with the applicable utility.

7. The Construction Coordinator will be responsible for obtaining all permits that may be required by other agencies or local governmental entities.

8. It is hereby agreed by the parties that this Agreement creates a permissive use only and all improvements resulting from this agreement shall become the property of the DEPARTMENT. Neither the granting of the permission to use the DEPARTMENT right of way nor the placing of facilities upon the DEPARTMENT property shall operate to create or vest any property right to or in the Construction Coordinator, except as may otherwise be provided in separate agreements. The Construction Coordinator shall not acquire any right, title, interest or estate in DEPARTMENT right of way, of any nature or kind whatsoever, by virtue of the execution, operation, effect, or performance of this Agreement including, but not limited to, the Construction Coordinator's use, occupancy or possession of DEPARTMENT right of way. The parties agree that this Agreement does not, and shall not be construed to, grant credit for any future transportation concurrency requirements pursuant to chapter 163, Florida Statutes.

9. The Construction Coordinator shall perform all required testing associated with the design and construction of the project. Testing results shall be made available to the DEPARTMENT upon request. The DEPARTMENT shall have the right to perform its own independent testing during the course of the Project.

10. The Construction Coordinator shall exercise the rights granted herein and shall otherwise perform this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, but not limited to, those of the DEPARTMENT, applicable Water Management District, Florida Department of Environmental Protection, Environmental Protection Agency, the Army Corps of Engineers, the United States Coast Guard and local governmental entities.

11. If the DEPARTMENT determines a condition exists which threatens the public's safety, the DEPARTMENT may, at its discretion, cause construction operations to cease and immediately have any potential hazards removed from its right of way at the sole cost, expense, and effort of the Construction Coordinator. The Construction Coordinator shall bear all construction delay costs incurred by the DEPARTMENT.

12. All work and construction shall be completed within 270 days of the date of the last signature affixed to this agreement. If construction is not completed within this time, the DEPARTMENT may make a claim on the bond. The DEPARTMENT may terminate this Agreement at any time, with or without cause and without DEPARTMENT liability to the Construction Coordinator, by providing sixty (60) days prior written notice of termination to the Construction Coordinator.

13. The Construction Coordinator shall be responsible to maintain and restore all features that might require relocation within the DEPARTMENT right of way.

14. The Construction Coordinator will be responsible for clean up or restoration required to correct any environmental or health hazards that may result from construction operations.

15. Upon completion of construction, the Construction Coordinator will be required to submit to the DEPARTMENT final as-built plans and an engineering certification that construction was completed in accordance to the plans. Prior to the termination of this Agreement, the Construction Coordinator shall remove its presence, including, but not limited to, all of the Construction Coordinator's property, machinery, and equipment from DEPARTMENT right of way and shall restore those portions of DEPARTMENT right of way disturbed or otherwise altered by the Project to substantially the same condition that existed immediately prior to the commencement of the Project.

16. If the DEPARTMENT determines that the Project is not completed in accordance with the provisions of this Agreement, the DEPARTMENT shall deliver written notification of such to the Construction Coordinator. The Construction Coordinator shall have thirty (30) days from the date of receipt of the DEPARTMENT'S written notice, or such other time as the Construction Coordinator and the DEPARTMENT mutually agree to in writing, to complete the Project and provide the DEPARTMENT with written notice of the same (the "Notice of Completion"). If the Construction Coordinator fails to timely deliver the Notice of Completion, or if it is determined that the Project is not properly completed after receipt of the Notice of Completion, the DEPARTMENT, within its discretion may: 1) provide the Construction

Coordinator with written authorization granting such additional time as the DEPARTMENT deems appropriate to correct the deficiency(ies); or 2) correct the deficiency(ies) at the Construction Coordinator's sole cost and expense, without DEPARTMENT liability to the Construction Coordinator for any resulting loss or damage to property, including, but not limited to, machinery and equipment. If the DEPARTMENT elects to correct the deficiency(ies), the DEPARTMENT shall provide the Construction Coordinator with an invoice for the costs incurred by the DEPARTMENT and the Construction Coordinator shall pay the invoice within thirty (30) days of the date of the invoice.

17. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the DEPARTMENT'S sovereign immunity protections, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes. The DEPARTMENT'S liability for breach of this Agreement is limited in amount and shall not exceed the limitations of liability for tort actions as set forth in Section 768.28(5), Florida Statutes.

18. All formal notices, proposed changes and determinations between the parties hereto and those required by this Agreement, including, but not limited to, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States mail, postage prepaid, to the parties at the contact information listed below.

19. The Construction Coordinator shall not cause any liens or encumbrances to attach to any portion of DEPARTMENT right of way.

20. This Agreement shall be governed by the laws of the State of Florida in terms of interpretation and performance. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

21. The Construction Coordinator may not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the DEPARTMENT'S District Secretary or his/her designee. The DEPARTMENT has the sole discretion and authority to grant or deny proposed assignments, with or without cause. Nothing herein shall prevent the Construction Coordinator from delegating its duties hereunder, but such delegation shall not release the Construction Coordinator from its obligation to perform this Agreement.

22. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for herein.

23. This instrument, together with the attached exhibits and documents made part hereof by reference, contain the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of this Agreement, and any part hereof, are waived, merged herein and superseded hereby.

24. By their signature below, the parties hereby acknowledge the receipt, adequacy and sufficiency of consideration provided in this Agreement and forever waive the right to object to or otherwise challenge the same.

25. The failure of either party to insist on one or more occasions on the strict performance or compliance with any term or provision of this Agreement shall not be deemed a waiver or relinquished in the future of the enforcement thereof, and it shall continue in full force and effect unless waived or relinquished in writing by the party seeking to enforce the same.

26. No term or provision of this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

27. If any section, paragraph, clause or provision of this Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of this Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of this Agreement remain enforceable.

28. A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.

29. The Construction Coordinator agrees to promptly indemnify, defend, save and hold harmless the DEPARTMENT and all of its officers, agents and employees from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, penalties, costs, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, or arising out of or related to the performance or breach of this Agreement by the Construction Coordinator, including, without limitation, performance of the Project within the DEPARTMENT'S right of way. The term "liabilities" shall specifically include, without limitation, any act, action, neglect or omission by the Construction Coordinator, its officers, agents, employees or representatives in any way pertaining to this Agreement, whether direct or indirect, except that neither the Construction Coordinator nor any of its officers, agents, employees or representatives will be liable under this provision for damages arising out of injury or damages directly caused or resulting from the sole negligence, intentional or wrongful acts of the DEPARTMENT or any of its officers, agents or employees. The Construction Coordinator shall notify the DEPARTMENT in writing immediately upon becoming aware of such liabilities. The Construction Coordinator's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph. The indemnities assumed by the Construction Coordinator shall survive termination of

this Agreement. The insurance coverage and limits required in this Agreement may or may not be adequate to protect the DEPARTMENT and such insurance coverage shall not be deemed a limitation on the Construction Coordinator's liability under the indemnities granted to the DEPARTMENT in this Agreement.

30. The Construction Coordinator shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of:

1. all persons employed by the Vendor/Contractor during the term of the Contract to perform employment duties within Florida; and
2. all persons, including subcontractors, assigned by the Construction Coordinator to perform work pursuant to the contract with the Department.

### CONSTRUCTION COORDINATOR CONTACT INFORMATION

Name Jerry A. Bentrott Title City Manager  
Office No. (772) 871-5163 Cell \_\_\_\_\_ Email contact City Engineer

Name Patricia Roebing, P.E. Title City Engineer  
Office No. (772) 871-5174 Cell \_\_\_\_\_ Email PatR@cityofpsl.com

Mail Address 121 SW PORT ST. LUCIE BLVD, PORT ST. LUCIE, FL 34984

**IN WITNESS WHEREOF**, Construction Coordinator and the DEPARTMENT have executed this Agreement for the purposes herein expressed on the dates indicated below.

#### CONSTRUCTION COORDINATOR

By: \_\_\_\_\_ (Signature)  
Jerry A. Bentrott (Print Name)  
City Manager (Title)  
\_\_\_\_\_  
(Date)

#### DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_ (Signature)  
\_\_\_\_\_  
(Print Name)  
\_\_\_\_\_  
(Title)  
\_\_\_\_\_  
(Date)

**Legal Review:**  
\_\_\_\_\_

## **EXHIBIT A**

### **I. SCOPE OF SERVICES**

City of Port St. Lucie will install a 2" HDPE Fiber Optic Conduit via horizontal directional drill, refurbish existing Rip Rap east of existing box culvert, repair incidental sidewalk damage and sod all disturbed areas.

### **II. PROJECT PLANS**

The Construction Coordinator is authorized to install the Project in accordance with the attached plans prepared by Joseph W. Capra, P.E., CAPTEC Engineering, Inc. and dated 07/20/2011. Any revisions must be approved by the DEPARTMENT in writing.

### **III. SPECIAL PROVISIONS FOR CONSTRUCTION**

[FDOT will add special conditions that apply to the proposed improvements (i.e. pre-construction conference required, agreement subject to Construction Coordinator obtaining all necessary permits from other agencies, submit as-built plans, etc.)]

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**MEMORANDUM**

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TO: JERRY A. BENTROTT, CITY MANAGER

THRU: ROGER G. ORR, CITY ATTORNEY *RG*

FROM: AZLINA GOLDSTEIN SIEGEL, ASSISTANT CITY ATTORNEY *AS* *clerk*

DATE: OCTOBER 5, 2011

SUBJECT: RESOLUTION 11 - \_\_\_\_\_  
AUTHORIZING THE EXECUTION OF A CONSTRUCTION AGREEMENT  
WITH FDOT CONCERNING THE CONSTRUCTION OF CERTAIN HOGPEN  
SLOUGH IMPROVEMENTS WITHIN FDOT RIGHT OF WAY ON US 1

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Attached for review and approval by the City Council of the City of Port St. is a resolution authorizing the execution of a Construction Agreement (reference CDBG-DRI 10DB-K4-10-66-01-K35) between the State of Florida Department of Transportation ("FDOT") and the City of Port St. Lucie concerning the construction of certain hazard mitigation improvements for enhanced flood protection as part of the Hogpen Slough Improvement Project. The proposed construction activities of installing fiber optic cables, refurbishing existing rip rap East of the existing box culvert, repairing incidental sidewalk damage, and sodding any disturbed areas will be within FDOT's right of way on State Road 5 (U.S. Highway One), North of Walton Road. Therefore, FDOT is requiring the City to enter into a Construction Agreement as said improvements will not only be constructed within FDOT's right of way, but will also become the property of FDOT upon FDOT's acceptance of the work.

Please process this resolution as required for the placement of this matter on the agenda for the October 10, 2011, City Council meeting. If you have any questions, please do not hesitate to contact me.

AGS/bb

Attachment: Resolution 11-R\_\_\_\_\_

cc: Larry Nadeau, Project Manager

**RECEIVED**

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City Manager's Office