

INDIAN RIVER COUNTY PUBLIC WORKS
UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT
(AT UTILITY EXPENSE)

Financial Project ID: 444270-1-54-01	Federal Project ID: N/A
County: INDIAN RIVER	Construction and CEI of 43 rd Avenue (12 th Street to 18 th Street)
District Document No:	
Utility Agency/Owner: City of Vero Beach, a Florida <u>municipal corporation</u>	

THIS UTILITY WORK AGREEMENT ("Agreement") is entered into on this _____ day of _____ 2023 by and between the **INDIAN RIVER COUNTY PUBLIC WORKS**, hereinafter referred to as the "IRC-PW" and **CITY OF VERO BEACH**, a Florida municipal corporation, hereinafter referred to as the "City."

WITNESSETH:

WHEREAS, the **IRC-PW**, is constructing, reconstructing, or otherwise changing a portion of a public road, said project being identified as Construction and CEI of 43rd Avenue (12th Street to 18th Street), hereinafter referred to as the "Project"; and

WHEREAS, the **CITY** owns or desires to install certain utility facilities which are located within the limits of the Project hereinafter referred to as the "Facilities" that are either in public right-of-way or otherwise need to be replaced (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 **IRC-PW** and the **CITY** desire to enter into this Agreement for the Utility Work to be accomplished by the **IRC-PW's** contractor as part of Indian River County's construction of the Project; and

WHEREAS, the **CITY**, pursuant to the terms and conditions hereof, will bear certain costs associated with the Utility Work;

WHEREAS, the **CITY** has agreed to incur costs with the removal and replacement of said Utility Facilities in order to benefit both parties and the public; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the **IRC-PW** and the **CITY** hereby agree as follows:

1. Design of Utility Work

- a. **CITY** has prepared, and **IRC-PW** has reviewed and commented on 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").
- b. The Plans Package are in the same format as the **IRC-PW's** contract documents for the Project and shall be suitable for reproduction.
- c. The Plans Package 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 a traffic control plan.
- d. The Plans Package was prepared in compliance with the City of Vero Beach Utility Standards, and the **IRC-PW's** contract documents for the Project.

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- e. The Parties agree that the technical special provisions which are a part of the Plans Package were prepared in accordance with the **IRC-PW's** guidelines on preparation of technical special provisions and shall not duplicate or change the general contracting provisions of the **IRC-PW's** Standard Specifications for Road and Bridge Construction and any Supplemental Specifications, Special Provisions, or Developmental Specifications of the **IRC-PW** for the Project.
- f. **CITY** shall provide a copy of the proposed Plans Package to the **IRC-PW**, and to such other right of way users as designated by the **IRC-PW**, for review at the following stages: 100% and Final Plans. Prior to submission of the proposed Plans Package for review at these stages, the **CITY** shall send the **IRC-PW** a work progress schedule explaining how the **CITY** will meet the **IRC-PW'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 **IRC-PW** finds any deficiencies in the Plans Package during the reviews performed pursuant to Subparagraph f. above, the **IRC-PW** will notify the **CITY** in writing of the deficiencies and the **CITY** will correct the deficiencies and return corrected documents within the time stated in the notice. The **IRC-PW's** review and approval of the documents shall not relieve the **CITY** from responsibility for subsequently discovered errors or omissions.
- h. The **IRC-PW** shall furnish the **CITY** such information from the **IRC-PW's** files as requested by the **CITY**; however, the **CITY** 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 **IRC-PW** shall not relieve the **CITY** of this obligation nor transfer any of that responsibility to the **IRC-PW**.
- i. The Facilities and the Utility Work are located within the limits of the Project as shown on the Project Plans or otherwise exist within right-of-way or on public property.

If any Facilities located within the Project limits are discovered after work on the project commences to be qualified for relocation at the **IRC-PW's** expense, but not previously identified as such, the **CITY** and **IRC-PW** shall meet and agree to a change order if the cost of relocation exceeds the 10% contingency fund.
- k. The **CITY** 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 **IRC-PW**.

2. Performance of Utility Work

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

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(10%) and the **IRC-PW** does not elect to participate in the cost of the Utility Work pursuant to Section 337.403(1)(b), Florida Statutes, the **CITY** may elect to have the Utility Work removed from the **IRC-PW's** contract by notifying the **IRC-PW** in writing within 60 days from the date that the **CITY** is notified of the bid amount. Unless this election is made, the Utility Work shall be performed as part of the Project by the **IRC-PW's** contractor.

- d. If the **CITY** elects to remove the Utility Work from the **IRC-PW's** contract in accordance with Subparagraph 2.c., the **CITY** shall perform the Utility Work in accordance with the contingency relocation schedule which is a part of the Plans Package. The **CITY** shall proceed immediately with the Utility Work so as to cause no delay to the **IRC-PW** or the **IRC-PW's** contractor in constructing the Project.
- e. The **CITY** shall perform all engineering inspection, testing, and monitoring of the Utility Work to ensure that it is properly performed in accordance with the Plans Package.
- f. Except for the inspection, testing, monitoring, and reporting to be performed by the **CITY** in accordance with Subparagraph 2. e., the **IRC-PW** will perform all contract administration for its construction contract.
- g. The **CITY** shall fully cooperate with the **IRC-PW** and the **IRC-PW's** contractor in all matters relating to the performance of the Utility Work.
- h. The **IRC-PW's** engineer has full authority over the Project and the **CITY** shall be responsible for coordinating and cooperating with the **IRC-PW's** engineer. In so doing, the **CITY** shall make such adjustments and changes in the Plans Package as the **IRC-PW's** engineer shall determine are necessary for the prosecution of the Project.
- i. The **CITY** shall not make any changes to the Plans Package after the date on which the **IRC-PW'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 **IRC-PW'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 **IRC-PW**.

3. Cost of Utility Work

- a. The **CITY** 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 **IRC-PW'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 **IRC-PW**. The **CITY** shall not be responsible for the cost of delays caused by such adjustments or changes unless they are attributable to the **CITY** pursuant to Subparagraph 4.a.
- b. The initial estimate of the cost of the Utility Work is **\$694,895.04** as may be amended. At such time as the **IRC-PW** prepares its official estimate, the **IRC-PW** shall notify the **CITY** of the amount of the official estimate for the Utility Work. Upon being notified of the official estimate, the **CITY** 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 **IRC-PW** to the cost of the Utility Work, or to elect to have the Utility Work removed from the **IRC-PW's** contract and performed separately pursuant to the terms and conditions set forth in Subparagraph 2. d. hereof.
- c. At least 14 (Fourteen) calendar days prior to the date on which the **IRC-PW** advertises the Project for bids, the **CITY** will pay to the **IRC-PW** an amount equal to the **IRC-PW's** official estimate; plus 10% 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

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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 **IRC-PW** for deposit into Indian River County Finance Division Account.
- ☐ none.
- e. If the portion of the contractor's bid selected by the **IRC-PW** 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 **IRC-PW** participation in the cost of the Utility Work and the **CITY's** election to remove the Utility Work from the Project, the **CITY** shall, within fourteen (14) calendar days from notification from the **IRC-PW** or prior to posting of the accepted bid, whichever is earlier, pay an additional amount to the **IRC-PW** to bring the total amount paid to the total obligation of the **CITY** for the cost of the Utility Work, plus Allowances and 10% Contingency Fund. The **IRC-PW** will notify the **CITY** 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 **IRC-PW** to so notify the **CITY** shall not relieve the **CITY** from its obligation to pay for its full share of project costs on final accounting as provided herein below. In the event that the **CITY** is obligated under this Subparagraph 3.e. to pay an additional amount and the additional amount that the **CITY** is obligated to pay does not exceed the Contingency Fund already on deposit, the **CITY** shall have sixty (60) calendar days from notification from the **IRC-PW** 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 **IRC-PW** will refund the amount that the advance deposit exceeds the bid amount, plus allowances and contingency if such refund is requested by the **CITY** in writing and approved by the Comptroller of the **IRC-PW** or his designee.
- g. Should contract modifications occur that increase the **CITY's** share of total project costs, the **CITY** will be notified by the **IRC-PW** accordingly. The **CITY** agrees to provide, in advance of the additional work being performed, adequate funds to ensure that cash on deposit with the **IRC-PW** is sufficient to fully fund its share of the project costs. The **IRC-PW** shall notify the **CITY** as soon as it becomes apparent the actual costs will overrun the award amount; however, failure of the **IRC-PW** to so notify the **CITY** shall not relieve the **CITY** from its obligation to pay for its full share of project costs on final accounting as provided herein below.
- h. The **IRC-PW** may use the funds paid by the **CITY** 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 **IRC-PW** will obtain the written concurrence of the City Council or the City Manager or his designee, as applicable. The City shall respond immediately to all requests for written concurrence. If the City refuses to provide written concurrence promptly and the **IRC-PW** determines that the work is necessary, the **IRC-PW** 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 **CITY** shall, within fourteen (14) calendar days from notification from the **IRC-PW**, pay to the **IRC-PW** an additional 10% of the total obligation of the **CITY** 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 **IRC-PW** 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 **CITY** for a period of three (3) years after final close out of the Project. The **CITY** will be notified of the final cost. Both parties agree that in the event the final accounting of total project costs

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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 **IRC-PW** to the **CITY** 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 **CITY** will pay the additional amount within forty (40) calendar days from the date of the invoice. The **CITY** 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 CITY

- a. The **CITY** shall be responsible for all costs incurred as a result of any delay to the **IRC-PW** or its contractors caused by errors or omissions in the Plans Package (including inaccurate location of the Facilities) or by failure of the **CITY** to properly perform its obligations under this Agreement in a timely manner.
- b. In the event the **IRC-PW's** contractor provides a notice of intent to make a claim against the **IRC-PW** relating to the Utility Work, the **IRC-PW** will notify the **CITY** of the notice of intent and the **CITY** will thereafter keep and maintain daily field reports and all other records relating to the intended claim.
- c. In the event the **IRC-PW's** contractor makes any claim against the **IRC-PW** relating to the Utility Work, the **IRC-PW** will notify the **CITY** of the claim and the **CITY** will cooperate with the **IRC-PW** in analyzing and resolving the claim within a reasonable time. Any resolution of any portion of the claim directly between the **CITY** and the **IRC-PW's** contractor shall be in writing, shall be subject to written **IRC-PW** concurrence and shall specify the extent to which it resolves the claim against the **IRC-PW**.
- d. The **IRC-PW** may withhold payment of surplus funds to the **CITY** 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 **IRC-PW** to the **IRC-PW's** contractor.

5. Out of Service Facilities

No Facilities shall be placed out of service after the date of this Agreement unless specifically identified as such in the Plans or as otherwise agreed by the parties. The following terms and conditions shall apply to Facilities placed Out-of-Service:

- a. The **CITY** acknowledges its present and continuing ownership of and responsibility for out of service Facilities.
- b. The **IRC-PW** agrees to allow the **CITY** to leave the out of service Facilities within the right of way subject to the continuing satisfactory performance of the conditions of this Agreement by the **CITY**. In the event of a breach of this Agreement by the **CITY**, the Facilities shall be removed upon demand from the **IRC-PW** in accordance with the provisions of Subparagraph e. below.
- c. The **CITY** 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 **CITY** to use due care in its dealings with others. The **CITY** shall be solely responsible for gathering all information necessary to meet these obligations.
- d. The **CITY** shall keep and preserve all records relating to the Facilities, including, but not limited to, records of the location, nature of, and steps taken to safely secure the Facilities and shall promptly respond to information requests of the **IRC-PW** or other permittees using or seeking use of the right of way.
- e. The **CITY** shall remove the Facilities at the request of the **IRC-PW** in the event that the **IRC-PW** determines that removal is necessary for **IRC-PW** use of the right of way or in the event that the

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IRC-PW 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 **CITY** and without any right of the **CITY** to object or make any claim of any nature whatsoever with regard thereto. Removal shall be completed within the time specified in the **IRC-PW's** notice to remove. In the event that the **CITY** fails to perform the removal properly within the specified time, the **IRC-PW** may proceed to perform the removal at the **CITY'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 **CITY** agrees that City Facilities shall forever remain the legal and financial responsibility of the **CITY**. 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 **CITY** to indemnify the **IRC-PW** for the **IRC-PW's** own negligence; however, it is the intent that all other costs and expenses of any nature be the responsibility of the **CITY**.

6. Default

- a. In the event that the **CITY** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement, the **IRC-PW** may exercise one or more of the following options, provided that at no time shall the **IRC-PW** 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 **IRC-PW**.
 - (2) Pursue a claim for damages suffered by the **IRC-PW**.
 - (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 **IRC-PW** to third parties.
 - (4) If the Utility Work is reimbursable under this Agreement, offset any damages suffered by the **IRC-PW** 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 **IRC-PW** to third parties.
 - (5) Suspend the issuance of further permits to the **CITY** for the placement of Facilities on **IRC-PW** property if the breach is material and has not been cured within sixty (60) days from written notice thereof from **IRC-PW**.
 - (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 **IRC-PW** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement, the **CITY** may exercise one or more of the following options:
- (1) Terminate this Agreement if the breach is material and has not been cured within sixty (60) days from written notice thereof from the **CITY**.
 - (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 **CITY** may have for failure to pay invoices.

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(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 **CITY** nor the **IRC-PW** 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. Sovereign Immunity/Claims

Nothing in this Agreement or any other contract documents shall be deemed to affect the rights, privileges, and immunities of the City as set forth in § 768.28, Florida Statutes, nor shall be a waiver of City's sovereign immunity, whether by contract or by law. The City's liability in all instances shall be limited to the monetary amounts set forth in § 768.28, Florida Statutes.

When the **IRC-PW** receives a notice of claim for damages that may have been caused by the **CITY** in the performance of services required under this Agreement, the **IRC-PW** will immediately forward the claim to the **CITY**. The **CITY** and the **IRC-PW** 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 **IRC-PW** will determine whether to require the participation of the **CITY** in the defense of the claim or to require the **CITY** to defend the **IRC-PW** in such claim as described in this section. The **IRC-PW's** failure to notify the **CITY** of a claim shall not release the **CITY** from any of the requirements of this section. The **IRC-PW** and the **CITY** 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.

9. Miscellaneous

- a. Time is of essence in the performance of all obligations under this Agreement.
- b. The **CITY** shall not be obligated to protect or maintain any of the Facilities to the extent the **IRC-PW's** contractor has that obligation as part of the Utility Work pursuant to the **IRC-PW's** specifications.
- c. The **IRC-PW** may unilaterally cancel this Agreement for refusal by the **CITY** 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 **CITY** 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 **IRC-PW** 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

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is provided. The **CITY** shall have a continuing obligation to notify each District of the **IRC-PW** 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 **CITY**:

Robert J. Bolton, Director
City of Vero Beach
Water and Sewer Administration
PO Box 1389
Vero Beach, FL 32961

If to the **IRC-PW**:

Sean Lieske, Acting Director
Indian River County
Public works Department
1801 27th Street
Vero Beach, FL 32960-3388

| |

IN WITNESS WHEREOF, the County has caused these presents to be executed in its name by its Board of County Commissioners acting by the Chairman of said Board, the day and year aforesaid.

SIGNATURE PAGES FOLLOW

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ATTEST: RYAN L. BUTLER
Clerk of Circuit Court and Comptroller

INDIAN RIVER COUNTY, FLORIDA
By its Board of County Commissioners

By: _____
Deputy Clerk

By: _____
Name: Susan Adams
Chairman



APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

(Official Seal)

By: _____
WILLIAM K. DEBRAAL
County Attorney

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online
notarization, this _____ day of _____, 20____, by _____
(name of person making statement).

(Signature of Notary Public - State of Florida)
(Print, Type, or Stamp Commissioned Name of Notary
Public)

☐ who is personally known to me or ☐ who has produced
_____ as identification.

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IN WITNESS WHEREOF, the City has caused these presents to be executed in its name by its Mayor or Vice-Mayor the day and year aforesaid.

ATTEST:

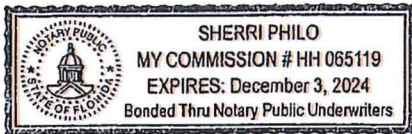
**CITY OF VERO BEACH, a Florida
municipal corporation**

Tammy K. Bursick
Tammy Bursick
City Clerk

By: [Signature]
John Cotugno
Mayor

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 13th day of March 2024 by Tammy K. Bursick, City Clerk and John Cotugno, Mayor
(name of person making statement).



[Signature]
(Signature of Notary Public - State of Florida)
(Print, Type, or Stamp Commissioned Name of Notary Public)

☒ who is personally known to me or ☐ who has produced
_____ as identification.

ADMINISTRATIVE REVIEW
(For Internal Use Only—Sec. 2-77 COVB Code)

Approved as to form and legal sufficiency:

[Signature]
John Turner
City Attorney

Approved as conforming to municipal policy:

[Signature]
Monte K. Falls
City Manager

Approved as to budget sufficiency:

[Signature]
Steven P. Dionne
Finance Director

Approved as to technical requirements:

[Signature]
Robert J. Bolton
Water and Sewer Director