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**USE AGREEMENT BETWEEN <NAME OF MUNICIPALITY> AND ORANGE
COUNTY**

THIS AGREEMENT (the “Agreement”), is entered into by and between _____, a municipality duly enacted under the laws of the State of Florida (“Municipality”), with a mailing address at _____, and **Orange County**, a charter county and political subdivision of the State of Florida (“County”), with a mailing address at P.O. Box 1393, Orlando, FL 32802-1393.

RECITALS

WHEREAS, Municipality is proposing to _____ (the “Improvements”) within certain County rights of way more particularly described in **Exhibit “A”**, attached hereto and by this reference made a part hereof; and

WHEREAS, the work to be performed in connection with the Improvements is detailed in **Exhibit “B”**, attached hereto and by this reference made a part hereof; and

WHEREAS, Municipality desires to obtain a Right-of-Way Utilization Permit (the “Permit”) from County, whereby Municipality will be allowed to install, construct, and maintain the above described improvements within the County rights of way; and

WHEREAS, County requires that Municipality be solely responsible for the fulfillment of certain commitments and covenants to assure the perpetual and continuous maintenance of the Improvements, which commitments and covenants are more particularly set forth herein.

NOW, THEREFORE, in consideration of the foregoing and of the terms and conditions set forth herein, the parties agree as follows:

1. **RECITALS**. The foregoing recitals are true and correct and form a material part of this Agreement.
2. **RIGHT-OF-WAY UTILIZATION PERMIT**. County shall issue a Permit to Municipality, subject to the terms of this Agreement. Municipality shall not, while installing or maintaining the Improvements, damage, or disturb any portion of the County rights of way without prior written approval by County and County's prior written approval of a plan to restore the County rights of way. Nothing contained herein or by virtue of the issuance of the Permit shall give or grant the Municipality any ownership rights to any portion of the County rights of way.
3. **IMPROVEMENTS**. Any Improvements that, in County's sole opinion, impede the functional operation of planned, proposed, or existing underdrains shall not be permitted under this Agreement. The Improvements shall be established and maintained in such a manner as will neither interfere with the use of the County rights of way by the public or County nor create a safety hazard on such County rights of way. If County determines, in its sole discretion, that the Improvements present a safety hazard, then Municipality, at its sole expense and at no cost to County, shall relocate the Improvements in such a manner as to eliminate the hazard, to the satisfaction of County.
4. **REMOVAL/RELOCATION**. If, in the sole opinion of County, the Improvements interfere with any construction, reconstruction, alteration,

improvement, or maintenance which County desires to perform on, around, or under the County rights of way, or if County requests removal for any reason, then Municipality, upon receipt of a written notice from County, shall remove or relocate the Improvements as requested by County, and to County's satisfaction, within thirty (30) days of receipt of said notice. Any such relocation or removal of the Improvements shall be at the sole expense of Municipality and at no cost or expense to County.

5. **INDEMNIFICATION.** Each party agrees to defend, indemnify, and hold harmless the other party, its officials, and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs, and expenses (including attorney fees) attributable to its negligent acts or omissions, or those of its officials and employees acting within the scope of their employment, or arising out of or resulting from the indemnifying party's negligent performance under this agreement. Nothing contained herein shall constitute a waiver of sovereign immunity or the provisions of Section 768.28, Florida Statutes. The foregoing shall not constitute an agreement by either party to assume any liability for the acts, omissions, and/or negligence of the other party.
6. **INSURANCE.** Without waiving its right to sovereign immunity as provided in Section 768.28, Florida Statutes, Municipality acknowledges to be self-insured for General Liability and Automobile Liability with coverage limits of as set forth in Section 768.28, Florida Statutes. Municipality agrees to maintain commercial

insurance or to be self-insured for Workers' Compensation & Employers' Liability in accordance with Florida Statute 440. Upon request Municipality shall provide an affidavit or Certificate of Insurance evidencing self-insurance or commercial insurance up to sovereign immunity limits, which County agrees to find acceptable for the coverage mentioned above. County's failure to request proof of insurance or to identify any deficiency in coverage or compliance with the foregoing requirements shall not relieve Municipality of its liability and obligations under this agreement. Municipality shall require all contractors performing work within the County rights of way or easement areas to procure and maintain workers' compensation, commercial general liability, business auto liability, and contractor's pollution liability coverage. Each party shall be listed as an additional insured on all general liability policies.

7. **RECORDING.** This Agreement shall be recorded in the Public Records of Orange County, Florida, within thirty (30) days of its execution by the last party to execute it. Promptly upon execution of this Agreement, Municipality shall pay to County an amount equal to the applicable cost of recording this Agreement in the Public Records of Orange County, Florida; or in the alternative, Municipality shall record this Agreement at its cost in the Public Records of Orange County, Florida.
9. **DURATION.** The provisions, restrictions, and covenants of this Agreement shall bind the parties for a period of twenty-five (25) years from the date this

Agreement is recorded in the Public Records of Orange County, Florida. Thereafter, this Agreement shall be automatically extended for successive periods of ten (10) years each, unless a written instrument agreeing to revoke said provisions, restrictions, and covenants is approved by a majority of the Orange County Board of County Commissioners and the governing body of the Municipality. No such agreement to revoke shall be effective until said written instrument has been signed, acknowledged, and recorded in the Public Records of Orange County, Florida. Notwithstanding any of the above provisions, County shall have the right to cancel this Agreement upon thirty (30) days prior written notice to Municipality. No such cancellation shall be effective until a written instrument has been executed and acknowledged by the Board of County Commissioners and recorded in the Public Records of Orange County, Florida.

10. **AMENDMENT.** The provisions, restrictions, and covenants of this Agreement shall not be modified or amended except in a written instrument approved by a majority of the Orange County Board of County Commissioners and the governing body of the Municipality. No such modification or amendment shall be effective until said written instrument has been signed, acknowledged, and recorded in the Public Records of Orange County, Florida.
11. **COMPLIANCE WITH APPLICABLE LAWS.** Municipality shall comply with all applicable state laws and county ordinances, including the Orange County Right-of-Way Utilization Regulations.
12. **DISCLAIMER OF COUNTY RESPONSIBILITY.** Nothing contained herein

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shall create any obligation on the part of County to maintain or participate in the maintenance of the Improvements.

13. **EFFECTIVE DATE**. This Agreement shall take effect upon being recorded in the Public Records of Orange County, Florida.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed
by their respective duly authorized representatives on the dates set forth below.

COUNTY

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
Jerry L. Demings
Orange County Mayor

Date: _____

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk

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<NAME OF MUNICIPALITY>

By: _____
<name>

Title: _____

Date: _____

ATTEST:

By: _____
<name>

Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me **by means of physical presence / online notarization**, this **(date)** by **(name of officer or agent)**, **(title of officer or agent)**, who is personally known to me or has produced **(type of identification)**, as identification.

Signature of person taking acknowledgement
Name typed, printed or stamped: _____
Title or rank: _____

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EXHIBIT "A"

Legal description and sketch of description of County rights-of-way

[See attached __ page(s)]

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EXHIBIT "B"

Detailed description of Improvements

[See attached __ page(s)]