

Prepared by: RETURN:  
City Attorney's Office  
200 N.W. 1st Avenue  
Delray Beach, Florida 33444

PCNs 12-43-46-21-01-104-0010, 12-43-46-21-01-104-0030,  
12-43-46-21-01-104-0050, and 12-43-46-21-01-104-0060  
Address: 302, 318, 338, and 346 SE 5<sup>th</sup> Avenue, Delray Beach

**HOLD HARMLESS AGREEMENT FOR WORK  
PERFORMED WITHIN THE STATE RIGHT-OF-WAY**

**THIS HOLD HARMLESS AGREEMENT**, is entered into this \_\_\_ day of \_\_\_\_\_, 2024, by and between the **CITY OF DELRAY BEACH, FLORIDA**, a Florida municipal corporation of the State of Florida, whose address is 100 NW 1st Avenue, Delray Beach, Florida 33444 (hereinafter referred to as "**CITY**") and **318 SE 5TH LLC**, a Florida Limited Liability Company, whose address is 6001 Broken Sound Pkwy NW, Suite 503, Boca Raton, FL 33487 (hereinafter referred to as "**OWNER**").

W I T N E S S E T H:

**WHEREAS, OWNER** is the owner of certain real property located at 302, 318, 338, and 346 SE 5<sup>th</sup> Avenue, Delray Beach, Florida ("**PROPERTY**"), as more particularly described in Exhibit "A"; and

**WHEREAS, OWNER** is constructing improvements on the **PROPERTY** which require the installation of utilities and related improvements ("**PROJECT**"); and

**WHEREAS, the PROJECT** requires work to be completed within State right-of-way located at or near the **PROPERTY** as shown in Exhibit "B"; and

**WHEREAS, the CITY** is required to sign the permit on behalf of the **OWNER** to allow the installation/construction to take place in the State right-of-way; and

**WHEREAS, the CITY** is required to indemnify and hold harmless the State for the work performed by **OWNER** in the State right-of-way; and

**WHEREAS**, this Agreement requires **OWNER** to hold harmless and defend the **CITY** for the work performed in the State right-of-way by the **OWNER**, its developer, contractor or agent.

**NOW, THEREFORE**, for the mutual covenants and matters set forth herein, as of the date set forth above, the parties hereby agree as follows:

1. The recitations set forth above are incorporated herein.
2. **OWNER** shall at all times indemnify and hold harmless the **CITY** and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the **CITY** or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the completion of the **PROJECT** by the **OWNER** or its employees, agents, servants, partners, principals, or subcontractors **OWNER** shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the **CITY**, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. **OWNER** expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by **OWNER** shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the **CITY** or its officers, employees, agents, and instrumentalities as herein provided the obligations of this section shall survive the term of this Agreement.

3. **OWNER** warrants and guarantees to the **CITY** that all work on the **PROJECT** shall be constructed in accordance with the applicable codes of the City of Delray Beach and the State of Florida. The **OWNER's** warranty and guarantee shall remain in effect for one year from the date of final acceptance. Unremedied defects identified for correction during the warranty/guarantee period but remaining after its expiration shall be considered as part of the

obligations of the guarantee and warranty. Defects in the installation or construction of the PROJECT, which are remedied as a result of obligations of the warranty/guarantee shall subject the remedied portion of the work to an extended warranty/guarantee period of one year after the defect has been remedied. **OWNER** shall deliver this Agreement to its Surety. The Surety shall be bound with and for the **OWNER** in the **OWNER's** faithful observance of the guarantee.

4. **OWNER** shall supervise and direct the installation and construction of the PROJECT and related improvements, applying such skills and expertise as may be necessary to perform the work in accordance with approved engineering plans. **OWNER** shall be solely responsible for the means, methods, techniques, sequences and procedures of the construction and installation of the PROJECT and related improvements.

5. **OWNER** agrees to include the following terms in any contract entered into between **OWNER** and any developer, contractor, or agent selected by **OWNER** to perform any work required by this Agreement: (i) The contractor agrees to protect, defend, indemnify, and hold harmless the City of Delray Beach, its officers, employees, and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges, and other expenses or liabilities of every kind, including court costs, reasonable attorney's fees, at both the trial and appellate levels in connection with or arising directly out of the work agreed to be performed herein, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of contractor, its employees, servants, agents, and subcontractors. Without limiting the foregoing, any and all such claims, suits, etc., relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in the indemnity. Contractor further agrees to investigate, handle, respond to, provide

defense for, and defend any such claims, etc., at his sole expense and agrees to bear all other costs and expenses related thereto. even if the claim(s) is groundless, false, or fraudulent, and (ii) The parties recognize that various provisions of this Agreement, including but not necessarily limited to this Section, provide for indemnification by the contractor and that Section 725.06, Florida Statutes, requires a specific consideration be given thereof. The parties therefore agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by contractor. Furthermore, the parties understand and agree that the covenants and representations relating to this indemnification provision shall survive the term of this Agreement and continue in full force and effect as to the party's responsibility to indemnify.

6. Any claims, lawsuits or disputes that may arise under this Agreement shall be governed by the Laws of Florida, with venue in Palm Beach County, Florida.

7. This Agreement constitutes the entire agreement and understanding of the parties, as it pertains to the PROJECT and related improvements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing and executed by both parties.

8. **OWNER**, its developer, contractor, or agent shall maintain worker's compensation insurance in an amount required by law and general liability insurance in the amount of one million dollars (\$1,000,000.00) governing bodily injury and property damage in standard form, insuring **CITY** and the State as additional named insureds. **OWNER** its developer, contractor, or agent shall provide this information to the **CITY** on a Certificate of Insurance, that is acceptable to the **CITY**, prior to commencing installation or construction.

9. The **CITY** hereby reserves the right to enforce this Agreement by pursuing any and

all remedies provided by law or in equity. All of the remedies available to the **CITY** shall be cumulative, and the **CITY'S** election to pursue any remedy shall not preclude the **CITY** for then or later pursuing any one or more other remedies.

10. **OWNER** shall be bound by all the terms and conditions found in the Permit Agreement between the **CITY** and the State for this project and attached hereto as Exhibit "C".

11. This agreement shall not be valid unless signed by the City's Mayor and City Clerk.

12. Any notice or communication under this Agreement shall be in writing and may be given by registered or certified mail. If given by registered or certified mail, the notice or communication shall be deemed to have been given and received when deposited in the United States Mail, properly addressed, with postage prepaid. If given otherwise, then by registered or certified mail, it should be deemed to have been given when delivered to and received by the party to whom it is addressed. The notices and communication shall be given to the particular parties at the following addresses:

City: City Manager  
City of Delray Beach  
100 N.W. 1st Avenue  
Delray Beach, Florida 33444

Owner: 318 SE 5TH LLC  
6001 Broken Sound Pkwy NW, Suite 503  
Boca Raton, FL 33487

Either party may at any time by giving ten (10) days written notice designate any other person or entity or any other address in substitution of the foregoing to which the notice or communication shall be given.

IN WITNESS WHEREOF, the City and the Owner executed this Agreement as of the day and year first above written.

ATTEST:

CITY OF DELRAY BEACH

\_\_\_\_\_  
Katerri Johnson, City Clerk

By: \_\_\_\_\_  
Mayor

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Lynn Gelin, City Attorney

WITNESSES:

318 SE 5TH LLC

\_\_\_\_\_  
Signature  
Michael Bokzam

By: \_\_\_\_\_  
Name: Maureen Bokzam

\_\_\_\_\_  
Print Name

Its: Manager

\_\_\_\_\_  
Signature  
Amanda Sindlecker

Date: 03/06/2024

\_\_\_\_\_  
Print Name

STATE OF Florida

COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 6th day of March, 2024 by Maureen Bokzam (name of person), as Manager (type of authority) for 318 SE 5TH LLC (name of party on behalf of whom instrument was executed).

Personally known  OR Produced Identification  
Type of Identification Produced \_\_\_\_\_

\_\_\_\_\_  
Notary Public – State of Florida



**EXHIBIT A**

**Legal Description:**

**LOTS 1 AND 2, BLOCK 104, OSCEOLA PARK, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 3, PAGE 2, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LESS AND EXCEPT THE FOLLOWING DESCRIBED LAND:**

**EAST 10 FEET OF LOTS 1 AND 2, BLOCK 104, OSCEOLA PARK, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 3, PAGE 2, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.**

**ALSO LESS**

**A PARCEL OF LAND IN LOT 1, BLOCK 104, OSCEOLA PARK, AS RECORDED IN PLAT BOOK 3, PAGE 2, PALM BEACH COUNTY PUBLIC RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: FROM A POINT ON THE NORTH LINE OF SAID LOT 1, LOCATED 10 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT 1, RUN WESTERLY ALONG SAID NORTH LINE FOR 14.78 FEET; THENCE RUN SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 15 FEET FOR 23.34 FEET THROUGH A CENTRAL ANGLE OF 89° 09' 00" TO A POINT ON A LINE PARALLEL TO AND 10 FEET WESTERLY FROM THE EAST LINE OF SAID LOT 1; THENCE RUN NORTH 1° 08' 35" WEST ALONG SAID PARALLEL LINE FOR 14.78 FEET TO THE POINT OF BEGINNING.**

**PARCEL 2:**

**LOTS 3 AND 4, LESS AND EXCEPT THE EAST TEN FEET THEREOF, BLOCK 104, OF OSCEOLA PARK, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 3, PAGE 2, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.**

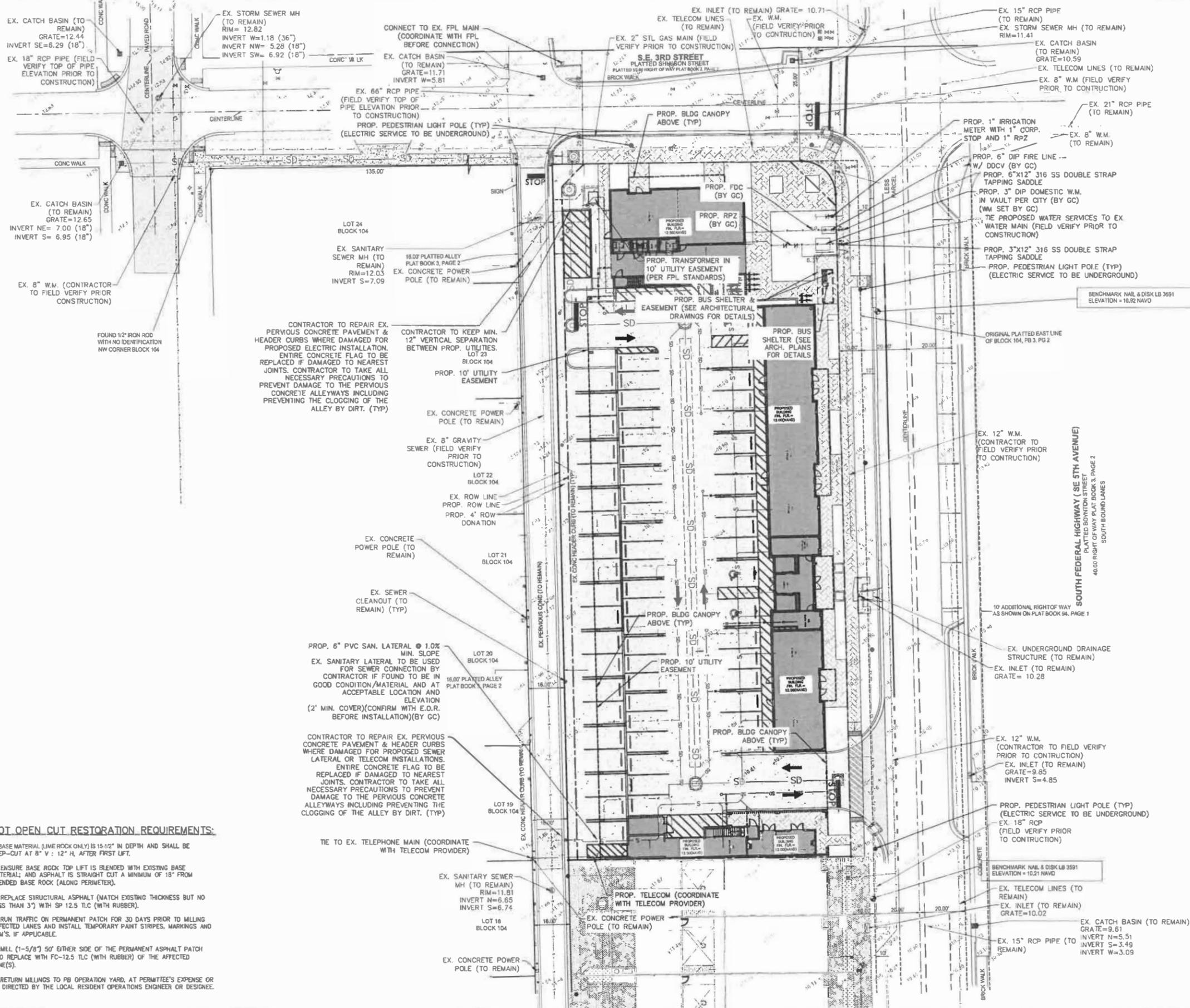
**PARCEL 3:**

**LOTS 5 AND 6, BLOCK 104, OF OSCEOLA PARK, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 3, PAGE 2, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LESS THE EAST 10 FEET OF SAID LOTS FOR ROAD RIGHT OF WAY PURPOSES.**

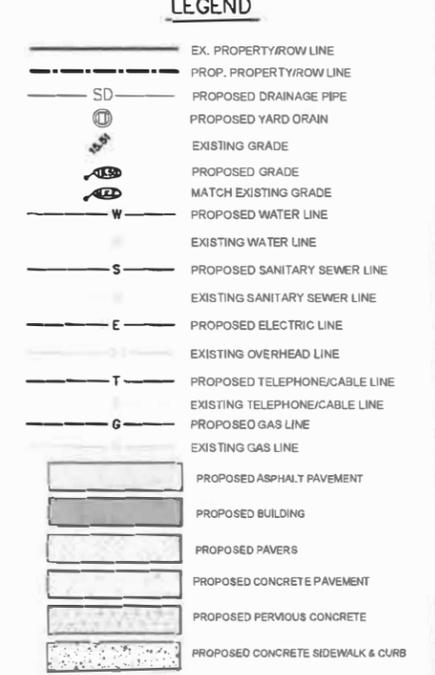
**SAID LANDS SITUATE IN THE CITY OF DELRAY BEACH, PALM BEACH COUNTY, FLORIDA AND CONTAINING 38,323 SQUARE FEET, OR 0.8798 ACRES, MORE OR LESS.**

**SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS, COVENANTS, AND RIGHTS-OF-WAY OF RECORD.**

# EXHIBIT "B"

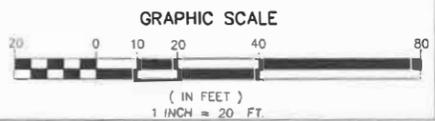


**NOTE: WM SIZES SHALL BE DESIGNED BY E.O.R. AND SHALL BE CHECKED AND AUTHORIZED BY THE CITY OF DELRAY BEACH UTILITIES DIVISION**



**NOTE:**  
ELEVATION ARE SHOWN IN NAVD  
CONVERSION NAVD+1.54 = NGVD

**NOTE:**  
ANY TREES OR SHRUBS PLACED  
WITHIN WATER, SEWER OR DRAINAGE  
EASEMENTS SHALL CONFORM TO THE  
CITY OF DELRAY BEACH STANDARD  
DETAILS: LD 1.0 & 2.0



- #### FDOT OPEN CUT RESTORATION REQUIREMENTS:
1. BASE MATERIAL (LIME ROCK ONLY) IS 15-12" IN DEPTH AND SHALL BE STEP-CUT AT 8" V : 12" H, AFTER FIRST LIFT.
  2. ENSURE BASE ROCK TOP LIFT IS BLENDED WITH EXISTING BASE MATERIAL; AND ASPHALT IS STRAIGHT CUT A MINIMUM OF 18" FROM BLENDED BASE ROCK (ALONG PERIMETER).
  3. REPLACE STRUCTURAL ASPHALT (MATCH EXISTING THICKNESS BUT NO LINGS THAN 3") WITH SP 12.5 TLC (WITH RUBBER).
  4. RUN TRAFFIC ON PERMANENT PATCH FOR 30 DAYS PRIOR TO MILLING AFFECTED LANES AND INSTALL TEMPORARY PAINT STRIPES, MARKINGS AND RPM'S, IF APPLICABLE.
  5. MILL (1-5/8") 50' EITHER SIDE OF THE PERMANENT ASPHALT PATCH AND REPLACE WITH FC-12.5 TLC (WITH RUBBER) OF THE AFFECTED LANE(S).
  6. RETURN MILLINGS TO PB OPERATION YARD, AT PERMITTEE'S EXPENSE OR AS DIRECTED BY THE LOCAL RESIDENT OPERATIONS ENGINEER OR DESIGNEE.

REV	DATE	BY
03/08/24	JRH	
01/15/24	NAV	
09/15/23	NAV	
05/05/23	NAV	

**CAULFIELD & WHEELER, INC.**  
 CIVIL ENGINEERING - SURVEYING  
 LANDSCAPE ARCHITECTURE - SITE 100  
 2000 GARDENS ROAD, SUITE 100  
 DELRAY BEACH, FLORIDA  
 PHONE (561) 392-1991 / FAX (561) 750-1452

**318 SE 5TH AVE**  
**PROPOSED WATER DISTRIBUTION,**  
**SANITARY SEWER & UTILITY PLAN**  
 DELRAY BEACH, FLORIDA

DATE	09/30/21
DRAWN BY	AIG
F B / P C.	
SCALE	1"= 20'

MATTHEW V. KAHN  
 PROFESSIONAL ENGINEER  
 LICENSE NO. 82227  
 STATE OF FLORIDA  
 FOR THE FIRM -  
 DATE

**JOB # 9183**  
 SHT NO.  
**WS-1**  
 OF 15 SHEETS

**Exhibit "C"**  
FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY PERMIT**

**PERMIT NO:** \_\_\_\_\_

**STATE ROAD INFORMATION**

<b>County:</b>	<b>Section:</b>	<b>State Road No:</b>	<b>Beginning Mile Post:</b>	<b>Ending Mile Post:</b>

**APPLICANT INFORMATION**

The Utility Agency Owner (UAO) shall be identified in this Applicant Information Box. When the UAO is a City or County and desires to have the Utility Builder make a joint permit applicant, as prescribed in Section 2.1(4) of the 2017 Utility Accommodation Manual (UAM), the Utility Builder shall also be identified in this Applicant Information Box. A Utility Builder alone cannot apply for a utility permit without the City or County adding them as a joint applicant.

<u>Utility Agency/Owner (UAO)</u>	<u>Utility Builder (only applicable when the UAO is a City or County)</u>
Name: _____	Name: _____
Contact Person: _____	Contact Person: _____
Address: _____	Address: _____
City: _____	City: _____
State: _____	State: _____
Zip: _____	Zip: _____
Telephone: (____) _____ - _____ ext. _____	Telephone: (____) _____ - _____ ext. _____
Email: _____	Email: _____

**WORK DESCRIPTION**

The Applicant(s) requests permission from the Florida Department of Transportation (FDOT) to construct, operate, and maintain the utilities as described below and as depicted in the incorporated documentation.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Utility Work No: \_\_\_\_\_

Additional sheets are attached and are incorporated into this permit Yes  No

For FDEP certification, the FDOT agency report is attached in accordance with UAM Section 2.4.1 (13) Yes  No

**TRAFFIC CONTROL (TCP)**

- The TCP will comply with the following 600 series index(es) \_\_\_\_\_
- A TCP has been attached and incorporated into this permit application in compliance with UAM Section 2.4.2.

MOT Technician's contact information (may be supplied at the two (2) business day notification to FDOT):

Name: \_\_\_\_\_ Telephone (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ Email: \_\_\_\_\_

**COMMENCEMENT OF WORK**

The UAO and/or Utility Builder shall commence actual construction in good faith within sixty (60) calendar days after approval of the permit application. If the beginning date is more than sixty (60) calendar days from the date of approval, the UAO and/or Utility Builder must review the permit with the FDOT Approving Engineer listed to make sure no changes have occurred to the transportation facility that would affect the permit's continued approval. The UAO and/or Utility Builder shall make good faith efforts to expedite the work and complete the work within the calendar days indicated.

Anticipated Start Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Calendar days needed to completed: \_\_\_\_\_

# UTILITY PERMIT

PERMIT NO: \_\_\_\_\_

## APPLICANT SIGNATURE

By the below signature(s) the UAO and/or Utility Builder agree(s) to construct, operate, and maintain the work as noted in the above Work Description, shown in plans and incorporated documents, in compliance with the UAM, all instructions noted in the FDOT Special Instructions Box, and special instructions incorporated into this permit. The UAO and/or Utility Builder declares, the location of all existing utilities that it owns or has an interest in, both aerial and underground, are accurately shown on the plans of the work areas. In accordance with UAM Section 2.8, the UAO and/or Utility Builder further declares that a letter of notification was delivered to the owners of other facilities within the work areas and that those listed below are the only facility owners known to be involved or potentially impacted by the proposed work.

Date Notified:

Name of other facility owners (attach additional sheets if necessary).

\_\_\_\_/\_\_\_\_/\_\_\_\_  
\_\_\_\_/\_\_\_\_/\_\_\_\_  
\_\_\_\_/\_\_\_\_/\_\_\_\_  
\_\_\_\_/\_\_\_\_/\_\_\_\_  
\_\_\_\_/\_\_\_\_/\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Utility Agency/Owner

Utility Builder (when applicable)

Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Name (printed): \_\_\_\_\_

Name (printed): \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## FDOT PROJECT INFORMATION

Pursuant to UAM Section 2.1(10), the utility work is within FDOT projects listed below and must have a Utility Work Schedule for each project approved prior to commencement of work within the FDOT project limits:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## FDOT SPECIAL INSTRUCTIONS

In accordance with UAM Section 2.7, FDOT incorporates the below and attached special instructions into this permit.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional FDOT Special Instructions are attached and incorporated into this permit. Yes  No

## PERMIT APPROVAL

By signature below, FDOT gives permission to the UAO and/or Utility Builder to construct, operate, and maintain the utilities indicated in this Utility Permit in compliance with the UAM, all incorporated documents, and special instructions. Any changes to the approved work must be approved by the FDOT's Approving Engineer and attached and incorporated into this permit in accordance with UAM Section 2.11.

Approving Engineer: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Notification of Utility Work to be provided to: Telephone (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ or Email: \_\_\_\_\_

An FDOT Representative is required to be present on the worksite prior to commencement of work. Yes  No

Rep. Name: \_\_\_\_\_ Telephone (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ Email: \_\_\_\_\_

Florida Department of Transportation  
**UTILITY PERMIT**

Page \_ of \_

**PERMIT NO:** \_\_\_\_\_

**CERTIFICATION**

I, the undersigned UAO and/or Utility Builder, hereby CERTIFY that the utilities were constructed and inspected in compliance with the UAM all incorporated documents, and special instructions. Pursuant to UAM Section 2.11, all changes have been approved by the FDOT's Approving Engineer and incorporated into this permit along with all other material certifications, test results, bore logs, approved plans changes, as-built plans or other required documentation.

I also CERTIFY that work began on \_\_\_/\_\_\_/\_\_\_ and was completed on \_\_\_/\_\_\_/\_\_\_ and that the area was left in as good or better condition than when the work began.

Utility Agency/Owner

Utility Builder (when applicable)

Signature: \_\_\_\_\_ Date \_\_\_/\_\_\_/\_\_\_

Signature: \_\_\_\_\_ Date \_\_\_/\_\_\_/\_\_\_

Name (printed): \_\_\_\_\_

Name (printed): \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**FINAL INSPECTION OF WORK**

The work was inspected and found to be in non-compliance as noted below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All issues of non-compliance listed above have been brought into compliance and/or FDOT has no outstanding issues that need to be addressed by the UAO and/or Utility Builder. However, this final inspection does not release the UAO and/or Utility Builder of their continuing responsibilities pursuant to Rule 14-46.001, the UAM, all incorporated documents, and special instructions.

FDOT Inspector: \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_