



Interoffice Memorandum

June 29, 2022

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

FROM: Joseph C. Kunkel, P.E., Director, Public Works Department

Handwritten signature of Joseph C. Kunkel in black ink.

**CONTACT PERSON: Humberto L. Castillero, P.E., PTOE, Manager
Traffic Engineering Division**

Handwritten signature of Humberto L. Castillero in black ink.

PHONE NUMBER: (407) 836-7891

SUBJ: Locally Funded Agreement between the State of Florida Department of Transportation and Orange County for Quiet Zone Improvements and County Resolution

Submitted for approval and execution is the bipartite agreement between the State of Florida Department of Transportation ("FDOT") and Orange County for Quiet Zone improvements at Pine Street and Fourth Street, west of South Orange Avenue (the "Project"). FDOT and Orange County each will complete portions of the Project. The portion of the Project to be completed by FDOT is referred to as "Additional Improvements" in the agreement. Orange County will complete the civil work that comprises the remainder of the work necessary to complete the Project.

At Pine Street, the Additional Improvements include installation of two automatic grade crossing exit gate signals, relocation of one pedestrian gate, and realignment of two entrance gates. The civil work includes relocation of a detectible warning strip on the sidewalk and the addition of two R10-1, "No Train Horn" signs.

At Fourth Street, the Additional Improvements include the installation of two automatic grade crossing exit gate signals, relocation of one pedestrian gate, and realignment of one entrance gate. The civil work includes relocation of a detectible warning strip on the sidewalk, addition of two R10-1, "No Train Horn" signs, and one R9-9 (MOD), "End of Sidewalk" sign.

The estimated cost of the Project and Orange County's contribution is in the amount of \$592,940. The Additional Improvements portion to be constructed by FDOT, and funded by Orange County, has an estimated cost of \$587,690. The civil work portion to be constructed and funded by Orange County has an estimated cost of \$5,250. After construction is complete, FDOT shall maintain the Additional Improvements at its own cost and expense and Orange County shall maintain the civil work at its own cost and expense.

The County Attorney's Office and the Public Works Traffic Engineering Division have reviewed the Local Funded Agreement and find it acceptable.

Action Requested: Approval and execution of (1) Locally Funded Agreement between the State of Florida Department of Transportation and Orange County Financial Project No.: 412994-8-92-13 for Quiet Zone Improvements at Crossing Number 622337W (Pine Street) and Crossing Number 622339K (Fourth Street); (2) Three Party Escrow Agreement by and between the State of Florida Department of Transportation, Orange County, and the State of Florida Department of Financial Services, Division of Treasury; and (3) Financial Management Number 412994-8-92-13 Resolution of the Orange County Board of County Commissioners regarding the Locally Funded Agreement with the State of Florida Department of Transportation Concerning Certain Railroad Improvements at the intersections of Pine Street and Fourth Street with Orange Avenue. The cost to the County is \$592,940. District 3.

JCK/HLC/JRG/dar

Attachments



OFFICE OF COMPTROLLER

ORANGE
COUNTY
FLORIDA

Phil Diamond, CPA
County Comptroller as
Clerk of the Board of County Commissioners
201 South Rosalind Avenue
Post Office Box 38
Orlando, FL 32802
Telephone: (407) 836-7300
Fax: (407) 836-5359

DATE: July 28, 2022

TO: Humberto L. Castillero, Manager
Traffic Engineering Division, BCC

FROM: Katie Smith, Deputy Clerk *NP for KS*
Comptroller Clerk of BCC

SUBJECT: Request for Execution of Documents, Public Works Department Consent
Item 4, Legislative File # 22-949, July 26, 2022

Enclosed is the Locally Funded Agreement Financial Project No: 412994-8-92-13 (2 originals); and Three Party Escrow Agreement (2 originals) which was approved by the Board of County Commissioners (BCC) at its regular meeting held on July 26, 2022.

Please forward the documents to all required parties for signature.

Email copies of the fully-executed documents to ClerkofBCC@occompt.com.

*Note: ClerkofBCC@occompt.com is **used only** for County staff submission of pending documents.*

Please include in cover memo or subject line identification of the documents by name, agenda item number, and date of BCC approval. Emailed copies must be in full-size PDF format. The documents will be processed and filed for the record upon receipt.

If you are unable to return a copy of the fully-executed documents before August 26, 2022, notify Katie Smith by email of the reason for the delay prior to that date.

If you have any questions, please do not hesitate to call.

ks:np

Enclosures (4)

dl: Joseph C. Kunkel, Director, Public Works Department, BCC [email]

Chris Testerman, Deputy County Administrator, BCC [email]

Whitney Verrett, Executive Assistant, Public Works Department, BCC [email]

Pending File

Agency: Orange County Vendor No.: F596-000-773-011	Fund: LF Contract Amount: \$587,690.00	Financial Project No.: 412994-8-92-13
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**LOCALLY FUNDED AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
ORANGE COUNTY**

This **AGREEMENT**, made and entered into _____,
by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter
referred to as the "DEPARTMENT") and ORANGE COUNTY (hereinafter referred to as the
"LOCAL GOVERNMENT"),

WITNESSETH:

WHEREAS, the Parties have been granted specific legislative authority to enter into this
Agreement pursuant to Section 339.12, Florida Statutes; and

WHEREAS, the LOCAL GOVERNMENT, by Resolution, a copy of which is attached
hereto as Exhibit "C", and made apart hereof, has authorized its officers to execute this
Agreement on its behalf; and

WHEREAS, the DEPARTMENT is prepared, in accordance with its Adopted Five Year
Work Program, to undertake the project described as: "the Design and Construction of Pine
Street and Fourth Street Crossing Quiet Zone Improvements project", said project being known
as Financial Project Number (FPN) 412994-8-92-13, hereinafter referred to as the "Project"; and

WHEREAS, the Project is not revenue producing and is contained in the Adopted Work
Program; and

WHEREAS, the implementation of the Project is in the interests of both the
DEPARTMENT and the LOCAL GOVERNMENT and it would be most practical, expeditious,
and economical for the LOCAL GOVERNMENT to provide the funds for: Quiet Zone
improvements at Crossing Number 622337W, Pine Street and Crossing Number 622339K,
Fourth Street, in Fiscal Year 2022/2023, said Project being known as FPN 412994-8-92-13, and
said improvements shall hereinafter be referred to as the "Additional Improvements"; and

WHEREAS, in order to maintain uniformity throughout the Project and to provide for the
Additional Improvements in a cost-effective manner, the LOCAL GOVERNMENT desires to
have said Additional Improvements made a part of the Project and to provide funding to the
DEPARTMENT to be used for the Additional Improvements as described in "Exhibit A".

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the joint participation of this Agreement, the parties agree as follows:

1. The term of this Agreement shall begin upon the date of signature of the last party to sign and shall remain in full force and effect through completion of all services required of the LOCAL GOVERNMENT. The DEPARTMENT may, at any time and at any stage, amend or terminate the Project in whole or in part if the DEPARTMENT determines that such action is in the best interests of the public.

2. The DEPARTMENT shall cause the Additional Improvements described in Exhibit "A" to be incorporated into the DEPARTMENT'S plans for the Design and Construction of Pine Street and Fourth Street Crossing Quiet Zone Improvements and to be constructed as a part of said Project.

3. The DEPARTMENT shall perform necessary preliminary engineering, prepare any and all design plans, acquire all necessary right-of-way, perform the construction, provide all necessary engineering supervision, and otherwise perform all other necessary work, all as may be applicable for the Project as previously defined. The Project as previously defined may include some or all of the foregoing activities. Nothing herein shall be construed as requiring the DEPARTMENT to perform any activity which is outside the scope of the Project as previously defined. Except as specifically stated otherwise in this Agreement, all such activities shall be performed by such entities, at such times, in such manner, under such conditions, and pursuant to such standards as the DEPARTMENT, in its sole discretion, deems appropriate. The LOCAL GOVERNMENT shall not have any jurisdiction or control over the DEPARTMENT'S activities, except as specifically stated in this Agreement. The LOCAL GOVERNMENT shall be entitled to be advised of the progress of the Project at reasonable intervals upon request.

4. After construction is complete, the DEPARTMENT agrees to inspect and maintain the constructed improvements in perpetuity as specified in Exhibit "A", Scope of Services.

5. Participation by the LOCAL GOVERNMENT in the funds for the construction phase of the Project shall be made as follows:

(A) The DEPARTMENT'S current estimate of cost for the Additional Improvements is **\$587,690.00 (Five Hundred Eighty-Seven Thousand Six Hundred Ninety Dollars and No/100)**. The DEPARTMENT'S performance and obligation to construct the Project is contingent upon an annual appropriation by the Florida Legislature. The parties agree that in the event funds are not appropriated to the DEPARTMENT for the Project, this Agreement may be terminated, which shall be

effective upon the DEPARTMENT giving written notice to the LOCAL GOVERNMENT to that effect.

(B) The Project is being funded by the LOCAL GOVERNMENT in the amount of **\$587,690.00 (Five Hundred Eighty-Seven Thousand Six Hundred Ninety Dollars and No/100)**. Said funds are programmed under Financial Project Number (FPN) 412994-8-92-13. As described in paragraph 5(C) below, the LOCAL GOVERNMENT agrees that it will provide the balance of the funding necessary to complete the Project.

(C) The LOCAL GOVERNMENT agrees that it will, on or before but no later than **August 31, 2022**, furnish the DEPARTMENT an advance deposit in the amount of **\$587,690.00 (Five Hundred Eighty-Seven Thousand Six Hundred Ninety Dollars and No/100)** for full payment of the estimated project cost for Locally Funded project number 412994-8-92-13. The advance deposit shall be the total estimated project cost plus allowances, including contingency. The DEPARTMENT may utilize this deposit for payment of the costs of the Project.

(D) If the accepted bid amount plus allowances is in excess of the advance deposit amount, the LOCAL GOVERNMENT will provide an additional deposit within fourteen (14) calendar days of notification from the DEPARTMENT or prior to posting of the accepted bid, whichever is earlier, so that the total deposit is equal to the bid amount plus allowances. The DEPARTMENT will notify the LOCAL GOVERNMENT as soon as it becomes apparent the accepted bid amount, plus allowances, is in excess of the advance deposit amount. However, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation on final accounting as provided herein below. If the LOCAL GOVERNMENT cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to and approved by the DEPARTMENT project manager indicating when the deposit will be made. The LOCAL GOVERNMENT understands the request and approval of the additional time could delay the project, and additional costs may be incurred due to a delay of the project.

(E) If the accepted bid amount plus allowances is less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit exceeds the bid amount plus allowances if such refund is requested by the LOCAL GOVERNMENT in writing.

(F) Should project modifications or changes to bid items occur that increase the LOCAL GOVERNMENT share of total project costs, the LOCAL GOVERNMENT will be notified by the DEPARTMENT accordingly. The LOCAL GOVERNMENT agrees to

provide, without delay, in advance of the additional work being performed, adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund its share of the Project. The DEPARTMENT shall notify the LOCAL GOVERNMENT as soon as it becomes apparent the actual costs will overrun the award amount. However, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation during the Project and on final accounting as provided herein below. Funds due from the LOCAL GOVERNMENT during the Project not paid within forty (40) calendar days from the date of the invoice are subject to an interest charge at a rate established pursuant to Section 55.03, Florida Statutes (F.S.).

(G) The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred and sixty days (360) of final payment to the Contractor. The DEPARTMENT considers the Project complete when the final payment has been made to the Contractor, not when the construction work is complete. All project cost records and accounts shall be subject to audit by a representative of the LOCAL GOVERNMENT for a period of three (3) years after final close out of the project. The LOCAL GOVERNMENT will be notified of the final cost. Both parties agree that in the event the final accounting of total project costs 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 DEPARTMENT to the LOCAL GOVERNMENT. If the final accounting is not performed within three hundred and sixty (360) days, the LOCAL GOVERNMENT is not relieved from its obligation to pay.

(H) In the event the final accounting of total project costs is greater than the total deposits to date, the LOCAL GOVERNMENT will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The LOCAL GOVERNMENT agrees to pay interest at a rate as established pursuant to Section 55.03, F. S., on any invoice not paid within forty (40) calendar days until the invoice is paid.

(I) The payment of funds under this Locally Funded Agreement will be made directly to the DEPARTMENT for deposit and as provided in the attached escrow agreement between LOCAL GOVERNMENT, DEPARTMENT and the State of Florida, Department of Financial Services, Division of Treasury.

(J) Contact Persons:

DEPARTMENT

District 5 Local Programs

719 South Woodland Boulevard, M.S. 4-520
DeLand, Florida 32720-6834
(386) 943-5520
D5-LocalPrograms@dot.state.fl.us

LOCAL GOVERNMENT

John Gorentz
Project Manager
Orange County
4200 S. John Young Parkway
Orlando, FL 32839
(407) 839-8031
John.gorentz@ocfl.net

6. All tracings, plans, specifications, maps, models, reports, or other work product prepared or obtained under this Agreement shall be considered works made for hire for the DEPARTMENT and shall at all times be and remain the property of the DEPARTMENT without restriction or limitation on their use. The LOCAL GOVERNMENT may, however, inspect those materials upon providing reasonable advance notice to the DEPARTMENT.

7. In the event this Agreement is in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) or has a term for a period of more than one (1) year, the provisions of Chapter 339.135(6)(a), Florida Statutes, are hereby incorporated as follows:

"The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year."

8. The DEPARTMENT may unilaterally cancel this Agreement for refusal by the LOCAL GOVERNMENT 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 such party in conjunction with this Agreement.

9. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof, and incorporates and includes all proper negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written.

10. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

11. The DEPARTMENT and the LOCAL GOVERNMENT acknowledge and agree to the following:

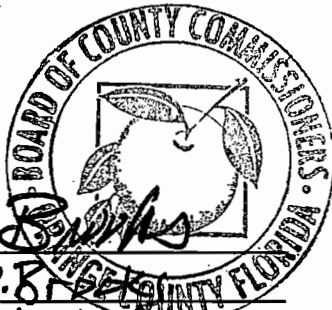
(A) The LOCAL GOVERNMENT shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the LOCAL GOVERNMENT during the term of the contract; and

(B) The LOCAL GOVERNMENT shall expressly require any contractors and subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the contractor/subcontractor during the contract term.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the LOCAL GOVERNMENT has executed this Agreement on _____, and the DEPARTMENT has executed this Agreement on _____

ORANGE COUNTY



By: *Byron W. Bissett*
Name: Byron W. Bissett
Title: County Administrator

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____
Name: C. Jack Adkins
Title: Director of Transportation Development

Attest:

Attest:

Executive Secretary

Legal Review:

LOCAL GOVERNMENT Attorney

Legal Review:

DEPARTMENT Attorney

Financial Provisions Approval by
Department of Comptroller on:

July 8, 2019

EXHIBIT "A"
SCOPE OF SERVICES

<i>DOT Crossing #</i>	<i>Mile Post</i>	<i>Crossing Name</i>	<i>Scope of Work</i>
622336P	797.60	Landstreet Road	<p>No Railroad crossing signal improvements Civil Work Add R10-1 No Train Horn Signs.</p>
622337W	797.94	Pine Street	<p>Install 1(one) Exit Gate with flashing lights in the Southeast Quadrant. Install 1(one) Exit Gate with one-way flashing lights on existing pedestrian gate foundation in the Northwest Quadrant. Relocate 1(one) Pedestrian Gate to new foundation in the Northwest Quadrant and add one-way flashing lights. Rotate entrance gates in the Northeast and Southwest Quadrant to be parallel with the tracks. Civil Work Relocate Tactile warning strip in the Northwest Quadrant and Add R10-1 No Train Horn Signs.</p>
622339K	798.24	Fourth Street	<p>Install 1(one) Exit Gate with flashing lights in the Southeast Quadrant. Install 1(one) Exit Gate with one-way flashing lights on existing pedestrian gate foundation in the Northwest Quadrant. Relocate 1(one) Pedestrian Gate to new foundation in the Northwest Quadrant and add one-way flashing lights. Rotate entrance gates in the Southwest Quadrant to be parallel with the tracks. Civil Work Relocate Tactile warning strip in the Northwest Quadrant and Install End of Sidewalk sign in the Southeast Quadrant and Add R10-1 No Train Horn Signs.</p>

Note: **Civil Work** to be performed by Orange County.

The DEPARTMENT'S Contractor shall construct the Additional Improvements as part of the construction contract for the Design and Construction of Pine Street and Fourth Street Crossing Quiet Zone Improvements.

After construction is complete, the DEPARTMENT shall at all times be responsible, at their own cost and expense, for maintaining the Additional Improvements constructed under this Agreement, in perpetuity, which includes clean-up, removal and disposal of debris from catastrophic events or accidents as well as routine maintenance. The DEPARTMENT will respond to and handle any citizen complaints. If the Additional Improvements needs to be rehabilitated and/or repaired at any time in the future, the LOCAL GOVERNMENT is under no obligation to restore, repair or replace the Additional Improvements.

EXHIBIT "B"**ESTIMATE**

The estimate is based on Statewide and District Average Bid Price for the following items times an escalation to bring the cost up to the construction fiscal year.

Pine St./Fourth St. Crossing Quiet Zone Improvements	Cost Estimate
Crossing Warning System - materials, supply & install	\$521,933.00
Design Services (3%)	\$15,657.99
Test Train Services	\$3,125.00
CEI (6%)	\$31,315.98
Contingency (3%)	\$15,657.99
Total (rounded):	\$587,690.00

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EXHIBIT "C"
RESOLUTION

The Resolution, or other official authorization, authorizing entry into this Agreement is attached and incorporated into this Agreement.

THREE PARTY ESCROW AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Florida, Department of Transportation ("FDOT"), Orange County ("Participant"), and the State of Florida, Department of Financial Services, Division of Treasury ("Escrow Agent"), and shall become effective upon the Agreement's execution by Escrow Agent.

WHEREAS, FDOT and Participant are engaged in the following project ("Project"):

Project Name: Design and Construction of Pine Street and Fourth Street
Crossing Quiet Zone Improvements
Project #: 412994-8-92-13
County: Orange

WHEREAS, FDOT and Participant desire to establish an escrow account for the project.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties agree to the following:

1. An initial deposit will be made into an interest bearing escrow account established hereunder for the purposes of the Project. The escrow account will be opened with the Escrow Agent on behalf of FDOT upon Escrow Agent's receipt and execution of this Agreement.
2. Other deposits to the escrow account may be made during the life of this agreement.
3. Deposits will be delivered in accordance with instructions provided by the Escrow Agent to the FDOT for deposit into the escrow account. A wire transfer or ACH deposit is the preferred method of payment and should be used whenever possible.
4. FDOT's Comptroller or designee shall be the sole signatory on the escrow account with the Escrow Agent and shall have sole authority to authorize withdrawals from the account. Withdrawals will only be made to FDOT or the Participant in accordance with the instructions provided to the Escrow Agent by FDOT's Comptroller or designee.
5. Moneys in the escrow account will be invested in accordance with section 17.61, Florida Statutes. The Escrow Agent will invest the moneys expeditiously. Income is only earned on the moneys while invested. There is no guaranteed rate of return. Investments in the escrow account will be assessed a fee in accordance with Section 17.61(4)(b), Florida Statutes. All income of the investments shall accrue to the escrow account.
6. Unless instructed otherwise by FDOT, all interest accumulated in the escrow account shall remain in the account for the purposes of the Project.

7. The Escrow Agent agrees to provide written confirmation of receipt of funds to FDOT. FDOT agrees to provide a copy of such written confirmation to Participant upon request.
8. The Escrow Agent further agrees to provide quarterly reports to FDOT concerning the escrow account. FDOT agrees to provide a copy of such quarterly reports to Participant upon request.
9. The Escrow Agent shall not be liable for any error of judgment or for any act done or omitted by it in good faith, or for anything which it may in good faith do or refrain from doing in connection herewith.
10. Escrow Agent shall have no liability for any claim, cost, expense, damage or loss due to the acts or omissions of FDOT and Participant, nor from any separate agreements between FDOT and Participant and shall have no responsibility to monitor or enforce any responsibilities herein or in any separate agreements associated with this Agreement between FDOT and Participant.
11. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.
12. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
13. This Agreement shall terminate upon disbursement by the Escrow Agent of all money held by it in the escrow account in accordance with the instructions given by FDOT's Comptroller or designee and notification from FDOT to Escrow Agent that the account is to be closed.

The remainder of this page is blank.

IN WITNESS WHEREOF, the parties have duly executed the Agreement on the date(s) below.

For FDOT-OOC (signature)

Name and Title

59-3024028

Federal Employer I.D. Number

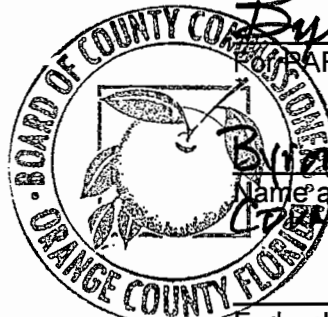
Date

FDOT Legal Review:

For Escrow Agent (signature)

Name and Title

Date

 *Bryan W. Brooks*

PARTICIPANT (signature)
Bryan W. Brooks

Name and Title
County Administrator

Federal Employer I.D. Number

26 July 2022

Date