



Interoffice Memorandum

November 29, 2021

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

FROM: Ed Torres, M.S., P.E., LEED AP, Director
Utilities Department

SUBJECT: BCC AGENDA ITEM – Consent Agenda
December 14, 2021 BCC Meeting
Agreements for Utility Work Related to the Florida Department of
Transportation's Highway Project: SR 400 (Interstate 4) at Sand Lake Road
Interchange Improvements from East of SR 528 to West of SR 435
Contact Person: Lindy A. Wolfe, P.E., LEED AP, Manager
Utilities Engineering Division
407-254-9918

Florida Department of Transportation (FDOT) is constructing improvements to SR 400 (Interstate 4) at Sand Lake Road Interchange Improvements from east of SR 528 to west of SR 435. Some County utility facilities must be relocated because they are in direct conflict with the proposed roadway improvements. The utility work associated with the roadway improvement project is within the Florida State Statute Chapter 337.403 for Federal-Aid Interstate System requirements.

Since this project is funded by the Federal Highway Administration, FDOT is financially responsible for the utilities relocation costs associated with the project. Orange County Utilities is participating in the cost associated to enhance/improve our system by adding future capacity.

Because both the County and FDOT are financially responsible for portions of the total cost associated with the project, the following agreements must be executed.

1. **Utility Work by Highway Contractor Agreement (At FDOT Expense) - FDOT Financial Project ID: 444315-1-56-01, including Appendix: "Change to Form Document" and "Required Contract Provisions for Federal Aid Contracts."** This agreement authorizes the FDOT to include the County's necessary utility relocation work in the FDOT's highway construction contract.

The County's work that FDOT is financially responsible for consist of construction of 1,500 feet of 14-inch force main, 2,000 feet of 16-inch force main, 2,800 feet of 24-inch force main and 500 feet of 30-inch reclaimed water main.

The County's work consists of construction of 1,050 feet of 24-inch force main and upsizing 2,000 feet of 16-inch force main to 20-inch force main.

The total agreement amount associated with utility relocations that the County is financially responsible for is \$1,700,000. This includes an estimated construction cost in the amount of \$1,517,857; a 2% administration fee in the amount of \$30,357 and a 10% contingency in the amount of \$151,786. The administration fee and contingency are required by the Agreement.



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2. **Three Party Escrow Agreement – FDOT Financial Project ID: 444315-1-56-01**
This agreement stipulates the premises and covenants under which an escrow account is established for the project.
3. **Utility Preliminary Engineering Agreement – FDOT Financial Project ID 444315-1-36-01, including Appendix: "Change to Form Document" and "Required Contract Provisions for Federal Aid Contracts."** This agreement provides a mechanism for the FDOT to reimburse the County for engineering design costs associated with the utility relocation work that FDOT is financially responsible for. This is the agreement referenced in paragraph 1.I of the document, "Utility Work by Highway Contractor Agreement (At FDOT Expense).

Orange County Attorney's Office and Risk Management Division have reviewed the documents and finds them acceptable as to form. Utilities Department staff recommends approval.

Action Requested: Approval and execution of 1) State of Florida Department of Transportation Utility Work by Highway Contractor Agreement (At FDOT Expense) Financial Project ID: 444315-1-56-01 by and between the State of Florida Department of Transportation and Orange County and State of Florida Department of Transportation Utility Work by Highway Contractor Agreement (At FDOT Expense) Appendix: "Change to Form Document" in the amount of \$1,700,000; 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) Utility Preliminary Engineering Agreement between the State of Florida, Department of Transportation and Orange County.

District 1.

BCC Mtg. Date: Dec. 14, 2021

**UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT
(AT FDOT EXPENSE)**

Financial Project ID: 444315-1-56-01	Federal Project ID: D521-023-B
County: Orange	State Road No.: 400
District Document No: 1	
Utility Agency/Owner (UAO): Orange County, a Charter County and Political Subdivision of Florida	

THIS AGREEMENT, entered into this _____ day of _____, year of _____, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as the "**FDOT**", and **Orange County, a Charter County and Political Subdivision of Florida**, hereinafter referred to as the "**UAO**";

WITNESSETH:

WHEREAS, the **FDOT**, is constructing, reconstructing, or otherwise changing a portion of a public road or publicly owned rail corridor, said project being identified as SR 400 (Interstate 4) at Sand Lake Road Interchange Improvements from E. of SR 528 to W. of SR 435, State Road No.: 400, hereinafter referred to as the "**Project**"; and

WHEREAS, the **UAO** owns or desires to install certain utility facilities which are located within the limits of the Project hereinafter referred to as the "**Facilities**" (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, adjustment or removal of the Facilities, or some combination thereof, hereinafter referred to as "**Utility Work**"; and

WHEREAS, the **FDOT** and the **UAO** desire to enter into a joint agreement pursuant to Section 337.403(1)(b), Florida Statutes for the Utility Work to be accomplished by the **FDOT's** contractor as part of the construction of the Project; and

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

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the **FDOT** and the **UAO** hereby agree as follows:

1. Design of Utility Work

- a. **UAO** shall prepare a final engineering design, plans, technical special provisions, and a cost estimate for the Utility Work (hereinafter referred to as the Plans Package) on or before September 1, year of 2021.
- b. The Plans Package shall be in the same format as the **FDOT's** contract documents for the Project and shall be suitable for reproduction.
- c. Unless otherwise specifically directed in writing, the Plans Package shall 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 shall include a traffic control plan.
- d. The Plans Package shall be prepared in compliance with the **FDOT's** Utility Accommodation Manual and the **FDOT's** Design Manual in effect at the time the Plans Package is prepared, and the **FDOT's** contract documents for the Project. If the **FDOT's** Design Manual is updated and conflicts with the **FDOT's** Utility Accommodation Manual, the Utility Accommodation Manual shall apply where such conflicts exist.
- e. The technical special provisions which are a part of the Plans Package shall be prepared in accordance with the **FDOT's** guidelines on preparation of technical special provisions and shall not duplicate or change the general contracting provisions of the **FDOT's** Standard Specifications for

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Road and Bridge Construction and any Supplemental Specifications, Special Provisions, or Developmental Specifications of the FDOT for the Project.

- f. **UAO** shall provide a copy of the proposed Plans Package to the **FDOT**, and to such other right of way users as designated by the **FDOT**, for review at the following stages: Phase II, Phase III, Final and Signed and Sealed Plans. Prior to submission of the proposed Plans Package for review at these stages, the **UAO** shall send the **FDOT** a work progress schedule explaining how the **UAO** will meet the **FDOT'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 **FDOT** finds any deficiencies in the Plans Package during the reviews performed pursuant to Subparagraph f. above, the **FDOT** will notify the **UAO** in writing of the deficiencies and the **UAO** will correct the deficiencies and return corrected documents within the time stated in the notice. The **FDOT's** review and approval of the documents shall not relieve the **UAO** from responsibility for subsequently discovered errors or omissions.
- h. The **FDOT** shall furnish the **UAO** such information from the **FDOT's** files as requested by the **UAO**; however, the **UAO** shall at all time 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 **FDOT** shall not relieve the **UAO** of this obligation nor transfer any of that responsibility to the **FDOT**.
- i. The Facilities and the Utility Work will include all utility facilities of the **UAO** which are located within the limits of the Project, except as generally summarized as follows: Designated facilities are to remain active until all replacement facilities are in service. Orange County will operate all valves. These exceptions shall be handled by separate arrangement.
- j. The **UAO** 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 **FDOT**.
- k. Upon completion of the Utility Work, the Facilities, shall be deemed to be located on the public road or publicly owned rail corridor under and pursuant to the Utility Permit at a later date.
(Note: It is the intent of this line to allow either attachment of or separate reference to the permit).
- l. The cost of any design work performed pursuant to this paragraph 1 shall be reimbursed by a separate agreement.
- m. As part of the final submittal of the Plans Package, the **UAO** shall also submit an estimate of the amount of the cost of the Utility Work that should be paid for by the **UAO**, hereinafter referred to as the **UAO Participating Amount**. The determination of that amount shall be based on the credit required for any increase in the value of the new Facility and for any salvage derived from the old Facility. These credits shall be determined as follows:
 - (1) Increase in value credit.
 - (a) Expired Service Life. If an entirely new Facility is constructed and the old Facility retired, credit for the normally-expected service life of the old Facility applies.
 - (b) Upgrading. A percentage of the total cost of the Relocation Work, based on the extent of the betterment obtained from the new Facilities will be applied.
 - (2) Salvage Value. The **FDOT** shall receive fair salvage value credit for any salvage which will become available to the **UAO** as a result of the Utility Work.

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The submittal shall show the calculation of the **UAO** Participating Amount in detail for each of the credits required above. The **FDOT** shall review the calculations and advise the **UAO** of any objections. In the event that the parties cannot come to an agreement as to the **UAO** Participating Amount, the **FDOT's** determination of the amount shall prevail.

2. Performance of Utility Work

- a. The **FDOT** shall incorporate the Plans Package into its contract for construction of the Project.
- b. The **FDOT** shall procure a contract for construction of the Project in accordance with the **FDOT's** requirements.
- c. The **UAO** shall perform all engineering inspection, testing, and monitoring of the Utility Work to insure that it is properly performed in accordance with the Plans Package except for the following activities: All in place Density Testing will be performed by FDOT or its designee. and will furnish the **FDOT** with daily diary records showing approved quantities and amounts for weekly, monthly, and final estimates in accordance with the format required by the **FDOT**.
- d. Except for the inspection, testing, monitoring and reporting to be performed by the **UAO** in accordance with Subparagraph 2. c., the **FDOT** will perform all contract administration for its construction contract.
- e. The **UAO** shall fully cooperate with the **FDOT** and the **FDOT's** contractor in all matters relating to the performance of the Utility Work.
- f. The **FDOT's** engineer has full authority over the Project and the **UAO** shall be responsible for coordinating and cooperating with the **FDOT's** engineer. In so doing, the **UAO** shall make such adjustments and changes in the Plans Package as the **FDOT's** engineer shall determine are necessary for the prosecution of the Project.
- g. The **UAO** shall not make any changes to the Plans Package after the date on which the **FDOT's** contract documents are mailed to Tallahassee for advertisement of the Project unless those changes fall within the categories of changes which are allowed by supplemental agreement to the **FDOT'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 **FDOT**.

3. Cost of Utility Work

- a. Except as otherwise provided herein, the **FDOT** 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 **FDOT'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 **UAO**. The **FDOT** shall not be responsible for the cost of delays caused by such adjustments or changes to the extent they are attributable to the **UAO** pursuant to Subparagraph 4.a.
- b. At such time as the **FDOT** prepares its official estimate, the **FDOT** shall notify the **UAO** of the **UAO** Participating Amount, determined in accordance with Subparagraph 1.m. hereof.
- c. At least thirty (30) days prior to the date on which the **FDOT** advertises the Project for bids, the **UAO** will pay to the **FDOT** the **UAO** Participating Amount.
- d. If the **UAO's** percentage contribution to the portion of the bid of the contractor selected by the **FDOT** which is for performance of the Utility Work (calculated by dividing the **UAO's** Participating Amount by the amount of the **FDOT's** official estimate) exceeds the amount of the deposit made pursuant to

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Subparagraph c. above, then the **UAO** shall, within fourteen (14) calendar days from notification from the **FDOT**, or prior to posting of the accepted bid, whichever is earlier, pay an additional amount to the **FDOT** to bring the total amount paid to the total percentage contribution of the **UAO**. If said portion of the bid is less than the amount on deposit, the excess deposit shall be returned to the **UAO** in accordance with Section 215.422, Florida Statutes.

- e. The **FDOT** may use the funds paid by the **UAO** for payment of the cost of the Utility Work.
- f. Payment of the funds pursuant to this paragraph will be made (choose one):
 - ☐ directly to the **FDOT** for deposit into the State Transportation Trust Fund.
 - ☒ as provided in the attached Three Party Escrow Agreement between the **UAO**, the **FDOT**, and the State of Florida, Department of Financial Services, Division of Treasury. Deposits of less than \$100,000.00 must be pre-approved by the Department of Financial Services and **FDOT** Comptroller's Office prior to execution of this agreement.
- g. Upon final payment to the contractor, the **FDOT** intends to have its final and complete billing of all costs incurred in connection with the Utility Work within three hundred sixty (360) days. All cost records and accounts shall be subject to audit by a representative of the **UAO** within three (3) years after final close out of the Project.

4. Claims Against UAO

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

5. Out of Service Facilities

No Facilities shall be placed out of service unless specifically identified as such in the Plans Package. The following terms and conditions shall apply to Facilities placed Out-of-Service:

- a. The **UAO** acknowledges its present and continuing ownership of and responsibility for out of service Facilities.
- b. The **FDOT** agrees to allow the **UAO** to leave the Facilities within the right of way subject to the continuing satisfactory performance of the conditions of this Agreement by **UAO**. In the event of a breach of this Agreement by **UAO**, the Facilities shall be removed upon demand from the **FDOT** in accordance with the provisions of Subparagraph e. below.
- c. The **UAO** 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 **UAO** to use due care in its dealings with others. The **UAO** shall be solely responsible for gathering all information necessary to meet these obligations.

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- d. The **UAO** 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 **FDOT** or other permittees using or seeking use of the right of way.
- e. The **UAO** shall remove the Facilities at the request of the **FDOT** in the event that the **FDOT** determines that removal is necessary for **FDOT** use of the right of way or in the event that the **FDOT** determines that use of the right of way is needed for other active utilities that cannot be otherwise accommodated in the right of way. In the event that the out of service Facilities would have qualified for reimbursement only under Section 337.403(1)(a), Florida Statutes, removal shall be at the sole cost and expense of the **UAO** and without any right of the **UAO** to object or make any claim of any nature whatsoever with regard thereto. In the event that the out of service Facilities would have qualified for reimbursement for other reasons, removal of the out of service Facilities shall be reimbursed by the **FDOT** as though it had not been placed out of service. Removal shall be completed within the time specified in the **FDOT's** notice to remove. In the event that the **UAO** fails to perform the removal properly within the specified time, the **FDOT** may proceed to perform the removal at the **UAO'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 **UAO** agrees that the Facilities shall forever remain the legal and financial responsibility of the **UAO**. The **UAO** shall reimburse the **FDOT** for any and all costs of any nature whatsoever resulting from the presence of the Facilities within the right of way. 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 **UAO** to indemnify the **FDOT** for the **FDOT's** own negligence; however, it is the intent that all other costs and expenses of any nature be the responsibility of the **UAO**.

6. Default

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

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- (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 **FDOT** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement, the **UAO** 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 **UAO**.
 - (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 **UAO** may have for failure to pay invoices.
 - (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 **UAO** nor the **FDOT** 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 estimated duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible.

8. Indemnification

FOR GOVERNMENT-OWNED UTILITIES,

To the extent provided by law, the **UAO** shall indemnify, defend, and hold harmless the **FDOT** and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by the **UAO**, its agents, employees, or contractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which **FDOT** or said parties may be subject, except that neither the **UAO**, its agents, employees, or contractors will be liable under this section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the **FDOT** or any of its officers, agents, or employees during the performance of this Agreement.

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

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FOR NON-GOVERNMENT-OWNED UTILITIES,

The **UAO** shall indemnify, defend, and hold harmless the **FDOT** and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by the **UAO**, its agents, employees, or contractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which **FDOT** or said parties may be subject, except that neither the **UAO**, its agents, employees, or contractors will be liable under this section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the **FDOT** or any of its officers, agents, or employees during the performance of this Agreement.

The **UAO's** obligation to indemnify, defend, and pay for the defense or at the **FDOT's** option, to participate and associate with the **FDOT** in the defense and trial of any damage claim or suit and any related settlement negotiations, shall arise within fourteen (14) days of receipt by the **UAO** of the **FDOT's** notice of claim for indemnification to the **UAO**. The notice of claim for indemnification shall be served by certified mail. The **UAO's** obligation to defend and indemnify within fourteen (14) days of such notice shall not be excused because of the **UAO's** inability to evaluate liability or because the **UAO** evaluates liability and determines the **UAO** is not liable or determines the **FDOT** is solely negligent. Only a final adjudication or judgment finding the **FDOT** solely negligent shall excuse performance of this provision by the **UAO**. The **UAO** shall pay all costs and fees related to this obligation and its enforcement by the **FDOT**. The **FDOT's** delay in notifying the **UAO** of a claim shall not release **UAO** of the above duty to defend.

9. Miscellaneous

- a. Time is of essence in the performance of all obligations under this Agreement.
- b. The Facilities shall at all times remain the property of and be properly protected and maintained by the **UAO** in accordance with the current Utility Accommodation Manual in effect at the time the Plans Package is prepared and the current utility permit for the Facilities; provided, however, that the **UAO** shall not be obligated to protect or maintain any of the Facilities to the extent the **FDOT's** contractor has that obligation as part of the Utility Work pursuant to the **FDOT's** specifications.
- c. The **FDOT** may unilaterally cancel this Agreement for refusal by the **UAO** 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 **UAO** 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 **FDOT** 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 is provided. The **UAO** shall have a continuing obligation to notify each District of the **FDOT** 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:

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If to the UAO:
Orange County - Attn: Utilities Director
9150 Curry Ford Road
Orlando, Florida 32825

If to the FDOT:
FDOT 5 Orlando Operations Engineer
420 W. Landstreet Road
Orlando, Florida 32824

10. Certification

This document is a printout of an FDOT form maintained in an electronic format and all revisions thereto by the UAO in the form of additions, deletions, or substitutions are reflected only in an Appendix entitled Changes To Form Document and no change is made in the text of the document itself. Hand notations on affected portions of this document may refer to changes reflected in the above-named Appendix but are for reference purposes only and do not change the terms of the document. By signing this document, the UAO hereby represents that no change has been made to the text of this document except through the terms of the appendix entitled Changes To Form Document."

You MUST signify by selecting or checking which of the following applies:

- ☐ No changes have been made to this Form Document and no Appendix entitled "Changes to Form Document" is attached.
- ☒ No changes have been made to this Form Document, but changes are included on the attached Appendix entitled "Changes to Form Document."

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first written.

UTILITY: Orange County, a Charter County and Political Subdivision of
Florida

BY: (Signature)

Raymond B. Bwaka

(Typed Name: See attached Appendix for signature page)

for

(Typed Title: Orange County Mayor)



DATE: December 14, 2021

Recommend Approval by the District Utility Office

BY: (Signature)

Savi Nester

DATE:

3/28/2022

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FDOT Legal review

BY: (Signature)



District Counsel

DATE:

3/30/22

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: (Signature)



(Typed Name: C. Jack Adkins)

(Typed Title: Interim Director of Transportation Development)

DATE:

3/30/22

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

BY: _____

DATE: _____

(Typed Name: _____)

(Typed Title: _____)

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
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APPENDIX: "CHANGE TO FORM DOCUMENT"

The following changes are hereby made to the UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT (AT FDOT EXPENSE), between the State of Florida Department of Transportation (the "FDOT") and Orange County, a Charter County and Political Subdivision of Florida (the "UAO") dated the _____ day of _____, 20____ for the project identified as Financial Project Identification Number FPID 444315 1 56 01 .

1. The following provisions shall modify the provisions of paragraphs 1.a. and 1.f.:

The contract for construction of the project will be a design/build contract. Final construction plans for the Project will therefore not be prepared at the time that the construction contract is executed and the final design plans for the Project will be prepared by the design/build contractor. Accordingly, the UAO will develop an initial Plans Package based on the design concept and design criteria package that is available as of the date of the execution of this Agreement. As the design plans and specifications for the Project are finalized by the design/build firm, a copy thereof will be provided to the UAO. The UAO will then make any necessary changes to its initial Plans Package within a reasonable time and submit the revised Plans Package for review and processing in accordance with the provisions of this Agreement. The UAO acknowledges and agrees that there may be multiple submissions from the design/build contractor and that the UAO may be required to make changes to its Plans Package more than once as part of the design/build process. The stages for submission and the work progress scheduled referred to in paragraph 1.f. will not apply.

2. Paragraph 1.g. – Is rewritten to read:

In the event that the FDOT finds any deficiencies in the Plans Package during the reviews performed pursuant to Subparagraph f. above, the FDOT will notify the UAO in writing of the deficiencies and the UAO will correct the deficiencies and return corrected documents within the time stated in the notice, which shall not be less than seven (7) calendar days. The FDOT review and approval of the documents shall not relieve the UAO from responsibilities for subsequently discovered errors or omissions.

3. Paragraph 1.m. – Is modified to include the following additional sentence:

The FDOT and the UAO agree that the UAO Participating Amount is \$1,700,000.00 as shown in the estimate attached to this Agreement. The UAO Participating Amount includes a 10% contingency to be used as hereinafter provided for changes to the utility work during the construction of the project (Contingency Fund) plus 2% for FDOT administrative cost.

4. Paragraph 5.f.- Is rewritten to read:

Except as otherwise provided in Subparagraph e. above, the UAO agrees that the Facilities shall forever remain the legal and financial responsibility of the UAO. The UAO shall reimburse the FDOT for any and all costs of any nature whatsoever resulting from the presence of the Facilities

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT
(AT FDOT EXPENSE)

APPENDIX: "CHANGE TO FORM DOCUMENT"

within the right of way. 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 unless the discharge from the facilities is due to an act or omission of FDOT, its contractor, or agents. Nothing in this paragraph shall be interpreted to require the UAO to indemnify the FDOT for the FDOT's own negligence; however, it is the intent that all other costs and expenses of any nature be the responsibility of the UAO.

5. Paragraph 8 - Is deleted.

6. The following is added to the form document in the signature portion:

IN WITNESS WHEREOF, this Agreement has been fully executed on behalf of the parties hereto by their duly authorized representatives, as of the date first above written.

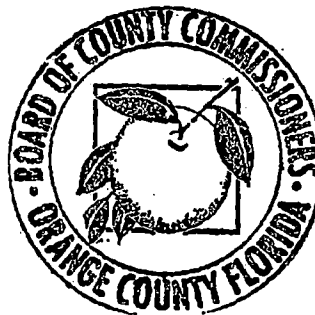
ORANGE COUNTY, FLORIDA

By: Orange County Board of County Commissioners

By: *Jerry L. Demings*

for Jerry L. Demings,
Orange County Mayor

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



By: *Katie Smith*

Deputy Clerk

Orange County Cost Estimate for SR 400 (I-4) at Sand Lake Interchange
FPID: 444315 1 56 01 UWHC (Orange County Utilities Participating Amount)

PAY ITEM	OCU DESCRIPTION	UNIT	UNIT COST	TOTAL QTY	TOTAL COST
1	MOB/DEMOB, BONDS & PERMITS (10%)	LS	\$137,987.00	1	\$137,987.00
2	Project Record Drawings	LS	\$52,000.00	1	\$52,000.00
3	Clearing and Grubbing	AC	\$38,000.00	0.3	\$11,400.00
4	Removal of Curb/Gutter	SY	\$123.00	50	\$6,150.00
5	TYPE B STABILIZATION	SY	\$26.00	450	\$11,700.00
6	OPTIONAL BASE, BASE GROUP 09	SY	\$40.00	130	\$5,200.00
7	3" Asphalt (SF)	TN	\$162.25	120	\$19,470.00
8	TRAFFIC SEPARATOR CONCRETE - TYPE I, 6' WIDE	LF	\$195.00	70	\$13,650.00
9	Place Exist 14" CIP Force Main Out of Service	LF	\$72.00	1100	\$79,200.00
10	Install 14" PVC Force Main (upsized to 24")	LF	\$170.00	30	\$5,100.00
11	Install 20" PVC Force Main (Cost for upsizing from 16" to 20" upsize)	LF	\$66.00	2000	\$132,000.00
12	Install 24" PVC Force Main	LF	\$430.00	1050	\$451,500.00
13	Install 14" Ductile Iron Bend (90, 45, 22.5, 11.25 or 5.625) (upsized from 14" to 24")	EA	\$15,000.00	1	\$15,000.00
14	Install 20" Ductile Iron Bend (90, 45, 22.5, 11.25 or 5.625)	EA	\$14,200.00	32	\$454,400.00
15	Install 24" x 14" Ductile Iron Tee	EA	\$15,600.00	1	\$15,600.00
16	Install 14" Tapping Sleeve on Force Main (upsized from 14" to 24")	EA	\$16,500.00	1	\$16,500.00
17	Install 14" RW Tapping Valve on Force Main (upsized from 14" to 24")	EA	\$26,000.00	1	\$26,000.00
18	Install 14" Plug Valve (upsized from 14" to 24")	EA	\$32,000.00	1	\$32,000.00
19	Install 14" Line Stop	EA	\$33,000.00	1	\$33,000.00

SUBTOTAL \$1,517,857

FDOT CONTINGENCY 10% \$151,786

FDOT CE & A 2% \$30,357

TOTAL ESTIMATE OF CONSTRUCTION \$1,700,000

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
REQUIRED CONTRACT PROVISIONS FOR FEDERAL AID CONTRACTS
(Appendix A of Assurances)

710-010-08
UTILITIES
OGC-04/17

Financial Project ID: 444315-1-56-01	Federal Project ID: D521-023-B
County: Orange	State Road No.: 400
District Document No: 1	
Utility Agency/Owner (UAO): Orange County, a Charter County and Political Subdivision of Florida	

During the performance of this Agreement, the **Utility Agency Owner (UAO)**, for itself, its assignees and successors in interest (**hereinafter referred to as the UAO**), agrees as follows:

(1) **Compliance with Regulations:** The **UAO** will comply with the Regulations of the **FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as the DEPARTMENT)** relative to nondiscrimination in Federally-assisted programs of the **DEPARTMENT** (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

(2) **Nondiscrimination:** The **UAO**, with regard to the work performed by it after award and prior to completion of the **UAO** work, will not discriminate on the ground of race, color or national origin in the selection and retention of subcontractors, including procurement of materials or leases of equipment. The **UAO** will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix A & B of the Regulations.

(3) **Solicitations:** In all solicitations either by competitive bidding or negotiation made by the **UAO** for work to be performed under a subcontract, including procurement of materials and leases of equipment, each potential subcontractor or supplier shall be notified by the **UAO** of the **UAO's** obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color or national origin.

(4) **"Buy America" Requirements:** The **UAO** will use domestic steel and/or iron products incorporated into the finished work in compliance with the Buy America provisions of 23 CFR 635.410 as amended. As used in this provision, "steel and/or iron products" means manufactured products that are predominately steel and/or iron products and that are not otherwise exempt from Buy America requirements pursuant to rules and regulations of the Federal Highway Administration. As used in this provision, "domestic" means products that are manufactured in the United States which have not undergone any manufacturing process outside of the United States that modified the chemical content, physical shape or size, or final finish of a product, beginning with the initial melting and continuing through final shaping and coating. If a steel and/or iron product is taken outside the United States for any manufacturing process, it becomes foreign source steel and/or iron products. The **UAO** may incorporate into the finished work foreign source steel and/or iron products as long as the actual cost of such foreign products does not exceed 0.1% of the total amount of this Agreement, or \$2,500.00 whichever is greater. The **UAO** will retain documentation verifying compliance with the Buy America provision of this Agreement for a period of 3 years after final payment of the finished work. Upon request, the **UAO** will provide the documentation verifying compliance with the Buy America provision of this Agreement. The **UAO** will provide a certification with the invoice that states the following: "The **UAO** certifies that all manufactured products that are predominately steel and/or iron are domestic products in compliance with the Buy America provisions of 23 CFR 635.410 as amended except for the foreign source steel and/or iron allowance of 0.1% of the total amount of the agreement between the Florida Department of Transportation and the **UAO**, or \$2,500.00 whichever is greater."

(5) **Information and Reports:** The **UAO** will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the **DEPARTMENT** or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the **UAO** is in the exclusive possession of another who fails or refuses to furnish this information, the **UAO** shall so certify to the **DEPARTMENT** or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
REQUIRED CONTRACT PROVISIONS FOR FEDERAL AID CONTRACTS
(Appendix A of Assurances)

710-010-08
UTILITIES
OGC-04/17

(6) **Sanctions for Noncompliance:** In the event of the **UAO's** noncompliance with the nondiscrimination provisions of paragraphs (1) through (4), the **DEPARTMENT** shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the contractor under the Agreement until the **UAO** complies; and/or
- (b) cancellation, termination or suspension of the Agreement, in whole or in part.

(7) **Incorporation of Provisions:** The **UAO** will include the provisions of paragraph (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, order or instructions issued pursuant thereto. The **UAO** will take such action with respect to any subcontract, procurement or lease as the **DEPARTMENT** or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the **UAO** becomes involved in, or is threatened with, litigation with a subcontractor, supplier or lessor as a result of such direction, the **UAO** may request the State to enter into such litigation to protect the interests of the State, and, in addition, the **UAO** may request the United States to enter into such litigation to protect the interests of the United States.

THREE PARTY ESCROW AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Florida, Department of Transportation ("FDOT"), Orange County, a Charter County and Political Subdivision of Florida ("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: SR 400 (Interstate 4) at Sand Lake Road Interchange
Improvements from East of SR 528 to West of SR 435
Project #: 444315 -1-56-01
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.

Orange County, Florida
By: Orange County Board of County Commissioners

DocuSigned by:

Cheryl Ward

218EE3F05A3D452

For FDOT-OOC (signature)

Raymond B. Bivins

For PARTICIPANT (signature)

Cheryl Ward, Deputy Comptroller, GAO

Name and Title

for Jerry L. Demings,
Orange County Mayor

Name and Title

59-3024028

Federal Employer I.D. Number

59-6000773016

Federal Employer I.D. Number

4/18/2022 | 12:17 PM EDT

Date

December 14, 2021

Date



FDOT Legal Review:

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

DocuSigned by:

Giselle Justo

D0F39D9F5E4D418...

By:
Deputy Clerk

Katie Smith

[Signature]

For Escrow Agent (signature)

Turner Collins, Director

Name and Title

4/19/22

Date

BCC Mtg. Date: Dec. 14, 2021

UTILITY PRELIMINARY ENGINEERING AGREEMENT

Financial Project ID:	444315 1 36 01	Federal Project ID:	D521-023-B
County:	Orange	State Road No:	400
District Document No:	1		
Utility Agency Owner (UAO):	Orange County		

This Utility Preliminary Engineering Agreement ("Agreement") is entered into this _____ day of _____, 20____, between State of Florida, Department of Transportation ("FDOT"), and ORANGE COUNTY, a Charter County and political subdivision of Florida.

FDOT AGREEMENT TO REIMBURSE ORANGE COUNTY

1. ORANGE COUNTY will perform engineering services in coordinating with FDOT concerning FDOT's project in Orange County, Florida, FDOT FIN No. 444315 1 ("Project") and ORANGE COUNTY facilities affected or potentially affected by FDOT's Project ("Preliminary Engineering") which for this project is defined as:

Engineering Analysis and preparation of engineering plans for the relocation and adjustment of ORANGE COUNTY water and sewer facilities on I-4 at SR 482 (Sand Lake Road) from E. of SR 528 to W. of SR 435.

Establish location of placement of the new facilities within the right of way on SR 482, Turkey Lake Road and within easements.

Develop a schedule for the finalization of design plans and permits.

Establish a final construction estimate that includes all procurement costs.

Provide technical professional services during construction to confirm substantial compliance with the requirements and provisions of applicable technical documents prepared by Orange County. acting upon shop drawings and other submittals during construction; providing clarification or interpretation of technical documents; evaluating general progress of construction; observing or evaluating completed construction; Certifications to the Orange County and regulatory agencies. reviewing as-builts and preparing record drawings.

2. Subject to the limitations of the terms and conditions of this Agreement, FDOT agrees to reimburse ORANGE COUNTY for the actual costs of the Preliminary Engineering not to exceed the amount of \$ 550,000.00.

Invoice Procedures

3. The following terms and conditions apply to all invoices submitted pursuant to this Agreement for reimbursement by FDOT:

- a. ORANGE COUNTY may at monthly intervals submit progress invoices for all costs incurred for the period covered by the invoice.

- b. ORANGE COUNTY shall submit a final invoice to FDOT for payment of all Preliminary Engineering within one hundred and eighty (180) days after written notification from FDOT of final acceptance of the Preliminary Engineering.
- c. All invoices shall be submitted in triplicate. Invoices shall be submitted in detail sufficient for a proper preaudit and post audit thereof. Invoices for any travel expenses shall be submitted in accordance with Section 112.061, Florida Statutes. All cost records and accounts shall be maintained in the auditable condition for a period of five years after final payment is received by ORANGE COUNTY and shall be subject to audit by a representative of FDOT at any reasonable time during this five-year period.
- d. Upon receipt of an invoice, FDOT has twenty (20) days to approve the invoice and to deliver a request for payment (voucher) to the Department of Financial Services or to return the invoice to ORANGE COUNTY.
- e. If a warrant in payment of an invoice is not issued within forty (40) days from the date the invoice is received a separate interest penalty, as established pursuant to Section 215.422, Florida Statutes, will be due and payable in addition to the invoice amount, to ORANGE COUNTY. Interest penalties of less than one (1) dollar will not be enforced unless ORANGE COUNTY requests payment. Invoices which have to be returned to ORANGE COUNTY because of ORANGE COUNTY's preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to FDOT. In the event of a bona fide dispute, FDOT's voucher shall contain a statement of the dispute and authorize payment only of the undisputed amount.
- f. A vendor ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.
- g. ORANGE COUNTY agrees to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.
- h. In accordance with the Florida Statutes, FDOT, 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. FDOT shall require a statement from the comptroller of FDOT 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 FDOT 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. For this purpose, the individual work orders shall be considered to be the binding commitment of funds.

Miscellaneous Provisions

4. 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.

5. This Agreement shall be governed by the laws of the State of Florida. The exclusive venue of any legal or equitable action that arises out of or relates to this Agreement shall be the appropriate state court in Leon County, Florida. In any such action, the parties waive any right to jury trial.

6. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining provisions hereof to the extent provided by Florida law.

7. Notices required to be given to another party under the provisions of this Agreement may be given to such party by any one or more of the following methods: prepaid U.S. certified mail, return receipt requested, overnight next day courier service, facsimile or email transmission or by delivery in person.

FDOT: Florida Department of Transportation

Name of contact: Staci Nester
Telephone No.: (386) 943-5250
Address: 719 S. Woodland Boulevard
DeLand, FL 32720
Email address: staci.nester@dot.state.fl.us

ORANGE COUNTY UTILITIES: ORANGE COUNTY UTILITIES

Name of contact: Orange County
ATTN: Director
Telephone No.: (407) 254-9718
Address: 9150 Curry Ford Road
Orlando, FL 32825
Email address:

Either party to this Agreement may, from time to time, change the contact information set forth above by giving notice of such change by any one or more of the methods specified.

8. Either FDOT or ORANGE COUNTY may terminate this Agreement at any time without penalty by giving the other party written notice at least thirty (30) days prior to the effective date of said termination; provided, however, that the termination shall not relieve FDOT of the responsibility to reimburse ORANGE COUNTY for costs incurred or services performed before the effective date of the termination.

ORANGE COUNTY

IN WITNESS WHEREOF, this Agreement has been fully executed on behalf of the parties hereto by their duly authorized representatives, as of the date first above written.

**ORANGE COUNTY,
FLORIDA**

By: Orange County Board of County
Commissioners

for By: *Bryan B. Bowers*
Jerry L. Demings

Orange County Mayor

ATTEST: Phil Diamond, CPA County
Comptroller

As Clerk of the Board of County Commissioners

By: *Katie Smith*

Deputy Clerk

**FLORIDA DEPARTMENT OF
TRANSPORTATION**

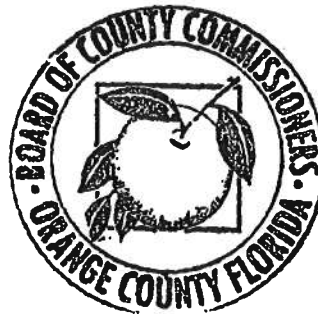
Legal Review:

[Signature]

By: *[Signature]*

Name: ~~Loreen Bobo, PE~~ Jack Atkins

Title: Director of Transportation Development



STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY PRELIMINARY ENGINEERING AGREEMENT

APPENDIX: "CHANGE TO FORM DOCUMENT"

The following changes are hereby made to the UTILITY PRELIMINARY ENGINEERING AGREEMENT, between the **State of Florida Department of Transportation** (the "FDOT") and **ORANGE COUNTY** (the "UAO") dated the 30th day of MARCH, 2021, for the project identified as Financial Project Identification Number 444315 1 36 01.

1. In order to meet the FDOT project schedule, FDOT agrees to pay for Engineering Services performed by BFA under the attached scope of services as executed on December 22, 2020 between Orange County and BFA. Reimbursement expenses for engineering services performed prior to execution of the UTILITY PRELIMINARY ENGINEERING AGREEMENT will be eligible for reimbursement once the agreement is entered.
2. The language change will be to delete all words starting with "once" and through the end and in lieu thereof say, "pursuant to that certain letter of authorization dated May 25, 2021."

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
REQUIRED CONTRACT PROVISIONS FOR FEDERAL AID CONTRACTS
COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964
ENGINEERING CONTRACTS
(Appendix A of Assurances)

Financial Project ID: 444315 1 36 01	Federal Project ID: D521-023-B
County: Orange	State Road No.: 400
District Document No: 1	
Utility Agency/Owner (UAO): Orange County, a Charter County and Political Subdivision of Florida	

During the performance of this contract, the **ENGINEERING CONTRACTOR**, for itself, its assignees and successors in interest (hereinafter referred to as the "**ENGINEER**"), agrees as follows:

(1) **Compliance with Regulations:** The **ENGINEER** will comply with the Regulations of the **DEPARTMENT OF TRANSPORTATION** relative to nondiscrimination in Federally-assisted programs of the **DEPARTMENT OF TRANSPORTATION** (hereinafter referred to as the **DEPARTMENT**) (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

(2) **Nondiscrimination:** The **ENGINEER**, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color or national origin in the selection and retention of subcontractors, including procurement of materials or leases of equipment. The **ENGINEER** will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix A & B of the Regulations.

(3) **Solicitations:** In all solicitations either by competitive bidding or negotiation made by the **ENGINEER** for work to be performed under a subcontract, including procurement of materials and leases of equipment, each potential subcontractor or supplier shall be notified by the **ENGINEER** of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color or national origin.

(4) **Information and Reports:** The **ENGINEER** will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the **DEPARTMENT** or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the **ENGINEER** is in the exclusive possession of another who fails or refuses to furnish this information, the **ENGINEER** shall so certify to the **DEPARTMENT** or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of the **ENGINEER's** noncompliance with the nondiscrimination provisions of paragraphs (1) through (4), the **DEPARTMENT** shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the **ENGINEER** under the contract until the **ENGINEER** complies; and/or
- (b) cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The **ENGINEER** will include the provisions of paragraph (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, order or instructions issued pursuant thereto. The **ENGINEER** will take such action with respect to any subcontract, procurement or lease as the **DEPARTMENT** or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the **ENGINEER** becomes involved in, or is threatened with, litigation with a subcontractor, supplier or lessor as a result of such direction, the **ENGINEER** may request the State to enter into such litigation to protect the interests of the State, and, in addition, the **ENGINEER** may request the United States to enter into such litigation to protect the interests of the United States.