



# Orange County Government

Orange County  
Administration Center  
201 S Rosalind Ave.  
Orlando, FL 32802-1393

## Legislation Text

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**File #:** 24-1655, **Version:** 1

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### Interoffice Memorandum

**DATE:** October 29, 2024

**TO:** Mayor Jerry L. Demings and County Commissioners

**THROUGH:** N/A

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

**CONTACT:** Lindy A. Wolfe, P.E., LEED AP, Manager, Engineering Division

**PHONE:** 407-254-9918

**DIVISION:** Engineering Division

**ACTION REQUESTED:**

Approval and execution of:

- a) State of Florida Department of Transportation Utility Work by Highway Contractor Agreement (At FDOT Expense), Financial Project ID: 436433-1-56-01 Appendix: "Change to Form Document" by and between the State of Florida Department of Transportation and Orange County for \$1,610,000.
- b) State of Florida Department of Transportation Utility Work by Highway Contractor Agreement (At Utility Expense), Financial Project ID: 436433-1-56-02 Appendix "Change to Form Document" by and between the State of Florida Department of Transportation and Orange County and 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, Project #: 436433-1-56-02 for \$1,904,000.
- c) Utility Preliminary Engineering Agreement between State of Florida, Department of Transportation and Orange County, Financial Project ID: 436433-1-36-01 for the Coast to Coast Trail, Orange County Gap Segment 2 from Hiawassee Rd to north of SR 414. District 2. (Engineering Division)

**PROJECT:** N/A

**PURPOSE:** The Florida Department of Transportation (FDOT) is constructing improvements to the

Coast to Coast Trail, Orange County Gap Segment 2 from Hiawasse Rd to north of SR 414. County utility facilities in direct conflict with the proposed roadway improvements must be relocated. To optimize project execution, FDOT's construction contractor will install the County's utility work within the project limits. Consequently, the County must execute several agreements with FDOT, as described below.

Responsibility for payment of relocation costs depends on where the facilities are located. Florida Statutes require Utility/Agency Owners to pay relocation costs for their facilities situated in the public right-of-way. FDOT is funding the relocation of OCU facilities located within Orange County right-of-way.

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

1. Utility Work by Highway Contractor Agreement (At FDOT Expense) - FDOT Financial Project ID: 436433-1-56-01, including Appendix: "Change to Form Document" and "Required Contract Provisions for Federal Aid Contracts"

This agreement authorizes FDOT to include the County's necessary utility relocation work in FDOT's highway construction contract at FDOT expense. The County's utility work that FDOT is financially responsible for consists of removal and replacement of approximately 360 linear feet (LF) of 12-inch and 16-inch water main and 660 LF of 4-inch PVC force main.

The total agreement amount associated with utility relocations that the FDOT is financially responsible for is \$1,610,000.

2. Utility Work by Highway Contractor Agreement (At Utility Expense) - FDOT Financial Project ID: 436433-1-56-02, including Appendix: "Change to Form Document" and "Required Contract Provisions for Federal Aid Contracts"

This agreement authorizes FDOT to include the County's necessary utility relocation work in FDOT's highway construction contract. The County's work consists of removal and replacement of approximately 710 LF of 16-inch DI water main.

The total agreement amount associated with utility relocations that the County is financially responsible for is \$1,904,000. This includes an estimated construction cost of \$1,700,000; a 2% administration fee of \$34,000; and a 10% contingency of \$170,000. The administration fee and contingency are required by the agreement.

3. Three Party Escrow Agreement - FDOT Financial Project ID: 436433-1-56-02

This agreement stipulates the premises and covenants under which an escrow account is established for the project.

4. Utility Preliminary Engineering Agreement - FDOT Financial Project ID: 436433-1-36-01, including Appendix: "Required Contract Provisions for Federal Aid Contracts" This agreement provides a mechanism for FDOT to reimburse the County for engineering design costs associated with the utility relocation work that are FDOT's financial responsibility.

The County Attorney's Office reviewed the documents and finds them acceptable as to form. Utilities Department staff recommends approval.

**BUDGET:** N/A



## 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: November 20, 2024

TO: Nicole Robinson, Executive Assistant  
Utilities Department, BCC

FROM: David Rooney, Manager *TH for DR*  
Comptroller Clerk of BCC

SUBJECT: Request for Execution of Documents, Utilities Department Consent Item  
2, Legislative File #24-1665, November 19, 2024

Enclosed is the State of Florida Department of Transportation Utility Work by Highway Contractor Agreement (At FDOT Expense), Financial Project ID: 436433-1-56-01 (3 originals), State of Florida Department of Transportation Utility Work by Highway Contractor Agreement (At Utility Expense), Financial Project ID: 436433-1-56-02 Appendix "Change to Form Document" by and Three Party Escrow Agreement (3 originals), and Utility Preliminary Engineering Agreement between State of Florida, Department of Transportation and Orange County, Financial Project ID: 436433-1-36-01 (3 originals) which was approved by the Board of County Commissioners (BCC) at its regular meeting held on November 19, 2024.

Please forward the documents to all required parties for signature.

**Email copies of the fully-executed documents to [ClerkofBCC@occompt.com](mailto:ClerkofBCC@occompt.com) and copy [jennifer.mcgill@ocfl.net](mailto:jennifer.mcgill@ocfl.net). Note: [ClerkofBCC@occompt.com](mailto: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 December 19, 2024, notify Jennifer Lara-Klimetz by email of the reason for the delay prior to that date.

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

dr:th

Enclosures (3)

dl: Ed Torres, Director, Utilities Department, BCC [email]  
Jon Weiss, Deputy County Administrator, BCC [email]  
Nicole Robinson, Executive Assistant, Utilities Department, BCC [email]  
Pending File

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

BCC Mtg. Date: November 19, 2024

Financial Project ID: 436433-1-56-01	Federal Project ID: N/A
County: Orange	State Road No.: Trail
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 Coast to Coast Trail, Orange County Gap Segment 2 from Hiawassee Rd to north of SR 414, State Road No.:N/A, 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 February 12, year of 2025.
- 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: Ph II, PH III, Signed & Sealed. 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 Subparagraph c. above, then the **UAO** shall, within fourteen (14) calendar days from notification from

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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:

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

Form No. 710-010-21  
UTILITIES  
03/20

If to the **UAO**:

Orange County - Attn: Utilities Director

9150 Curry Ford Road

Orlando, FL 32825

If to the **FDOT**:

FDOT D5 Orlando Operations Engineer

420 W. Landstreet Road

Orlando, FL 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) See Attached Appendix \_\_\_\_\_

DATE: \_\_\_\_\_

(Typed Name: \_\_\_\_\_)

(Typed Title: \_\_\_\_\_)

**Recommend Approval by the District Utility Office**

BY: (Signature) \_\_\_\_\_

DATE: \_\_\_\_\_

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT**  
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**FDOT Legal review**

**BY: (Signature)** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**District Counsel**

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**STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION**

**BY: (Signature)** \_\_\_\_\_

**DATE:** \_\_\_\_\_

(Typed Name: C. Jack Adkins)

(Typed Title: Director of Transportation Development)

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**FEDERAL HIGHWAY ADMINISTRATION (if applicable)**

**BY:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

(Typed Name: \_\_\_\_\_)

(Typed Title: \_\_\_\_\_)

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

**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 436433-1-56-01.

1. 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.

2. Paragraph 1.m. - Is deleted. This Agreement does not have County contributions.

3. Paragraph 3.b., 3.c., 3.d., 3.e., and 3.f. - Are deleted. This Agreement does not have **UAO** participation.

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 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.

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

APPENDIX: "CHANGE TO FORM DOCUMENT"

ORANGE COUNTY, FLORIDA

By: Orange County Board of County Commissioners

By: Bryan W. Brooks

for Jerry L. Demings,  
Orange County Mayor

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

By: Jennifer Lane-Kline  
for Deputy Clerk



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

710-010-08  
UTILITIES  
OGC-06/24

<b>Financial Project ID: 436433-1-56-01</b>	<b>Federal Project ID: N/A</b>
<b>County: Orange</b>	<b>State Road No.: Trail</b>
<b>District Document No: 1</b>	
<b>Utility Agency/Owner (UAO): Orange County, a Charter County and Political Subdivision of Florida</b>	

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.

(5) **Additional "Buy America" Requirements:** The **UAO** will comply with 2 CFR 184 and 2 CFR 200.322, which includes the Buy America Preferences for Infrastructure Projects of the Build America, Buy America Act (BABA) and Domestic Preferences for Procurements. The **UAO** will use Manufactured Products that are consumed in, incorporated into, or affixed to an infrastructure project that are manufactured in the United States, in accordance with BABA requirements and applicable waivers. The **UAO** will use non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project that are manufactured in the United States, in accordance with BABA requirements.

As used in 2 CFR 184, "construction material" means materials that are predominately non-ferrous metals, plastic and polymer-based products, glass, optical fiber, fiber optic cable, lumber, and drywall articles, materials, and supplies 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 construction materials 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 or as defined in 2 CFR 184. If a construction material is taken outside the United States for any manufacturing process, it becomes foreign source construction material.



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

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The UAO will retain documentation verifying compliance with the Build America, 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 Build America, Buy America provision of this Agreement. The UAO will provide a certification with the invoice that states the following: "The UAO certifies that all products that are predominately steel and/or iron are domestic products in compliance with the Buy America provisions of 23 CFR 635.410. The UAO certifies that all products that are predominately construction materials are domestic products in compliance with the Buy America provisions of 2 CFR 184. The UAO certifies that all manufactured products are domestic products in compliance with the Buy America provisions of 2 CFR 184 and applicable waivers."

(6) **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.

(7) **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.

(8) **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.

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

BCC Mtg. Date: November 19, 2024

<b>Financial Project ID: 436433-1-56-02</b>	<b>Federal Project ID: N/A</b>
<b>Financial Project ID:</b>	
<b>Financial Project ID:</b>	
<b>Financial Project ID:</b>	
<b>County: Orange</b>	<b>State Road No.: Trail</b>
<b>District Document No: 1</b>	
<b>Utility Agency/Owner (UAO): Orange County, a Charter County and Political Subdivision of Florida</b>	

**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 Coast to Coast Trail, Orange County Gap Segment 2 from Hiawassee Rd to north of SR 414, State Road No.: N/A, 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, installation, 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 **UAO**, 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, at **UAO's** sole cost and expense, a final engineering design, plans, technical special provisions, a cost estimate, and a contingency Utility Work Schedule (said contingency schedule to be used in the case of a bid rejection) for the Utility Work (hereinafter referred to as the "Plans Package") on or before Feb. 12, year of 2025.
- 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 has been updated and conflicts with the Utility Accommodation Manual, the Utility Accommodation Manual shall apply where such conflicts exist.

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- 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 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: Ph II, PH III, S & S. 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 times be and remain solely responsible for proper preparation of the Plans Package and for verifying all information necessary to properly prepare the Plans Package, including survey information as to the location (both vertical and horizontal) of the Facilities. The providing of information by the **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. If any facilities of the **UAO** located within the project limits are discovered after work on the project commences to be qualified for relocation at the **FDOT's** expense, but not previously identified as such, the **UAO** shall file a claim with the **FDOT** for recovery of the cost of relocation thereof. The filing of the claim shall not necessarily entitle the **UAO** to payment, and resolution of the claim shall be based on a determination of fault for the error. The discovery of facilities not previously identified as being qualified for relocation at the **FDOT's** expense shall not invalidate this Agreement.
- k. 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**.
- l. 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*).

**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. If the portion of the bid of the contractor selected by the **FDOT** which is for performance of the Utility

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Work exceeds the **FDOT's** official estimate for the Utility Work by more than ten percent (10%) and the **FDOT** does not elect to participate in the cost of the Utility Work pursuant to Section 337.403(1)(b), Florida Statutes, the **UAO** may elect to have the Utility Work removed from the **FDOT's** contract by notifying the **FDOT** in writing within five (5) days from the date that the **UAO** is notified of the bid amount. Unless this election is made, the Utility Work shall be performed as part of the Project by the **FDOT's** contractor.

- d. If the **UAO** elects to remove the Utility Work from the **FDOT's** contract in accordance with Subparagraph 2. c., the **UAO** shall perform the Utility Work separately pursuant to the terms and conditions of the **FDOT's** standard relocation agreement, the terms and conditions of which are incorporated herein for that purpose by this reference, and in accordance with the contingency relocation schedule which is a part of the Plans Package. The **UAO** shall proceed immediately with the Utility Work so as to cause no delay to the **FDOT** or the **FDOT's** contractor in constructing the Project.
- e. 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 **FDOT** procedures.
- f. Except for the inspection, testing, monitoring, and reporting to be performed by the **UAO** in accordance with Subparagraph 2. e., the **FDOT** will perform all contract administration for its construction contract.
- g. The **UAO** shall fully cooperate with the **FDOT** and the **FDOT's** contractor in all matters relating to the performance of the Utility Work.
- h. 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.
- i. The **UAO** shall not make any changes to the Plans Package after the date on which the **FDOT's** contract documents are mailed for advertisement of the Project unless those changes fall within the categories of changes which are allowed by supplemental agreement to the **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. The **UAO** 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 **FDOT**. The **UAO** shall not be responsible for the cost of delays caused by such adjustments or changes unless they are attributable to the **UAO** pursuant to Subparagraph 4.a.
- b. The initial estimate of the cost of the Utility Work is \$1,904,000. At such time as the **FDOT** prepares its official estimate, the **FDOT** shall notify the **UAO** of the amount of the official estimate for the Utility Work. Upon being notified of the official estimate, the **UAO** shall have five (5) working days within which to accept the official estimate for purposes of making deposits and for determining any possible contribution on the part of the **FDOT** to the cost of the Utility Work, or to elect to have the Utility Work removed from the **FDOT's** contract and performed separately pursuant to the terms and conditions set forth in Subparagraph 2. d. hereof.

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- c. At least thirty (30) calendar days prior to the date on which the **FDOT** advertises the Project for bids, the **UAO** will pay to the **FDOT** an amount equal to the **FDOT's** official estimate; plus 2% for mobilization of equipment for the Utility Work, additional maintenance of traffic costs for the Utility Work, administrative costs of field work, tabulation of quantities, Final Estimate processing and Project accounting (said amounts are to be hereinafter collectively referred to as the Allowances); plus 10% of the official estimate for a contingency fund to be used as hereinafter provided for changes to the Utility Work during the construction of the Project (the Contingency Fund).
- d. Payment of the funds pursuant to this paragraph will be made (choose one):
- ☐ directly to the **FDOT** for deposit into the State Transportation Trust Fund.
- ☒ as provided in the attached Three Party Escrow Agreement between **UAO**, **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 **FDOT** Comptroller's Office prior to execution of this agreement.
- e. If the portion of the contractor's bid selected by the **FDOT** for performance of the Utility Work exceeds the amount of the deposit made pursuant to Subparagraph c. above, then subject to and in accordance with the limitations and conditions established by Subparagraph 2. c. hereof regarding **FDOT** participation in the cost of the Utility Work and the **UAO's** election to remove the Utility Work from the Project, 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 obligation of the **UAO** for the cost of the Utility Work, plus Allowances and 10% Contingency Fund. The **FDOT** will notify the **UAO** as soon as it becomes apparent the accepted bid amount plus allowances and contingency is in excess of the advance deposit amount; however, failure of the **FDOT** to so notify the **UAO** shall not relieve the **UAO** from its obligation to pay for its full share of project costs on final accounting as provided herein below. In the event that the **UAO** is obligated under this Subparagraph 3.e. to pay an additional amount and the additional amount that the **UAO** is obligated to pay does not exceed the Contingency Fund already on deposit, the **UAO** shall have sixty (60) calendar days from notification from the **FDOT** to pay the additional amount, regardless of when the accepted bid is posted.
- f. If the accepted bid amount plus allowances and contingency is less than the advance deposit amount, the **FDOT** will refund the amount that the advance deposit exceeds the bid amount, plus allowances and contingency if such refund is requested by the **UAO** in writing and approved by the Comptroller of the **FDOT** or his designee.
- g. Should contract modifications occur that increase the **UAO's** share of total project costs, the **UAO** will be notified by the **FDOT** accordingly. The **UAO** agrees to provide, in advance of the additional work being performed, adequate funds to ensure that cash on deposit with the **FDOT** is sufficient to fully fund its share of the project costs. The **FDOT** shall notify the **UAO** as soon as it becomes apparent the actual costs will overrun the award amount; however, failure of the **FDOT** to so notify the **UAO** shall not relieve the **UAO** from its obligation to pay for its full share of project costs on final accounting as provided herein below.
- h. The **FDOT** may use the funds paid by the **UAO** for payment of the cost of the Utility Work. The Contingency Fund may be used for increases in the cost of the Utility Work which occur because of quantity overruns or because of adjustments or changes in the Utility Work made pursuant to Subparagraph 2. h. Prior to using any of the Contingency Fund, the **FDOT** will obtain the written concurrence of the person delegated that responsibility by written notice from the **UAO**. The delegatee shall respond immediately to all requests for written concurrence. If the delegatee refuses to provide written concurrence promptly and the **FDOT** determines that the work is necessary, the **FDOT** may proceed to perform the work and recover the cost thereof pursuant to the provisions of Section 337.403(3), Florida Statutes. In the event that the Contingency Fund is depleted, the **UAO** shall, within fourteen (14) calendar days from notification from the **FDOT**, pay to the **FDOT** an

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additional 10% of the total obligation of the **UAO** for the cost of the Utility Work established under Subparagraph 3. e. for future use as the Contingency Fund.

- i. Upon final payment to the Contractor, the **FDOT** intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred sixty (360) days. All project cost records and accounts shall be subject to audit by a representative of the **UAO** for a period of three (3) years after final close out of the Project. The **UAO** 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 **FDOT** to the **UAO** in accordance with Section 215.422, Florida Statutes. In the event said final accounting of total project costs is greater than the total deposits to date, the **UAO** will pay the additional amount within forty (40) calendar days from the date of the invoice. The **UAO** agrees to pay interest at a rate as established pursuant to Section 55.03, Florida Statutes, on any invoice not paid within the time specified in the preceding sentence until the invoice is paid.

#### 4. **Claims Against 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**.
- d. The **FDOT** may withhold payment of surplus funds to the **UAO** until final resolution (including any actual payment required) of all claims relating to the Utility Work. The right to withhold shall be limited to actual claim payments made by the **FDOT** to the **FDOT's** contractor.

#### 5. **Out of Service Facilities**

No Facilities shall be placed out of service unless specifically identified as such in the Plans. 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 the **UAO**. In the event of a breach of this Agreement by the **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.
- 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

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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. 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. 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**.
  - (6) Pursue any other remedies legally available.
  - (7) Perform any work with its own forces or through contractors and seek repayment for the cost thereof under Section 337.403(3), Florida Statutes.
- b. In the event that the **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)

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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 estimate duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible.

**8. 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.

**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



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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 of 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:

If to the **UAO**:

Orange County - Attn: Utilities Director

9150 Curry Ford Road

Orlando, FL 32825

If to the **FDOT**:

FDOT D5 Orlando Operations Engineer

420 W. Landstreet Road

Orlando, FL 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

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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) See Attached Appendix DATE: \_\_\_\_\_  
(Typed Name: \_\_\_\_\_)  
(Typed Title: \_\_\_\_\_)

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**Recommend Approval by the District Utility Office**

BY: (Signature) DATE: \_\_\_\_\_

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**FDOT Legal review**

BY: (Signature) DATE: \_\_\_\_\_  

District Counsel

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**STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION**

BY: (Signature) DATE: \_\_\_\_\_  
(Typed Name: C. Jack Adkins)  
(Typed Title: Director of Transportation Development)

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**FEDERAL HIGHWAY ADMINISTRATION (if applicable)**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
(Typed Name: \_\_\_\_\_)  
(Typed Title: \_\_\_\_\_)

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**APPENDIX: "CHANGE TO FORM DOCUMENT"**

The following changes are hereby made to the UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT (AT UTILITY 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 436433-1-56-02.

1. 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 fourteen (14) days. The **FDOT's** review and approval of the documents shall not relieve the **UAO** from responsibility for subsequently discovered errors or omissions.
2. Paragraph 3.b. is rewritten to read:  
The approved amount of the Utility Work is \$ 1,904,000.00. This amount is for internal processing purposes of the **UAO** only and is not intended as limiting the obligations of the **UAO** under this Agreement. At such time as the **FDOT** prepares its official estimate, the **FDOT** shall notify the **UAO** of the amount of the official estimate for the Utility Work. Upon being notified of the official estimate, the **UAO** shall have five (5) working days within which to accept the official estimate for purposes of making deposits and for determining any possible contribution on the part of the **FDOT** to the cost of the Utility Work, or to elect to have the Utility Work removed from the **FDOT's** contract and performed separately pursuant to the terms and conditions set forth in Subparagraph 2.  
d. hereof.
3. Paragraph 3.e is rewritten to read:  
If the portion of the contractor's bid selected by the **FDOT** for performance of the Utility Work exceeds the amount of the deposit made pursuant to Subparagraph 3 c. above, then subject to and in accordance with the limitations and conditions established by Subparagraph 2. c. hereof regarding **FDOT** participation in the cost of the Utility Work and the **UAO's** election to remove the Utility Work from the Project, the **UAO** shall, within sixty (60) calendar days from notification from the **FDOT**, pay an additional amount to the **FDOT** to bring the total amount paid to the total obligation of the **UAO** for the cost of the Utility Work, plus Allowances and 10% Contingency Fund. The **FDOT** will notify the **UAO** as soon as it becomes apparent the accepted bid amount plus allowances and contingency is in excess of the advance deposit amount; however, failure of the **FDOT** to so notify the **UAO** shall not relieve the **UAO** from its obligation to pay for its full share of project costs on final accounting as provided herein below. In the event that the **UAO** is obligated under this Subparagraph 3.e. to pay an additional amount and the additional amount that the **UAO** is obligated to pay does not exceed the Contingency Fund already

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on deposit, the **UAO** shall have sixty (60) calendar days from notification from the **FDOT** to pay the additional amount, regardless of when the accepted bid is posted.

4. Paragraph 3.f. is rewritten to read:  
If the accepted bid amount plus allowances and contingency is less than the advance deposit amount, the **FDOT** will refund the amount that the advance deposit exceeds the bid amount plus allowances and the contingency if such refund is requested by the **UAO** in writing.
5. Paragraph 3.h. is rewritten to read:  
The **FDOT** may use the funds paid by the **UAO** for payment of the cost of the Utility Work. The Contingency Fund may be used for increases in the cost of the Utility Work which occur because of quantity overruns or because of adjustments or changes in the Utility Work made pursuant to Subparagraph 2. h. Prior to using any of the Contingency Fund, the **FDOT** will obtain the written concurrence of the person delegated that responsibility by written notice from the **UAO**. The delegate shall respond promptly to all requests for written concurrence. If the delegate refuses to provide written concurrence promptly and the **FDOT** determines that the work is necessary, the **FDOT** may proceed to perform the work and recover the cost thereof pursuant to the provisions of Section 337.403(3), Florida Statutes. In the event that the Contingency Fund is depleted, the **UAO** shall, within sixty (60) calendar days from notification from the **FDOT**, pay to the **FDOT** an additional 10% of the total obligation of the **UAO** for the cost of the Utility Work established under Subparagraph 3. e. for future use as the Contingency Fund.
6. Paragraph 3.i. is rewritten to read:  
Upon final payment to the Contractor, the **FDOT** intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred sixty (360) days. All project cost records and accounts shall be subject to audit by a representative of the **UAO** for a period of three (3) years after final close out of the Project. The **UAO** 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 **FDOT** to the **UAO** in accordance with Section 215.422, Florida Statutes. In the event said final accounting of total project costs is greater than the total deposits to date, the **UAO** will pay the additional amount within sixty (60) calendar days from the date of the invoice. The **UAO** agrees to pay interest at a rate as established pursuant to Section 55.03, Florida Statutes, on any invoice not paid within the time specified in the preceding sentence until the invoice is paid.
7. Paragraph 5.d is rewritten to read:  
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 in compliance with Florida Law and shall promptly respond to information requests of the **FDOT** or other permittees using or seeking use of the right of way.
8. 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**

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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 unless the discharge is from the facilities 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**.

9. Paragraph 6.a.5 is rewritten to read:  
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 ninety (90) days from written notice thereof from **FDOT**.
10. Paragraph 8 is deleted.
11. 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*

Jerry L. Demings,  
Orange County Mayor

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

By: *for Jennifer Sam Klimt*  
Deputy Clerk



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

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<b>Financial Project ID: 436433-1-56-02</b>	<b>Federal Project ID: N/A</b>
<b>County: Orange</b>	<b>State Road No.: Trail</b>
<b>District Document No: 1</b>	
<b>Utility Agency/Owner (UAO): Orange County, a Charter County and Political Subdivision of Florida</b>	

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.

(5) **Additional "Buy America" Requirements:** The **UAO** will comply with 2 CFR 184 and 2 CFR 200.322, which includes the Buy America Preferences for Infrastructure Projects of the Build America, Buy America Act (BABA) and Domestic Preferences for Procurements. The **UAO** will use Manufactured Products that are consumed in, incorporated into, or affixed to an infrastructure project that are manufactured in the United States, in accordance with BABA requirements and applicable waivers. The **UAO** will use non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project that are manufactured in the United States, in accordance with BABA requirements.

As used in 2 CFR 184, "construction material" means materials that are predominately non-ferrous metals, plastic and polymer-based products, glass, optical fiber, fiber optic cable, lumber, and drywall articles, materials, and supplies 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 construction materials 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 or as defined in 2 CFR 184. If a construction material is taken outside the United States for any manufacturing process, it becomes foreign source construction material.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**REQUIRED CONTRACT PROVISIONS FOR FEDERAL AID CONTRACTS**  
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The UAO will retain documentation verifying compliance with the Build America, 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 Build America, Buy America provision of this Agreement. The UAO will provide a certification with the invoice that states the following: "The UAO certifies that all products that are predominately steel and/or iron are domestic products in compliance with the Buy America provisions of 23 CFR 635.410. The UAO certifies that all products that are predominately construction materials are domestic products in compliance with the Buy America provisions of 2 CFR 184. The UAO certifies that all manufactured products are domestic products in compliance with the Buy America provisions of 2 CFR 184 and applicable waivers."

(6) **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.

(7) **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.

(8) **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: Coast to Coast Trail, Orange County Gap Segment 2  
from Hiawassee Rd. to north of SR 414  
Project #: 436433-1-56-02  
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

\_\_\_\_\_  
For FDOT-OOC (signature)

Bryan B. Bivens  
For PARTICIPANT (signature)

\_\_\_\_\_  
Name and Title

Jerry L. Demings  
for Orange County Mayor  
Name and Title

59-3024028  
Federal Employer I.D. Number

59-6000773016  
Federal Employer I.D. Number

\_\_\_\_\_  
Date

19 November 2024  
Date

FDOT Legal Review:

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

\_\_\_\_\_

By: Jennifer Lara Klimetz  
for Deputy Clerk

\_\_\_\_\_  
For Escrow Agent (signature)

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date



## UTILITY PRELIMINARY ENGINEERING AGREEMENT

Financial Project ID: 436433-1-36-01  
County: Orange  
Federal Project ID: N/A  
State Road No: Trail  
District Document No: 1  
Utility Agency Owner (UAO): Orange County, a Charter County and political subdivision of Florida

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 UTILITIES**

1. ORANGE COUNTY will perform engineering services in coordinating with FDOT concerning FDOT's project in Orange County, Florida, FDOT FIN No. 436433-1-36-01 ("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 prepare engineering plans for the relocation and adjustment of ORANGE COUNTY water and sewer facilities on the Coast to Coast Trail, Orange County GAP Segment 2 from Hiawasse Rd to north of SR 414.

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 Orange County and regulatory agencies; reviewing as-builts and preparing record drawings.

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

Establish a final construction estimate that includes all procurement costs.

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 \$320,000.00.

### **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 postaudit 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 (5) 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 (5) 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 dollar (\$1.00) 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:	<a href="mailto:staci.nester@dot.state.fl.us">staci.nester@dot.state.fl.us</a>

ORANGE  
COUNTY:

ORANGE COUNTY

Name of contact:

Orange County

ATTN: Director

Telephone No.:

407-254-9900

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

FLORIDA DEPARTMENT OF  
TRANSPORTATION

**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.

Legal Review:

**ORANGE COUNTY,  
FLORIDA**

By: Orange County Board of County  
Commissioners

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

By: *Bryan W. Brooks*  
Jerry Demings  
Orange County Mayor

Name: C. Jack Adkins

Title: Director of Transportation Development

ATTEST: Phil Diamond, CPA, County  
Comptroller

As Clerk of the Board of County Commissioners

By: *Jennifer Jan. Lantz*  
Deputy Clerk



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)

<b>Financial Project ID: 436433-1-36-01</b>	<b>Federal Project ID: N/A</b>
<b>County: Orange</b>	<b>State Road No.: Trail</b>
<b>District Document No: 1</b>	
<b>Utility Agency/Owner (UAO): Orange County, a Charter County and Political Subdivision of Florida</b>	

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.