



Interoffice Memorandum

December 12, 2019

TO: Mayor Jerry L. Demings
and Board of County Commissioners

FROM: Raymond E. Hanson, P. E., Director
Utilities Department

A handwritten signature in black ink, appearing to read "R. Hanson", is written over the "FROM:" line.

**SUBJECT: BCC AGENDA ITEM – Consent Agenda
January 14, 2020 BCC Meeting
Utility Line Construction Reimbursement Agreement for CR 545 –
Segment 4 Reclaimed Water Main Improvements
Contact Person: Andres Salcedo, P. E., Deputy Director
Utilities Department
407-254-9719**

As part of their infrastructure improvements, D.R. Horton, Inc., the developer, will be reconstructing CR 545 and replacing utilities along the west side of the CR 545 right-of-way.

Based on Orange County Utilities' Master Plan, the County requires 30-inch reclaimed water mains along this route to support the County's regional transmission needs.

To maximize efficiency and coordination, Orange County asked the developer to remove approximately 2,000 linear feet of the existing 20-inch reclaimed water main and replace it with a new 30-inch reclaimed water main along their proposed construction route.

The construction costs of the utility improvements to be paid by Orange County under this agreement are limited to a total payment obligation amount of \$831,700.

The County Attorney's Office staff has reviewed the agreement and finds it acceptable. Utilities Department staff recommends approval.

Action Requested: Approval and execution of Utility Line Construction Reimbursement Agreement for CR 545 – Segment 4 Reclaimed Water Main Improvements by and between Orange County and D.R. Horton, Inc. in the total payment obligation amount of \$831,700.

District 1.

UTILITY LINE CONSTRUCTION REIMBURSEMENT AGREEMENT FOR CR 545 – SEGMENT 4 RECLAIMED WATER MAIN IMPROVEMENTS

THIS UTILITY LINE CONSTRUCTION REIMBURSEMENT AGREEMENT FOR CR 545 – SEGMENT 4 RECLAIMED WATER MAIN IMPROVEMENTS (the “**Agreement**”) is made and entered into as of the date of last execution below (the “**Effective Date**”) by and between Orange County, a charter county and political subdivision of the State of Florida (the “**County**”), whose address is 201 South Rosalind Avenue, Orlando, Florida 32801 and D.R. Horton, Inc., a Delaware corporation (the “**Developer**”), whose principal address is 1341 Horton Circle, Arlington, Texas 76011. Hereinafter, the County and the Developer may be referred to individually as a “**Party**” or collectively as the “**Parties**.”

RECITALS

WHEREAS, the Developer is the fee simple owner of certain real property located in unincorporated Orange County, as more particularly described in **Exhibit “A”** attached to and made a part of this Agreement by this reference (the “**Property**”); and

WHEREAS, the Developer entered into the “Village H Horizon West Road Network Agreement (C.R. 545)” recorded in Official Records Book 10525, Page 6172, of the Public Records of Orange County, Florida (as amended, the “**Roadway Agreement**”); and

WHEREAS, the Developer, as a party of the Roadway Agreement, is to design, permit, and reconstruct C.R. 545; and

WHEREAS, the Developer contemplates the development of a number of improvements for various uses to serve the Property (collectively the “**Project**”); and

WHEREAS, in order to proceed with the Project, or any part thereof, it will be necessary to obtain potable water, wastewater, and reclaimed water service to the Property; and

WHEREAS, the Project is located entirely within the County’s potable water, wastewater, and reclaimed water service territory and, therefore, the County is the appropriate potable water, wastewater, and reclaimed water service provider with jurisdiction over the Project; and

WHEREAS, at the request of the County, the Developer will remove approximately 2,000 linear feet of the existing 20-inch reclaimed water main and replace it with a new 30-inch reclaimed water main as depicted in **Exhibit “B”** attached to and made a part of this Agreement by this reference (the “**Extension**”); and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of setting forth the terms and conditions under which (i) the Developer will construct the Extension requested by the County, and (ii) the County will reimburse the Developer for the cost of the Extension, as more particularly set forth below; and

WHEREAS, the Extension will enable the County to better serve areas within its reclaimed water service territory and the County finds the expenditure of funds in the achievement of the objectives of this Agreement to be in the public interest.

NOW, THEREFORE, in consideration of the premises of this Agreement, and the mutual covenants set forth in this Agreement, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

SECTION 1. RECITALS INCORPORATED.

All of the recitals set forth above are true and correct and are incorporated in and made a part of this Agreement by this reference.

SECTION 2. PREPARATION OF CONSTRUCTION PLANS, BIDS, AND CONTRACT.

2.1 The Developer shall cause the preparation of a set of design plans for the Extension based on the preliminary design sketch as depicted in **Exhibit "B."** The design plans are subject to the County's reasonable review and approval in accordance with County biddable standards. The contract for the design plans must provide that the County is a third-party beneficiary with regard to insurance against the design professional's errors and omissions. The review and approval under this Agreement by the County is in its proprietary capacity as a Party to this Agreement and is in addition to any governmental permitting functions the County may be otherwise obligated to perform. Upon final acceptance of the design plans, the County will provide the Developer with written notification of such acceptance. Once approved by the County, the design plans will be referred to in this Agreement as the "**Construction Plans.**"

2.2 The Developer must retain a professional engineering firm to assist the Developer in obtaining at least two responsive bids from responsible bidders qualified to do utility construction for the Extension based on the Construction Plans. The Developer must obtain itemized bids for the Extension displaying the bid price for each item listed in **Exhibit "C"** attached to and made a part of this Agreement by this reference.

2.3 The Developer must select the bid of the lowest responsible bidder and notify the County in writing of the bid selection by providing copies of the itemized bids for the Extension.

2.4 The County will have 15 business days following receipt of notice from the Developer of the selected bid to review and notify the Developer of the County's acceptance of the selected bid, or if the bid is not accepted, the reasons for rejection of the selected bid. In the event the County does not accept the selected bid, the Developer will have 120 days to address the rejection of the selected bid. In the event the Parties cannot agree on the selected bid within the 120-day period to cure, either the Developer or the County may terminate this

Agreement by notice of termination to the other Party, and neither Party will be liable for or be entitled to bring any action against the other for damages.

2.5 The Developer must ensure that the construction contract(s) provide(s) a maintenance guarantee pursuant to Section 7.2 of this Agreement for the work performed, which maintenance guarantee must be in force and effect for a period of one year from the date on which the County accepts ownership and maintenance responsibility for the Extension.

2.6 The Developer must ensure that the construction contract(s) contain(s) a performance bond and a payment bond pursuant to Section 7 of this Agreement. Each bond must be in the amount of the value of the construction contract. The performance bond must ensure that the construction contractor fully, promptly, and faithfully performs the contract and all of its obligations thereunder. The payment bond must ensure that the contractor will promptly make payment to all persons supplying services, labor, material, or supplies used directly or indirectly by the contractor, or any subcontractor(s) in the prosecution of the work provided for in the contract.

SECTION 3. PERMITS.

The Developer shall apply for and obtain all necessary governmental permits and approvals for the Extension. The County agrees to cooperate and assist the Developer in its obtaining of all necessary permits related to the Extension. The Developer must deliver to the County copies of all applicable permits prior to commencement of construction.

SECTION 4. COMMENCEMENT OF WORK.

After the execution of this Agreement, issuance of all required permits, and the County's approval of the Construction Plans and selected bidder, and after the County's receipt of the required items as stated in this Agreement, the Developer will commence the Extension, based upon the Construction Plans and permits for the same.

SECTION 5. PAYMENT OF COSTS.

The Developer and the County agree to pay for the Extension as follows:

- 5.1 Subject to the terms hereof, the Developer shall pay for the following costs:
- A. The design, engineering, surveying, geotechnical engineering, environmental work, permitting, and bidding for the Extension (collectively, the "**Pre-Construction Cost**") as described in **Exhibit "D"** attached to and made a part of this Agreement by this reference.
 - B. The construction administration for the Extension (the "**Construction Administration Cost**"), as described in **Exhibit "D"**.

- C. The inspection, construction, maintenance guarantee, final testing, certification costs, and fees for the Extension (collectively, the “**Construction Cost**”).

5.2 The County shall reimburse the Developer for the following costs:

- A. Pre-Construction Cost in the amount of \$35,700.00.
- B. Construction Administration Cost in the amount of \$24,000.00.
- C. All actual and reasonable total Construction Cost in an amount not to exceed \$772,000.00.

5.3 The County will reimburse the Developer in one lump sum for the Pre-Construction Cost after all of the following events have occurred:

- A. Approval by the County of the Construction Plans pursuant to subsection 2.1;
- B. Delivery of copies of all required permits to the County pursuant to Section 3;
- C. Commencement of construction of the Extension pursuant to Section 4;
- D. Receipt and approval by the County of a written reimbursement request from the Developer. The request document must explicitly specify to whom the reimbursement check is made payable and the payee’s address. The request document must be accompanied by the following information:
 - i. An invoice from the Developer’s engineer for the Pre-Construction Cost;
 - ii. An affidavit from the Developer’s engineer certifying to the Developer and to the County the completion of the scope of work for the Pre-Construction Cost;
 - iii. Waivers and releases of liens for the work associated with the Pre-Construction Cost. A completed release of liens form utilizing the standardized County approved form is required; and
 - iv. Other documents evidencing the costs of and complete payment by the Developer as the County reasonably requires for the Pre-Construction Cost.

5.4 The County will reimburse the Developer for the actual and reasonable costs associated with the Construction Administration Cost and the Construction Cost which may be requested by the Developer as often as on a monthly basis after all the following events have occurred:

- A. Delivery of copies of all required permits to the County pursuant to Section 3;

- B. Commencement of construction of the Extension pursuant to Section 4;
- C. Receipt and approval by the County of a written reimbursement request from the Developer. The request document must explicitly specify to whom the reimbursement check is made payable and the payee's address. The request document must be accompanied by the following information:
 - i. An itemized contractor invoice, utilizing the standardized County-approved form for the portion of the Construction Cost for which reimbursement is being requested;
 - ii. An invoice from the Developer's engineer for the portion of the Construction Administration Cost for which reimbursement is being requested;
 - iii. An affidavit from the Developer's engineer certifying to the Developer and to the County the completion of the scope of work for the portion of the Construction Administration Cost and the Construction Cost for which reimbursement is being requested;
 - iv. Waivers and releases of liens for the work associated with the portion of the Construction Administration Cost and the Construction Cost for which reimbursement is being requested. A completed release of liens form utilizing the standardized County approved form is required; and
 - v. Other documents evidencing the costs of and complete payment by the Developer as the County reasonably requires for the portion of the Construction Administration Cost and the Construction Cost for which reimbursement is being requested.
- D. Inspection, approval, and acceptance by the County of the portion of the Extension for which reimbursement is requested; and
- E. Receipt and approval by the County of any utility easement(s) or right-of-way required for the Extension for which reimbursement is requested.

5.5 Notwithstanding the foregoing, the County will retain 10% of each monthly reimbursement request for the actual and reasonable costs associated with the Construction Cost (the "**Retainage**"). The County will reimburse the Developer the County's final payment obligation including the Retainage after all the following events have occurred.

- A. Receipt and approval by the County of a written payment request from the Developer. The request document must explicitly specify to whom the reimbursement check is made payable and the payee's address;
- B. Inspection, approval, and acceptance by the County of the completed Extension;

- C. Receipt and approval by the County of the maintenance guarantee and bill of sale as described in Section 7 of this Agreement;
- D. Receipt and approval by the County of copies of such contracts, final releases of liens, itemized invoices and other documents evidencing the costs of and complete payment by the Developer for the Construction Cost as the County reasonably requires; and
- E. Receipt and approval by the County of any utility easement(s) or right-of-way required for the Extension.

5.6 In the event the County raises any objections to any fee or cost on the reimbursement requests, the disputed amount will be withheld from payment and the undisputed amount will be paid in accordance with this Section 5.

SECTION 6. DISPUTES.

All claims, disputes, and other matters in question between the Parties arising out of, or relating to, this Agreement or its performance or breach (a “Dispute”) will be resolved in the following order: (a) good-faith negotiation, (b) mediation, and then (c) judicial resolution. The process of “good-faith negotiation” requires each Party to set out in writing to the other its reason(s) for adopting a specific conclusion or for selecting a particular course of action, together with the sequence of subordinate facts leading to the conclusion or course of action. The good-faith negotiations must include at least one meeting of representatives of the Parties. The Party-representative will have authority to resolve the Dispute.

SECTION 7. PERFORMANCE AND PAYMENT BONDS; MAINTENANCE GUARANTEE; AND BILL OF SALE.

7.1 Prior to commencing the construction, the Developer or its general contractor shall obtain and deliver to the County a payment bond and a performance bond, as referenced in Section 2.6 of this Agreement, reasonably acceptable to the County, pursuant to Section 255.05, Florida Statutes, as it may be amended. The payment and performance bonds must name the County as Dual-Obligee and be assignable to the County following acceptance of the completed Extension by the County. The surety company issuing the payment bond and the performance bond must meet the following qualifications:

- Surety must be licensed to do business in the State of Florida, maintain an A-VI or better rating with A.M. Best or an equivalent rating agency and must comply with the provisions of Section 255.05, Florida Statutes.
- Surety must be listed on the most recent version of the U.S. Department of Treasury Fiscal Service, Bureau of Financial Management, Circular 570 entitled: “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.”
- All bonds/surety instruments must be originals and issued by a producing agent with the authority to issue said bonds/surety instruments on behalf of the surety

company. Attorneys-in-fact who sign bonds/surety instruments must attach with each bond/surety instrument a certified and effectively dated copy of their power of attorney. Agents of surety companies must list their name, address, and telephone number on all bonds/surety instruments.

7.2 The Developer shall provide a maintenance guarantee in the form of an irrevocable letter of credit, cash escrow, or maintenance bond in favor of the County in an amount equal to 10% of the costs of the Extension. The purpose of the maintenance guarantee is to guarantee the materials, workmanship, structural integrity, functioning, and maintenance of the Extension. The surety company issuing the maintenance bond must meet the qualifications set forth in Section 7.1 of this Agreement. If the maintenance guarantee is provided in the form of an irrevocable letter of credit, the letter of credit must be drawn on a financial institution having an office for the letter of credit presentation in either Orange, Seminole, or Osceola counties, and the financial institution must be on the State of Florida approved "qualified public depositories" list for local governments, as identified in Chapter 280, Florida Statutes. The maintenance guarantee must be in a form acceptable to the County.

7.3 Prior to the County's issuance of the certificate of completion for the Extension, the Developer must deliver to the County a bill of sale in favor of the County, and a maintenance guarantee provided herein for the Extension, at which time the County will be deemed to have accepted the dedication of and ownership and operational responsibility for the completed Extension.

SECTION 8. INDEMNIFICATION.

For value received, which is hereby acknowledged, the Developer agrees, on behalf of itself, its agents, contractors, successors and assigns, that it shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless the County, its officials, agents, and employees from and against any and all liabilities, claims, damages, losses, costs, and expenses (including attorneys' fees, environmental assessments, evaluations, remediation, fines, penalties, and clean-up costs) arising out of or resulting from the performance of the construction activities, provided that any such liability, claim, damage, loss, cost, or expense:

- Is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (other than the construction activities themselves) including the loss of use resulting therefrom, and
- Is caused in whole, or part, by an act or omission relating to the Extension by the Developer, its agents or employees, or any contractor employed by the Developer, or anyone directly or indirectly employed by the Developer or its contractor(s), their subcontractors, or anyone for whose acts any of them may be liable; excepting those acts or omissions arising out of the negligence of the County.

SECTION 9. INSURANCE.

Prior to commencing any portion of the Extension and throughout the course of construction of the Extension, the Developer or its agents and contractors, shall procure and maintain insurance limits and terms as follows:

- (i) Workers' compensation insurance with statutory workers' compensation limits and no less than \$1,000,000.00 for Employer's Liability with a waiver of subrogation in favor of the County, its consultants, agents, employees and officials.
- (ii) Commercial general liability insurance for all operations including, but not limited to contractual, products, completed operations, and personal injury with limits of not less than \$1,000,000.00 per occurrence and an aggregate limit of at least twice the per occurrence limit.
- (iii) Business automobile liability insurance for all owned, hired, or non-owned vehicles with limits of not less than \$1,000,000.00 per occurrence.
- (iv) Professional Liability (errors and omissions) for engineering design in amounts not less than \$1,000,000.00 per occurrence.
- (v) Contractor's Pollution Liability with a limit of not less than \$1,000,000.00 per incident.

The Developer shall be responsible for ensuring that each of its contractors and subcontractors of every tier procure and maintain the insurance specified above and must furnish to the County evidence of such insurance including endorsements prior to commencement of construction. The County must be specifically named (scheduled) as an additional insured on all policies except for workers' compensation coverage.

All coverage must be primary and not contributory with any insurance or self-insurance maintained by the County. The Developer must provide the County notice of any material change, cancellation, or non-renewal of any policy required herein at least 30 days prior to the occurrence thereof.

SECTION 10. EXCUSE FROM PERFORMANCE BY GOVERNMENTAL ACTS.

If for any reason during the term of this Agreement, local, regional or state governments or agencies (other than the County) fail to issue necessary permits or fail to grant necessary approvals for the Extension, after the Developer has complied with all conditions precedent to receipt of such permits, to the extent that the requirements necessary to obtain such permits or approvals affect the ability of the Developer or the County to perform any of the terms thereof, this Agreement will be renegotiated by the Parties to the extent reasonably feasible to cause the Extension to comply with said requirements.

SECTION 11. **TERM; LIMITATION OF LIABILITY.**

11.1 The term of this Agreement is five years from the Effective Date. In the event the Developer has not, by the second anniversary of the Effective Date of this Agreement, let a contract for the construction of the Extension reasonably acceptable to the County, the County may terminate this Agreement upon 30 days' notice to the Developer.

11.2 The County and the Developer expressly agree that the consideration, in part, for each of them entering into this Agreement is the willingness of the other to limit the remedies as provided herein. Except as otherwise provided herein, in redress for the failure of either Party to perform its obligations under this Agreement, the Parties have only the following remedies available against each other:

- (i) action for specific performance; or
- (ii) action for injunction; or
- (iii) action for declaratory judgment regarding the rights and obligations of the Developer or the County; or
- (iv) any combination of the foregoing.

Both Parties expressly waive their respective rights to sue for damages of any type for breach of or default under this Agreement by the other. Both Parties expressly agree that each will bear the cost of its own attorney's fees for any action arising out of or in connection with this Agreement. Both Parties waive their respective rights to trial by jury.

SECTION 12. **COMPLIANCE WITH LAWS AND REGULATIONS.**

In performing pursuant to the Agreement, each Party will abide by the respective statutes, ordinances, rules, and regulations pertaining to, or regulating, the acts of such Party.

SECTION 13. **NOTICE.**

Any notice required or allowed to be delivered hereunder must be in writing and be deemed to be delivered when (i) hand delivered to the official hereinafter designated, or (ii) three days after the date on which deposited in the United States mail, postage prepaid, certified mail return receipt requested, and addressed to a Party at the address set forth opposite the Party's name below, or such other address as the Party will have specified by written notice to the other Party delivered in accordance herewith.

If to the County:

Orange County Utilities Department
9150 Curry Ford Road
Orlando, Florida 32825-7600
Attn: Director

With copy to: Orange County Administrator's Office
Orange County Administration Building
201 S. Rosalind Avenue, 5th Floor
Orlando, Florida 32801-3527
Attn: County Administrator

If to the Developer: D.R. Horton, Inc.
6200 Lee Vista Blvd., Suite 400
Orlando, Florida 32822-5149
Attn: Matthew Stoltz

With copy to: Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
215 N. Eola Drive
Orlando, Florida 32801-2028
Attn: Miranda F. Fitzgerald

SECTION 14. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and may not be modified or amended except by a written instrument equal in dignity herewith and executed by the Parties to be bound thereby.

SECTION 15. TIME IS OF THE ESSENCE.

Time is declared of the essence as to the lawful performance of all duties and obligations set forth in this Agreement.

SECTION 16. NON-WAIVER.

No consent or waiver, expressed or implied, by either Party, to or of any breach or default of the other Party, with regard to the performance by said other Party of its obligations under this Agreement will be deemed or construed to constitute consent or waiver, to or of, any other breach or default in the performance of that Party, of the same or of any other objection of performance incumbent upon that Party. Failure on the part of either Party to complain of any act or failure to act on the part of the other Party in default, irrespective of how long the failure continues, will not constitute a waiver by that Party of its rights and any remedies that exist under this Agreement, at law, or in equity.

SECTION 17. CONSTRUCTION OF AGREEMENT.

This Agreement may not be construed against either Party on the basis of it being the drafter of the Agreement. The Parties agree that each Party played an equal part in negotiating the terms and conditions of this Agreement. Captions and section headings in this Agreement are provided for convenience only and may not be deemed to explain, modify, amplify, or aid in the interpretation, construction, or meaning of this Agreement.

SECTION 18. **REASONABLE APPROVAL.**

In those instances, in this Agreement, in which a Party's approval, consent, or satisfaction is required and a time period is not specified, then it is implied that such action will be exercised in a reasonable manner and within a reasonable time frame.

SECTION 19. **PUBLIC RECORDS.**

The Developer will allow public access to all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and which have been made or received by the Developer in conjunction with this Agreement. Nothing herein contained requires the Developer to allow public access to any financial information not pertaining specifically to the design plans, the Construction Plans, or to any proprietary information.

SECTION 20. **RECORDS AND AUDITS.**

The Developer will maintain in its place of business all books, documents, papers, and other evidence pertaining in any way to payments made pursuant to this Agreement. Such records will be available at the Developer's place of business at all reasonable times during the term of this Agreement and for four years from the date of final payment under this Agreement for audit or inspection by the County upon five business days' prior written notice.

SECTION 21. **EQUAL OPPORTUNITY EMPLOYMENT.**

The Developer agrees that it will not discriminate and will provide in all contracts that its contractors will not discriminate against any employee or applicant for employment under this Agreement because of race, color, religion, sex, age, or national origin and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, or national origin.

SECTION 22. **SEVERABILITY.**

If any part of this Agreement is found invalid or unenforceable by any court, such validity or unenforceability will not affect the other parts of this Agreement if the rights and obligations of the Parties contained therein are not materially prejudiced and if the intentions of the Parties can continue to be effectuated. To that end, this Agreement is declared severable.

SECTION 23. **ASSIGNMENT.**

The rights and obligations of the Developer hereunder are not covenants running with the land and will only be binding upon and exercisable by the Developer (and not any successor in title to any portion of the Property), unless this Agreement is expressly assigned by the Developer as provided in this Section 23. This Agreement or any of the rights, obligations and responsibilities hereunder, will be in no part assignable by the Developer without the consent or approval of such assignment by the County, provided that the County's approval will not be unreasonably withheld so long as the successor to the Developer is of equal or better economic status and is capable of fulfilling all obligations of the Developer, including but not limited to, the ability to service and maintain the insurance and indemnification obligations of the Developer. Only upon

the written acceptance by the County of the successor owner, will the Developer be released from any obligations and responsibilities arising under or attributable to the Agreement and only where the County has received notice of and accepted work performed by the said successor owner.

SECTION 24. DISCLAIMER OF THIRD PARTY BENEFICIARIES.

No right or cause of action will accrue upon or by reason of this Agreement, to or for the benefit of any third party not a formal party hereto. The Parties agree that this Section 24 will not be applied to provisions of this Agreement to situations where the Parties have authorized one Party to be a third-party beneficiary to the construction, design, or other agreement authorized herein or any assignee under this Agreement.

SECTION 25. GOVERNING LAW AND VENUE.

This Agreement will be governed by and construed in accordance with laws of the State of Florida, without giving effect to any choice of law rules thereof which may direct the application of laws of another jurisdiction. The venue for any mediation or judicial proceedings will be Orange County, Florida.

SECTION 26. LAND USE AND OTHER REGULATORY APPROVALS.

This Agreement may not be construed as granting or assuring or indicating any further grant of any land use, zoning, subdivision, density or development approvals, permissions or rights with respect to the Project. Nor may this Agreement be deemed to reduce, eliminate, derogate from, or otherwise adversely affect any such approvals, permissions, or rights.

SECTION 27. NON-APPROPRIATION.

In accordance with the Florida Constitution and other applicable state and local laws, including but not limited to Section 129.07, Florida Statutes, the obligations of the County in this Agreement are subject to sufficient budgeted County funds being available in each County budget year to achieve the purposes of this Agreement.

SECTION 28. NO PARTNERSHIP OR JOINT VENTURE.

Nothing in this Agreement is intended to create a partnership or joint venture between the Parties and neither Party will be construed to be the partner or joint venturer of the other Party for any purpose.

SECTION 29. FURTHER DOCUMENTATION.

The Parties agree that from time to time and following a request therefore by a Party, each Party will properly execute and deliver to the other Party such other documents and instruments reasonably necessary to effectuate the obligations of each Party hereunder.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

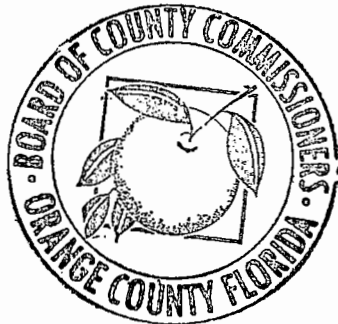
IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed as of the dates indicated below by their duly authorized representatives.

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

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

Date: 1/14/2020



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

By: *Katie Smith*
Deputy Clerk

Print: Katie Smith

WITNESSES:

D.R. Horton, Inc., a Delaware corporation

[Signature]
Print Name: MATTHEW STOLZ

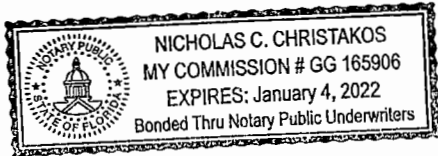
[Signature]
Print Name: Ryan Kohn

By: [Signature]
Name: CHRISTOPHER WRENN
Title: ASSISTANT SECRETARY
Date: 11/25/19

STATE OF FL
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 25 day of November, 2019, by Chris Wrenn as Asst. Sec. of **D.R. Horton, Inc.**, a Delaware corporation, on behalf of the corporation, who is personally known to me or has produced _____ as identification.

(NOTARY SEAL)



[Signature]
Notary Public Signature
Nicholas C. Christakos
(Name typed, printed or stamped)
Notary Public, State of FL
Commission No.: 165906
My Commission Expires: 1/4/22

EXHIBIT "A"
PROPERTY LEGAL DESCRIPTION

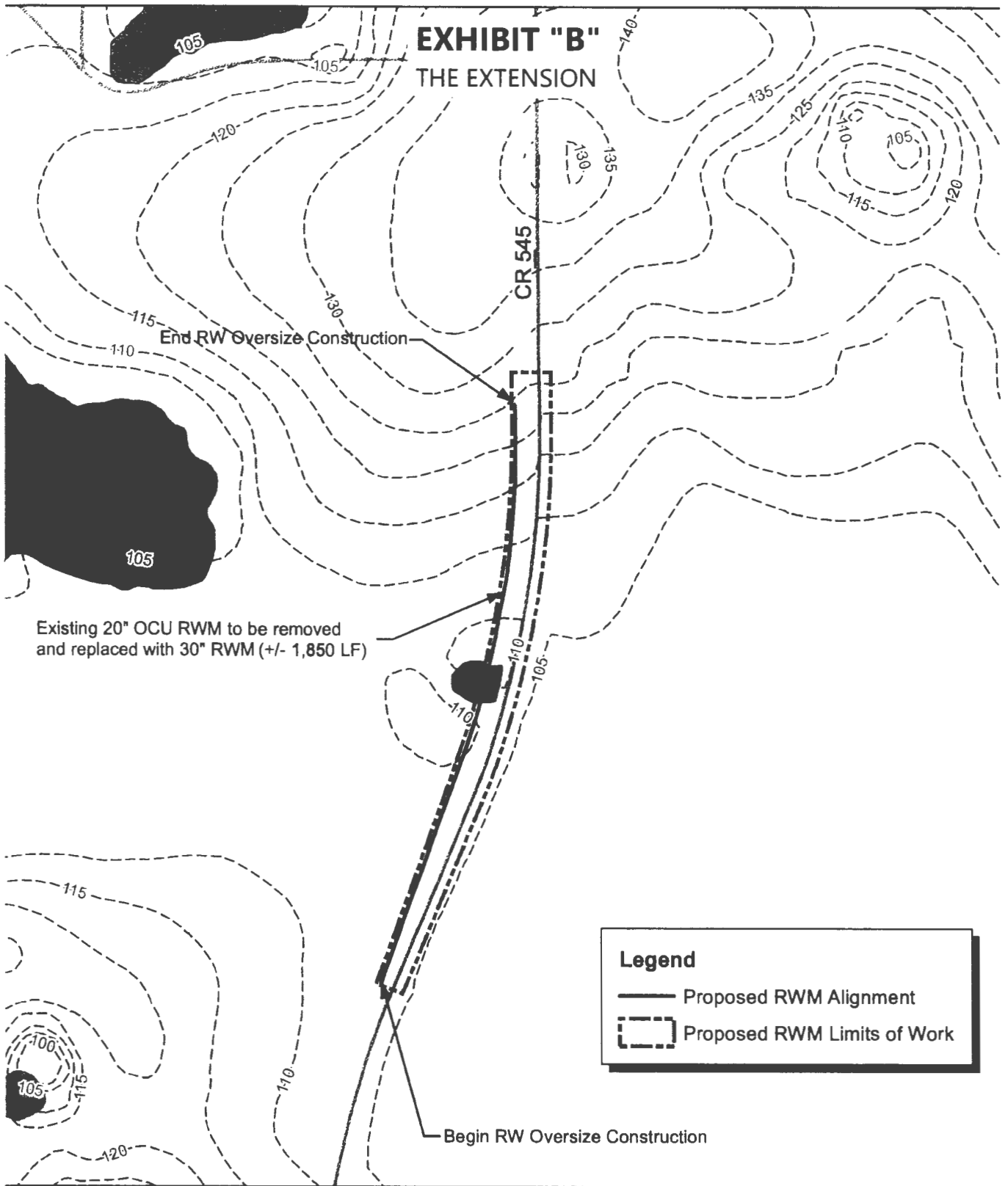
A TRACT OF LAND LYING IN SECTIONS 7 & 8, TOWNSHIP 24 SOUTH, RANGE 27 EAST, DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF TRACT LS-2, WATERLEIGH PHASE 2A, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 92, PAGES 6 THROUGH 16 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN SOUTH 47°21'04" EAST, ALONG THE WESTERLY LINE OF SAID TRACT LS-2, A DISTANCE OF 199.67 FEET TO A POINT ON THE WEST REALIGNED RIGHT-OF-WAY LINE OF AVALON ROAD, COUNTY ROAD NO. 545 ACCORDING TO THE RIGHT-OF-WAY MAP PREPARED BY DONALD W. MCINTOSH, SAID POINT LIES ON A NON-TANGENT CURVE CONCAVE WESTERLY; THENCE RUN ALONG SAID WEST RIGHT-OF-WAY LINE THE FOLLOWING COURSES: THENCE SOUTHERLY ALONG SAID NON-TANGENT CURVE, HAVING A RADIUS OF 9940.00 FEET, A CENTRAL ANGLE OF 01°53'49", AN ARC LENGTH OF 329.07 FEET, A CHORD LENGTH OF 329.06 FEET AND A CHORD BEARING OF SOUTH 02°49'16" WEST TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE EASTERLY; THENCE RUN SOUTHERLY ALONG SAID CURVE, HAVING A RADIUS OF 10060.00 FEET, A CENTRAL ANGLE OF 04°12'41", AN ARC LENGTH OF 739.44 FEET, A CHORD LENGTH OF 739.27 FEET AND A CHORD BEARING OF SOUTH 01°39'50" WEST TO THE POINT OF TANGENCY; THENCE RUN SOUTH 00°26'31" EAST, 45.50 FEET TO A POINT LYING ON THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 8; THENCE RUN SOUTH 89°52'04" WEST, ALONG SAID SOUTH LINE AND ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 8, A DISTANCE OF 1342.09 FEET TO THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 8; THENCE RUN SOUTH 89°23'21" WEST, ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 7, A DISTANCE OF 423.93 FEET; THENCE DEPARTING SAID SOUTH LINE, RUN NORTH 00°44'54" EAST, 961.44 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE SOUTHEASTERLY; THENCE RUN NORTHEASTERLY ALONG SAID CURVE, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 88°36'33", AN ARC LENGTH OF 38.66 FEET, A CHORD LENGTH OF 34.92 FEET AND A CHORD BEARING OF NORTH 45°03'11" EAST TO THE POINT OF TANGENCY; THENCE RUN NORTH 89°21'27" EAST, 44.91 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE NORTHWESTERLY; THENCE RUN NORTHEASTERLY ALONG SAID CURVE, HAVING A RADIUS OF 230.00 FEET, A CENTRAL ANGLE OF 26°20'48", AN ARC LENGTH OF 105.76 FEET, A CHORD LENGTH OF 104.83 FEET AND A CHORD BEARING OF NORTH 76°11'03" EAST TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE SOUTHWESTERLY; THENCE RUN SOUTHEASTERLY ALONG SAID CURVE, HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 82°18'56", AN ARC LENGTH OF 35.92 FEET, A CHORD LENGTH OF 32.91 FEET AND A CHORD BEARING OF SOUTH 75°49'53" EAST TO THE POINT OF REVERSE CURVATURE OF A CURVE CONCAVE NORTHEASTERLY, SAID POINT LIES ON THE SOUTHERLY RIGHT-OF-WAY LINE OF WATERWAY PASSAGE DRIVE, ACCORDING TO SAID PLAT OF WATERLEIGH PHASE 2A; THENCE RUN ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THE FOLLOWING COURSES: THENCE RUN SOUTHEASTERLY ALONG SAID CURVE, HAVING A RADIUS OF 547.50 FEET, A CENTRAL ANGLE OF 61°44'36", AN ARC LENGTH OF 590.00 FEET, A CHORD LENGTH OF 561.86 FEET AND A CHORD BEARING OF SOUTH 65°32'44" EAST TO THE POINT OF TANGENCY; THENCE RUN NORTH 83°34'58" EAST, 170.78 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE NORTHWESTERLY; THENCE RUN NORTHEASTERLY ALONG SAID CURVE, HAVING A RADIUS OF 547.50 FEET, A CENTRAL ANGLE OF 39°12'24", AN ARC LENGTH OF 374.65 FEET, A CHORD LENGTH OF 367.38 FEET AND A CHORD BEARING OF NORTH 63°58'46" EAST TO THE POINT OF TANGENCY; THENCE RUN NORTH 44°22'34" EAST, 263.53 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE SOUTHEASTERLY; THENCE RUN NORTHEASTERLY ALONG SAID CURVE, HAVING A RADIUS OF 452.50

FEET, A CENTRAL ANGLE OF $04^{\circ}07'42''$, AN ARC LENGTH OF 32.60 FEET, A CHORD LENGTH OF 32.60 FEET AND A CHORD BEARING OF NORTH $46^{\circ}26'25''$ EAST TO A POINT ON NON-TANGENT LINE; THENCE RUN NORTH $65^{\circ}19'02''$ EAST, 48.61 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY; THENCE RUN NORTHEASTERLY ALONG SAID NON-TANGENT CURVE, HAVING A RADIUS OF 476.00 FEET, A CENTRAL ANGLE OF $12^{\circ}22'06''$, AN ARC LENGTH OF 102.75 FEET, A CHORD LENGTH OF 102.55 FEET AND A CHORD BEARING OF NORTH $61^{\circ}44'54''$ EAST TO THE POINT OF COMPOUND CURVATURE OF A CURVE CONCAVE SOUTHEASTERLY; THENCE RUN NORTHEASTERLY ALONG SAID CURVE, HAVING A RADIUS OF 440.00 FEET, A CENTRAL ANGLE OF $11^{\circ}47'29''$, AN ARC LENGTH OF 90.55 FEET, A CHORD LENGTH OF 90.39 FEET AND A CHORD BEARING OF NORTH $73^{\circ}49'42''$ EAST TO THE POINT OF BEGINNING.

CONTAINS 38.37 ACRES MORE OR LESS.

EXHIBIT "B" THE EXTENSION



Existing 20" OCU RWM to be removed
and replaced with 30" RWM (+/- 1,850 LF)

Legend

- Proposed RWM Alignment
- - - Proposed RWM Limits of Work

Begin RW Oversize Construction

CR 545 Widening-Segment 4

Reclaimed Watermain
Extension

Exhibit B
Page B1 of 1

0 200 400
Feet



EXHIBIT "C"
STANDARD BID FORM AND PAY ITEMS
CR 545 WIDENING SEGMENT 4 - RECLAIMED WATERMAIN EXTENSION

Description	Quantity	Unit	Unit Price	Total
Maintenance Guarantee		LS		
Payment and Performance Bond		LS		
30" DIP RWM		LF		
30" RW Gate Valve		EA		
RW Pipe Fittings and Restraints		LS		
RWM Pressure Testing		LF		
Connect to Existing Reclaimed Watermain		LS		
Removal of Existing 20" DIP RWM		LF		
Total				

Note: The reclaimed water main's installation prices per linear foot include all installation costs, backfill and compaction and restoration

EXHIBIT "D"
ENGINEER'S SCOPE OF SERVICES

PROJECT DESCRIPTION

As requested by Orange County Utilities, the Developer's Engineer will assist the Developer as directed pursuant to the following Scope of Services:

PRE-CONSTRUCTION SERVICES

1.0 Preparation of Engineering Plans

The Developer's Engineer will prepare engineering plans for the replacement of approximately 1,850 linear feet of existing 20-inch Orange County Utilities (OCU) reclaimed watermain with a proposed 30-inch reclaimed watermain along the west side of the CR 545 right-of-way. The proposed 30-inch reclaimed watermain extension will connect to a proposed stub-out located on the west side of the CR 545 right-of-way approximately at Station 268+50. The proposed stub-out is currently being designed and constructed by Water Conserv II (WCII) in conjunction with a new turnout west of the CR 545 right of way. The proposed 30-inch reclaimed watermain will terminate on the north side of Water Springs Boulevard near station 250+00.

The existing 20-inch reclaimed watermain crossing under CR 545 to the existing WCII turnout will remain in service. The existing 20-inch reclaimed watermain running south along the CR 545 right-of-way will be removed with this project.

The plans will be prepared as a revision to the CR 545 Segment 4 Roadway Widening Plans. The design of the proposed 30-inch reclaimed watermain will be coordinated with the final approved plans for the CR 545 Segment 4 Roadway Widening. This scope assumes that the proposed work can be performed within the approved limits of work for the CR 545 Segment 4 Roadway Widening Project, and no additional right-of-way or easements will be required. The Developer's Engineer will also communicate with WCII regarding the final design of their proposed stub-out. Upon completion of the engineering plans, the Developer's Engineer will submit the plans to Orange County Utilities and Orange County Development Engineering for review and approval. It is assumed that no permitting through the Florida Department of Environmental Protection (FDEP), Reedy Creek Improvement District (RCID), or the South Florida Water Management District (SFWMD) will be required.

CONSTRUCTION ADMINISTRATION SERVICES

2.0 Construction Administration

Upon receipt of the necessary construction permits, the Developer's Engineer will provide construction administration services as follows:

- The Developer's Engineer will provide engineering plans for soliciting bids from qualified contractors and assist the Developer in the bid review process. At least two (2) responsive bidders qualified to do utility construction in accordance with the approved construction plans will be required.
- The Developer's Engineer will provide final approved engineering plans for use by the Developer and the selected contractor.

- The Developer's Engineer will conduct a pre-construction conference with representatives of the selected contractor, Orange County and the Developer.
- The Developer's Engineer will make up to two (2) field visits per month to observe construction, as well as attend the testing of the infrastructure prior to Regulatory Agency Certification. These observations will not be exhaustive or continuous. The Developer's Engineer will not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the contractor or the safety precautions and programs incidental to the work of the contractor. The Developer's Engineer will keep the Developer informed of its observations of the work and will advise Developer of known defects and deficiencies in such work. These visits will be scheduled as necessary for certification purposes or as requested by the Developer. Upon completion of construction in conformance with the permitted construction plans and upon receipt from Developer's contractor of an "as-built" survey signed and sealed by a professional licensed surveyor identifying actual as-built conditions, the Developer's Engineer will prepare Record Drawings, conduct a final site visit and submit a letter of substantial completion and certification of completion as required by Orange County.
- Shop Drawing/Submittal Review - the Developer's Engineer will review submittals for civil engineering related components of the project. The Developer's Engineer's review and approval of submittals such as shop drawings, product data, samples and other data will be for the limited purpose of checking for conformance with the design concept and the information in the Developer's Engineer's documents. This review will not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the contractor and other unrelated parties. Review of a specific item will not indicate that the Developer's Engineer has reviewed the entire assembly of which the item is a component. The Developer's Engineer will not be responsible for any deviations from the Developer Engineer's documents or other documents which are not brought to the attention of the Developer's Engineer in writing by the contractor. The Developer's Engineer will not be required to review partial submissions or those for which submission of correlated items have not been received.

This Agreement assumes that the Developer or Contractor will prepare the NPDES NOI, perform weekly monitoring and file for the Notice of Termination (NOT). The Developer's Engineer will provide base files of the construction plans to the third party entity to assist in this task

The Developer's Engineer has estimated a six (6) month site construction duration for the construction.

ASSUMPTIONS

It is understood that the Developer's Engineer will perform services under the sole direction of the Developer. In the performance of these services, the Developer's Engineer will coordinate its efforts with those of other project team members, the Developer's architect, and other consultants, as required. The following assumptions are made:

- The project site is accessible.
- The Developer's Engineer will be relying on information provided by the Developer.

- Geotechnical, environmental, flood studies, and surveys are not included in this scope of work. Any maps, plans, survey, geotechnical reports, and any other pertinent documents, and information made available to the Developer's Engineer by the Developer at inception of this project will be used by the Developer's Engineer in conducting the above described scope of services.
- The project will not require any earthwork or mass grading outside of the project limits.
- No underdrain will be required.
- No structural design is included.
- No stormwater facilities will be required for the construction of the utilities infrastructure.
- No additional right-of-way or easements will be required.
- The Developer's Engineer fees do not include permit application and review fees. The Developer will be responsible for all permit application and review fees, or any other fees not specifically identified within this Agreement.
- Any additional work tasks that may be required due to third party objectors, Chapter 120 Florida Statutes Hearing Requests, Appeals to the Governor and Cabinet, and other third party appeal processes are specifically excluded from this scope of work.
- No Florida Department of Environmental Protection (FDEP), Reedy Creek Improvement District (RCID), or South Florida Water Management District (SFWMD) permitting will be required.

SERVICES NOT INCLUDED

The following services are not anticipated and therefore are not included in this Agreement at this time:

- Environmental Services including hazardous material services and biological services
- Surveying Services
- Boundary and Topographic Survey Preparation
- Geotechnical Services
- Underground Utility Surveys
- Mechanical Engineering Services
- Electrical Engineering Services
- Structural Engineering Services
- Graphic Design
- Aquatic Engineering
- Architectural Services
- Work efforts associated with environmental permitting
- Traffic and transportation Services
- FDEP, RCID, or SFWMD Permitting

Should work be required in these areas, or areas not previously described, the Developer's Engineer will prepare a proposal or amendment, at the Developer's request, that contains the Scope of Services, fee, and schedule required to complete the additional work items. Any variation from scope provided shall be reviewed and approved by Orange County prior to performance.

DEVELOPER FURNISHED INFORMATION

The Developer's Engineer will rely upon the accuracy and completeness of Developer-furnished information in connection with the performance of services under this Agreement. Developer shall provide the Developer's Engineer with project-related technical data including, but not limited to, the following:

SCHEDULE

The Developer's Engineer will begin performance of the above services on the date written authorization to proceed is received. The schedule is also subject to timely delivery of information promised by the Developer and is exclusive of Developer and local review of interim products.

COMPENSATION

THE DEVELOPER'S ENGINEER will perform the Scope of Services contained in this Agreement on a lump sum basis. The total fee for this Scope of Services is as follows:

Task	Lump Sum Fee
PRE-CONSTRUCTION SERVICES	
1.0 Preparation of Engineering Plans	\$35,700
CONSTRUCTION ADMINISTRATION SERVICES	
2.0 Construction Administration	\$24,000
TOTAL	\$59,700