



Interoffice Memorandum

May 24, 2023

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

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

A handwritten signature in black ink, appearing to read "Ed Torres", written over the "FROM:" line.

**SUBJECT: BCC AGENDA ITEM – Consent Agenda
June 6, 2023, BCC Meeting
Utility Preliminary Engineering Agreement for Utility Work Related to the
Florida Department of Transportation’s Highway Project: State Road 400
From West of State Road 536 to West of Daryl Carter Parkway & Westbound
Express Lane Extension.
Contact Person: Lindy A. Wolfe, P.E., LEED AP, Manager
Utilities Engineering Division
407-254-9918**

The Florida Department of Transportation (FDOT) is constructing improvements to State Road 400 (Interstate 4) from west of State Road 536 to west of Daryl Carter Parkway and the westbound Express Lane Extension. County utility facilities must be relocated because they are in direct conflict with the proposed roadway improvements. The utility work associated with the roadway improvement project is eligible for funding under Florida State Statute Chapter 337.403 for Federal-Aid Interstate System projects.

Since this project is funded by the Federal Highway Administration, FDOT is financially responsible for relocation costs associated with the project. This agreement provides a mechanism for FDOT to reimburse the County for engineering design costs associated with the utility relocation work.

The County Attorney’s Office and Risk Management Division have reviewed the agreement and finds it acceptable as to form. Utilities Department staff recommends approval.

Action Requested: Approval and execution of Utility Preliminary Engineering Agreement between the State of Florida, Department of Transportation and Orange County, Financial Project ID: 448914-1-52-01 & 449771-1-36-03 for State Road 400 from West of State Road 536 to West of Daryl Carter Parkway and Westbound Express Lane Extension.

District 1.

APPROVED BY ORANGE
COUNTY BOARD OF COUNTY
COMMISSIONERS

BCC Mtg. Date: June 6, 2023

UTILITY PRELIMINARY ENGINEERING AGREEMENT

Financial Project ID:	448914 1 52 01 & 449771 1 36 03	Federal Project ID:	ARPA
County:	Orange	State Road No:	400
District Document No:	1		
Utility Agency Owner (UAO):	ORANGE COUNTY, a Charter County and political subdivision of Florida		

This Utility Preliminary Engineering Agreement ("Agreement") is entered into this 19th day of June, 2023, between State of Florida, Department of Transportation ("FDOT"), and ORANGE COUNTY, a Charter County and political subdivision of Florida.

FDOT AGREEMENT TO REIMBURSE ORANGE COUNTY

1. ORANGE COUNTY will perform engineering services in coordinating with FDOT concerning FDOT's project in Orange County, Florida, FDOT Financial Project Number 448914 1 52 01 & 449771 1 36 03 ("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 SR 400 From West of SR 536 to West of Daryl Carter Parkway & WB Express Lane Extension.

Establish location of placement of the new facilities within the right of way on SR 535, Apopka-Vineland Road and within easements.

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

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 \$400,000.00.

Invoice Procedures

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

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

- g. ORANGE COUNTY agrees to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.
- h. In accordance with the Florida Statutes, FDOT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. FDOT shall require a statement from the comptroller of FDOT that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of FDOT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year. For this purpose, the individual work orders shall be considered to be the binding commitment of funds.

Miscellaneous Provisions

- 4. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto.
- 5. This Agreement shall be governed by the laws of the State of Florida. The exclusive venue of any legal or equitable action that arises out of or relates to this Agreement shall be the appropriate state court in Leon County, Florida. In any such action, the parties waive any right to jury trial.
- 6. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining provisions hereof to the extent provided by Florida law.
- 7. Notices required to be given to another party under the provisions of this Agreement may be given to such party by any one or more of the following methods: prepaid U.S. certified mail, return receipt requested, overnight next day courier service, facsimile or email transmission or by delivery in person.

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

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

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

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

ORANGE COUNTY

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.

**ORANGE COUNTY,
FLORIDA**

By: Orange County Board of County Commissioners

Legal Review:

DocuSigned by:

Daniel McDermott

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DocuSigned by:

By: Jack Adkins

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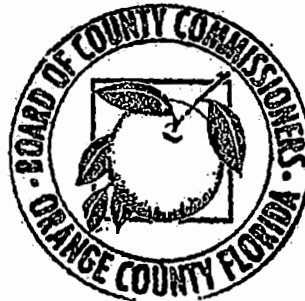
Name: C. Jack Adkins

Title: Director of Transportation Development

fd
 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: *Jennifer Ann - Kline*
 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)

Financial Project ID: 448914 1 52 01 & 449771 1 36 03	Federal Project ID: ARPA
County: Orange	State Road No.: 400
District Document No: 1	
Utility Agency/Owner (UAO): ORANGE COUNTY, a Charter County and political subdivision of Florida	

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

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

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

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

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

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

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

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