



Interoffice Memorandum

May 10, 2019

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

A handwritten signature in black ink, appearing to be "M. Massaro", written over the recipient information.

FROM: Mark V. Massaro, P. E., Director, Public Works Department

CONTACT PERSON: Christine Lofye, P.E., Manager
Traffic Engineering Division

A handwritten signature in black ink, appearing to be "Christine Lofye", written over the contact person information.

PHONE NUMBER: (407) 836-7891

SUBJ: **Off System Construction and Maintenance Agreement Regarding State Road 551 (North Goldenrod Road) between State of Florida, Department of Transportation and Orange County, Florida**

Submitted for approval and execution is a construction and maintenance agreement between State of Florida, Department of Transportation ("Department") and Orange County, Florida for the portion of the Department's milling and resurfacing of State Road 551 (North Goldenrod Road) project (FM# 439235-1-52-01) that is not on the State Highway System.

The Department's milling and resurfacing project includes the installation of a traffic signal at the intersection of State Road 551 (North Goldenrod Road) and Palmetto Avenue. This construction and maintenance agreement grants the Department a right to enter County property to construct the project and authorizes the Department to act on the behalf of the County for the construction of the improvements. The County is required to maintain those portions of the project located within the County's jurisdiction.

Staff recommends approval and execution of the Maintenance Agreement and Resolution.

Action Requested: Approval and execution of (1) Off System Construction and Maintenance Agreement Between State of Florida, Department of Transportation ("Department") and Orange County, Florida, a Charter County and a political subdivision of the State of Florida ("Local Government") FM#:439235-1-52-01 and (2) Resolution of the Orange County Board of County Commissioners regarding the Off System Construction and Maintenance Agreement with the Florida Department of Transportation for the Milling and Resurfacing of State Road 551 from S.R. 50 to S.R. 426. Districts 3 and 5.

MVM/CNL/nad

Attachments

OFF SYSTEM CONSTRUCTION AND MAINTENANCE AGREEMENT
Between
STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION (“DEPARTMENT”)
and
ORANGE COUNTY, FLORIDA,
a Charter County and a political subdivision of the State of Florida
(“LOCAL GOVERNMENT”)

WHEREAS, the State of Florida Legislature has approved and mandated the DEPARTMENT to complete the various projects included in the DEPARTMENT’S Work Program; and

WHEREAS, included in the DEPARTMENT’S Work Program is Project Number FM # 439235-1-52-01, Milling and Resurfacing of State Road 551 (North Goldenrod Road) located in Orange County, Florida, hereinafter referred to as the “Project,” some of which is not on the State Highway System; and

WHEREAS, the parties hereto agree that it is in the best interest of the DEPARTMENT and of the LOCAL GOVERNMENT for the DEPARTMENT to act on behalf of the LOCAL GOVERNMENT in completing all aspects of any portion of the Project not on the State Highway System, including, but not necessarily limited to (1) the acquisition of real property through voluntary acquisition and through the DEPARTMENT’S use of the power of eminent domain, if necessary, to complete this Project as authorized by §336.467, Florida Statutes; (2) constructing the Project through its completion; and (3) providing Construction Engineering Inspection (CEI) as necessary for the Project;

NOW THEREFORE,

1. The parties agree that the DEPARTMENT shall undertake and complete the Project. The Project shall include the tasks described in Exhibit “A” hereto and all other tasks associated with or arising out of the tasks listed therein. The LOCAL GOVERNMENT shall cooperate with and support the DEPARTMENT’S work efforts in these regards. The LOCAL GOVERNMENT hereby grants to the DEPARTMENT, its Contractors, representatives, employees, and agents the reasonable right to enter onto LOCAL GOVERNMENT property to accomplish the tasks required by the Project. The DEPARTMENT shall have final decision-making authority with respect to the design of the Project, the design review process, acquisition of property necessary for this Project, and for construction of the Project.

2. The LOCAL GOVERNMENT, by virtue of the formal resolution approving this agreement, consents to and authorizes the DEPARTMENT to act on behalf of, for the benefit of, and in the name of the LOCAL GOVERNMENT, to further do all acts necessary, specifically the construction of improvements in the name of the DEPARTMENT for the benefit of the LOCAL GOVERNMENT, including acquiring all necessary right of way, securing all environmental and regulatory permits, and acquiring all necessary easements, temporary construction easements, and rights of entry associated with and necessary for the Project. Any

and all right of way for the portion of the Project not located on the State Highway System may, in the discretion of the DEPARTMENT, be acquired either directly in the name of the LOCAL GOVERNMENT or in the name of the DEPARTMENT and subsequently conveyed by the DEPARTMENT to the LOCAL GOVERNMENT.

3. To the extent necessary, the LOCAL GOVERNMENT hereby appoints the DEPARTMENT as its agent for purposes of construction, reconstruction, and relocation of utilities under Sections 337.403 and 337.404, Florida Statutes. The LOCAL GOVERNMENT agrees to fully cooperate with the DEPARTMENT in the construction, reconstruction, and relocation of utilities that may be located within the existing or acquired right of way. The parties agree to meet on a periodic basis, as necessary, during the planning, design, construction, and post-construction phase to identify, plan, and to relocate utilities. The parties acknowledge and agree that the DEPARTMENT may be utilizing federal highway interstate funds and as such, the cost of utility relocation may be considered a part of the cost of the Project to be paid by the DEPARTMENT.

4. The LOCAL GOVERNMENT acknowledges that the DEPARTMENT may be utilizing federal funds on the Project and as a result thereof, the LOCAL GOVERNMENT agrees to maintain those portions of the Project that are located within the jurisdictional limits of the LOCAL GOVERNMENT in perpetuity.

5. The DEPARTMENT shall have the sole authority to make all decisions relating to, and including the need for, change orders and supplemental agreements associated with the construction contract for the Project, including those portions of the Project that are located within the jurisdictional limits of the LOCAL GOVERNMENT.

6. All payment and performance bonds shall be issued in favor of the DEPARTMENT. All warranties, if any, for improvements made within those portions of the Project that are located within the jurisdictional limits of the LOCAL GOVERNMENT shall be made in favor of the LOCAL GOVERNMENT.

7. Upon completion of the Project, the DEPARTMENT shall issue a Notice of Final Acceptance to the contractor with a copy of said notice being provided to the LOCAL GOVERNMENT. Upon issuance of the Notice of Final Acceptance, the LOCAL GOVERNMENT shall be responsible for the perpetual maintenance of those portions of the Project that are located within the jurisdictional limits of the LOCAL GOVERNMENT. Notwithstanding the issuance of the Notice of Final Acceptance, the DEPARTMENT shall have the right to assure completion of any punch list by the contractor. Upon issuing its Notice of Final Acceptance, the DEPARTMENT shall transfer all permits for those portions of the Project that are located within the jurisdictional limits of the LOCAL GOVERNMENT to the LOCAL GOVERNMENT as the operational maintenance entity and the LOCAL GOVERNMENT agrees to accept said transfer and to become fully responsible to comply with all operational and maintenance conditions of the permits. The LOCAL GOVERNMENT agrees to cooperate and to support the DEPARTMENT'S efforts to secure permits necessary for and associated with the Project.

8. This Agreement shall become effective as of the date both parties hereto have executed the Agreement and shall continue in full force and effect until the Project is

completed by the DEPARTMENT and the applicable improvements have been turned over to the LOCAL GOVERNMENT by the DEPARTMENT by formal notice from the DEPARTMENT. The DEPARTMENT reserves the reasonable right to unilaterally cancel its performance hereunder if it determines that it is in the best interest of the public to do so. This discretion shall include, but shall not be limited to budgetary and bid cost considerations.

9. Pursuant to Section 287.058, Florida Statutes, the DEPARTMENT may unilaterally cancel this Agreement for refusal by the LOCAL GOVERNMENT to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes and made or received by the LOCAL GOVERNMENT in conjunction with this Agreement except for the obligation of the LOCAL GOVERNMENT to maintain the Project and said Agreement shall be perpetual as to that obligation.

10. If any election, referendum, approval or permit, notice, or other proceeding or authorization is required to be undertaken by the LOCAL GOVERNMENT to enter into this Agreement or to undertake the Project, the LOCAL GOVERNMENT will expeditiously initiate and consummate, as provided by law, all actions necessary with respect to any such matters with time being of the essence.

11. It is understood that the DEPARTMENT'S participation in said Project is subject to:

a) Legislative approval of the DEPARTMENT'S appropriation request in the work program year that the Project is scheduled;

b) Availability of funds based on the following limitations:

i) The DEPARTMENT'S performance and obligations to pay under this Agreement is contingent upon an annual appropriation by the Florida Legislature. If the DEPARTMENT'S funding for this Project is in multiple years, funds approved from the DEPARTMENT'S Comptroller must be received every year prior to costs being incurred.

ii) In the event this Agreement is in excess of \$25,000.00 and has a term of a period of more than one year, the provisions of §339.135(6)(a), Florida Statutes, are hereby incorporated. The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the DEPARTMENT that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executor only for the value of the services to be rendered or agreed to be paid in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT, which are for an amount in excess of \$25,000.00 and which have term for a period of more than one (1) year.”

12. 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.

13. The LOCAL GOVERNMENT shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of:

a) All persons employed by the LOCAL GOVERNMENT during the term of the Contract to perform employment duties within Florida; and

b) All persons, including, subcontractors, assigned by the LOCAL GOVERNMENT to perform work pursuant to the contract with the DEPARTMENT.

14. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, express mail or electronic mail (e-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. Each party hereto shall have the continuing obligation to notify each other of the appropriate persons for notices to be sent to pursuant to the terms of this Agreement. Unless otherwise notified in writing, notices shall be sent to the following:

To the LOCAL GOVERNMENT:

Orange County Public Works Department, Traffic Engineering Division
Attn: Manager
4200 S. John Young Parkway
Orlando, Florida 32839-9205

To the DEPARTMENT:

District Five- Local Programs
719 South Woodland Boulevard, M.S. 4-520
DeLand, Florida 32720
D5-LocalPrograms@dot.state.fl.us

15. No modification of this Agreement shall be binding on the Parties unless reduced to writing and signed by a duly authorized representative of the Parties.

16. In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney and legal fees and costs.

17. The individuals identified as the persons to receive notice hereunder shall have the authority to act on behalf of and to bind the LOCAL GOVERNMENT and the DEPARTMENT, respectively, as to all determinations required to be made under the terms of this Agreement.

To the LOCAL GOVERNMENT:

Orange County Public Works Department, Traffic Engineering Division
Attn: Manager
4200 S. John Young Parkway
Orlando, Florida 32839-9205

To the DEPARTMENT:

State of Florida, Department of Transportation
Alan E. Hyman, P.E., Director of Transportation Operations 719 South Woodland Boulevard
DeLand, Florida 32720

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective duly authorized representatives on the dates set forth below.

COUNTY
ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

By: *Alan E. Hyman*
Alan E. Hyman, P.E.
Director of Transportation Operations

Date: 4 June 2019

Date: 6-25-2019

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

Department Legal Review:
[Signature]
Attorney

By: *Craig A. Stopyra*
for Deputy Clerk

Print name: Craig A. Stopyra



Exhibit "A"

SCOPE OF SERVICES FM#: 439235-1-52-01

FDOT has committed to performing the construction on LOCAL GOVERNMENT roadways to widen/reconstruct, harmonize and to connect the LOCAL GOVERNMENT'S roadways to the FDOT'S Project for State Road 551 from south of State Road 50 (Colonial Drive) to State Road 426 (Aloma Avenue) in Orange County, Florida.

The State Road 551 project will require work on the following LOCAL GOVERNMENT roadway: North Goldenrod Road. The anticipated scope for this roadway is described below:

- **North Goldenrod Road** – Provide signalized intersection improvements including widening, reconstruction and milling/resurfacing of North Goldenrod Road to accommodate a three-lane section at the intersection with State Road 551. In addition, the existing northbound turn-off lane will be removed and replaced with a right turn lane with adjacent curb and gutter and concrete sidewalk on State Road 551. Improvements include minor median modifications to State Road 551, new curb cut ramps and crosswalks across State Road 551, concrete sidewalk, curb and gutter, closed drainage system modifications, signing and pavement markings, advance signage, pedestrian detectors and lighting.
- **Mast Arm Upgrades** – LOCAL GOVERNMENT has requested to upgrade the signalized intersection from concrete strain pole structures to mast arm structures. Subject to funding availability, the Department agrees to design and place mast arms and to include said work as a part of the Department's Project. Funding for the upgrades will be addressed in a separate Locally Funded Agreement.

Exhibit "B"

RESOLUTION
FM#439235-1-52-01