

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

APPENDIX: "CHANGES 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 FL** (the "**UAO**") dated the day of _____, 20____ for the project identified as Financial Project Identification Number FPID 444980-1-56-04 / 444980-1-66-04

1. **Subparagraph 1.g. is amended to read as follows:**

"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) calendar days. The **FDOT's** review and approval of the documents shall not relieve the **UAO** from responsibility for subsequently discovered errors or omissions."

2. **Subparagraph 3.b. is amended to read as follows:**

"The initial estimate of the cost of the Utility Work is **\$3,804,941.89**. 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. **Subparagraph 3.e. is amended to read as follows:**

"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 2 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 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. **Subparagraph 3.h. is amended to read as follows:**

"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."

5. **Subparagraph 3.i. is amended to read as follows:**

"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."

6. **Subparagraph 5.d. is amended to read as follows:**

"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."

7. **Subparagraph 6.a.5 is amended to read as follows:**

"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) calendar days from written notice thereof from **FDOT**."

8. Section 8 portion titled "FOR GOVERNMENT-OWNED UTILITIES "is replaced in its entirety with the following language:

FOR GOVERNMENT-OWNED UTILITIES.

To the extent provided by law, the UAO agrees to defend, indemnify, and hold harmless the FDOT, its officials and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses arising from the UAO's own negligent acts or omissions, or those negligent acts or omissions of the UAO's officials and employees acting within the scope of their employment, or arising out of or resulting from the UAO's negligent performance under this Agreement. The UAO's indemnification is expressly limited to the amounts set forth in Section 768.28(5), Florida Statutes, as amended by the Florida State Legislature. Nothing contained herein shall constitute a waiver of sovereign immunity or the provisions of Section 768.28, Florida Statutes. The foregoing shall not constitute an agreement by the UAO to assume any liability of any kind for the acts, omissions, and/or negligence of FDOT, its officers, officials, employees, agents, or contractors or any third party.

The UAO agrees to include the following indemnification clause in all contracts with contractors, subcontractors, consultants, or subconsultants who perform work in connection with this Agreement (modified to appropriately identify the parties):

"The UAO's contractor/consultant shall indemnify and hold harmless the **UAO** and the State of Florida, Department of Transportation, including the **FDOT's** officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor/consultant and persons employed or utilized by the contractor/consultant in the performance of this Agreement.

This indemnification shall survive the termination of this Agreement."

If the UAO elects to self-perform the Project, and such self-performance is approved by the FDOT in accordance with the terms of this Agreement, the UAO may self-insure and proof of self-insurance shall be provided to the FDOT. If the UAO elects to hire a contractor or consultant to perform the Project, then the UAO shall, or cause its contractor or consultant to carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Agreement. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. UAO shall, or cause its contractor to cause the FDOT to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the FDOT as an Additional Insured shall be primary as to any other available insurance and shall not be

more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Agreement and may not be shared with or diminished by claims unrelated to the Agreement. The policy/ies and coverage described herein may be subject to a deductible and such deductibles shall be paid by the Named Insured. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-insured Retention unless the UAO is a state agency or subdivision of the State of Florida that elects to self-perform the Project. Prior to the execution of the Agreement, and at all renewal periods which occur prior to final acceptance of the work, the FDOT shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The FDOT shall be notified in writing within ten (10) days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The FDOT's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the FDOT may have.

When the Agreement involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the FDOT as an Additional Insured on the Commercial General Liability policy/ies procured above.

To the extent the FDOT's Standard Specifications for Road and Bridge Construction, as revised at the time the UAO enters into any contract for construction of the Project, require higher or different insurance coverages, the requirements of the Standard Specifications shall control.

9. 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
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller

As Clerk of the Board of County Commissioners

By: _____

Deputy Clerk