



Interoffice Memorandum

Date March 4, 2024

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

FROM: Joseph C. Kunkel, P. E., Director, Public Works Department

CONTACT PERSON: Raymond L.A. Williams, P.E., Manager
Engineering Division

PHONE NUMBER: (407) 836-7909

SUBJ: **Joint Project Agreement for Utility Lines Construction for East Bay Street Sub Area 2 Paving and Drainage Project, C.D. Number 93-53, between Orange County, Florida and City of Winter Garden.**

On February 8, 2022, the Board approved an Interlocal Agreement for Annexation of Enclave between City of Winter Garden and Orange County. Item 5 of Section IX of the agreement requires the County to complete the East Bay Street Sub Area 2 Paving and Drainage project.

The Engineering Division is managing the East Bay Street Sub Area 2 Paving and Drainage Project on behalf of Housing and Community Development Division. The project area consists of four residential streets (East Bay Street, Christopher Street, Trumbo Street, and Saba Avenue). The proposed construction improvements will comprise of new five-foot sidewalks on both sides of the roadways, roadway milling and resurfacing, a closed drainage system, and two retention ponds.

The City of Winter Garden will fund the construction of a water main that will be constructed with the project. Orange County desires to enter into this Joint Project Agreement (JPA) with City of Winter Garden to facilitate the construction of the utility line.

The Engineering Division, Highway Construction Division, Risk Management Division, Procurement Division, Comptroller's Finance and Accounting Office, and the County Attorney's Office have reviewed the JPA and find the terms and conditions acceptable.

Action Requested: Approval and execution of Joint Project Agreement for Utility Lines Construction by and among Orange County, Florida and City of Winter Garden for East Bay Street Sub Area 2 Paving and Drainage Project. District 1.

JCK/RLAW/ilc

Attachment(s)

JOINT PROJECT AGREEMENT FOR UTILITY LINES CONSTRUCTION

THIS JOINT PROJECT AGREEMENT, (the "Agreement"), is made and entered into by and among Orange County, Florida, a charter county and political subdivision of the State of Florida, whose address is c/o County Administrator, P.O. Box 1393, Orlando, Florida 32802-1393 (the "County"), and City of Winter Garden, a Florida municipal corporation, whose address is 300 West Plant Street, Winter Garden, Florida 34787 (the "City").

WHEREAS, the County, through a contractor, anticipates constructing in fiscal years FY22-23 and FY23-24 a reconstruction of East Bay Street - Sub Area 2, C.D. Number 93-53 (the "Roadway Paving & Drainage Project") pursuant to that certain Interlocal Agreement for Annexation of Enclave between County and City dated February 8, 2022

WHEREAS, the City is proposing to pay for the construction of a six-inch (6") PVC water main (approximately 990 LF), an eight-inch (8") PVC water main (approximately 3,680 LF (collectively the "Utility Lines") along the Roadway Paving & Drainage Project that will be constructed within public right of way and utility easements.

WHEREAS, the City believes that it is more economical and efficient for the County's contractor (the "Contractor"), at the City's expense, to install the Utility Lines (hereinafter, the "Utility Lines Construction") during its construction of the Roadway Paving & Drainage Project.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein as a material part of this agreement.
2. The drawings and specifications for the Utility Lines Construction, prepared by Mead & Hunt on behalf of the City and on file with the Engineering Division of the Orange County Public Works Department (the "Plans"), are hereby incorporated by reference into this Agreement.
3. The City shall obtain all permits required for the Utility Lines prior to the start of construction.
4. The City and the County hereby agree that the responsive and responsible bid for the Roadway Paving & Drainage Project, including the Utility Lines Construction

(the "Successful Bid") shall be determined by the County in accordance with its usual procurement practices, procedures, and policies, subject to review and comment by the City as provided for herein. The County shall have all bidders separately bid the Roadway Paving & Drainage Project and the Utility Lines Construction as part of their respective bid responses to the County. The County shall provide the City with a copy of all bids for the Utility Lines Construction and identify the County's determination of the Successful Bid. The City shall notify the County in writing within ten (10) calendar days following the City's receipt of the copy of the Successful Bid whether the portion of the Successful Bid pertaining to the Utility Lines Construction is acceptable to the City or is not acceptable to the City. In the event the City timely notifies the County that the Successful Bid regarding the Utility Lines Construction is not acceptable to the City, the City may proceed with the Utility Lines Construction in a commercially reasonable manner pursuant to applicable approvals, laws, rules, and regulations, including those of the County, and in coordination with the Contractor, and the provisions in Paragraphs 4 through 14 of this Agreement shall be null and void as of the date of the notice delivered by the City.

5. If the County does not receive written notification from the City within the ten (10) calendar day time period referenced in Paragraph 4 above, the failure to provide such notice shall constitute approval of the Successful Bid by the City, to the same effect as if written notification of approval had been provided by the City. If City approves the Successful Bid, or if such bid is deemed approved by reason of failure of the City to timely provide such notice, County shall then proceed to contract with the Contractor who submitted the Successful Bid and all of the following provisions shall apply.
6. Within forty-five (45) calendar days following the County's notification to the City of the selection of the Contractor, the City shall pay an amount equal to the amount of the Utility Lines Construction Bid, plus an additional ten percent (10%) to serve as a contingency fund (together, the "Utilities Construction Costs"). The County shall deposit the funds paid by the City into a separate fund that shall be designated the East Bay Street JPA Fund (Sub Area 2, C.D. Number 93-53 Paving & Drainage) - Utility Cost Account (the "Utility Cost Account").
7. Amounts in the Utility Cost Account may be commingled with other County funds in a common account for investment purposes. The County shall maintain accounting records which reflect control or restricted distribution of the funds in the Utility Cost Account and shall be deposited in a noninterest bearing account. Any investment of the funds in the Utility Cost Account shall be made in accordance with applicable federal laws or regulations, and in accordance with the County's policy.

8. The County shall use the funds in the Utility Cost Account to make payments to the Contractor for the Utility Lines Construction, pursuant to its customary payment procedures. The County, from time to time, may propose change orders to the portion of the Contract pertaining to the Utility Lines Construction, and the County may unilaterally authorize the Contractor to proceed with any change order, including change orders needed to address unforeseen or emergency conditions; provided that the cost for any change order, when considered individually or cumulatively with all other change orders, does not exceed the ten percent (10%) contingency fund (the "Contingency Fund") deposited by the City for the Utility Lines Construction. If any proposed change order, when considered individually or cumulatively with other County-proposed change orders, will result in costs in excess of the amount of the Utility Lines Construction in the Successful Bid, plus the Contingency Fund, then before approving such change order (and any subsequent change orders) pertaining to the Utility Lines Construction, the County shall obtain the written approval of the City for the proposed change order or change orders through coordination with the City. The City shall have no obligation to approve any change order if the individual or cumulative amount of the change orders exceeds the ten percent (10%) Contingency Fund deposited by the City for the Utility Lines Construction. In the event the City agrees to fund any change order that will result in cumulative costs which exceed the amount of the Utility Lines Construction in the Successful Bid plus the Contingency Fund, the City shall pay the additional necessary funds prior to the County directing the Contractor to proceed with the work contemplated by any such change order. If the City does not approve a proposed change order that the County deems necessary for the Utility Lines Construction, the County may, but is not obligated to, elect to fund the change order out of County utility revenues and proceed to issue the change order without the City's consent.
9. The County shall use the funds in the Utility Cost Account to pay the Contractor all County-approved reasonable amounts for: (i) Utility Lines Construction included in the Successful Bid; (ii) any change orders that individually or cumulatively do not exceed the amount of the Contingency Fund; and (iii) any change orders expressly approved by the City. Prior to paying any funds to the Contractor for the Utility Lines Construction, the County shall have inspected the relevant work and deemed it acceptable, as described in Paragraph 11 below. Once every one hundred eighty (180) days following execution of the Contract through completion of the Utility Lines Construction, the County shall provide to the City a written accounting of all payments made to the Contractor for the Utility Lines Construction. In the event the City has approved and funded payments for the Utility Lines Construction that exceed the funds initially deposited in the Utility Cost Account, then the County's accounting shall also include the additional amounts funded by the City.

10. The time period of the Contractor's performance of the Utility Lines Construction work under the Contract shall run generally concurrently with the construction of the Roadway Paving & Drainage Project.
11. During the course of the Utility Lines Construction work, the City's engineer or other designated representative shall have the reasonable right, in coordination with the County and the Contractor, to inspect the Utility Lines Construction to determine if it is in conformance with the Plans. The City shall promptly notify the County of any deviation(s) from the Plans discovered by the City's engineer or representative who conducted the inspection, and upon such notification and confirmation, the County shall require the Contractor to remedy such deficiencies without additional expense to the City, unless the deviation is necessary as a result of an unforeseen field condition or other circumstance. The County shall also require the Contractor to remedy any deficiencies in the Contractor's performance of the Utility Lines Construction work of which the County has knowledge. The County shall review the work that was performed and determine whether such work is acceptable. The County shall not make payments to the Contractor for any Utility Lines Construction work that has not been inspected and approved by the County.
12. The Contract shall require the Contractor to maintain insurance in the following types and amounts:
 - (a) General liability insurance including contractual liability in the amount not less than One Million Dollars (\$1,000,000) per occurrence and \$2,000,000 aggregate;
 - (b) Worker's compensation, statutory limits or greater;
 - (c) Automobile liability, One Million dollars (\$1,000,000); and
 - (d) Railroad Protective Liability with bodily injury protection of Two Million dollars (\$2,000,000) and property damage of Two Million dollars (\$2,000,000). Required if coverage excludes work within fifty feet of a railroad.

The Contract shall also require the Contractor to include the City and Orange County as additional insured on its general liability insurance for the duration of the Utility Lines Construction.

13. The Contractor shall provide a surety bond in accordance with the provisions of Section 255.05 of the Florida Statutes, in a principal amount sufficient to cover the amount of the Utility Line Construction.
14. During the course of the Utility Lines Construction, if the County or the City observe, or otherwise become aware of any defects, conflicts or necessary changes to the Plans, such party shall immediately notify the other party of such

defects, conflicts or necessary changes. The County and the City agree that time is of the essence in making any decisions, interpretations and/or changes with respect to design, materials and other matters pertinent to the Utility Lines Construction work covered by the Contract so as to not materially delay the work of the Contractor.

15. Upon completion of the Utility Lines Construction work by the Contractor, approval of the Utility Lines Construction work by the County, and final payment to the Contractor of funds due for the Utility Lines Construction, the County shall provide the City with a final accounting of the funds expended and return any unexpended funds in the Utility Cost Account to the City within forty-five (45) calendar days following final payment to the Contractor for the Utility Lines Construction under the Contract. After construction of the Utility Lines, the City will be the owner of such Utility Lines and will be responsible for its operation, repair and maintenance.
16. The County shall obtain from the Contractor a written one (1) year warranty stating that all work shall be free of defects for one (1) year from the date of completion of the Utility Lines Construction.
17. This Agreement constitutes the entire agreement between the parties and shall supersede and replace all prior agreements or understandings, written or oral, relating to the matters set forth herein. Any changes to this Agreement shall be made in writing and signed by all parties with the same formality as the Agreement.
18. All notices to be given to the parties shall be in writing and shall be given by hand delivery or United States mail, first class postage prepaid, addressed as follows:

COUNTY:

Orange County
c/o County Administrator
201 S. Rosalind Avenue
Orlando, Florida 32801

With copy to:

Orange County Public Works Department
Engineering Division
4200 S. John Young Parkway
Orlando, Florida 32839-9204

CITY:

James P. Monahan
300 W. Plant Street
Winter Garden, Florida 34787

With copy to:

Daniel W. Langley Esq.
Fishback Dominick LLP
1947 Lee Road
Winter Park, Florida 32789

19. The validity, interpretation and effect of this Agreement shall be in accordance with and governed by the laws of the State of Florida. In the event any provision hereof is determined to be unenforceable or invalid, such unenforceability or invalidity shall not affect the remaining provisions of the Agreement, which shall remain in full force and effect.
20. Time is of the essence under this Agreement.
21. There shall be no third-party beneficiaries to this Agreement and no rights of action for third parties are intended or implied herein.
22. The County and the City 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 for all actions arising out of or in connection with this Agreement.
 - (a) Upon any failure by the City to perform its obligations under this Agreement, the County shall be limited strictly to only the following remedies:
 - (i) The County may file an action for specific performance or injunction;
 - (ii) In the event the City fails to timely pay to the County the funds referred to in Paragraph 5 above, the County may refuse to include the Utility Lines Construction in the Contract and terminate this Agreement; in the event the City fails to timely pay to the County any additional funds referred to in Paragraph 7 above, the County may cancel the Utility Lines Construction portion of the Contract and terminate this Agreement;
 - (iii) The County has the right to file suit against the City for any claims against the County by the Contractor relating to the Utility Lines Construction;
 - (iv) If at any time the funds in the Utility Cost Account are insufficient to cover the costs of completing the Utility Lines Construction, and the City fails to timely pay any additional funds pursuant to the terms of this Agreement within the times provided for such payment herein, the County shall have the right to notify the Contractor to stop work

on the Utility Lines Construction, terminate that portion of the Contract, and pay the Contractor for all work completed on the Utility Lines Construction portion of the Contract from the funds in Utility Cost Account; and

- (v) The County may withhold approvals or permits in connection with the Utility Lines Construction.
- (b) Upon any failure by the County to perform its obligations under this Agreement, the City shall be limited strictly to only the following remedies:
- (i) The City may file an action for specific performance with regard to the use of the funds in Utility Cost Account;
 - (ii) The City may request injunctive relief to prevent the County from using the funds in the Utility Cost Account for purposes inconsistent with this Agreement; and
 - (iii) The City may file an action for specific performance to obtain any funds remaining in Utility Cost Account after completion and acceptance of and final payment for the Utility Lines Construction portion of the Contract.

All parties expressly waive their respective rights to sue for damages of any type for breach of or default under this Agreement by any other, and each party shall be responsible for its own legal fees, including attorney fees, in connection with any action arising out of or in relation to this Agreement. Venue for any actions initiated under or in connection with this Agreement shall be in the Circuit Court for the Ninth Judicial Circuit of Florida in Orange County.

- 23. This Agreement shall not be assigned and any purported assignment shall be deemed void and of no effect.
- 24. The effective date of this Agreement shall be the date when the last of the County and the City has properly executed this Agreement as determined by the dates set forth immediately below the respective signatures of the County and the City.

[Signatures and Acknowledgements on Following Pages]

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

"COUNTY"

(Official Seal)



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

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

DATE: March 26, 2024

ATTEST:

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

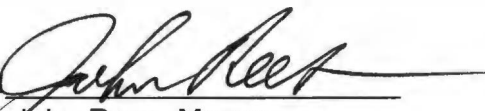
By: *Jennifer Lara-Klimetz*
for Deputy Clerk

Jennifer Lara-Klimetz
Printed Name

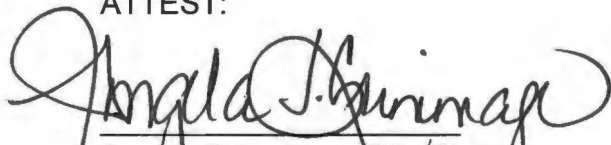
[Signatures and Acknowledgements Continue on Following Pages]



**City of Winter Garden,
a Florida municipal corporation**

By 
John Rees, Mayor

ATTEST:


Angela Grimmage, City Clerk

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