



**Interoffice Memorandum**

Date July 3, 2019

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

FROM: Diana M. Almodovar P.E., Interim Director, Public Works Department 

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

**PHONE NUMBER:** (407) 836-7908

**SUBJ: Joint Project Agreement for Orange County Texas Avenue  
Improvements - OUC Water Main Relocation Project**

On May 2, 2008, the Board approved final design contract Y7-824 for improvements to Texas Avenue. The improvements to Texas Avenue consist of widening to a four-lane, divided urban roadway with 11-foot travel lanes, raised grassed medians, sidewalks, on-road bicycle lanes, curb and gutter drainage system, street lighting, and landscaping (the "County Project").

Orlando Utilities Commission (OUC) plans to design and install approximately 1,280 feet of 4-inch to 12-inch diameter water main along Texas Avenue (the "OUC Project"). The County and OUC agree that it would be cost effective and efficient to utilize the County's contractor to complete construction of the OUC Project in conjunction with construction of the County Project. The County is willing to incorporate the OUC Project into the County's Project for bidding and construction services. The County and OUC agree that the cost of the OUC Project will be at OUC's sole expense. The County and OUC negotiated the Joint Project Agreement to memorialize the terms under which the OUC Project will be constructed concurrent with the County's Project.

The Engineering Division, Risk Management Division, and the County Attorney's Office have reviewed the Agreement and find the terms and conditions acceptable.

**Action Requested: Approval and execution of Joint Project Agreement for Orange County Texas Avenue Improvements - North Segment and Texas Avenue - North Segment OUC Water Main Relocation Project by and between Orlando Utilities Commission and Orange County. District 6.**

DMA/RLAW/DRT/ilc

Attachments

**JOINT PROJECT AGREEMENT  
FOR  
ORANGE COUNTY TEXAS AVENUE  
IMPROVEMENTS - NORTH SEGMENT AND  
TEXAS AVENUE – NORTH SEGMENT  
OUC WATER MAIN RELOCATION PROJECT**

THIS JOINT PROJECT AGREEMENT FOR ORANGE COUNTY TEXAS AVENUE IMPROVEMENTS - NORTH SEGMENT AND TEXAS AVENUE – NORTH SEGMENT OUC WATER MAIN RELOCATION PROJECT (the "Agreement") is made and entered into by and between ORLANDO UTILITIES COMMISSION ("OUC"), a statutory commission existing under the laws of the State of Florida, whose address is 100 West Anderson Street, Orlando, Florida, 32801, and ORANGE COUNTY( "COUNTY"), a charter county and political subdivision of the State of Florida, whose address is 201 South Rosalind Avenue, Orlando, Florida, 32801. OUC and COUNTY may hereinafter be referred to individually as a "Party" or collectively as the "Parties."

**RECITALS**

**WHEREAS**, the COUNTY plans to design and construct certain improvements to Texas Avenue, from a point north of Duskin Avenue to a point south of Holden Avenue as shown in Exhibit "A" attached hereto and made a part hereof by this reference (the "County Project"); and

**WHEREAS**, OUC plans to design and construct certain water main system improvements along the same segment of Texas Avenue and to install approximately one thousand two hundred and eighty feet (1,280') of 4-inch to 12-inch diameter water main along

Texas Avenue (the "OUC Project") as shown in Exhibit "A"; and

**WHEREAS**, the Parties agree that it would be cost effective and efficient to utilize the COUNTY'S contractor to complete construction of the OUC Project in conjunction with construction of the County Project; and

**WHEREAS**, OUC desires to incorporate the OUC Project into the County Project; and

**WHEREAS**, the COUNTY is willing to incorporate the OUC Project into the County Project for bidding and construction services (the "Joint Project"); and

**WHEREAS**, the Parties agree that the costs of the OUC Project will be at OUC's sole expense.

**NOW, THEREFORE**, in consideration of the recitals, agreements and mutual covenants contained herein, and other good and valuable consideration, of which the Parties acknowledge the receipt and sufficiency, OUC and the COUNTY hereby agree as follows:

**SECTION 1. RECITALS INCORPORATED.**

All of the recitals contained herein are true and correct, and are incorporated herein and made a part hereof by this reference.

**SECTION 2. PREPARATION OF CONSTRUCTION PLANS AND BID DOCUMENTS.**

Not later than ten (10) calendar days after the effective date of this Agreement, OUC shall provide its design plans and specifications for the OUC Project to the COUNTY, so that the COUNTY may incorporate the OUC Project into the COUNTY's construction plans, specifications, and work schedule for construction of the County Project. Both Parties acknowledge and understand that both the County Project and the OUC Project are being

designed by Inwood Consulting Engineers, Inc. to minimize OUC's water main impacts with the COUNTY's roadway construction. After the OUC Project has been incorporated into the County Project's construction plans and specifications, the COUNTY shall provide OUC with a copy of the Joint Project construction plans, specifications, and schedules for OUC to review. OUC shall have no more than ten (10) business days to complete its review and provide comments to the COUNTY. The COUNTY shall generate the bid package for the Joint Project and provide to OUC the COUNTY Procurement Division's internet link to the bid package documents on the first date of the bid advertisement.

### **SECTION 3. BIDDING AND AWARD OF JOINT PROJECT.**

The COUNTY shall obtain by its standard competitive bid process a contractor to construct the Joint Project (the "Contractor"). The COUNTY shall evaluate the Joint Project bids and provide OUC with the name of the COUNTY's highest ranked low responsive responsible bidder. OUC shall, within ten (10) business days, have the right to review and evaluate the low responsive responsible bidder. However, the COUNTY has the ultimate authority to select the Contractor for the County Project. In the event OUC rejects or fails to approve the COUNTY's successful bidder within the ten (10) business day review period, the COUNTY may proceed with awarding the construction of the County Project only, and this Agreement will terminate.

Within forty-five (45) calendar days of the COUNTY's notification to OUC of the selection of the Contractor, OUC shall pay the COUNTY an amount equal to the amount of the OUC Project portion of the successful bid, plus an additional ten percent (10%) to serve as a contingency fund. The COUNTY shall deposit such funds paid by OUC into a separate fund

for OUC's benefit that shall be designated the "OUC-JPA Texas Avenue Fund" (the "JPA Fund.")

#### **SECTION 4. PERMITS.**

The COUNTY shall not be responsible to obtain any permits for OUC or for the OUC Project. OUC agrees that all necessary permits for the OUC Project shall be obtained or provided prior to commencement of construction of the Joint Project by OUC at its sole cost and expense.

#### **SECTION 5. CONSTRUCTION ADMINISTRATION AND INSPECTIONS.**

The COUNTY shall provide and be responsible for the necessary construction, engineering, and inspection work ("CEI") to ensure that construction of the County Project is in compliance with the plans and specifications. For its part, OUC shall provide and be responsible for any CEI, and clarification or interpretation required, related to the OUC Project during the course of construction. OUC shall respond to any COUNTY requests for clarification or interpretation relating to the OUC Project no later than two (2) business days following receipt of request and all required information to evaluate the request, unless additional time is agreed to by both Parties. OUC shall make every effort to reply as quickly as possible to any COUNTY requests in order to avoid Joint Project delays. If OUC has not provided a response to the COUNTY within the two (2) business days, the COUNTY will use its reasonable judgment to make an appropriate determination. Any costs incurred as a result of the COUNTY's interpretation or misinterpretation shall be at OUC's sole cost and expense. OUC shall not provide directives or clarifications directly to the Contractor. The COUNTY shall inform OUC of all construction progress meetings so OUC may attend and monitor the

Contractor's compliance with the construction schedule; as such, OUC staff will be made aware, in advance, of all scheduled inspections of the OUC Project requested by the Contractor. Any changes or requests that OUC's inspectors reasonably deem necessary to protect the health, safety, and welfare of its customers, and that are required to comply with OUC's construction and maintenance standards, shall be coordinated and requested through the COUNTY. The COUNTY shall require the Contractor to comply with OUC's requests and changes for work specified in the bid award and contract. Upon completion of OUC's final inspection and clearance of the system for operation ("Final Completion date"), and as provided in Section 7 ("Warranties") herein, OUC shall take title and risk of loss to the OUC Project infrastructure and shall operate and perpetually maintain the water main, and shall be solely responsible for the costs thereof.

#### **SECTION 6. CHANGE ORDERS.**

During the course of the Joint Project, if OUC or the COUNTY observes, or otherwise becomes aware of, any defects, conflicts, or necessary changes to the Joint Project, such Party shall immediately notify in writing the other Party of such defects, conflicts, or necessary changes. OUC and the COUNTY 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 work covered by the construction contract so as not to delay the work of the Contractor. If OUC determines that a change in the work or design for the OUC Project is necessary to the construction contract in order to complete the OUC Project, OUC shall provide such proposed change in writing to the COUNTY and the COUNTY shall process a change order with the Contractor, subject to approval by the Board of County Commissioners, as may be applicable.

Funding for approved changes to OUC's work will be drawn from the JPA Fund. In the event the JPA Funds are depleted, OUC shall provide additional funds for change orders as necessary. Change orders will not be processed by the COUNTY until payment is received. In the event that the COUNTY determines a change in the work or design for the County Project is necessary to the construction contract in order to complete the County Project, the COUNTY shall provide to OUC a copy of the applicable approved change order for its records.

#### **SECTION 7. WARRANTIES.**

The COUNTY will require the Contractor to provide a performance bond and payment bond before contract execution. The performance bond and payment bond shall be in amounts at least equal to the contract amount of the Joint Project and conform with the requirements as described in the COUNTY's contract with the Contractor. All performance bonds and payment bonds shall name "Orange County" and "OUC" as additional insureds/obligees. The construction contract applicable to the Joint Project will contain a warranty of the work performed which shall be in force and effect for a period of one year from the Final Completion date. One year from the Final Completion date, the COUNTY and OUC (as applicable) hereby accept ownership (title and risk of loss) of each's part of the Joint Project, assuming neither the COUNTY nor OUC (as applicable) has found and timely notified the other party about any problems during the warranty period. If either or both parties find problems during the warranty period, the COUNTY and/or OUC, as applicable, will not accept title and risk of loss for its part of the Joint Project until the warranty problems are cured or fixed to the satisfaction of the COUNTY and/or OUC, as applicable.

## **SECTION 8. INSURANCE.**

Without waiving its right to sovereign immunity as provided in Section 768.28, Florida Statutes, the COUNTY acknowledges to be self-insured for General Liability and Automobile Liability with coverage limits of as set forth in Section 768.28, Florida Statutes.

The COUNTY agrees to maintain commercial insurance or to be self-insured for Workers' Compensation & Employers' Liability in accordance with Chapter 440, Florida Statutes.

Upon request, the COUNTY shall provide an affidavit or Certificate of Insurance evidencing self-insurance or commercial insurance up to sovereign immunity limits, which OUC agrees to find acceptable for the coverage mentioned above.

OUC's failure to request proof of insurance or to identify any deficiency in coverage or compliance with the foregoing requirements shall not relieve the COUNTY of its liability and obligations under this Agreement.

The COUNTY shall require all contractors performing work within the COUNTY right-of-way or easements to procure and maintain workers' compensation, commercial general liability, business auto liability and contractor's pollution liability coverage.

Each Party shall be listed as an additional insured on all general liability policies.

## **SECTION 9. PAYMENT OF COSTS.**

The COUNTY shall use the funds in the JPA Fund to make payments to the Contractor for the OUC Project. The COUNTY will make payments pursuant to payment procedures as set forth in the COUNTY's contract with the Contractor. Prior to the COUNTY making any payment to the Contractor, OUC shall review the invoice and provide a response to the



COUNTY within two (2) business days upon receipt of the invoice.

Notwithstanding any provisions seemingly to the contrary herein, the COUNTY shall pay to the Contractor all amounts for work that OUC has deemed acceptable. Any such amounts paid to the Contractor for work on the OUC Project shall be deducted from the JPA Fund. In the event any claim for payments for the OUC Project exceed the funds in the JPA Fund, the COUNTY shall provide to OUC a written accounting of all payments made and due to the Contractor for the OUC Project, together with a written request for funding the difference between such claim for payment and the funds in the JPA Fund. OUC shall pay the COUNTY the amount requested on the written request for payment within ten (10) calendar days of the date of the COUNTY's written request for payment.

If at any time the funds in the JPA Fund are insufficient to cover the costs of completing the OUC Project construction portion of the contract, and OUC fails to deposit sufficient funds to cover the shortfall within ten (10) calendar days of OUC's receipt of the COUNTY's written request and documentation showing the anticipated deficiency, the COUNTY shall have the right to notify the Contractor to stop work on the OUC Project, terminate that portion of the contract, and pay the Contractor for work completed on the OUC Project construction portion of the contract from any remaining funds in the JPA Fund. Upon completion of the OUC Project, approval of the water transmission system improvements construction work by OUC, and final payment to the Contractor, the COUNTY shall provide OUC with an accounting of the funds expended for the OUC Project and return any unexpended funds in the JPA Fund within forty-five (45) calendar days of final payment to the Contractor under the contract.

**SECTION 10. DISPUTE RESOLUTION.**

All claims, disputes and other matters in question between the Parties arising out of, or relating to, this Agreement or its performance or breach shall be resolved in accordance with the steps set forth:

- (a) Negotiation;
- (b) Non-binding mediation; and
- (c) Judicial resolution.

**SECTION 11. MAINTENANCE.**

Upon OUC's acceptance of title and risk of loss on the OUC Project, OUC shall be solely responsible for maintenance, repair, replacement, etc., required for the OUC Project.

**SECTION 12. COOPERATION DURING TERM OF AGREEMENT.**

The Parties agree to cooperate and work together during the term of this Agreement in order to maximize the benefit to Orange County residents and customers of OUC. If this Agreement requires modification as a result of circumstances, unforeseen at the time of Agreement execution, the Parties agree to meet in good faith and coordinate these modifications through an amendment to this Agreement.

**SECTION 13. EFFECTIVE DATE AND TERM OF AGREEMENT.**

This Agreement shall be effective as of the latest date of execution hereof by the Parties hereto (the "Effective Date") and remain in effect until any remaining balance in the JPA Fund is fully reimbursed by the COUNTY to OUC, the Joint Project is completed and cleared for service, and the COUNTY and OUC have taken title and risk of loss to the County Project and the OUC Project, respectively.

**SECTION 14. INDEMNIFICATION AND HOLD HARMLESS; DISCLAIMER OF DAMAGES.**

Each Party agrees to defend, indemnify and hold harmless the other Party, its officials and employees, from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses (including attorney's fees) attributable to its negligent acts or omissions, or those of its officials and employees acting within the scope of their employment, or arising out of or resulting from the indemnifying party's negligent performance under this Agreement. 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 either Party to assume any liability for the acts, omissions and/or negligence of the other Party.

Notwithstanding anything in this Agreement seemingly to the contrary, in no event will either party be liable to the other or any third party for incidental, consequential or special damages under the terms of this Agreement.

**SECTION 15. DISCLAIMER OF THIRD PARTY BENEFICIARIES.**

This Agreement is solely for the benefit of the Parties hereto and no right or cause of action shall accrue under or by reason hereof to or for the benefit of any third party.

**SECTION 16. TERMINATION.**

In addition to an automatic termination under Section 3, this Agreement may be terminated by mutual written agreement by the Parties executed with the same formality as the Agreement. If so terminated during the construction of the Joint Project, the COUNTY shall draw money from the JPA Fund to pay the COUNTY for the contract price for all work done related to the OUC Project until the date of termination, and shall draw money from the JPA

Fund to pay the COUNTY for the costs to remove any and all OUC facilities installed as part of the OUC Project. To the extent there may not be sufficient funds in the JPA Fund to reimburse the COUNTY for any of those costs, OUC shall pay the COUNTY those extra costs within ten (10) calendar days after termination.

**SECTION 17. NOTICES.**

Any notice required or allowed to be delivered hereunder shall be in writing and shall be deemed to be delivered when a) hand delivered to the official hereinafter designated for each Party, or b) upon receipt of such notice when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, and addressed to the representative or official and address set forth below, or at such other address as a Party shall specify by written notice to the other.

If to COUNTY: County Administrator  
P.O. Box 1393  
Orlando, Florida 32802-1393

With a copy to: Director of Utilities  
Orange County Utilities  
9150 Curry Ford Road  
Orlando, Florida 32825

and

Manager, Engineering Division  
Orange County Public Works  
4200 South John Young Parkway  
Orlando, Florida 32839

If to OUC: Director, Distribution Engineering  
Orlando Utilities Commission  
6003 Pershing Avenue  
Orlando, Florida 32822

When notice is required due to maintenance and repairs, the Parties shall notify each other at the contacts provided above or such other contact information that has been specified by written notice to the other Party.

**SECTION 18. SEVERABILITY.**

If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of the 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 effective. To that end, this Agreement is declared severable.

**SECTION 19. APPLICABLE LAW.**

This Agreement and the provisions contained herein shall be construed, controlled and interpreted according to the laws of the State of Florida, and the venue of any action arising hereunder shall lie in the 9<sup>th</sup> Judicial Circuit Court of Orange County, Florida.

**SECTION 20. ENTIRE AGREEMENT.**

This Agreement and its attachments contain the entire agreement between the Parties and supersedes all previous discussions, understanding and agreements between the Parties relating to the subject matter of this Agreement.

**SECTION 21. TIME OF THE ESSENCE.**

Time is of the essence in implementing the terms of this Agreement.

**SECTION 22. MODIFICATIONS.**

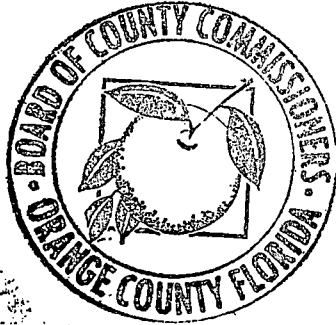
Any and all modifications to the provisions herein shall be made by mutual agreement of the Parties, in writing, and be executed by the Parties hereto.

**SECTION 23. RIGHTS-OF WAY; EFFECT OF AGREEMENT.**

Nothing contained herein is intended to or shall give or grant to OUC any ownership or other property interests or rights to any portion of the COUNTY's rights-of-way.

*[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.]*

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



**ORANGE COUNTY, FLORIDA**

By: Board of County Commissioners

BY: *Jerry L. Demings*  
for Jerry L. Demings, County Mayor

Date: 16 July, 2019

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

BY: *Craig A. Stopyca*  
for Deputy Clerk

Printed name: Craig A. Stopyca

**ORLANDO UTILITIES COMMISSION**

BY: *Clint Bullock*  
Clint Bullock, General Manager & CEO

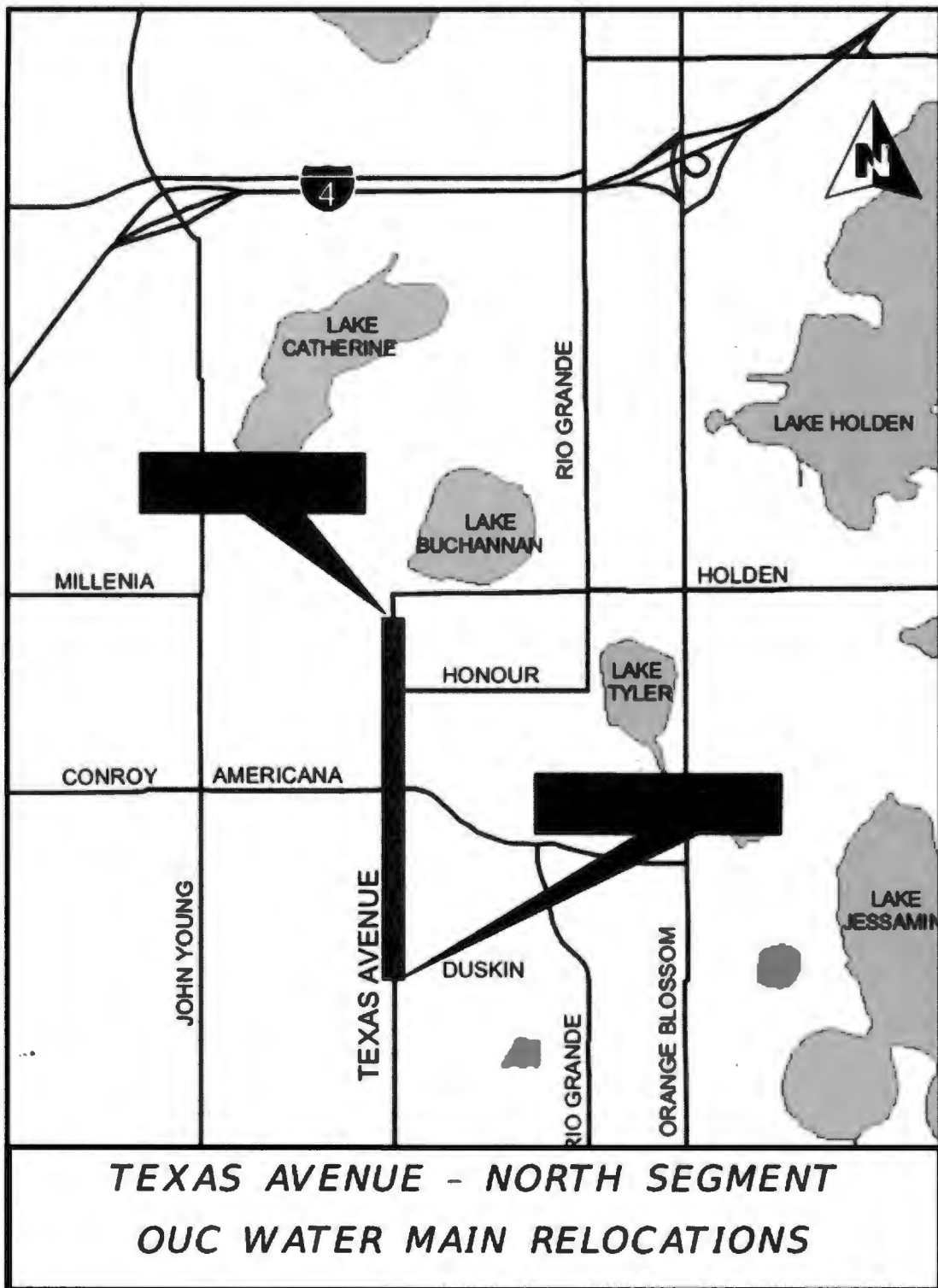
Date: April 3, 2019

FOR THE USE AND RELIANCE OF ORLANDO UTILITIES COMMISSION ONLY

Approved as to form:  
April 1<sup>st</sup>, 2019

*Wayne Morris*  
Print name: WAYNE MORRIS  
Attorney for OUC

Exhibit "A"



County/OUC Project Map