



Interoffice Memorandum

September 9, 2020

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

FROM: Eric Ushkowitz
Economic Development Administrator
County Administrator's Office
Phone: 407-836-7326

A handwritten signature in black ink, appearing to read "EU", written over a horizontal line.

SUBJECT: September 22, 2020 – Consent Item
Partial Assignment and Agreement Regarding Certain Rights and Obligations
Arising from Florida Job Growth Infrastructure Grant Agreement No. G0053

On June 18, 2019, the County and the Florida Department of Economic Opportunity (DEO) entered into a Florida Job Growth Infrastructure Grant Agreement, designated as DEO Agreement No.: G0053, and amended on May 5, 2020 (the "Grant Agreement"). Under the Grant Agreement, the DEO conditionally awarded the County a grant of up to \$16,000,000 as a funding source for the construction of the northern portion of an extension to Kirkman Road that includes the interchange with Sand Lake Road. This northern portion and interchange lies within the jurisdiction of the Florida Department of Transportation. The entire Kirkman Road extension runs between Carrier Drive on the north and Universal Boulevard on the south and includes the northern segment described above.

On December 17, 2019, Universal City Development Partners, Ltd. ("Universal") and the County entered into a Roadway and Infrastructure Agreement (Kirkman Road Extension) (the "Road Agreement") whereby Universal will plan, design, engineer, permit, and construct the Kirkman Road Extension.

Given that Universal is planning, designing, engineering, permitting, and constructing the Kirkman Road Extension, the Grant Agreement and the Road Agreement provided that the County would assign certain rights and obligations under the Grant Agreement to Universal.

The County and Universal have negotiated the subject Partial Assignment and Agreement to fulfill the terms of the Grant Agreement and the Road Agreement.

ACTION REQUESTED: Approval and execution of Partial Assignment and Agreement Regarding Certain Rights and Obligations Arising from Florida Job Growth Infrastructure Grant Agreement No. G0053 by and between Universal City Development Partners, LTD., and Orange County. District 6.

EU/JP
Attachment

BCC Mtg. Date: September 22, 2020

**PARTIAL ASSIGNMENT AND AGREEMENT
REGARDING CERTAIN RIGHTS AND OBLIGATIONS
ARISING FROM FLORIDA JOB GROWTH INFRASTRUCTURE
GRANT AGREEMENT NO. G0053**

This Partial Assignment and Agreement Regarding Certain Rights and Obligations Arising From Florida Job Growth Infrastructure Grant Agreement No. G0053 (“Assignment”) is entered into by and between **UNIVERSAL CITY DEVELOPMENT PARTNERS, LTD.**, a Florida limited partnership, whose address is 1000 Universal Studios Plaza, Orlando, Florida 32819 (“**Universal**”) and **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida, whose address is P.O. Box 1393, Orlando, Florida, 32801-1393 (“**County**”).

RECITALS

WHEREAS, on March 17, 1998, the Board of County Commissioners of Orange County (the “**BCC**”), in accordance with Ch. 163, Part III, Florida Statutes (the “**Redevelopment Act**”), adopted Resolution No. 98-M-06 which determined that an area along the International Drive corridor, as specifically defined and depicted therein, was suffering from a transportation blight and designated such area as a “Community Redevelopment Area;” and

WHEREAS, Universal owns property within the Community Redevelopment Area which it would like to develop; and

WHEREAS, Universal and County have entered into that certain “Roadway and Infrastructure Agreement (Kirkman Road Extension)” approved by County on December 17, 2019, and recorded under Instrument Number 20190800173 in the Public Records of Orange County, Florida (the “Road Agreement”), pursuant to which Universal will design, engineer, and construct an extension of Kirkman Road as a six lane road, with an additional two dedicated transit lanes, from Universal Boulevard northward to Carrier Drive (the “Kirkman Road Extension”), a portion of which will be located within the State of Florida Department of Transportation (“**FDOT**”) right-of-way jurisdictional boundary and which part will, upon

conveyance to FDOT and completion of construction, be a state road (the “**FDOT Section**”), and the remainder of which, being outside the FDOT right-of-way jurisdictional boundary, will be conveyed to County (the “**County Section**”); and

WHEREAS, the Florida Department of Economic Opportunity (“**DEO**”) and County have entered into that certain Florida Job Growth Infrastructure Grant Agreement designated as DEO Agreement No.:G0053, including all attachments and exhibits included therein, as amended by virtue of that certain Amendment One thereto dated May 5, 2020 (collectively, the “**Grant Agreement**”), whereby DEO has, subject to the terms and conditions set forth therein, awarded County up to Sixteen Million and No/100 Dollars (\$16,000,000.00) (the “**Grant Funds**”) as a funding source for construction of the Project (as defined in the Grant Agreement); and

WHEREAS, County and Universal wish to document their agreement as to which rights and obligations of the Grant Agreement are being assigned and assumed, in whole or in part, and subject to what conditions, provisos, and limitations, if any.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County hereby assigns, and Universal hereby accepts and assumes, the following rights and obligations arising from the Agreement upon the terms and conditions set forth in this Assignment.

1. **Recitals.** The foregoing Recitals are true and correct, form a material part of this Assignment and are incorporated fully herein by this reference.

2. **Defined Terms.** Any capitalized term not defined herein shall have the meaning ascribed to it in the Grant Agreement.

3. **Scope and Conditions of Partial Assignment and Agreement.** The following sets forth the County’s and Universal’s agreement with respect to the following sections and exhibits of the Grant Agreement:

(a) Section 1. Term. County assigns and Universal accepts and assumes, in whole, assignment of the rights and obligations set forth in Section 1 of the Grant Agreement.

(b) Section 2. Performance Requirements. County assigns and Universal assumes the County's obligation under Section 2 of the Grant Agreement to fully perform the services specified in the Grant Agreement to the extent the obligation to perform such services is being assigned to and assumed by Universal hereunder.

(c) Section 3. Type of Agreement. Universal acknowledges that the Grant Agreement is a cost reimbursement agreement and further acknowledges that it shall only receive Grant Funds from County to the extent County has received the same from DEO.

(d) Section 4. Release of Funds. Although Universal will not be receiving any Grant Funds directly from DEO, County assigns and Universal accepts and assumes, in whole, assignment of Section 4 of the Grant Agreement including, without limitation: (i) the obligation therein to not use Grant Funds for the exclusive benefit of any single company, corporation, or business entity; (ii) all obligations regarding immediate repayment of all funds, plus reasonable interest thereon, if DEO determines that any Grant Funds were so used, except that such repayment shall be made by Universal to County; and (iii) liability for all costs in excess of the amount paid by DEO.

(e) Section 5. Payments to Grantee. Universal acknowledges and agrees that:

1. County is required to submit invoices to DEO pursuant to Section 5 of the Grant Agreement in accordance with the requirements of the State of Florida Reference Guide for State Expenditures http://www.myfloridacfo.com/aadir/reference_guide/ and with detail sufficient for a proper pre-audit and post-audit thereof, including, without limitation, complying with the following:

a. Invoices must be legible and clearly reflect the goods/services provided in accordance with the terms of the Grant Agreement, and payment does not become due under the Grant Agreement until DEO accepts and approves the invoiced deliverable(s) and any required report(s).

b. Invoices must contain Grantee identification and Grant Agreement information, in addition to the invoice number and period and additional information as may be necessary to process an invoice.

c. Invoices must be submitted in accordance with the time requirements specified in the Grant Agreement's **Exhibit A**, Scope of Work.

2. DEO or the State of Florida may require that invoices be submitted electronically.

3. Payment shall be made in accordance with the time limits in Section 215.422, Florida Statutes.

4. Section 55.03(1), Florida Statutes address the rate of interest payable on judgments and decrees.

5. An advance may be provided as part of the Grant Agreement.

6. A Vendor Ombudsman to advocate for vendors dealing with a state agency is established in Section 215.422(5), Florida Statutes.

Because Universal is not a party to the Grant Agreement, Universal cannot submit invoices directly to DEO; therefore, County is not assigning, and Universal is not assuming, the obligation to submit invoices and documentation directly to DEO. Universal shall, however, timely provide County with legible invoices and/or other documentation in compliance with the requirements detailed in Section 5 of the Grant

Agreement, and summarized in part herein, as well as any additional information DEO or the State of Florida deems necessary to process a County invoice. Additionally, Universal shall provide electronic invoices to County, if required by DEO or the State of Florida. In return, as and when such invoices are approved by DEO and County receives Grant Funds, County agrees to pay Universal from such Grant Funds.

(f) Section 6. Requirements of Section 287.058(1)([a]) through ([i]), Florida Statutes. With regard to the subsections set forth in Section 6 of the Grant Agreement, the parties agree as follows:

6.a. Universal agrees to submit invoices to County in detail sufficient for a proper pre-audit and post audit thereof.

6.b. Universal agrees to not include travel expenses in its invoices.

6.c. Universal acknowledges and accepts that DEO shall have the right to unilaterally cancel the Grant Agreement for County's refusal to allow public access to all documents, papers, letters or other materials ("Public Records") made or received by County in conjunction with the Grant Agreement, unless the records are exempt from Section 24(a) of Article I of the State Constitution and Section 119.07(1), Florida Statutes. As such, to the extent that Universal has in its possession any Public Records made or received in conjunction with the Grant Agreement that qualify as public records under Section 24(a) of Article I of the State Constitution and Section 119.07(1), Florida Statutes and are not otherwise exempt, it shall timely provide such Public Records to the County upon request.

6.d. Universal agrees it shall perform those tasks contained in **Exhibit A** (Scope of Work) attached to and incorporated in the Grant Agreement as are being assigned by County and assumed by Universal as set forth in Section 3.(11) of this Assignment.

6.e. Universal acknowledges and accepts that DEO shall not pay County until DEO has determined satisfactory completion of each Deliverable described in the Scope of Work pursuant to the Grant Agreement. County assigns and Universal accepts and assumes the obligation to satisfactorily complete each Deliverable and the right to be paid from Grant Funds for same. County agrees to remit Grant Funds it receives from DEO to Universal within forty-five (45) days after County receives such Grant Funds from DEO.

6.f. Universal agrees to comply with all criteria stated in **Exhibit A** (Scope of Work) which are being assigned to Universal under Section 3.(kk) of this Assignment, and to complete same by the final date by which such criteria must be met for completion of the Grant Agreement.

6.g. Universal acknowledges and accepts that the Grant Agreement may not be renewed by DEO unless agreed to in writing by County and DEO.

6.h. Universal acknowledges and accepts that if it fails to perform in accordance with the terms of the Grant Agreement, DEO shall apply financial consequences as set forth in **Exhibit A** (Scope of Work) of the Grant Agreement and Universal agrees that it shall be responsible for such consequences to the extent the same arise from Universal's failure, including by any of its employees, officers, contractors, agents, or representatives, but not to the extent that same arise from any failure of County.

6.i. Universal acknowledges and agrees that County and Universal shall own all of their respective intellectual property rights preexisting the starting date of the Grant Agreement and the State of Florida and DEO shall own intellectual property rights thereafter created in performance of the Scope of Work, if any, as set forth in subsection 6.i. of the Grant Agreement and that proceeds derived from the sale, licensing, marketing, or other authorization related to any such state-

owned intellectual property right shall be handled in the manner specified by applicable state statute.

(g) Section 7. Representations and Warranties. With regard to the subsections set forth in Section 7 of the Grant Agreement, the parties agree as follows:

7.a. Inasmuch as subsection 7.a. of the Grant Agreement is a representation from County to DEO that County has taken all necessary actions to authorize and execute the Grant Agreement and properly done so, no rights or obligations set forth in subsection 7.a. are being assigned to or assumed by Universal.

7.b. Inasmuch as subsection 7.b. is a representation by County that neither its execution of the Grant Agreement nor the performance of the transactions contemplated therein violate the County's Charter, constitute a default of County's indentures or any other material agreement, or constitute a violation of any applicable law or regulation, subsection 7.b is not assignable and is neither assigned to nor assumed by Universal. Likewise, Universal cannot assume County's obligation to warrant that County has never been convicted of a public entity crime nor been placed on the discriminatory vendor list. Similarly, Universal cannot assume County's obligation to represent to DEO that none of County's elected or appointed officers, agents, employees or other persons acting on its behalf has taken any act in furtherance of an offer, payment, promise to pay, authorization, or ratification of the payment, directly or indirectly, of any gift, money or anything of value to a government official or to obtain or retain business from any person or entity in violation of applicable law. Universal can, and does, represent that: (i) it is duly authorized to execute this Assignment and undertake the performance of the transaction contemplated by the Grant Agreement; (ii) it has never been convicted of a public entity crime nor been placed on the discriminatory vendor list; and (iii) it has not offered, paid, promised to pay, authorized or ratified payment, directly or indirectly, of any gift,

money or anything of value to a government official in relation to the Grant Agreement or this Assignment.

7.c. Universal cannot assume obligations directly related to the required representations by the County in subsection 7.c, including that no event, change or condition with respect to County has occurred that has had, or would reasonably be expected to have, a material adverse effect on the Project. Nevertheless, for its part, Universal, represents and warrants that (i) no litigation, investigation, claim, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of or before any arbitrator or governmental authority is pending or, to Universal's knowledge, threatened by or against Universal or against any of its properties or assets, which, individually or in the aggregate, could reasonably be expected to result in a material adverse effect on the financial condition of Universal, the Project, or Universal's ability to perform its obligations under this Assignment and (ii) with respect to the Project, no state or federal criminal investigation, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of the Office of the Attorney General of the State of Florida, any State Attorney in the State of Florida, the United States Department of Justice, or any other prosecutorial or law enforcement authority is pending or, to the knowledge of Universal, threatened by or against Universal.

7.d. Universal cannot assume obligations directly related to representations and warranties by County described in subsection 7.d. Nevertheless, for its part, Universal represents and warrants that no information, report, financial statement, exhibit or schedule furnished by Universal to County or DEO in connection with the Grant Agreement including, without limitation, the Proposal, or delivered by Universal pursuant to the Grant Agreement when taken together, contained or contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements contained therein, in the light of the circumstances under which they were made, not misleading.

(h) Section 8. Laws Applicable to This Agreement. With regard to the subsections set forth in Section 8 of the Grant Agreement, the parties agree as follows:

8.a. Universal acknowledges and accepts all rights and obligations set forth in subsection 8.a. of the Grant Agreement.

8.b. Universal acknowledges and accepts all rights and obligations set forth in subsection 8.b. of the Grant Agreement.

8.c. County assigns and Universal accepts and assumes all rights and obligations set forth in subsection 8.c. of the Grant Agreement prohibiting use of any of the Grant Funds for lobbying.

8.d. County assigns and Universal accepts and assumes all rights and obligations set forth in subsection 8.d. of the Grant Agreement regarding costs of investigation by the Inspector General; provided, however, Universal shall have no obligation to reimburse DEO if any investigation which led to the suspension or debarment of County resulted solely from County action or inaction.

8.e. Universal acknowledges and agrees to abide by the requirements regarding the convicted vendor list. County assigns and Universal accepts and assumes all rights and obligations set forth in subsection 8.e. of the Grant Agreement provided, however, if any notice is required to be given by Universal it shall be timely given to County rather than directly to DEO.

8.f. County assigns and Universal accepts and assumes all rights and obligations set forth in subsection 8.f. of the Grant Agreement governing limitations on advertising of the Grant Agreement.

8.g. Inasmuch as Universal is not a nongovernmental organization that sponsors a program financed wholly or in part by state funds, no rights or obligations arising under subsection 8.g of the Grant Agreement are being assigned to or assumed by Universal.

8.h. Mandatory Disclosure Requirements:

h.1) Conflict of Interest. Universal acknowledges that the Grant Agreement is subject to Chapter 112, Florida Statutes. However, because Universal's employees, including seasonal employees, number in the tens of thousands, Universal is unable, without unreasonable effort, to determine and disclose whether any of its employees are also employees of the State. Accordingly, County assigns, and Universal assumes only the obligation to disclose the name of any State employee who may own, directly or indirectly, more than a five percent (5%) interest in Universal, its parent or subsidiaries, as such the disclosure obligation is set forth in the third sentence of Section 8.h.1) of the Grant Agreement.

h.2) Vendors on Scrutinized Companies Lists. Universal assumes the obligation to be aware of and understand the provisions of s. 287.134(2)(a), F.S. and certifies that it is not: (1) listed on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, F.S.; (2) engaged in a boycott of Israel; (3) listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, F.S.; (4) engaged in business operations in Cuba or Syria; or (5) engaged in business operations with the government of Venezuela or knowingly engaged in business operations with any company doing business with the Government of Venezuela. Universal makes such certification for itself only and not for each and every entity that may be in some way construed as being affiliated with Universal through a parent entity or otherwise. Universal acknowledges that if it is placed on any of the foregoing lists or is found to have

falsely certified the above DEO may immediately terminate the Grant Agreement and take such other action as may be authorized by law, if any, and in such case Universal agrees to be solely responsible for any financial penalty imposed by DEO or the State of Florida.

h.3) Discriminatory Vendors. Universal does not appear on any discriminatory vendor list pursuant to s.287.134, F.S., nor does any affiliated entity appear on such a list. Universal agrees that it shall disclose to County and DEO if Universal is subsequently placed on such a list or if Universal becomes aware of an affiliated entity being placed on such a list as set forth in subsection 8.h. 3) of the Grant Agreement.

h.4) Abuse, Neglect, and Exploitation Incident Reporting. Universal acknowledges the County's obligations under subsection 8.h.4) of the Grant Agreement.

h.5) Information Release. County assigns and Universal accepts and assumes all rights and obligations set forth in subsection 8.h.5) to the extent required under the Florida Public Records Act, including as described in Section 119.0701, Florida Statutes, with the express understanding that nothing herein shall be construed as a waiver of Universal's right to assert any available exemption including, but not limited to, the exemption for trade secrets provided in section 815.045, Florida Statutes, and the exemption for building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attraction, entertainment or resort complex as set forth in Section 119.071(3)(c)1, Florida Statutes, and provided that, where the provisions of subsection 8.h.5) require notification or delivery to the DEO such notification or delivery shall be tendered by Universal to the County instead. Any documents in Universal's possession do not become public records based on this assignment alone, and such documents are only public records to the extent they would be public records

under Section 119.0701, Florida Statutes. **IF UNIVERSAL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO UNIVERSAL'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS** at Angela Maldonado, Administrative Support Supervisor, Fiscal & Operational Services Division, Public Works Department 407-836-7708, angela.maldonado@ocfl.net, OR Ralphetta Aker, Manager, Fiscal & Operational Services Division, Public Works Department 407-836-8011, ralphetta.aker@ocfl.net.

h. 6) Funding Requirements of s. 215.971(1), F.S. County assigns and Universal accepts and assumes all rights and obligations arising under subsection 8.h.6) of the Grant Agreement provided, however, Universal only assumes the obligation to refund unobligated or overpaid Grant Funds to the extent Universal has actually received same from County.

h.7) Section 288.101, F.S. County assigns and Universal accepts and assumes all rights and obligations set forth in subsection 8.h. 7) of the Grant Agreement.

(i) Section 9. Final Invoice. County assigns and Universal accepts and assumes all rights and obligations set forth in Section 9 of the Grant Agreement provided, however, Universal shall submit the Final Invoice to County rather than to DEO, and shall do so no later than 30 days after termination or expiration of the Grant Agreement.

(j) Section 10. Recoupment of Funds. County assigns and Universal accepts and assumes all rights and obligations set forth in Sections 10.a. and 10.b. of the Grant Agreement governing recoupment of overpayment of funds due to unearned or disallowed

funds and/or non-compliance with the Grant Agreement. However, County's right to recoup such overpayments from Universal shall only apply to the extent that Universal received such overpayments and such non-compliance was caused by or the fault of Universal.

(k) Section 11. Audits and Records. Universal and County agree that with respect to the County's obligations under Section 11.a.-f., inclusive, of the Grant Agreement, Universal upon the written request of County, shall timely provide to County records, reports, invoices, or other documents required under those certain provisions of Exhibit A (Scope of Work) that are being assigned hereunder to Universal, so that County may then retain such documentation and make the same available to those entities listed in subsection 11.a. of the Grant Agreement as and if required.

(l) Section 12. Employment Eligibility Verification. County does not assign, and Universal does not accept or assume, the obligation to verify the employment eligibility of all new employees County hires during the term of the Grant Agreement; provided, however, Universal agrees to continue to utilize an alternative system of equal or better quality to verify the employment eligibility of Universal employees. Universal does, however, assume the obligation to require that all contracts and subcontracts entered pursuant to the Grant Agreement contain a requirement that contractors and subcontractors performing work or providing services pursuant to the Grant Agreement utilize the E-Verify system to verify the employment eligibility of all new employees hired during the term of their respective contract or subcontract.

(m) Section 13. Duty of Continuing Disclosure of Legal Proceedings. To the extent the obligations set forth in Section 13 of the Grant Agreement relate to legal proceedings arising from or directly related to the Project and are not construed as a general duty of disclosure of unrelated litigation, and only to such extent, County assigns and Universal accepts and assumes the obligation to make such disclosures, including notifications of any Proceeding, as such term is defined in the Section 13.a. of the Grant Agreement and to the extent Universal has knowledge of such Proceeding, relating to or affecting

Universal's contractor(s) for the Project, provided, however, that if any notice is required to be given by Universal pursuant to Section 13 it shall be given to County rather than directly to DEO.

(n) Section 14. Assignments and Subcontracts. With regard to the subsections set forth in Section 14 of the Grant Agreement, the parties agree as follows:

14.a. County assigns and Universal accepts and assumes all rights and obligations set forth in subsection 14.a. of the Grant Agreement governing assignment and sub-licensing of the Grant Agreement.

14.b. County assigns and Universal accepts and assumes all rights and obligations set forth in subsection 14.b. of the Grant Agreement governing subcontracting of the work to be performed under the Grant Agreement; provided, however, Universal specifically acknowledges that no right or claim of sovereign immunity possessed by County is assigned to Universal.

14.c. County assigns and Universal accepts and assumes all rights and obligations set forth in subsection 14.c. of the Agreement governing personnel.

14.d. County assigns and Universal accepts and assumes all rights and obligations set forth in subsection 14.d. of the Grant Agreement governing succession of rights.

14.e. County is not assigning, and Universal is not assuming, the obligation to pay subcontractors within seven working days of County's receipt of Grant Funds because Universal will have already paid its contractors and subcontractors for Project work from its own funds and submitted documentation thereof to County prior to receiving payment of Grant Funds for such work from County.

14.f. County assigns and Universal accepts and assumes the obligation to provide monthly reports regarding certified and non-certified minority and service-disabled veteran subcontractor and supplier participation set forth in subsection 14.f. of the Grant Agreement provided, however, Universal shall provide same to County and not directly to DEO.

14.g. Universal acknowledges and accepts the statement set forth in subsection 14.g. of the Grant Agreement governing beneficiaries.

(o) Section 15. Nonexpendable Property. County assigns and Universal accepts and assumes all rights and obligations set forth in Section 15 of the Grant Agreement governing, without limitation, the listing, disposition, and use of property.

(p) Section 16. Requirements Applicable to the Purchase of or Improvements to Real Property. Inasmuch as Grant Funds will only be used with regard to the construction of improvements within public right-of-way owned by the State of Florida Department of Transportation, Universal cannot grant a lien on or security interest in such property and, therefore, cannot accept or assume the obligations set forth in Section 16 of the Grant Agreement.

(q) Section 17. Information Resource Acquisition. County assigns and Universal accepts and assumes all rights and obligations set forth in Section 17 of the Grant Agreement governing purchase of or impact upon any Information Technology Resource (ITR) .

(r) Section 18. Insurance. County assigns and Universal accepts and assumes all rights and obligations set forth in Section 18 of the Grant Agreement governing insurance; provided, however, Certificates of Insurance, if any, shall name both DEO and County as additional insureds and any notice to be provided regarding insurance shall be given to both DEO and County.

(s) Section 19. Confidentiality and Safeguarding Information. County assigns and Universal accepts and assumes all rights and obligations set forth in Section 19 of the Grant Agreement governing implementation of procedures, notifications, and compliance with the Florida Public Records Act, Chapter 119, F.S., and other applicable state and federal laws; provided, however, if any notice is required to be given by Universal pursuant to Section 19 it shall be given to County rather than directly to DEO.

(t) Section 20. Warranty of Ability to Perform. County assigns and Universal accepts and assumes all rights and obligations set forth in Section 20 of the Grant Agreement provided, however, if any notice is required to be given by Universal pursuant to Section 20 it shall be given to County rather than directly to DEO.

(u) Section 21. Patents, Copyrights, and Royalties. County assigns and Universal accepts and assumes all rights and obligations set forth in Section 21 of the Grant Agreement as they pertain to intellectual property, if any, arising directly from Universal's use of the Grant Funds. County and Universal agree that nothing in this Assignment shall be construed as a waiver, abandonment, release, conveyance, grant of license or other relinquishment of any right, title or interest held by Universal in any intellectual property, trademarks, service marks, patents, copyrights or other property existing or later developed or perfected.

(v) Section 22. Independent Contractor Status. County assigns and Universal accepts and assumes all rights and obligations set forth in Section 22 of the Grant Agreement governing Grantee's status as an independent contractor.

(w) Section 23. Electronic Funds Transfer. Inasmuch as Section 23 of the Agreement provides for County to enroll in the State's Electronic Funds Transfer program in order to receive Grant Funds electronically, and inasmuch as DEO will not be paying Universal directly, County is not assigning any rights or obligations set forth in Section 23 to Universal.

(x) Section 24. Modification. County assigns and Universal accepts and assumes all rights and obligations set forth in Section 24 of the Grant Agreement with respect to, without limitation, due diligence obligations and notice of modification; provided, however, any request for modification must be made by County to DEO, or vice versa.

(y) Section 25. Time is of the Essence. County assigns and Universal accepts and assumes all rights and obligations set forth in Section 25 of the Grant Agreement and agrees to comply with any applicable deadlines.

(z) Section 26. Construction; Interpretation. Universal acknowledges and accepts the rights and obligations set forth in Section 26 of the Grant Agreement governing construction and interpretation of the Grant Agreement.

(aa) Section 27. Termination. Universal acknowledges and accepts the rights and obligations set forth in Section 27 of the Grant Agreement governing termination of the Grant Agreement.

(bb) Section 28. Dispute Resolution. Universal acknowledges and accepts the rights and obligations set forth in Section 28 of the Grant Agreement.

(cc) Section 29. Indemnification. Inasmuch as DEO is an agency of the State and County is a subdivision of the State, pursuant to §768.28(19), F.S., neither has indemnified the other under Section 29 of the Agreement. Universal agrees, however, to indemnify DEO as would otherwise be applicable under subsections 29. a., b., c., d. and e. of the Grant Agreement, to wit:

a. Universal shall indemnify, defend, and hold harmless DEO, and the State of Florida (except FDOT and its officers, agent and employees, which shall be indemnified by Universal under and pursuant to that certain State of Florida Department of Transportation Construction Agreement to be entered into by and between Universal and FDOT (the “FDOT Agreement”)) and their respective

officers, agents and employees from suits, actions, damages and costs of every name and description, including attorneys' fees, arising from or relating to personal injury or damage to real or personal tangible property alleged to be caused in whole or in part by Universal, its agents, employees, partners, contractors or subcontractors; provided, however, that Universal shall not indemnify, defend, and hold harmless DEO and the State of Florida, and their respective officers, agents and employees for that portion of any loss or damages proximately caused by the intentional or negligent act or omission of County, DEO, the State of Florida or their respective officers, agents, employees, contractors or subcontractors.

b. Universal shall indemnify, defend, and hold harmless DEO and the State of Florida (except FDOT and its officers, agent and employees, which shall be indemnified by Universal under and pursuant to the FDOT Agreement) from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right; provided, however, that the foregoing obligation shall not apply to DEO's or the State of Florida's misuse or modification of Universal's products or DEO's or the State of Florida's operation or use of Universal's products in a manner not contemplated by this Agreement. If any product is the subject of an infringement suit, or in Universal's opinion is likely to become the subject of such a suit, Universal may, at Universal's sole expense, procure for DEO and the State of Florida the right to continue using the product or to modify it to become non-infringing. If Universal is not reasonably able to modify or otherwise secure use rights, Universal shall remove the product and refund the amounts paid in excess of a reasonable fee, as determined by DEO in its sole and absolute discretion, for past use. Neither DEO nor the State of Florida shall be liable for any royalties.

c. Universal's obligations under the two immediately preceding subsections, with respect to any legal action, are contingent upon the County giving Universal

(1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Universal's sole expense, and (3) assistance in defending the action at Universal's sole expense. Universal shall not be liable for any cost, expense, or compromise incurred or made by County, DEO or the State of Florida in any legal action without Universal's prior written consent, which shall not be unreasonably withheld.

d. Universal expressly assumes any and all liability for payment to its own agents, employees, contractors, subcontractors, consultants, sub-consultants, as applicable, and shall indemnify and hold DEO harmless from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to any denial or reduction of any invoice submitted by Universal to County for reimbursement of costs under the Grant Agreement where DEO has imposed financial consequences pursuant to the terms of the Grant Agreement as and to the extent such financial consequences result from Universal's non-compliance with the Grant Agreement.

e. Universal further agrees to carry, or cause its contractors, subcontractors, consultants and sub-consultants to carry, and keep in force Worker's Compensation insurance as required by the State of Florida under the Worker's Compensation Law.

f. Universal agrees to include the following indemnification in all contracts with contractors, subcontractors, consultants and sub-consultants, who perform work in connection with the Grant Agreement:

"The contractor/subcontractor/consultant/sub-consultant shall indemnify, defend, save and hold harmless the Florida Department of Economic Opportunity and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any

negligent act or occurrence of omission or commission of the contractor/subcontractor/consultant/sub-consultant, its officers, agents or employees.”

(dd) Section 30. Limitation of Liability. Universal acknowledges and accepts the rights and obligations set forth in Section 30 of the Grant Agreement.

(ee) Section 31. Preservation of Remedies; Severability; Right to Set-Off. Universal acknowledges and accepts the rights and obligations set forth in Section 31 of the Grant Agreement.

(ff) Section 32. Force Majeure and Notice of Delay from Force Majeure. County assigns and Universal accepts and assumes all rights and obligations set forth in Section 32 of the Grant Agreement provided, however, if any notice is required to be given by Universal pursuant to Section 32 it shall be given to County rather than directly to DEO.

(gg) Section 33. Attorneys’ Fees; Expenses. Universal acknowledges and accepts the rights and obligations set forth in Section 33 of the Grant Agreement.

(hh) Section 34. Entire Agreement; Amendment; Waiver. Universal acknowledges and accepts the rights and obligations set forth in Section 34 of the Grant Agreement.

(ii) Section 35. Authority of Grantee’s Signatory. The obligations imposed on County pursuant to Section 35 of the Grant Agreement were satisfied upon execution of the Grant Agreement by DEO and, therefore, no right or obligations under Section 35 are being assigned to Universal.

(jj) Section 36. Counterparts. Universal acknowledges and accepts the rights and obligations set forth in Section 36 of the Grant Agreement.

(kk) Section 37. Contact Information and Notices. County assigns and Universal accepts and assumes all rights and obligations set forth in Section 37 of the Grant

Agreement; provided, however, Universal shall provide any notice due under the Grant Agreement to County rather than directly to DEO unless County directs Universal otherwise in writing. Also, unless County directs Universal otherwise, notice to County shall be directed to:

Eric Ushkowitz
Economic Development Administrator
201 South Rosalind Ave, Fifth Floor
Orlando, Florida 32802-1393
Telephone: (407) 836-7370
Email: Eric.Ushkowitz@ocfl.net

(II) Exhibit A, Scope of Work. Universal acknowledges the Project description set forth in Section 1 of Exhibit A (Scope of Work). County assigns, and Universal assumes, County's obligation to complete the Project within the required timeframe.

County further assigns, and Universal accepts and assumes, County's obligations to design, permit, and construct the Project in accordance with Section 2.b. of Exhibit A (Scope of Work). The parties acknowledge and agree that such design, permitting, and construction shall be consistent with the Road Agreement.

County further assigns, and Universal accepts and assumes, County's obligation set forth Section 2.c. of Exhibit A (Scope of Work) to certify New Jobs created by Universal as a result of the Project.

Universal agrees to cooperate with County and/or DEO with regard to DEO's actions to monitor progress, review reports, and conduct site visits pursuant to Section 3 of Exhibit A (Scope of Work).

County assigns, and Universal accepts and assumes, County's obligation to complete the "Tasks" set forth in Section 4 of Exhibit A (Scope of Work).

Universal agrees that it shall be responsible for any and all financial consequences imposed by DEO under and pursuant to Section 5 of Exhibit A (Scope of Work) but only to the extent Universal fails to create 2,534 New Jobs as a result of the Project.

Universal agrees that it shall be responsible for any and all financial consequences imposed by DEO under and pursuant to Section 8 of Exhibit A (Scope of Work) if Universal fails to complete the Tasks set forth in Section 4 of Exhibit A (Scope of Work).

Universal and County agree that with respect to County's reporting and submittal obligations under Section 6 and Section 7 of Exhibit A (Scope of Work), Universal, upon the request of County, shall provide to County any notices, invoices, support documentation, reports, certifications, and/or other documents to be provided to DEO pursuant to Sections 6 and 7 of Exhibit A (Scope of Work) as and to the extent the same relate to Tasks, completion of work, or New Jobs created by Universal as a result of the Project.

County assigns, and Universal accepts and assumes, County's rights and obligations under Section 9 (Notification of Instances of Fraud), Section 10 (Grantee's Responsibilities Upon Termination), Section 11 (Non-Discrimination), Section 12 (Disposition of Project Property), and Section 13 (Criteria for Measuring Return on Investment) of Exhibit A (Scope of Work).

(mm) Exhibit B, Audit Requirements. Universal agrees that with respect to the County's audit obligations in Exhibit B, Universal, upon the written request of County, shall provide to County any and all reports, invoices, and other documents required under Exhibit B, Audit Requirements, pertaining to Universal's completion of those certain tasks set forth in Exhibit A (Scope of Work) that are being assigned hereunder to Universal, so that County may retain such documentation and make same available to the Chief Financial Officer or Auditor General as and if required.

(nn) Exhibit C, Audit Compliance Certification. The certification required by Exhibit C relates to all financial assistance received by County under any agreement between County and DEO, and, as such, Universal assumes no obligation for filing the same.

(oo) Exhibit D. Exhibit D was intentionally omitted from the Grant Agreement.

(pp) Exhibit E, Grantee's Resolution Exhibit E is evidence of County's authority to execute the Grant Agreement and, therefore, is not being assigned.

(qq) Exhibit F, Notice of Completion and Engineer's Certification of Compliance. County assigns and Universal accepts and assumes all rights and obligations set forth in Exhibit F, Notice of Completion and Engineer's Certification of Compliance; provided, however, Universal shall provide such notice and certification to County rather than directly to DEO unless County directs otherwise in writing.

4. **Modification of Grant Agreement.** Prior to County agreeing to any other amendment or any other modification of the Grant Agreement that would amend or modify any of the terms being assigned to or acknowledged by Universal hereunder, including the extension of any dates by which the performance of certain actions or events are required to occur, County shall consult with Universal and, to the extent such term or terms have been assigned to, assumed by, agreed to and/or accepted by Universal, obtain Universal's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

5. **Scope.** The County acknowledges and agrees that this Assignment is a partial assignment of the Grant Agreement and as such only those terms of the Grant Agreement that are assigned to, assumed by, agreed to and/or accepted by Universal hereunder shall be deemed to have been assigned to, assumed by, agreed to and/or accepted by Universal.

6. **Sovereign Immunity.** Notwithstanding anything in this Assignment to the contrary, it is specifically understood and agreed that nothing in this Assignment shall constitute

or be construed as a waiver of the County's sovereign immunity protections or of the provisions of Section 768.28, Florida Statutes.

7. **Controlling Law.** This Assignment shall be construed, interpreted, and controlled according to the laws of the State of Florida. Venue for any action arising out of this Assignment shall be in a court of competent jurisdiction located in Orange County, Florida.

8. **Severability.** The invalidity or unenforceability of any one or more provisions of this Assignment shall not affect the validity or enforceability of the remaining portions of this Assignment, provided the remaining portions of the Assignment can have meaning and effect without those invalid or unenforceable provisions.

9. **Notice.** If Universal desires to give notice to County it shall do so in accordance with Section 37 of the Grant Agreement utilizing County's contact information found therein. If County desires to give notice to Universal it shall also do so in accordance with Section 37 but utilizing Universal's following contact information:

UNIVERSAL CITY DEVELOPMENT PARTNERS, LTD.
1000 Universal Studios Plaza
Orlando, Florida 32819-7610
Attn: John Sprouls, Executive Vice President
Phone: 407-363-8000
Email: John.Sprouls@universalorlando.com

With a copy to: UNIVERSAL CITY DEVELOPMENT PARTNERS, LTD.
1000 Universal Studio Plaza
Orlando, Florida 32819-7610
Attn: Adam Williams, Senior Vice President of Legal Affairs, Corporate
Transactions, Universal Parks & Resorts
Phone: 407-363-8000
Email: Adam.Williams@universalorlando.com

SHUTTS & BOWEN LLP
300 South Orange Avenue, Suite 1600
Orlando, Florida 32801
Attn: Juli Simas James, Esquire
Phone: 407-835-6774
Email: jjames@shutts.com

10. **Counterparts.** This Assignment may be executed in up to three (3) counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute but one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.

11. **Effective Date.** This Partial Assignment and Agreement Regarding Certain Rights and Obligations Arising From Florida Job Growth Infrastructure Grant Agreement No. G0053 shall be effective upon the date it has been fully executed by Universal and County.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, and in consideration of the mutual covenants set forth above, Universal and County have each caused their duly authorized representatives to execute this Assignment.

UNIVERSAL:

UNIVERSAL CITY DEVELOPMENT PARTNERS, LTD., a Florida limited partnership

By: Universal City Florida Holding Co. II, its general partner

By: Universal City Property Management II LLC, a Delaware limited liability company, its general partner

By: [Signature]
John R. Sprouls,
Executive Vice President

Date: 9/8/2020

COUNTY:

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: [Signature]
Jerry L. Demings, County Mayor
fd

ATTEST:

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

By: [Signature]
Deputy Clerk

Print name: Katie Smith

Date: SEP 22 2020

