



Interoffice Memorandum

June 15, 2018

TO: Mayor Teresa Jacobs  
and Board of County Commissioners

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

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

PHONE NUMBER: (407) 836-7894

SUBJ: Joint Participation Agreement between Orange County and Osceola  
County for Contemplated Improvements at Ward Road and Simpson Road  
– Discussion Item

Submitted for approval and execution is a Joint Participation Agreement between Orange County and Osceola County for contemplated improvements at Ward Road and Simpson Road. The intersection of Ward Road at Simpson Road is located just south of the Orange/Osceola County line within Osceola County.

Several new residential developments have been constructed along Ward Road, which have caused an increase in traffic volumes at the Ward Road/Simpson Road intersection. Currently, drivers are restricted from turning left onto Simpson Road. Orange County citizens have requested improved access at this Osceola County intersection, including signalization.

Osceola County has programmed the widening of Simpson Road from two lanes to four lanes with construction beginning in the year 2022. Osceola County has agreed to cooperate with Orange County to advance intersection improvements ahead of the widening project.

This Agreement requires Orange County to pay costs for design and construction of a temporary span wire signal and to pay costs for construction of interim roadway improvements, which include an eastbound left turn lane from Simpson Road to Ward Road and separate southbound left and right turn lanes from Ward Road onto Simpson Road. It is anticipated that costs related to the temporary signal are \$150,000 and costs related to the roadway improvements are \$300,000.

Osceola County has agreed to design the interim roadway improvements and has purchased the right of way needed for the left and right turn lanes on Ward Road. Osceola County has also agreed to modify their widening plans to replace the temporary span wire signal with a mast arm signal.

June 15, 2018

TO: Mayor Teresa Jacobs and Board of County Commissioners

SUBJ: **Joint Participation Agreement between Orange County and Osceola County for Contemplated Improvements at Ward Road and Simpson Road**

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Staff recommends approval and execution of the Joint Participation Agreement between Orange County and Osceola County for contemplated improvements at Ward Road and Simpson Road as a benefit to Orange County citizens. This agreement has been approved as to form by the County Attorney's Office and the Risk Management Division.

**Action Requested: Approval and execution of Joint Participation Agreement between Orange County and Osceola County for contemplated improvements at Ward Road and Simpson Road. District 4.**

MVM/CL/wjn

Attachments

BCC Mtg. Date: July 31, 2018

**JOINT PARTICIPATION AGREEMENT  
BETWEEN  
ORANGE COUNTY AND OSCEOLA COUNTY  
FOR CONTEMPLATED IMPROVEMENTS AT  
WARD ROAD AND SIMPSON ROAD**

This Joint Participation Agreement between Orange County and Osceola County for contemplated improvements at Ward Road and Simpson Road (the "Agreement"), effective as of the latest date of execution (the "Effective Date"), is entered into by and between Orange County, a charter county and political subdivision of the State of Florida, hereinafter called "Orange," and Osceola County, a political subdivision of the State of Florida, hereinafter called "Osceola."

**WITNESSETH**

WHEREAS, Osceola and Orange wish to cooperate in making certain improvements to those certain two-lane roadways known as Simpson Road and Ward Road; and

WHEREAS, Osceola is in the process of design and engineering work for the ultimate widening of Simpson Road (the "Ultimate Roadway Plans"), with construction anticipated in its fiscal year 21-22; and

WHEREAS, the ultimate widening of Simpson Road will include independent left and right turn lanes from Ward Road onto Simpson Road (the "Turn Lanes") and a mast arm signal at the Intersection (the "Intersection Improvement"); and

WHEREAS, Orange has requested certain modifications to the Ultimate Roadway Plans (the "Interim Roadway Plans") to include earlier construction of the Turn Lanes and Intersection Improvement prior to the ultimate widening of Simpson Road (the "Interim Improvements"), to include a temporary strain pole signal (the "Temporary Signal"); and

WHEREAS, the parties have reached agreement regarding each one's participation in the design, funding, permitting, construction, and maintenance of the contemplated Interim Improvements.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties hereto, Orange and Osceola agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated herein as fully as if set forth hereafter.

2. Roadway Plans; Completion of Interim Improvements.

(a) Within thirty (30) days of the Effective Date, Osceola will provide a copy of its draft Interim Roadway Plans to Orange for its use in designing the Temporary Signal. Interim Roadway improvements will include a turn lane onto Ward Road from Simpson, and a left turn lane onto Simpson from Ward.

(b) Within one hundred eighty (180) days of its receipt of the draft Interim Roadway Plans, Orange shall complete the design of the Temporary Signal and provide such design to Osceola.

(c) Osceola shall finalize the Interim Roadway Plans to include the Temporary Signal within sixty (60) days of its receipt from Orange.

(d) Osceola shall permit and construct the Interim Improvements no later than nine (9) months after payment by Orange of the estimated total costs for the Interim Improvements, as further described below.

(e) Upon completion of construction, Osceola shall maintain the Interim Improvements, including the Temporary Signal.

3. Cost Estimate.

(a) The parties agree that the current total estimated cost (the "Cost Estimate") of the Interim Improvements is \$450,000.

(b) Osceola shall pursue its customary bid process for construction of the Interim Improvements.

(c) If the bid chosen by Osceola for the Interim Improvements is more than ten percent (10%) higher than the agreed-upon Cost Estimate, then Osceola shall not award the bid and the parties shall meet in good faith to discuss the bid amount.

(d) If the parties agree to the new bid amount, this Agreement will be amended to update the Cost Estimate to the amount of the bid.

(e) No later than 60 days after its receipt of a copy of Osceola's construction contract or purchase order for the Interim Improvements, Orange will pay to Osceola an amount equal to the Cost Estimate.

4. Inspections; approvals; fees.

(a) During construction, Orange personnel shall have the right, but not the obligation, to inspect the Interim Improvements, including the Temporary Signal.

(b) Any deficiencies observed by Orange personnel shall be reported to Osceola's construction representative, which deficiencies by the Contractor shall be corrected or otherwise resolved as Osceola and Orange agree.

(c) Upon completion of construction, Orange may, and the Osceola shall, conduct a final inspection. Any deficiencies in the work shall be set forth on a punch list.

(d) Upon completion of outstanding issues listed on the punch list, Orange shall promptly notify the Osceola in writing of its approval.

(e) No final payment shall be made by Osceola to the Contractor until Orange has approved the Interim Improvements, including the Temporary Signal, in writing, which approval shall not be unreasonably withheld or delayed.

(f) Osceola and Orange agree to waive all permit fees required by their respective jurisdictions for construction of the contemplated improvements.

5. "True-up" process.

(a) Upon completion of construction of the Interim Improvements, Osceola shall provide to Orange a final accounting of its total actual incurred costs of construction ("Total Costs").

(b) If the Total Costs are for an amount that is less than the Cost Estimate paid by Orange to Osceola, Osceola shall reimburse Orange for that amount within sixty (60) days.

(c) If the Total Costs are for an amount that is more than the Cost Estimate paid by Orange to Osceola, then Orange shall reimburse Osceola for that amount within sixty (60) days, except that an amendment to this Agreement will be required for any overage that amounts to more than ten percent (10%) of the Cost Estimate.

(d) In the event the Interim Improvements are not timely completed by Osceola, Orange shall be entitled to a full refund of its payment of the Cost Estimate. Osceola shall pay the refund to Orange within sixty (60) days of demand by Orange.

6. This Agreement is solely for the benefit of the parties herein, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party that is not a party hereto.

7. The term of this Agreement shall commence upon the Effective Date and end upon completion of construction by Osceola of the ultimate widening of Simpson Road in accordance with the Ultimate Roadway Plans, including the Intersection Improvement and the Turn Lanes, currently anticipated to be no more than sixty (60) months.

8. Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered when (a) hand delivered to the official hereinafter designated, or (b) upon receipt of such notice when deposited in the United States mail, postage prepaid, certified mail return receipt requested, addressed to a party at the address set forth opposite the party's name below, or at such other address as the party shall have specified in written notice to the other party in accordance herewith.

**AS TO ORANGE:** Public Works Complex – Building 1  
4200 John Young Parkway  
Orlando, Florida 32839

With a copy to: County Administrator  
201 South Rosalind Avenue, 5<sup>th</sup> Floor  
Orlando, Florida 32801

**AS TO OSCEOLA:** Transportation and Transit  
1 Courthouse Square  
Suite 3100  
Kissimmee, FL 34741

9. Each of the parties hereto shall give the other party written notice of any defaults hereunder and shall allow the defaulting party thirty (30) days from the date of receipt to cure such defaults.

10. If any court finds part of this Agreement invalid or unenforceable, 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 affected. To that end, this Agreement is declared severable.

11. The parties 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 the Agreement to (i) specific performance, (ii) injunctive relief, (iii) action for declaratory judgment, or (iv) any combination of the foregoing remedies. Each party to this Agreement shall bear its own attorneys' fees and costs in connection with this Agreement and in connection with any and all actions to be undertaken with relation to this Agreement.

12. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Agreement.

13. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

14. Each party to this Agreement shall defend, indemnify, and hold the other party harmless from all claims, damages, losses, and/or expenses arising out of or resulting from the wrongful acts and/or negligent performance of their respective obligations and operations under this Agreement. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity pursuant to the provisions of Section 768.28, *Florida Statutes*.

15. This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this agreement. Any amendment(s) to the provisions herein shall only be made by the parties in writing by formal amendment.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

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

**ORANGE COUNTY, FLORIDA**

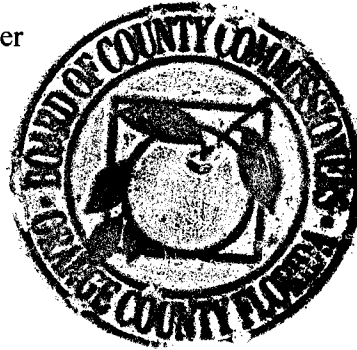
By: Board of Orange Commissioners

By: *Teresa Jacobs*  
Teresa Jacobs  
for Orange Mayor

Date: 8 - 2 -, 2018

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

By: *Craig A. Stopysa*  
for Deputy Clerk





BOARD OF COUNTY COMMISSIONERS  
OF OSCEOLA COUNTY, FLORIDA

By: [Signature]  
Chair / Vice Chair

ATTEST:  
OSCEOLA COUNTY CLERK OF THE BOARD

By: [Signature]  
Clerk/ Deputy Clerk of the Board

As authorized for execution at the Board of  
County Commissioners meeting of:

07/16/18

