



Orange County Government

Orange County
Administration Center
201 S Rosalind Ave.
Orlando, FL 32802-1393

Legislation Text

File #: 25-601, **Version:** 1

Interoffice Memorandum

DATE: April 2, 2025

TO: Mayor Jerry L. Demings and County Commissioners

THROUGH: N/A

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

CONTACT: Eduardo Avellaneda, P.E., Manager

PHONE: (407) 836-7871

DIVISION: Roads and Drainage Division

ACTION REQUESTED:

Approval and execution of (1) Locally Funded Agreement between the State of Florida Department of Transportation and Orange County; (2) Resolution of the Orange County Board of County Commissioners regarding the Locally Funded Agreement with the State of Florida Department of Transportation concerning State Road 438 (From Homestead Road to Princeton Road) Project (FPN Number 445696-2-52-02); and (3) Three Party Escrow Agreement by and between State of Florida, Department of Transportation, Orange County, and State of Florida, Department of Financial Services, Division of Treasury. District 6. **(Roads and Drainage Division)**

PROJECT: N/A

PURPOSE:

The Florida Department of Transportation (FDOT) is preparing to undertake the subject project known as Financial Project Number (FPN) 445696-2-52-02. The implementation of the project is in the interest of both the FDOT, and Orange County (County) and it would be most practical, expeditious, and economical for the County to provide the funds for upgrading standard strain poles to galvanized mast arms at the intersection of State Road 438 (Silver Star Road) and Le Havre/Coastline Drive and at State Road 438 and Dardanelle Drive.

The FDOT estimates the cost for the improvements is \$696,692 with the County providing funds in the amount of \$430,540 as its share of the project cost. The FDOT is requesting a Three Party Escrow Agreement to be executed along with the Locally Funded Agreement for the establishment of an escrow account to hold the funds for the Locally Funded Project.

This Locally Funded Agreement and Three Party Escrow Agreement with the FDOT were reviewed and approved by the County Attorney's Office and the Risk Management Division as to form.

BUDGET: N/A



OFFICE OF COMPTROLLER

**ORANGE
COUNTY
FLORIDA**

Phil Diamond, CPA
County Comptroller as
Clerk of the Board of County Commissioners
201 South Rosalind Avenue
Post Office Box 38
Orlando, FL 32802
Telephone: (407) 836-7300
Fax: (407) 836-5359

DATE: April 23, 2025

TO: Eduardo Avellaneda, Manager
Roads and Drainage Division, BCC

FROM: David Rooney, Manager *MF for DR*
Comptroller Clerk of BCC

SUBJECT: Request for Execution of Documents, Public Works Department Consent
Item 2, Legislative File # 25-601, April 22, 2025

Enclosed is the Locally Funded Agreement Financial Project Number: 445696-2-52-02 (1 original) and Three Party Escrow Agreement (1 original) which was approved by the Board of County Commissioners (BCC) at its regular meeting held on April 22, 2025.

Please forward the documents to all required parties for signature.

Email copies of the fully-executed documents to ClerkofBCC@occompt.com and copy jennifer.mcgill@ocfl.net. Note: ClerkofBCC@occompt.com is used only for County staff submission of pending documents.

Please include in cover memo or subject line identification of the documents by name, agenda item number, and date of BCC approval. Emailed copies must be in full-size PDF format. The documents will be processed and filed for the record upon receipt.

If you are unable to return a copy of the fully-executed documents before May 22, 2025, notify the Clerk's Office by email of the reason for the delay prior to that date.

If you have any questions, please do not hesitate to call.

dr:mf

Enclosure (2)

dl: Joseph Kunkel, Director, Public Works Department, BCC [email]

Jon Weiss, Deputy County Administrator, BCC [email]

Avanti Minns-Griffith, Executive Assistant, Public Works Department, BCC [email]

Pending File

BCC Mtg. Date: April 22, 2025

Agency: Orange County Vendor No.: F596000773011	Fund: LF Contract Amount: \$430,540.00	Financial Project No.: 445696-2-52-02
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**LOCALLY FUNDED AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
ORANGE COUNTY**

This **AGREEMENT**, made and entered into _____,
by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter
referred to as the "DEPARTMENT") and the ORANGE COUNTY (hereinafter referred to as the
"LOCAL GOVERNMENT"),

WITNESSETH:

WHEREAS, the Parties have been granted specific legislative authority to enter into this
Agreement pursuant to Section 339.12, Florida Statutes; and

WHEREAS, the LOCAL GOVERNMENT, by Resolution, a copy of which is attached
hereto as Exhibit "C", and made a part hereof, has authorized its officers to execute this
Agreement on its behalf; and

WHEREAS, the DEPARTMENT is prepared, in accordance with its Adopted Five-Year
Work Program, to undertake the project described as: "State Road 438 (from Homestead
Road to Princeton Street)", said project being known as Financial Project Number (FPN)
445696-1-52-01, hereinafter referred to as the "Project"; and

WHEREAS, the Project is not revenue producing and is contained in the Adopted Work
Program; and

WHEREAS, the implementation of the Project is in the interests of both the
DEPARTMENT and the LOCAL GOVERNMENT and it would be most practical, expeditious,
and economical for the LOCAL GOVERNMENT to provide the funds for: upgrading standard
strain poles to galvanized mast arms at the intersections of State Road 438 and Le
Havre/Coastline Drive, and at State Road 438 and Dardanelle Drive, in Fiscal Year 2025/2026,
said Project being known as FPN 445696-2-52-02, and said improvements shall hereinafter be
referred to as the "Additional Improvements"; and

WHEREAS, in order to maintain uniformity throughout the Project and to provide for the
Additional Improvements in a cost-effective manner, the LOCAL GOVERNMENT desires to

have said Additional Improvements made a part of the Project and to provide funding to the DEPARTMENT to be used for the Additional Improvements as described in "Exhibit A".

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the joint participation of this Agreement, the parties agree as follows:

1. The term of this Agreement shall begin upon the date of signature of the last party to sign and shall remain in full force and effect through completion of all services required of the LOCAL GOVERNMENT. The DEPARTMENT may, at any time and at any stage, amend or terminate the Project in whole or in part if the DEPARTMENT determines that such action is in the best interests of the public.

2. The DEPARTMENT shall cause the Additional Improvements described in Exhibit "A" to be incorporated into the DEPARTMENT'S plans for the State Road 438 (from Homestead Road to Princeton Street) project and to be constructed as a part of said Project.

3. The DEPARTMENT shall perform necessary preliminary engineering, prepare any and all design plans, acquire all necessary right-of-way, perform the construction, provide all necessary engineering supervision, and otherwise perform all other necessary work, all as may be applicable for the Project as previously defined. The Project as previously defined may include some or all of the foregoing activities. Nothing in this Agreement may be construed as requiring the DEPARTMENT to perform any activity which is outside the scope of the Project as previously defined. Except as specifically stated otherwise in this Agreement, all such activities shall be performed by such entities, at such times, in such manner, under such conditions, and pursuant to such standards as the DEPARTMENT, in its sole discretion, deems appropriate. The LOCAL GOVERNMENT shall not have any jurisdiction or control over the DEPARTMENT'S activities, except as specifically stated in this Agreement. The LOCAL GOVERNMENT shall be entitled to be advised of the progress of the Project at reasonable intervals upon request.

4. After construction is complete, the LOCAL GOVERNMENT agrees to inspect and maintain the constructed improvements in perpetuity as specified in Exhibit "A", Scope of Services.

5. Participation by the LOCAL GOVERNMENT in the funds for the construction phase of the Project shall be made as follows:

(A) The DEPARTMENT'S current estimate of cost for the Additional Improvements is **\$696,692.00 (Six Hundred Ninety-Six Thousand Six Hundred Ninety-Two Dollars and No/100)**. The DEPARTMENT'S performance and obligation to construct the Project is contingent upon an annual appropriation by the Florida Legislature. The parties agree that in the event funds are not appropriated to the DEPARTMENT for the Project, this Agreement may be terminated, which shall be

effective upon the DEPARTMENT giving written notice to the LOCAL GOVERNMENT to that effect.

(B) The Project is being funded by the LOCAL GOVERNMENT in the amount of **\$430,540.00 (Four Hundred Thirty Thousand Five Hundred Forty Dollars and No/100)**. Said funds are programmed under Financial Project Number (FPN) 445696-2-52-02. As described in paragraph 5(C) below, the LOCAL GOVERNMENT agrees that it will provide the balance of the funding necessary to complete the Project.

(C) The LOCAL GOVERNMENT agrees that it will, on or before but no later than **May 15, 2025**, furnish the DEPARTMENT an advance deposit in the amount of **\$430,540.00 (Four Hundred Thirty Thousand Five Hundred Forty Dollars and No/100)** for full payment of the estimated project cost for Locally Funded project number 445696-2-52-02. The advance deposit shall be the total estimated project cost plus allowances, including contingency. The DEPARTMENT **shall** utilize this deposit, as well as any interest accrued, for payment of the costs of the project.

(D) If the accepted bid amount plus allowances is in excess of the advance deposit amount, the LOCAL GOVERNMENT will provide an additional deposit within fourteen (14) calendar days of notification from the DEPARTMENT or prior to posting of the accepted bid, whichever is earlier, so that the total deposit is equal to the bid amount plus allowances. The DEPARTMENT will notify the LOCAL GOVERNMENT as soon as it becomes apparent the accepted bid amount, plus allowances, is in excess of the advance deposit amount. However, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation on final accounting as provided herein below. If the LOCAL GOVERNMENT cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to and approved by the DEPARTMENT project manager indicating when the deposit will be made. The LOCAL GOVERNMENT understands the request and approval of the additional time could delay the project, and additional costs may be incurred due to a delay of the project.

(E) If the accepted bid amount plus allowances is less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit exceeds the bid amount plus allowances if such refund is requested by the LOCAL GOVERNMENT in writing.

(F) Should project modifications or changes to bid items occur that increase the LOCAL GOVERNMENT share of total project costs, the LOCAL GOVERNMENT will be notified by the DEPARTMENT accordingly. The LOCAL GOVERNMENT agrees to

provide, without delay, in advance of the additional work being performed, adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund its share of the Project. The DEPARTMENT shall notify the LOCAL GOVERNMENT as soon as it becomes apparent the actual costs will overrun the award amount. However, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation during the Project and on final accounting as provided herein below. Funds due from the LOCAL GOVERNMENT during the Project not paid within forty (40) calendar days from the date of the invoice are subject to an interest charge at a rate established pursuant to Section 55.03, Florida Statutes (F.S.).

(G) The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred and sixty days (360) of final payment to the Contractor. The DEPARTMENT considers the Project complete when the final payment has been made to the Contractor, not when the construction work is complete. All project cost records and accounts shall be subject to audit by a representative of the LOCAL GOVERNMENT for a period of three (3) years after final close out of the project. The LOCAL GOVERNMENT will be notified of the final cost. Both parties agree that in the event the final accounting of total project costs pursuant to the terms of this agreement is less than the total deposits to date, a refund of the excess will be made by the DEPARTMENT to the LOCAL GOVERNMENT. If the final accounting is not performed within three hundred and sixty (360) days, the LOCAL GOVERNMENT is not relieved from its obligation to pay.

(H) In the event the final accounting of total project costs is greater than the total deposits to date, the LOCAL GOVERNMENT will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The LOCAL GOVERNMENT agrees to pay interest at a rate as established pursuant to Section 55.03, F. S., on any invoice not paid within forty (40) calendar days until the invoice is paid.

(I) The payment of funds under this Locally Funded Agreement will be made directly to the DEPARTMENT for deposit and as provided in the attached escrow agreement between LOCAL GOVERNMENT, DEPARTMENT and the State of Florida, Department of Financial Services, Division of Treasury.

(J) Contact Persons:

DEPARTMENT

District 5 Local Programs
719 South Woodland Boulevard, M.S. 4-520
DeLand, Florida 32720-6834
(386) 943-5486
D5-LocalPrograms@dot.state.fl.us

LOCAL GOVERNMENT

Brian Sanders
Assistant Manager
Transportation Planning Division
Orange County
4200 South John Young Parkway
Orlando, Florida 32839
(407) 836-8022
Brian.Sanders@OCFL.net

6. All tracings, plans, specifications, maps, models, reports, or other work product prepared or obtained under this Agreement shall be considered works made for hire for the DEPARTMENT and shall at all times be and remain the property of the DEPARTMENT without restriction or limitation on their use. The LOCAL GOVERNMENT may, however, inspect those materials upon providing reasonable advance notice to the DEPARTMENT.

7. In the event this Agreement is in excess of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) or has a term for a period of more than one (1) year, the provisions of Chapter 339.135(6)(a), Florida Statutes, are hereby incorporated as follows:

“The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year.”

8. The DEPARTMENT may unilaterally cancel this Agreement for refusal by the LOCAL GOVERNMENT to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by such party in conjunction with this Agreement.

9. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof, and incorporates and includes all proper negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written.

10. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

11. The DEPARTMENT and the LOCAL GOVERNMENT acknowledge and agree to the following:

(A) The LOCAL GOVERNMENT shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the LOCAL GOVERNMENT during the term of the contract; and

(B) The LOCAL GOVERNMENT shall expressly require any contractors and subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the contractor/subcontractor during the contract term.

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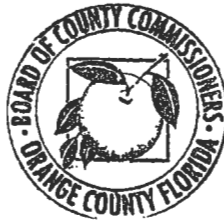
IN WITNESS WHEREOF, the LOCAL GOVERNMENT has executed this Agreement on
April 22, 2025, and the DEPARTMENT has executed this Agreement on
 _____.

ORANGE COUNTY

By: Raymond B. Brown

Name: ^{for} Jerry L. Demings

Title: Orange County Mayor



Attest:

72 24

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____

Name: James S. Stroz Jr., P.E.

Title: Director of Transportation Development

Attest:

Executive Secretary

Legal Review:

Legal Review:

LOCAL GOVERNMENT Attorney

DEPARTMENT Attorney

Financial Provisions Approval by
Department of Comptroller on:

July 8, 2019

EXHIBIT "A"**SCOPE OF SERVICES**

This Locally Funded Agreement (LFA) includes funds for the improvements at State Road 438 (Silver Star Road) with Le Havre Boulevard/Coast Line Drive and Dardanelle Drive. A new galvanized will be constructed at Le Havre Boulevard/Coast Line Drive and the existing signal at Dardanelle Drive will be replaced with galvanized mast arms.

The DEPARTMENT'S Contractor shall construct the Additional Improvements as part of the construction contract for State Road 438 (from Homestead Road to Princeton Street).

After construction is complete, the LOCAL GOVERNMENT shall at all times be responsible, at their own cost and expense, for maintaining the Additional Improvements constructed under this Agreement, in perpetuity, which includes clean-up, removal and disposal of debris from catastrophic events or accidents as well as routine maintenance. The LOCAL GOVERNMENT will respond to and handle any citizen complaints. If the Additional Improvements needs to be rehabilitated and/or repaired at any time in the future, the DEPARTMENT is under no obligation to restore, repair or replace the Additional Improvements.

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EXHIBIT "B"**ESTIMATE**

The estimate is based on Statewide and District Average Bid Price for the following items times an escalation to bring the cost up to the construction fiscal year.

ENGINEERS OPINION OF COST DIFFERENCE BETWEEN STRAIN POLE AND MAST ARM SIGNAL					
445696-2-52-02 SR 438					
(2) Signals at Coast Line Dr/Le Havre Blvd and Dardanelle Dr					
2024-11-19					
PAY ITEM	PAY ITEM DESCRIPTION	UNITS	QUANTITIES	UNIT PRICE	TOTAL
0634-4-153	SPAN WIRE ASSEMBLY, F&I, TWO POINT, BOX SPAN	PI	2	\$14,800.00	\$29,600.00
641-2-17	PRESTRESSED CONCRETE POLE, F&I, TYPE P-VII	EA	8	\$28,600.00	\$228,800.00
STRAIN POLE COST					\$258,400.00
649-21-1	STEEL MAST ARM ASSEMBLY, FURNISH AND INSTALL, SINGLE ARM (30')	EA	3	\$71,300.00	\$213,900.00
649-21-6	STEEL MAST ARM ASSEMBLY, FURNISH AND INSTALL, SINGLE ARM (50')	EA	1	\$80,100.00	\$80,100.00
649-21-15	STEEL MAST ARM ASSEMBLY, FURNISH AND INSTALL, SINGLE ARM (70')	EA	2	\$89,700.00	\$179,400.00
649-21-21	STEEL MAST ARM ASSEMBLY, FURNISH AND INSTALL, SINGLE ARM (78')	EA	2	\$101,500.00	\$203,000.00
MAST ARM COST					\$676,400.00
COST DIFFERENCE					\$418,000.00
Escalation Factor (3%)					\$12,540.00
Total LF Amount					\$430,540.00

The remainder of this page intentionally left blank.

EXHIBIT “C”

RESOLUTION

The Resolution, or other official authorization, authorizing entry into this Agreement is attached and incorporated into this Agreement.

BCC Mtg. Date: April 22, 2025

THREE PARTY ESCROW AGREEMENT

THIS AGREEMENT is made and entered into by and between the State of Florida, Department of Transportation ("FDOT"), Orange County ("Participant"), and the State of Florida, Department of Financial Services, Division of Treasury ("Escrow Agent"), and shall become effective upon the Agreement's execution by Escrow Agent.

WHEREAS, FDOT and Participant are engaged in the following project ("Project"):

Project Name: State Road 438 (from Homestead Road to Princeton Street)
Project #: 445696-2-52-02
County: Orange

WHEREAS, FDOT and Participant desire to establish an escrow account for the project.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties agree to the following:

1. An initial deposit will be made into an interest bearing escrow account established hereunder for the purposes of the Project. The escrow account will be opened with the Escrow Agent on behalf of FDOT upon Escrow Agent's receipt and execution of this Agreement.
2. Other deposits to the escrow account may be made during the life of this agreement.
3. Deposits will be delivered in accordance with instructions provided by the Escrow Agent to the FDOT for deposit into the escrow account. A wire transfer or ACH deposit is the preferred method of payment and should be used whenever possible.
4. FDOT's Comptroller or designee shall be the sole signatory on the escrow account with the Escrow Agent and shall have sole authority to authorize withdrawals from the account. Withdrawals will only be made to FDOT or the Participant in accordance with the instructions provided to the Escrow Agent by FDOT's Comptroller or designee.
5. Moneys in the escrow account will be invested in accordance with section 17.61, Florida Statutes. The Escrow Agent will invest the moneys expeditiously. Income is only earned on the moneys while invested. There is no guaranteed rate of return. Investments in the escrow account will be assessed a fee in accordance with Section 17.61(4)(b), Florida Statutes. All income of the investments shall accrue to the escrow account.
6. Unless instructed otherwise by FDOT, all interest accumulated in the escrow account shall remain in the account for the purposes of the Project.

7. The Escrow Agent agrees to provide written confirmation of receipt of funds to FDOT. FDOT agrees to provide a copy of such written confirmation to Participant upon request.
8. The Escrow Agent further agrees to provide quarterly reports to FDOT concerning the escrow account. FDOT agrees to provide a copy of such quarterly reports to Participant upon request.
9. The Escrow Agent shall not be liable for any error of judgment or for any act done or omitted by it in good faith, or for anything which it may in good faith do or refrain from doing in connection herewith.
10. Escrow Agent shall have no liability for any claim, cost, expense, damage or loss due to the acts or omissions of FDOT and Participant, nor from any separate agreements between FDOT and Participant and shall have no responsibility to monitor or enforce any responsibilities herein or in any separate agreements associated with this Agreement between FDOT and Participant.
11. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.
12. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
13. This Agreement shall terminate upon disbursement by the Escrow Agent of all money held by it in the escrow account in accordance with the instructions given by FDOT's Comptroller or designee and notification from FDOT to Escrow Agent that the account is to be closed.

The remainder of this page is blank.

IN WITNESS WHEREOF, the parties have duly executed the Agreement on the date(s) below.

For FDOT-OOC (signature)

Name and Title

59-3024028

Federal Employer I.D. Number

Date

FDOT Legal Review:

For Escrow Agent (signature)

Name and Title

Date

Ramona B. Brown

For PARTICIPANT (signature)

for Jerry L. Demings Orange County Mayor

Name and Title

Federal Employer I.D. Number

April 22, 2025

Date

