



Interoffice Memorandum

June 20, 2019

AGENDA ITEM

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

THRU: Lonnie C. Bell, Jr., Director *Lonnie C Bell*
Community and Family Services Department

FROM: **Matt Suedmeyer, Manager**
Parks and Recreation Division
(407) 836-6202

SUBJECT: **Consent Agenda Item – July 2, 2019**
Lake-Wekiva Trail Project Agreement – Project Number FM 430975-5

The Florida Department of Transportation (FDOT) is requesting that Orange County enter into an off system project agreement for the long-term maintenance of Lake-Wekiva Trail, starting at County Road 435 and ending at State Road 46. The project is currently in the design phase and will include a 14' paved, multi-use trail. All phases of the project, including design, construction, construction inspection, utilities, permits, and other associated tasks, are being funded by FDOT.

FDOT requires the executed agreement prior to awarding construction, which is anticipated to begin in December of 2019. The agreement outlines the responsibilities of participating agencies. The agreement has been reviewed, revised, and approved by the County Attorney's Office, Risk Management, and Real Estate Management.

ACTION REQUESTED: Approval and execution of Off System Project Agreement ("Agreement") Between State of Florida, Department Of Transportation, an agency of the State of Florida ("FDOT") and Orange County, Florida, a charter county and political subdivision of the State of Florida ("Orange County") and St. Johns River Water Management District, a special district created under Chapter 373, Florida Statutes ("SJRWMD") for Project Number FM 430975-5. (Parks and Recreations Division)

MS/rr:jam
Attachment

c: Randy Singh, Deputy County Administrator
Yolanda Brown, Fiscal Manager, Community and Family Services
Auria Oliver, Management and Budget Advisor

BCC Mtg. Date: July 2, 2019

OFF SYSTEM PROJECT AGREEMENT

(“Agreement”)

Between

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION,

an agency of the State of Florida

(“FDOT”)

and

ORANGE COUNTY, FLORIDA,

a charter county and political subdivision of the State of Florida

(“ORANGE COUNTY”)

and

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT,

a special district created under Chapter 373, Florida Statutes

(“SJRWMD”)

WHEREAS, the State of Florida Legislature has approved and mandated the FDOT to complete the various projects included in the FDOT’s Work Program; and

WHEREAS, included in the FDOT Work Program is Project Number FM 430975-5 (Lake-Wekiva Trail from CR 435 to SR 46) located in Orange County, Florida, a project not on the State Highway System; and

WHEREAS, the parties agree that it is in the best interest of each party for the FDOT to undertake and to complete all aspects of the project, including but not limited to the design, construction, construction inspection, utilities, permits, and other associated tasks; and

WHEREAS, a portion of the trail described as the Project herein below shall occur on property owned by ORANGE COUNTY (undivided 62% interest) and SJRWMD (undivided 38% interest), and identified as Orange County Parcel Identification Number 04-20-28-0000-00-005 (“PROPERTY”); and

WHEREAS, the PROPERTY is managed pursuant to a Lease Agreement between SJRWMD, ORANGE COUNTY, and the Florida Department of Environmental Protection, Division of Recreation and Parks (FDEP), dated March 13, 2009, as amended; and

WHEREAS, ORANGE COUNTY agrees to maintain said portion of the project to be constructed on the PROPERTY; and

NOW THEREFORE, the recitals above are incorporated into and shall constitute a part of this Agreement.

1. The parties agree that the FDOT shall act on behalf of ORANGE COUNTY and SJRWMD to undertake and to complete project number FM 430975-5, generally described as the design and construction of the Lake-Wekiva Trail from CR 435 to SR 46, hereinafter “Project”. The Project shall include the tasks listed and the limits of right of way described in Exhibit “A” hereto and all other tasks associated with or arising out of the tasks listed therein. ORANGE COUNTY and

SJRWMD shall cooperate with and shall support the FDOT's work efforts in these regards. However, SJRWMD shall not be required to take any action that requires an expenditure of funds. FDOT shall coordinate approval with respect to the design of the Project and the design review process with ORANGE COUNTY and SJRWMD.

2. ORANGE COUNTY and SJRWMD shall, through the passage of a formal resolution of their governing body, consent to and authorize the FDOT to act on behalf of, for the benefit of each, to further do all acts necessary, including securing all environmental and regulatory permits, easements, temporary construction easements and rights of entry associated with the Project, in the name of each. This right of entry shall continue in full force and effect throughout the time that the Project is ongoing.

3. To the extent necessary, ORANGE COUNTY and SJRWMD hereby appoints the FDOT as its agent for purposes of the construction; reconstruction, and relocation of utilities under section 337.403(1), Florida Statutes. ORANGE COUNTY and SJRWMD agree to fully cooperate with the FDOT in the construction, reconstruction and relocation of utilities that may be located within the existing or acquired right of way. The parties agree to meet on a periodic basis, as determined to be necessary by the FDOT, ORANGE COUNTY, AND SJRWMD during the planning, design, construction and post-construction phase to identify, plan and to relocate utilities. The responsibility for the costs associated with the relocation of utilities shall be based on Florida law as it relates to said matters. The parties agree that if existing utilities owned by either ORANGE COUNTY or SJRWMD are required to be reconstructed or relocated because of the Project that the costs associated therewith shall be deemed to be a cost of the Project to be paid for by the owner of the utility. FDOT is responsible for discovering any utilities and notifying ORANGE COUNTY and SJRWMD of any discovery, except for utilities owned by those parties, which shall be properly located by the respective party. If ORANGE COUNTY and SJRWMD are the owners of any utility, ORANGE COUNTY and SJRWMD reserve the right to have the utility moved by a contractor and at a contract rate of their choosing.

4. FDOT will be utilizing federal funds on the Project and ORANGE COUNTY agrees to maintain the Project, according to FDOT standards. ORANGE COUNTY and SJRWMD agree to cooperate in the provision of all studies and or data that may be necessary for the NEPA process and for all other permit matters. The cooperation of SJRWMD extends only to provision of studies, data, reports, or other information already compiled by SJRWMD. SJRWMD shall not be responsible for providing or funding the provision of studies, data, reports, or other information that may be necessary for the NEPA process or other permit matters.

5. Improvements and structures that will be located within the trail corridor, are and will remain under the control of ORANGE COUNTY and SJRWMD. FDOT will not have any ownership interest in the right of way, improvements or structures located thereon. Notwithstanding the requirements hereof, maintenance during construction shall be the responsibility of the FDOT and its contractor.

6. The parties understand and agree that the parties to this agreement will cooperate with and keep each other well informed of the work efforts and progress hereunder. FDOT will coordinate

approval for decisions relating to, and including the need for, change orders and supplemental agreements associated with construction of the Project.

7. All payment and performance bonds issued by FDOT contractors shall be issued in favor of the FDOT. All warranties, if any, shall be made jointly in favor of ORANGE COUNTY and SJRWMD.

8. The FDOT shall require its Contractor to provide insurance as required by FDOT construction contract specifications. ORANGE COUNTY and SJRWMD shall be included as additional insured parties.

9. Project Completion

9.1 Upon completion of the Project, but prior to the issuance of the Notice of Final Acceptance, FDOT shall submit to ORANGE COUNTY and SJRWMD written notice that:

- A.
 - 1. Project Contract Document requirements have been met.
 - 2. Work has been inspected for compliance with Project Contract Documents.
 - 3. Work has been completed in accordance with Project Contract Documents.
 - 4. Equipment and systems have been tested in the presence of ORANGE COUNTY and SJRWMD representatives and that the equipment and systems are operational.
 - 5. All minor deficiencies have been corrected or completed and the Project is ready for final inspection.
 - 6. All operation and maintenance manuals have been submitted and are acceptable.
 - 7. Project record documents are complete and submitted.

B. The parties will inspect the Project with FDOT to verify the status of completion with reasonable promptness after receipt of such certification.

C. Should the parties agree that the Project is incomplete or defective:

- 1. FDOT shall remedy any deficiencies, and send a second written notification that the Project is complete.
- 2. If necessary, ORANGE COUNTY and SJRWMD will re-inspect the Project with FDOT.

D. Upon completion, the FDOT shall issue a Notice of Final Acceptance to the Department's Contractor with a copy of said notice being provided to ORANGE COUNTY and SJRWMD.

9.2 Upon issuance of the Notice of Final Acceptance, ORANGE COUNTY shall be responsible for the maintenance of the Project. Notwithstanding the issuance of the Notice of Final Acceptance, the FDOT shall have the right to assure completion of any punch list by the contractor. All permits associated with the Project will be transferred to ORANGE COUNTY as the operational maintenance entity and ORANGE COUNTY agrees to accept said transfer and to become fully responsible to comply with all operational and maintenance conditions of the permits. SJRWMD will not be required to accept a transfer of the permit or to operate or maintain the facilities associated with the Project.

10. This Agreement shall become effective as of the date all parties hereto have executed the Agreement and shall continue in full force and effect until the Project is completed by the FDOT and the improvements have been turned over to ORANGE COUNTY and SJRWMD by the FDOT by formal notice from the FDOT. Either FDOT, ORANGE COUNTY, or SJRWMD may cancel its performance hereunder if either determines that it is in the best interest of the public to do so. This discretion shall include, but shall not be limited to budgetary and bid cost considerations. It shall be the responsibility of the party cancelling performance of this Agreement to restore the PROPERTY to substantially the same condition as found on the date of execution of said Agreement.

11. Pursuant to Section 287.058, Florida Statutes, the FDOT may unilaterally cancel this agreement for refusal by ORANGE COUNTY 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 the parties in conjunction with this agreement except for the obligation of ORANGE COUNTY to maintain the Project, and said agreement shall be perpetual as to that obligation.

12. If any election, referendum, approval or permit, notice or other proceeding or authorization is required to be undertaken by the parties to enter into this agreement or to undertake the Project, the parties will expeditiously initiate and consummate, as provided by law, all actions necessary with respect to any such matters with time being of the essence.

13. It is understood that the FDOT's participation in said Project is subject to:

- a.) Legislative approval of the FDOT's appropriation request in the work program year that the Project is scheduled;
- b.) Availability of funds based on the following limitations:
 - i.) The FDOT's performance and obligations to pay under this agreement is contingent upon an annual appropriation by the Legislature. If the FDOT's funding for this Project is in multiple years, funds approved from the Department's Comptroller must be received every year prior to costs being incurred.
 - ii.) In the event this agreement is in excess of \$25,000.00 and has a term for a period of more than one year, the provisions of §339.135(6)(a), Fla. Stat. are hereby incorporated: 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 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 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 1 year.”

14. This agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

15. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, express mail or electronic mail (e-mail) and shall be deemed to have been received by the end of five business days from the proper sending thereof unless proof of prior actual receipt is provided. Each party hereto shall have the continuing obligation to notify each other of the appropriate persons for notices to be sent to pursuant to the terms of this agreement. Unless otherwise notified in writing, notices shall be sent to the following:

To ORANGE COUNTY:

Orange County Parks & Recreation Division

Attn: Matt Suedmeyer, Parks and Recreation Division Manager

4801 West Colonial Drive

Orlando, FL 32808

To SJRWMD:

St. Johns River Water Management District

Attn: Director, Office of Real Estate Services

4049 Reid Street

Palatka, FL 32177-2529

To the FDOT:

State of Florida, Department of Transportation

District Five – Local Programs

719 South Woodland Boulevard, MS 4-520

DeLand, FL 32720

D5-LocalPrograms@dot.state.fl.us

16. No modification of this Agreement shall be binding on the Parties unless reduced to writing and signed by a duly authorized representative of the Parties.

17. In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.

The individual identified as the person to receive notice hereunder shall have the authority to receive notice. The other parties may rely upon the representations of such person as those that bind ORANGE COUNTY, and SJRWMD, and FDOT, respectively, as to all determinations required to be made under the terms of this agreement.

To ORANGE COUNTY:
Orange County Parks & Recreation Division
Attn: Byron Brooks, County Administrator
4801 West Colonial Drive
Orlando, FL 32808

To: SJRWMD:
St. Johns River Water Management District
Attn: Director, Office of Real Estate Services
4049 Reid Street
Palatka, FL 32177-2529

To FDOT:
State of Florida, Department of Transportation
Alan E. Hyman, P.E., Director of Transportation Operations
719 South Woodland Boulevard
DeLand, FL 32720


18. The Project depends upon the execution of all three agreements necessary for the construction of the Lake-Wekiva Trail. The other two agreements to be executed are: (i) Off System Project Agreement by and between Lake County, the SJRWMD, and the FDOT; and (ii) Off System Project Agreement by and between Lake County, the Florida Department of Environmental Protection, and the FDOT. Performance under the terms of this Agreement is contingent on the full execution of all three agreements.

The remainder of this page intentionally left blank.

Off System Project Agreement
FM 430975-5 (Lake-Wekiva Trail from CR 435 to SR 46)

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the dates exhibited by the signatures below.

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
an Agency of the State of Florida**

DocuSigned by:

BC91A4E30A15477...
By: Alan E. Hyman, P.E.

Title: Director of Transportation Operations

Date: 7/24/2019 | 8:19 AM EDT

**ORANGE COUNTY,
a charter county and political subdivision
of the State of Florida**

See Attached Signature Page (7a of 8)
By: _____


Title: _____

Date: _____

DocuSigned by:
Daniel McDermott
585E81E28BBA45C...
FDOT Legal Review

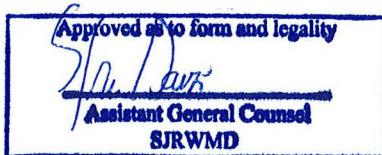
Attest: See Attached Signature Page (7a of 8)
By: _____
Title: _____
Date: _____

**ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT,
a special district created under Chapter 373,
Florida Statutes**


By: _____

Title: Executive Director

Date: 7/9/19



IN WITNESS WHEREOF, the parties hereto have executed this agreement on the dates exhibited by the signatures below.

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
an Agency of the State of Florida**

By: Alan E. Hyman, P.E.

Title: Director of Transportation Operations

Date: _____

FDOT Legal Review

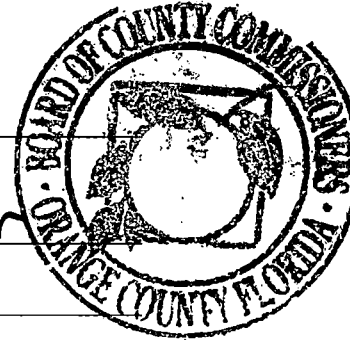
**ORANGE COUNTY,
a charter county and political subdivision
of the State of Florida**

Bryan W. Brooks

By:

Title: County Administrator

Date: 2 July 2019



Attest:

Lakela Louis

By: Lakela Louis

Title: Senior Minutes Coordinator

Date: JUL 02 2019

**ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT,
a special district created under Chapter 373,
Florida Statutes**

By: _____

Title: _____

Date: _____

Exhibit “A”

SCOPE OF SERVICES

FM#: 430975-5

The project consists of the design and construction of the segment 4A of Wekiva Trail. This is a 2.78-mile long paved multi-use trail from County Road 435 to State Road 46 in Lake and Orange County. Work will begin at the southern trailhead that is accessed from County Road 435. Work will end at the trail terminus at State Road 46 where the trail will tie into the Wekiva Parkway Section 5 (FPID 238275-8) trail system. The proposed trail has been designed to an 18-miles per hour design speed and has a typical section consisting of a 14-foot wide paved asphalt trail, 8-foot sodded unpaved inside shoulder, 2-foot sodded unpaved outside shoulder and sodded side slopes tying into the existing ground. The horizontal and vertical trail alignments generally match existing conditions in order to minimize disturbances to the natural surroundings. Each trailhead consists of asphalt paved parking areas in addition to gravel parking areas.

WEKIVA TRAIL

Legend

- Wekiva Trail Phase 4A (FDOT)
- Wekiva Trail Phase 4B (Orange County)
- West Orange Trail Phase 4
- Kelly Park
- Future Wekiva Trailhead
- Major Street

