

Date

Interoffice Memorandum

February 3, 2023

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

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

CONTACT PERSON:Raymond L.A. Williams, P.E., Manager<br/>Public Works Engineering DivisionPHONE NUMBER:(407) 836-7909

SUBJ: Resolution, Landscape Construction and Maintenance Memorandum of Agreement for improvements on State Road 434 for the UCF Pedestrian Safety Project and Landscape Construction and Maintenance Memorandum of Agreement

On November 29, 2016, Board approved the UCF/Alafaya Trail Pedestrian Safety Study Report and recommendations. Design of the recommended improvements is now complete.

The proposed UCF Pedestrian Safety Project includes improvements on State Road 434 which is part of the State Highway System, requiring Orange County to enter into this Agreement. The Agreement prescribes certain terms and conditions that will allow the County to construct, operate, and maintain the proposed improvements within the State Highway System without interfering with the State's rights. The agreement also delineates those improvements to be maintained by the County and the improvements to be maintained by the Florida Department of Transportation.

Public Works Engineering Division, Public Works Stormwater Division, Public Works Traffic Engineering Division, Risk Management, and the County Attorney's Office have reviewed the agreement and find the terms and conditions acceptable.

Action Requested: Approval and execution of (1) Resolution of the Orange County Board of County Commissioners regarding the Landscape Construction and Maintenance Memorandum of Agreement with the Florida Department of Transportation for the UCF Pedestrian Safety Project Landscaping and (2) Landscape Construction and Maintenance Memorandum of Agreement. District 5.

JCK/RLAW/ilc

Attachment(s)

BCC Mtg. Date: March 7, 2023

### LANDSCAPE CONSTRUCTION AND MAINTENANCE MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made and entered into this <u>17th</u> day of <u>March</u>, 2023 by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, a component agency of the State of Florida, hereinafter called the "DEPARTMENT" and the County of Orange County, a charter county and political subdivision of the State of Florida, hereinafter called the "LOCAL GOVERNMENT."

### <u>WITNESSETH</u>

WHEREAS, the DEPARTMENT has jurisdiction over and maintains State Road 434 as part of the State Highway System; and

WHEREAS, the LOCAL GOVERNMENT seeks to install and maintain certain landscaping within the right of way of State Road 434, specifically, as part of the UCF Pedestrian Safety Project which includes landscaping, decorative crosswalks, and pedestrian guide signage; and

WHEREAS, the **DEPARTMENT** agrees to allow the landscaping only under certain conditions necessary to protect the traveling public using said right of way; and

**WHEREAS**, Rule 14-40.003, Florida Administrative Code, requires the parties to enter into an Agreement designating and setting forth the responsibilities of each party; and

WHEREAS, the LOCAL GOVERNMENT, by Resolution No. 2022-M-11, dated <u>March 7</u>, 2023, and attached hereto as Exhibit "A," has authorized its officers to execute this AGREEMENT on its behalf.

**NOW THEREFORE**, for and in consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

- 1. The LOCAL GOVERNMENT hereby agrees to install or cause to be installed landscaping as specified in the Plans included as Exhibit "B." Such installation shall be in conformance with Florida Administrative Code Rule 14-40.003, as it may be amended from time to time, and the Florida Highway Landscape Guide, which is incorporated into Rule 14-40.003 by reference. The LOCAL GOVERNMENT shall not change or deviate from said plans(s) without written approval of the DEPARTMENT.
- 2. The LOCAL GOVERNMENT agrees to maintain the landscaping referenced above in accordance with the Landscape Maintenance Plan(s) included as Exhibit "C." Said maintenance will be in accordance with Florida Administrative Code Rule 14-40.003 and the Florida Highway Landscape Guide, as they may be amended from time to time. The LOCAL GOVERNMENT's responsibility for maintenance shall be consistent with the requirements of Florida Administrative Code Rule 14-40.003. The above-named functions to be performed by the LOCAL GOVERNMENT shall be subject to periodic inspections by

the **DEPARTMENT**. The **LOCAL GOVERNMENT** shall not change or deviate from said plan(s) without written approval of the **DEPARTMENT**.

- 3. All landscape installation and all maintenance activities undertaken by the LOCAL GOVERNMENT shall be in accordance with the Maintenance of Traffic Plans(s) included as Exhibit "D" and Florida Administrative Code Rule 14-40.003.
- 4. If at any time after the LOCAL GOVERNMENT has assumed the landscaping installation or the maintenance responsibility above-mentioned, it shall come to the attention of the DEPARTMENT that the limits or a part thereof is not properly installed or maintained pursuant to the terms of this AGREEMENT, the District Secretary or his designee may issue a written notice that a deficiency or deficiencies exist(s), by sending a certified letter to the LOCAL GOVERNMENT to place said LOCAL GOVERNMENT on notice thereof. The certified letter shall be sent to the Public Works Director with a copy to the County Engineer. Thereafter the LOCAL GOVERNMENT shall have a period of thirty (30) calendar days within which to correct the cited deficiencies. If said deficiencies are not corrected within this time period, the DEPARTMENT may at its option, proceed as follows:
  - (a) If installation is not completed in accordance with the Plans in paragraph 1, the **DEPARTMENT** may complete the installation, with **DEPARTMENT** or Contractor's personnel, and invoice the **LOCAL GOVERNMENT** for expenses incurred by the **DEPARTMENT**.
  - (b) If installation has been properly completed or if the DEPARTMENT elects not to complete the installation under (a) above, and maintenance by the LOCAL GOVERNMENT is not in compliance with paragraphs 2 or 3, the DEPARTMENT may take action to maintain the landscaping or a part thereof, with DEPARTMENT or Contractor's personnel and invoice the LOCAL GOVERNMENT for actual, reasonable expenses incurred by the DEPARTMENT, or
  - (c) The **DEPARTMENT** may terminate the **AGREEMENT**, in which case the **LOCAL GOVERNMENT** shall at its own expense and within sixty (60) days after written notice by the **DEPARTMENT**, remove all of the landscaping that the **DEPARTMENT** directs be removed and return the right-of-way to its original condition. The **LOCAL GOVERNMENT** will own such materials as it removes and the **DEPARTMENT** shall own any materials remaining. The **DEPARTMENT** may, in its discretion, remove, relocate or adjust the landscaping materials, with the **LOCAL GOVERNMENT** being responsible for actual, reasonable cost of any removal incurred by the **DEPARTMENT**.

Upon **DEPARTMENT** action under one of the above options and upon direction of the **DEPARTMENT**, the **LOCAL GOVERNMENT** shall cease installation and maintenance activities under this **AGREEMENT**.

5. It is understood between the parties hereto that the landscaping covered by this **AGREEMENT** may be removed, relocated or adjusted by the **DEPARTMENT** at any time

in the future as determined to be necessary by the **DEPARTMENT** in order that the state road be widened, altered or otherwise changed which activities may include, but are not limited to, emergency or routine maintenance which may impact the landscaping. The **LOCAL GOVERNMENT** shall be given sixty (60) calendar days notice to remove said landscaping/hardscape after which time the **DEPARTMENT** may remove the same, with the **LOCAL GOVERNMENT** being responsible for the cost of removal.

- 6. The LOCAL GOVERNMENT may utilize its employees or third parties to accomplish its obligations under paragraphs 1, 2 or 3; however, the LOCAL GOVERNMENT remains responsible for proper performance under this AGREEMENT and shall take all steps necessary to ensure that its employees or third parties perform as required under this AGREEMENT.
- 7. The LOCAL GOVERNMENT agrees to include the following indemnification in all contracts with contractors, subcontractors, consultants, and subconsultants, who perform work in connection with this Agreement:

"The contractor/subcontractor/consultant/subconsultant shall indemnify, defend, save and hold harmless the State of Florida, Department of Transportation 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/subconsultant, its officers, agents or employees."

- 8. The term of this AGREEMENT commences upon execution. The LOCAL GOVERNMENT shall notify or cause the Department's Maintenance Engineer or his designee to be notified a minimum of 48 hours, excluding Saturday, Sunday, and legal holidays, prior to starting work in the right-of-way, unless said Engineer or his designee waives this period in writing. When the Department through said Engineer or his designee issues a Notice to Proceed, the LOCAL GOVERNMENT may proceed with the project.
- 9. **LEGAL REQUIREMENTS.** This Agreement is executed and entered into in the State of Florida and will be construed, performed, and enforced in all respects in strict conformity with local, state, and federal laws, rules, and regulations.
  - (a) If any term or provision of the Agreement is found to be illegal or unenforceable, the remainder of the Agreement will remain in full force and effect and such term or provision will be deemed stricken.
  - (b) The LOCAL GOVERNMENT shall 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 LOCAL GOVERNMENT in conjunction with this Agreement. Failure by the LOCAL GOVERNMENT to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the DEPARTMENT.

- (c) The LOCAL GOVERNMENT and the DEPARTMENT agree that the LOCAL GOVERNMENT, its employees, contractors, subcontractors, consultants, and sub consultants are not agents of the DEPARTMENT as a result of this Agreement.
- (d) The LOCAL GOVERNMENT shall not cause any liens or encumbrances to attach to any portion of the DEPARTMENT right-of-way.
- (e) Nothing herein shall be construed as a waiver of either party's sovereign immunity.
- (f) LOCAL GOVERNMENT:
  - i. 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
  - ii. shall expressly require any 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 subcontractor during the contract term.
- 10. This writing embodies the entire **AGREEMENT** and understanding between the parties hereto and there are no other **AGREEMENTS** and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.
- 11. This **AGREEMENT** may not be assigned or transferred by the **LOCAL GOVERNMENT** in whole or part without the consent of the **DEPARTMENT**.
- 12. This **AGREEMENT** shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the **AGREEMENT** and Florida law, the laws of Florida shall prevail.
- 13. <u>Public Entity Crime</u> A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- 14. <u>Anti-Discrimination</u> An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.
- 15. The Parties agree to comply with s.20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with s.20.055(5), Florida Statutes and cooperate with

the inspector general in any investigation, audit, inspection, review, or hearing pursuant to that section.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.



#### COUNTY

ORANGE COUNTY, FLORIDA By: Board of County Commissioners

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Jerry L. Demings Orange County Mayor

Date: March 7, 2023

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

By: Jemifer for - Klinet

Deputy Clerk

Print Name: Jennifer Lara-Klimetz

### STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

Ron J. Meade, P.E., District Maintenance Engineer

DocuSigned by: Victor LoPiccolo Attest:

Victor A. LoPiccolo, Maintenance Project Manager

Legal Approval A5148259631D422

Page 5 of 5

## **EXHIBIT A**

RESOLUTION of the Orange County BOARD OF COUNTY COMMISSIONERS regarding the LANDSCAPING CONSTRUCTION AND MAINTENANCE MEMORANDUM OF AGREEMENT with the FLORIDA DEPARTMENT OF TRANSPORTATION for the UCF PEDESTRIAN SAFETY PROJECT LANDSCAPING BCC Mtg. Date: March 7, 2023

# RESOLUTION

of the

## ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS regarding the LANDSCAPE CONSTRUCTION AND MAINTENANCE MEMORANDUM OF AGREEMENT with the FLORIDA DEPARTMENT OF TRANSPORTATION for the UCF PEDESTRIAN SAFETY PROJECT LANDSCAPING

### **Resolution No. 2023-**<u>M-11</u>

WHEREAS, today, the Board of County Commissioners is approving a Landscape Construction and Maintenance Memorandum of Agreement with the State of Florida Department of Transportation for landscaping within the right of way of State Road 434 as part of the UCF Pedestrian Safety Project; and

WHEREAS, the FDOT requires that Orange County adopt a Resolution authorizing its officials to execute this Landscape Construction and Maintenance Memorandum of Agreement on Orange County's behalf.

NOW, THEREFORE, BE IT RESOLVED BY THE ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS:

Section 1. Authorization for County Mayor to Execute Landscape Construction and Maintenance Memorandum of Agreement and any Future Supplements or Amendments. The County Mayor is hereby authorized to execute the above-described Landscape Construction and Maintenance Memorandum of Agreement with the FDOT on behalf of the County, and any future supplements and amendments thereto. Section 2. Effective date. This Resolution shall take effect on the date of its adoption.

ADOPTED this 7th day of March , 2023.



ORANGE COUNTY, FLORIDA By: Board of County Commissioners

By: Thursd. Bud

Jerry L. Demings Orange County Mayor

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

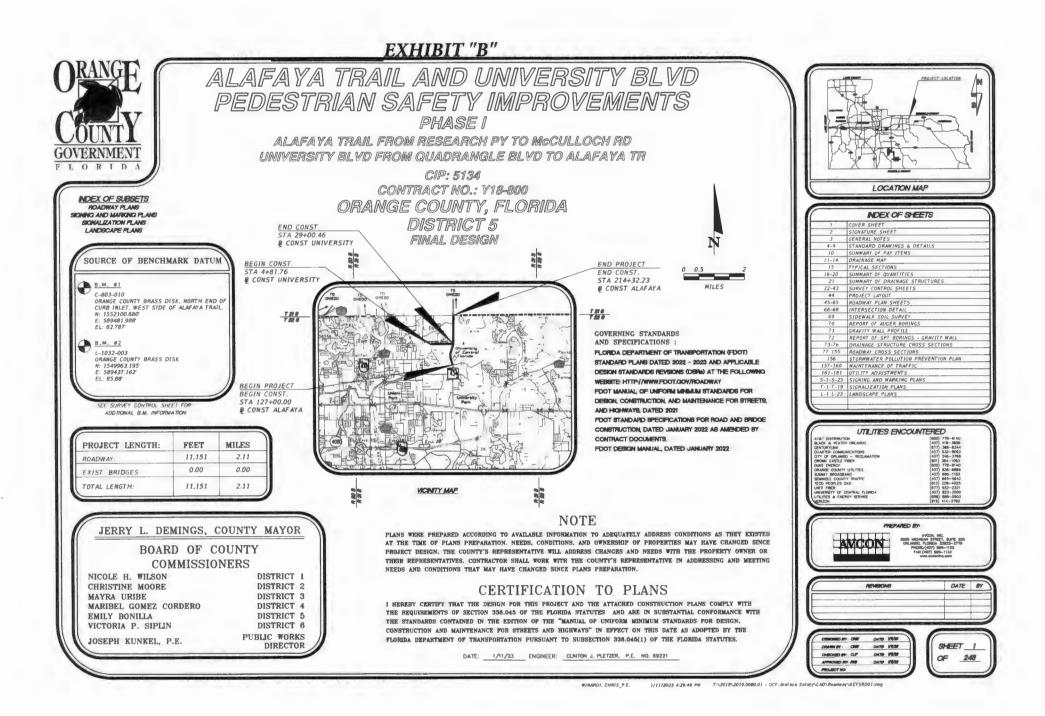
By: \_\_\_\_\_ Klinetz

Deputy Clerk

Print Name: Jennifer Lara-Klimetz

## EXHIBIT B PLANS

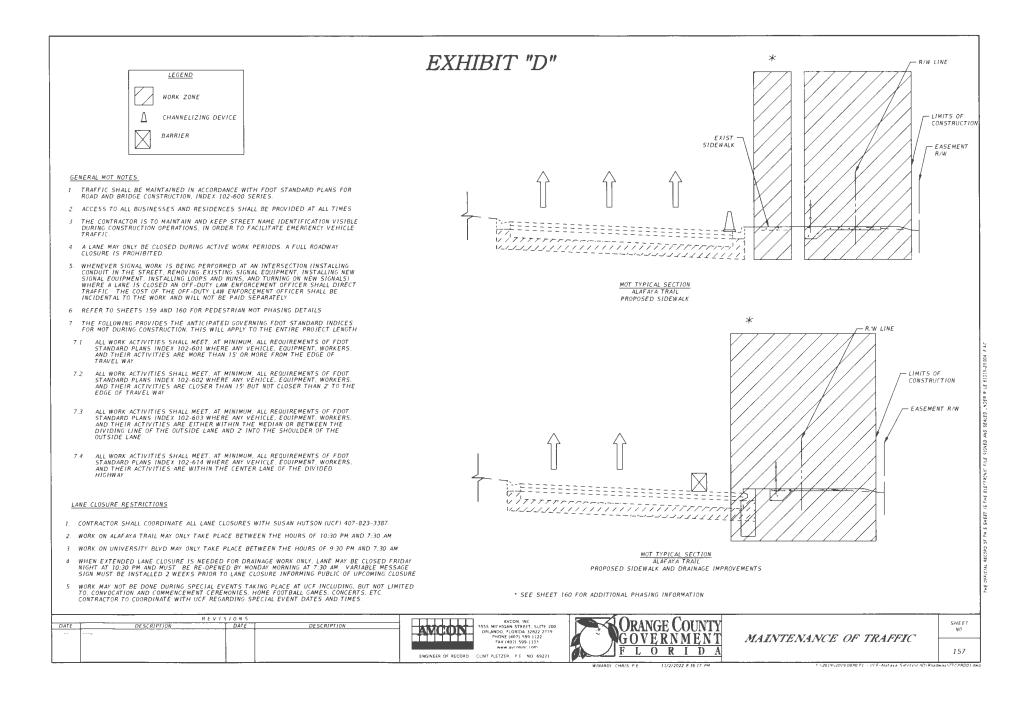
## ALAFAYA TRAIL AND UNIVERSITY BLVD PEDESTRIAN SAFETY IMPROVEMENTS PHASE I ALAFAYA TRAIL FROM RESEARCH PY TO McCULLOCH RD UNIVERSITY BLVD FROM QUADRANGLE BLVD TO ALAFAYA TR dated January 11, 2023, prepared by AVCON INC.

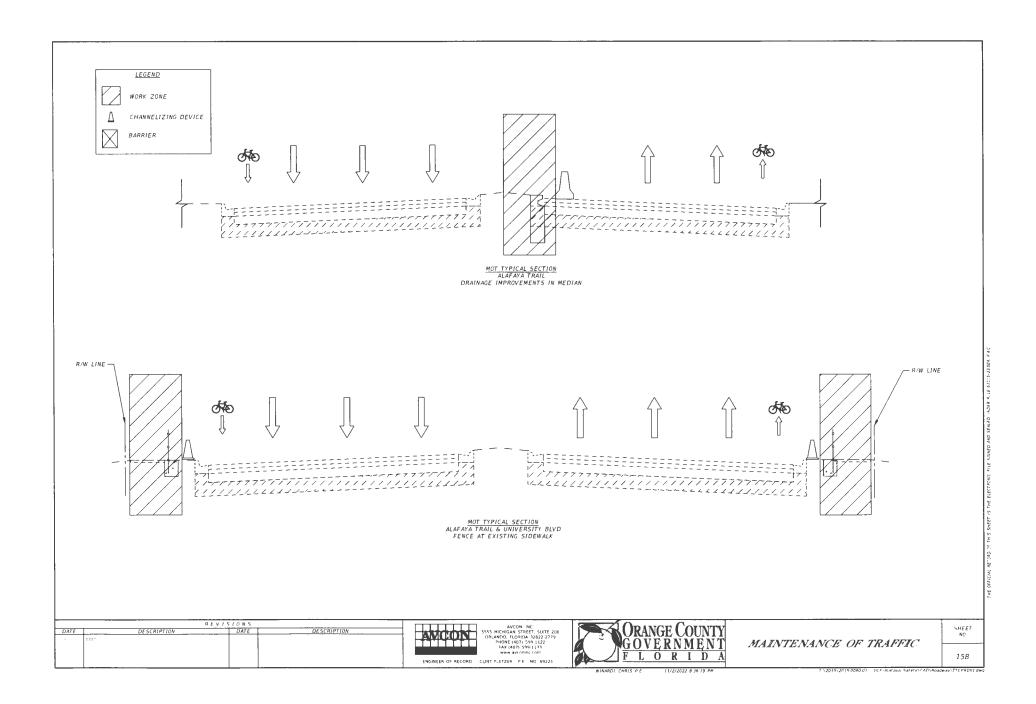


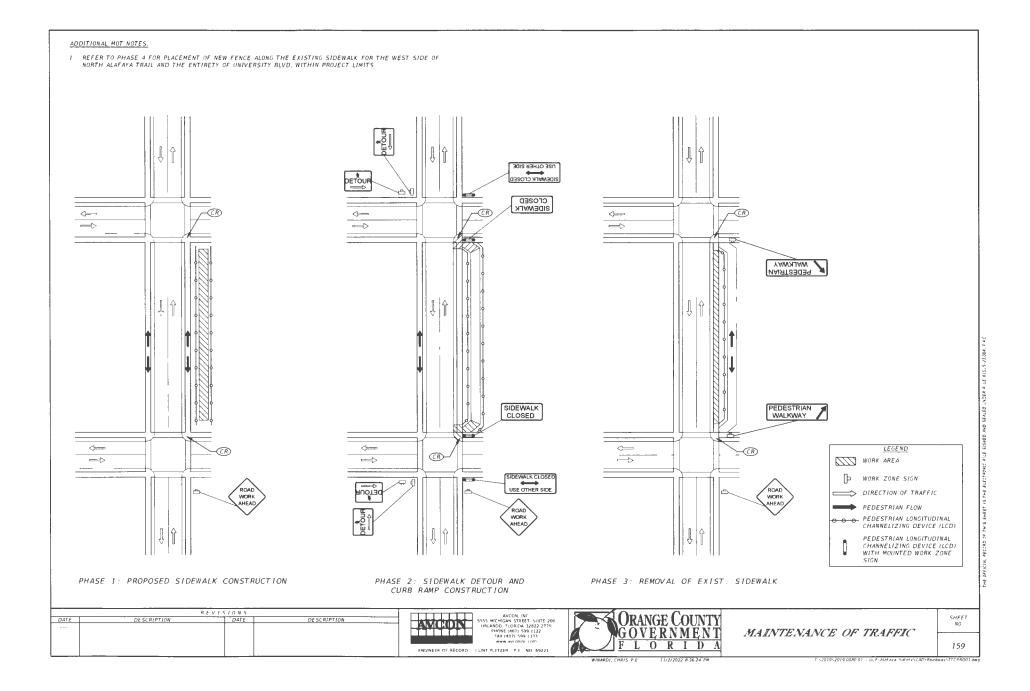
## EXHIBIT C MAINTENANCE PLAN

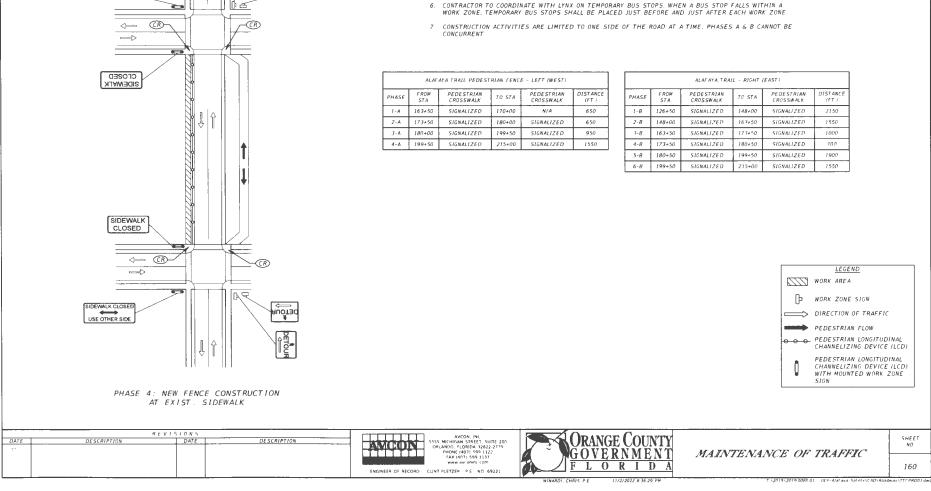
The Local Government shall maintain, or cause to be maintained, the Project landscaping, decorative crosswalks, and pedestrian guide signage in accordance with Rule Chapter 14-40, FAC, the Landscape and Pedestrian Improvements Construction and Maintenance Memorandum of Agreement, Landscape Plans, and the FDOT Standard Plans.

The Department will maintain, or cause to be maintained, the sidewalk, fencing, highway lighting, and mid-block pedestrian signal.









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- 6. CONTRACTOR TO COORDINATE WITH LYNX ON TEMPORARY BUS STOPS. WHEN A BUS STOP FALLS WITHIN A WORK ZONE, TEMPORARY BUS STOPS SHALL BE PLACED JUST BEFORE AND JUST AFTER EACH WORK ZONE.
- 5. WHEN PEDESTRIAN ROUTE IMPACTS SIGNALIZED CROSSING MOVEMENT, PHASE CONSTRUCTION SO THAT ALL OTHER PEDESTRIAN MOVEMENTS AT THAT INTERSECTION ARE MAINTAINED.
- 4. SIGNAL CROSSING TO SIGNAL CROSSING ON THE LEFT SIDE OF THE ALIGNMENT IS SHOWN CONSTRUCTION ON THE RIGHT SIDE IS SIMILAR.
- 3 ADA ACCESSIBLE PEDESTRIAN ROUTES TO BE MAINTAINED ADJACENT TO WORK ZONE AND WITHIN PEDESTRIAN DETOUR ROUTES.
- 2. ALL DRIVEWAY ACTIVITIES, INCLUDING DEMOLITION AND CONSTRUCTION, SHALL BE COMPLETED IN EACH SUB-PHASE PRIOR TO MOVING ON TO THE NEXT SUB-PHASE.
- NOTES CONSTRUCTION AT DRIVEWAYS AND EXISTING SIDEWALK IS LIMITED TO THE SUB-PHASES LISTED IN 1 TABLE BELOW. PEDESTRIAN DETOURS ARE LIMITED TO A MAXIMUM OF ONE BLOCK AT A TIME.