




Interoffice Memorandum

October 5, 2018

TO: Mayor Teresa Jacobs  
and the Board of County Commissioners

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

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

PHONE NUMBER: (407) 836-7890

SUBJ: **Joint Participation Agreement between Orange County, Florida and  
Central Florida Expressway Authority for New Independence Parkway  
and S.R. 429 Ramps Traffic Signals Project**

Submitted for approval and execution is an agreement between Orange County and the Central Florida Expressway Authority for the installation of traffic signals on New Independence Parkway at the two ramp terminals with S.R. 429. The Central Florida Expressway Authority shall permit, design, and construct the signals and Orange County agrees to pay one-half of the project costs. The County's initial payment for design of the signals, including contingency, is \$41,800 and the estimate for construction plus construction engineering inspection costs is \$734,580. The County's portion of the project costs is one-half of the actual design cost and one-half of the actual construction cost.

Staff recommends approval and execution of the Joint Participation Agreement.

**Action Requested: Approval and execution of the Joint Participation Agreement  
between Orange County, Florida and the Central Florida  
Expressway Authority for New Independence Parkway and  
the S.R. 429 Ramps Traffic Signals Project. District 1.**

MVM/CNL/nad

Attachments

BCC Mtg. Date: October 30, 2018

**JOINT PARTICIPATION AGREEMENT  
BETWEEN ORANGE COUNTY, FLORIDA AND CENTRAL FLORIDA  
EXPRESSWAY AUTHORITY FOR NEW INDEPENDENCE PARKWAY AND S.R. 429  
RAMPS TRAFFIC SIGNALS PROJECT**

***THIS AGREEMENT***, effective as of the last date of execution (the "Effective Date"), is entered into by and among **Orange County**, a charter county and political subdivision of the State of Florida, hereinafter called "County," and **Central Florida Expressway Authority**, an agency of the state, hereinafter called "CFX." County and CFX are sometimes collectively referred to as the "Parties" or individually referred to as a "Party."

**WITNESSETH**

***WHEREAS***, County and CFX jointly wish to improve traffic safety and operations at the S.R. 429 Interchange with New Independence Parkway; and

***WHEREAS***, County has conducted a traffic signal warrant analysis for the S.R. 429 Interchange Ramps at New Independence Parkway, which has been reviewed by CFX; and

***WHEREAS***, the traffic signal warrant analysis concluded that traffic signals are warranted on New Independence Parkway at the two (2) ramp terminals with S.R. 429; and

***WHEREAS***, the Parties have agreed that CFX shall permit, design, and construct traffic signals on New Independence Parkway at the two (2) ramp terminals with S.R. 429 ("Traffic Signals"); and

***WHEREAS***, the Parties are currently negotiating and finalizing a traffic signal maintenance agreement, which shall govern both operation and maintenance of the Traffic Signals; and

***WHEREAS***, County and CFX shall each be responsible for one-half (1/2) of the total project cost for permitting, design, and construction of the aforementioned signals.

***NOW, THEREFORE***, in consideration of the mutual covenants and promises of the Parties hereto, County and CFX agree as follows:

1. The above recitations are true and correct and are incorporated herein as fully as if set forth hereafter.
2. Subject to the provisions of Section 3, herein below, CFX shall utilize a professional engineering firm ("Design Consultant") to design the Traffic Signals in accordance with CFX and County requirements for road and traffic signal design. County shall provide CFX with any utility "As-builts" or surveys along New Independence Parkway for the proposed Traffic Signals, if such information is in their possession, upon reasonable request from CFX or CFX's Design Consultant. County shall have the right to review and approve the Traffic Signals design as described herein and in Section 3 below; such approval shall not be unreasonably withheld or delayed. Review of the design plans shall occur within thirty (30) days of submittal of the plans to County. For purpose of this

Agreement, the term "Traffic Signals" shall include, but is not limited to, the following: electronic cabinets, poles, mast arms, signal heads, video detection equipment, signal interconnect, pedestrian signals, and pavement markings.

3. Design Cost.

- (a) CFX has procured the Design Consultant in accordance with CFX's procurement process.
- (b) The agreed upon design cost is \$76,000.00 as shown by **Attachment A hereto** ("Design Cost") and the agreed upon contingency is ten percent (10%) of the Design Cost ("Design Contingency") or \$7,600.00. County agrees to pay one-half (1/2) of the Design Cost plus one-half (1/2) of the Design Contingency, which amounts to **\$41,800.00**, to CFX within forty-five (45) days of the Effective Date of this Agreement.
- (c) The Design Contingency may only be used for mutually-approved increases in the Design Cost of the Traffic Signals. Prior to using any of the Design Contingency, CFX will notify County for its review and approval, said approval not to be unreasonably withheld.
- (d) Upon completion of the design of the Traffic Signals, CFX shall provide such final design to County together with a statement setting forth the actual design costs ("Actual Design Costs") of the Traffic Signals. If County approves the final design and the Actual Design Costs exceed the amount that CFX and County have already paid, as previously approved by County, then CFX will invoice County who shall pay for one-half (1/2) of said excess amount. County shall pay such amount to CFX within forty-five (45) days of its receipt of the invoice(s); provided, however, any such additional requested payment that exceeds ten percent (10%) of the Design Cost plus the Design Contingency shall be subject to approval by the Orange County Board of County Commissioners, and therefore will be reimbursed to CFX as soon as reasonably possible. If the Orange County Board of County Commissioners does not approve the additional requested payment, CFX has the right to terminate this Agreement. In the event the Design Costs are less than the amount already paid by County to CFX, then CFX shall refund one-half (1/2) of such overage amount to County within thirty (30) days of the statement date.

4. CFX shall incorporate its standard insurance and Public Construction Bond requirements in the construction contract documents for the Traffic Signals. The general liability insurance policy provided by CFX's contractor shall name Orange County and CFX as additional insureds. The Public Construction Bond shall remain in full force and effect until one (1) year after substantial completion of the Traffic Signals.

5. Construction Costs.

- (a) CFX will procure the construction contractor ("Contractor") in accordance with CFX's procurement process. Construction of the Traffic Signals is estimated to cost Six Hundred Thirty Thousand and 00/100 dollars (\$630,000.00) ("Construction Estimate") as shown by **Attachment B**.
- (b) Upon receipt of bids, and prior to authorizing construction of the Traffic Signals, CFX shall provide County with the Traffic Signals construction low bid (the "Construction Cost").
- (c) If the Construction Cost is less than or equal to the Construction Estimate, County agrees to pay one-half (1/2) of the Construction Cost plus one-half (1/2) of the agreed upon contingency of ten percent (10%) of the Construction Cost ("Construction Contingency") plus one-half (1/2) of the agreed upon construction, engineering and inspection cost ("CEI Cost") of six percent (6%) of the Construction Cost plus Construction Contingency, subject to completion of the procurement process, change orders and claims as discussed below.
- (d) If the Construction Cost is greater than the Construction Estimate, County may accept or reject the Construction Cost within ten (10) business days of receipt. If County rejects the Construction Cost, then County shall reimburse CFX's portion of the Actual Design Costs as provided for in Section 3, and either Party may then terminate the Agreement upon thirty (30) days written notice to the other Party.
- (e) The Construction Contingency may only be used for mutually agreed-upon increases in the Construction Cost of the Traffic Signals, including any change orders, as set out in Section 6 below. Prior to using any of the Construction Contingency, CFX will notify County for review and approval, said approval not to be unreasonably withheld. If the Construction Contingency is insufficient to cover the cost of a mutually agreed-upon increase in the Construction Cost, then County may obtain the necessary approvals to increase the Construction Contingency to cover the increased cost. If County does not obtain the necessary approvals, then CFX is under no obligation to accept the change order, perform additional work, or incur additional costs.
- (f) Upon completion of the Traffic Signals, CFX shall provide to County a statement setting forth the actual total permitting and construction costs ("Final Construction Costs"), including all change orders, of the Traffic Signals. County shall pay one-half (1/2) of the Final Construction Costs to CFX within forty-five (45) days of its receipt of the statement; provided, however, any such additional requested payment that exceeds ten percent (10%) of County's total previous payment obligation (which is one-half (1/2) of the Construction Cost plus the Construction Contingency plus the CEI Cost plus approved increases) shall be subject to

approval by the Orange County Board of County Commissioners, and therefore will be reimbursed to CFX as soon as reasonably possible.

6. During the course of the Traffic Signals work, if either of CFX or County observes, or otherwise become aware of, any defects, conflicts, or necessary changes to the Traffic Signals, that Party shall immediately notify the other Party of such defect(s), conflict(s), or necessary change(s). County and CFX agree that time is of the essence in making any decisions, interpretations, or changes with respect to design, materials, and other matters pertinent to the work covered by the construction contract so as to not materially delay the work of the Contractor.
  - a. If County determines that a change is necessary to the construction contract in order to complete the Traffic Signals, then County shall provide such proposed change to CFX for review and approval, which approval shall not be unreasonably withheld or denied. Upon CFX's approval of such change, CFX shall inform County of the cost for the change order, which County shall review and approve/reject within ten (10) business days, said approval not to be unreasonably withheld. Upon County's approval of the cost, CFX shall process a change order with the Contractor.
  - b. If CFX determines that a change is necessary to the construction contract in order to complete the Traffic Signals, then CFX shall provide to County a copy of the proposed change order for review and approval, which approval shall not be unreasonably withheld or delayed. County shall notify CFX within ten (10) business days of receipt of the proposed change order of their approval or rejection. Upon County's approval of such change order, CFX shall inform County of the cost for the change order, which County shall review and approve/reject within ten (10) business days, said approval not to be unreasonably withheld.
  - c. If the Parties reach an impasse over any change order, the objection shall be heard by a committee ("Committee") composed of a CFX representative, a County representative, and a third member selected by the other two, which Committee shall make the final determination as to whether the change order shall be implemented. Such Committee shall make a good faith effort to resolve any such issues as expeditiously as possible and any such issues shall be resolved within three (3) days from the time the Committee first considers it, unless a majority of the Committee (2/3) agrees otherwise.
7. During construction, County may inspect the Traffic Signals. Any deficiencies in the Traffic Signals observed by County shall be reported to CFX's construction representative. All such identified deficiencies in the construction of the Traffic Signals shall be corrected or otherwise resolved by the Contractor as County and CFX agree. The County shall pay one-half (1/2) of any and all Contractor's or subcontractor's delay claims resulting from construction of the Traffic Signals, or any claims resulting from activities or

representations of the County, if such claims are payable pursuant to arbitration or court order, and provided that County was first afforded the reasonable opportunity to participate in any arbitration, dispute, and/or settlement process, with counsel of its choice. Said payment(s) shall be made within forty-five (45) days of CFX's written request and will be subject to Board of County Commissioners approval for any amount that exceeds ten percent (10%) of County's total previous payment obligation. Upon completion of the Traffic Signals, County and CFX shall jointly conduct a final inspection. Any deficiencies in work shall be set forth on a "punch list." Upon completion or correction of all outstanding issues listed on the punch list to County's satisfaction, County shall promptly notify CFX in writing of its acceptance of the Traffic Signals. Any costs incurred by the Parties under the terms of this Section are not subject to the limitations referenced in paragraph 5 above and will be mutually negotiated among the two Parties.

8. The Parties anticipate that construction of the Traffic Signals can be performed completely within existing County or CFX right-of-way and no additional real property is required.
9. 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.
10. County will issue a right-of-way utilization permit, as necessary, for CFX's Design Consultant and Contractor to design and construct the Traffic Signals. County and CFX agree to waive all permit fees required by their respective jurisdictions for the Traffic Signals. In the alternative, either CFX or County may itself pay a permit fee required by its respective jurisdiction. Said payment shall not be reimbursable under this Agreement. To the extent permit fees are required by any other agency with jurisdiction, County shall reimburse CFX one-half (1/2) of such permit fees for the Traffic Signals within forty-five (45) days of receipt of an invoice from CFX.
11. Unless terminated earlier by one or both of the Parties, the term of this Agreement shall be eighteen (18) months, which is anticipated to be the period necessary to complete the Traffic Signals, subject to one (1) automatic renewal of 6 months.
12. Any notice required or allowed to be delivered pursuant to Sections 3, 4, 5, 6, or 7 may be delivered via electronic mail and shall be acknowledged by the recipient upon receipt. The electronic mail shall be addressed to the Party at the email 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.

**COUNTY:** Traffic Engineering Division Manager  
Email: Christine.Lofye@ocfl.net

With a copy to: Public Works Director  
Email: Mark.Massar@ocfl.net

County Traffic Engineer  
Email: Humberto.Castillero@ocfl.net

**CFX:** Chief of Infrastructure  
Email: Joseph.Berenis@CFXway.com;

With a copy to: Director of Engineering  
Email: Glenn.Pressimone@CFXway.com;

13. Except as set forth in Section 13, any formal notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered (a) when 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.

**COUNTY:** Orange County Traffic Engineering  
Attention: Manager, Traffic Engineering Division  
Public Works Complex – Building 1  
4200 John Young Parkway  
Orlando, Florida 32839

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

**CFX:** Central Florida Expressway Authority  
Attention: Chief of Infrastructure  
4974 ORL Tower Road  
Orlando, Florida 32807

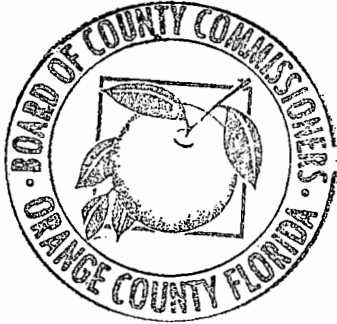
14. Each of the Parties hereto shall give the other Party written notice of any alleged defaults hereunder and shall allow the defaulting Party thirty (30) days from the date of receipt to cure such defaults.

15. If any court finds part of this Agreement invalid or unenforceable, such invalidity or unenforceability shall not affect the other parts of the Agreement (i) if the rights and obligations of the Parties contained therein are not materially prejudiced and, (ii) if the intentions of the Parties can continue to be effected. To that end, this Agreement is declared severable.
16. No right or remedy herein conferred upon or reserved to either Party hereto is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of a default hereunder. The failure of any Party hereto to insist, at any time, upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy as provided in this Agreement, shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof with respect to subsequent defaults. Every right and remedy given by this Agreement to the Parties hereof may be exercised from time to time and as often as may be deemed expedient by the Parties hereto, as the case may be.
17. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Agreement.
18. This Agreement and the provisions contained herein shall be construed, controlled and interpreted according to the laws of the State of Florida.
19. 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. Amendments to the provisions herein, shall be made by the Parties in writing by formal amendment.

[SIGNATURES APPEAR ON FOLLOWING PAGES]



***IN WITNESS WHEREOF***, the Parties have caused this Joint Participation Agreement to be executed as of the day and year written below.



**Orange County, Florida**

By: Board of County Commissioners

By: *Teresa Jacobs*  
Teresa Jacobs, Mayor

Date: 10.30.18

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

By: *Katie Smith*  
Deputy Clerk

**SIGNATURES CONTINUE NEXT PAGE**

**Central Florida Expressway Authority**

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

Laura Kelley  
Executive Director

Date: \_\_\_\_\_

Oct. 11, 2018

ATTEST:

M. Lamaute  
Mimi Lamaute, Executive Secretary

Approved as to Form and Legality  
for the use and reliance of the  
Central Florida Expressway Authority only.

Oct. 11, 20 18  
Linda L. B. Landon for  
General Counsel

## ATTACHMENT A

DESIGN COST	
429 NEW INDEPENDENCE PKWY SIGNALS	
Pegasus (Tasks 21 & 22)	\$43,996
Southeastern Surveying (Tasks 27.10 (Partial) & 27.18)	\$8,415
STV	\$10,077
Ardaman (75%)	\$13,512
Sub-Total	\$76,000
10% Contingency	\$7,600
Total	\$83,600

# ATTACHMENT B

CONSTRUCTION ESTIMATE				
429 NEW INDEPENDENCE PKWY SIGNALS				
ITEM	QUANTITY	UNIT	UNIT PRICE	TOTAL
<b>** SIGNALIZATION **</b>				
50' STEEL MAST ARM	2	EA	\$ 35,000.00	\$70,000
70' STEEL MAST ARM	4	EA	\$ 50,000.00	\$200,000
3-SECTION SIGNAL HEADS	13	AS	\$ 1,000.00	\$13,000
4-SECTION SIGNAL HEADS	2	AS	\$ 1,300.00	\$2,600
VIDEO DETECTION CABINET EQUIPMENT	2	EA	\$ 5,500.00	\$11,000
VIDEO DETECTION CAMERAS	6	EA	\$ 4,400.00	\$26,400
CONTROLLER CABINETS	2	EA	\$ 30,000.00	\$60,000
CONDUIT	600	LF	\$ 18.00	\$10,800
PULL BOXES	8	EA	\$ 600.00	\$4,800
SIGNAL CABLE	2	PI	\$ 6,000.00	\$12,000
ELECTRIC POWER SERVICE	1	AS	\$ 6,000.00	\$6,000
INTERNALLY ILLUMINATED STREET NAME SIGNS	6	EA	\$ 3,700.00	\$22,200
<b>PEDESTRIAN ITEMS</b>				
PED SIGNALS	16	AS	\$ 700.00	\$11,200
PED DETECTORS	14	EA	\$ 250.00	\$3,500
<b>SIGNAL INTERCONNECT</b>				
CONDUIT	1120	LF	\$ 18.00	\$20,160
FIBER-OPTIC CABLE	1395	LF	\$ 3.00	\$4,185
SPLICE ENCLOSURE	2	EA	\$ 675.00	\$1,350
SPLICE TRAY	2	EA	\$ 40.00	\$80
PATCH PANEL	2	EA	\$ 1,700.00	\$3,400
PULL & SPLICE BOXES SMALL	4	EA	\$ 1,400.00	\$5,600
PULL & SPLICE BOXES LARGE	2	EA	\$ 3,000.00	\$6,000
<b>CROSSWALKS ACROSS NEW INDEPENDENCE</b>				
6" CONC. SW (FOR PED CROSSING)	55	SY	\$ 59.64	\$3,280
TYPE E CURB & GUTTER	48	LF	\$ 20.00	\$960
DETECTABLE WARNING SURFACE	48	SF	\$ 30.00	\$1,440
12" WHITE THERMOPLASTIC CROSS WALKS	208	LF	\$ 2.50	\$520
18" WHITE THERMOPLASTIC CROSS WALKS	240	LF	\$ 3.16	\$757
24" WHITE THERMOPLASTIC STOP BARS	120	LF	\$ 5.00	\$600
6" WHITE SKIP THERMOPLASTIC	160	LF	\$ 1.00	\$160
SUB-TOTAL				\$501,992
EROSION CONTROL / TEMPORARY DRAINAGE (0.5%)				\$2,510
MAINTENANCE OF TRAFFIC (15%)				\$75,299
MOBILIZATION (10%)				\$50,199
SUB-TOTAL CONSTRUCTION				\$630,000
CONSTRUCTION CONTINGENCY (10%)				\$63,000
SUB-TOTAL (2018 CONSTRUCTION COST)				\$693,000
CONSTRUCTION, ENGINEERING & INSPECTION (6% of SUB-TOTAL)				\$41,580.00
TOTAL (2018 CONSTRUCTION COST + CEI)				\$734,580