

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY DESIGN BY FDOT CONSULTANT AGREEMENT
(AT UTILITY EXPENSE)

Form No. 710-010-56
UTILITIES
11/14

Financial Project ID: 437341-1-32-02	Federal Project ID: D517-081 B
County: ORANGE	State Road No.: 435
District Document No: 1	
Utility Agency/Owner (UAO): CITY OF ORLANDO	

THIS AGREEMENT, entered into this _____ day of _____, year of _____, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as the "**FDOT**," and **CITY OF ORLANDO**, hereinafter referred to as the "**UAO**";

WITNESSETH:

WHEREAS, the **FDOT**, is constructing, reconstructing, or otherwise changing a portion of a public road or publicly owned rail corridor, said project being identified as SR 435 (Kirkman Road) from SR 482 (Sand Lake Road) to South of SR 408, State Road No.: 435, hereinafter referred to as the "Project"; and

WHEREAS, the **UAO** owns or desires to install certain utility facilities which are located within the limits of the Project hereinafter referred to as the "Facilities" (said term shall be deemed to include utility facilities as the same may be relocated, adjusted, installed, or placed out of service pursuant to this Agreement); and

WHEREAS, the Project requires the location (vertically and/or horizontally), protection, relocation, installation, adjustment or removal of the Facilities, or some combination thereof, hereinafter referred to as "Utility Work"; and

WHEREAS, the **DEPARTMENT** and the **UTILITY** have determined that it would be to the best interest of the general public and to the economic advantage of both parties to enter into an agreement providing for the design of the Utility Work by the engineer designing the Project for the **FDOT**, hereinafter referred to as the "**FDOT Consultant**," which design of the Utility Work shall hereinafter be referred to as the "Utility Design"; and

WHEREAS, the **UAO**, pursuant to the terms and conditions hereof, will bear certain costs associated with the Utility Design;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the **FDOT** and the **UAO** hereby agree as follows:

1. Design of Utility Work

- a. **FDOT Consultant** shall prepare, at the **UAO's** sole cost and expense, final engineering design, plans, other necessary related design documents, and cost estimate for the Utility Work (hereinafter referred to as the "Plans Package") more specifically described in the **FDOT's** Supplemental Agreement # 4 to Consultant Comprehensive Engineering Services, Inc. Design Services Contract.
- b. The Plans Package shall be in the same format as the **FDOT's** contract documents for the Project.
- c. The Plans Package shall include any and all activities and work effort required to perform the Utility Work, including but not limited to, all clearing and grubbing, survey work and shall include a traffic control plan.
- d. The Plans Package shall be prepared in compliance with the **FDOT's** Utility Accommodation Manual and the **FDOT's** Plans Preparation Manual in effect at the time the Plans Package is prepared, and the **FDOT's** contract documents for the Project. If the **FDOT's** Plans Preparation Manual is updated and conflicts with the **FDOT's** Utility Accommodation Manual, the Utility Accommodation Manual shall apply where such conflicts exist.
- e. The technical special provisions which are a part of the Plans Package shall be prepared in

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY DESIGN BY FDOT CONSULTANT AGREEMENT
(AT UTILITY EXPENSE)

Form No. 710-010-56
UTILITIES
11/14

accordance with the **FDOT's** guidelines on preparation of technical special provisions.

- f. The **FDOT Consultant** shall provide a copy of the proposed Plans Package to the **UAO**, for review at the following stages: PHASE III; FINAL REVIEW; SIGNED & SEALED. The **UAO** shall review the Plans Package to see that it complies with the requirements of this Agreement.
- g. In the event the **UAO** finds any deficiencies in the Plans Package during the reviews performed pursuant to Subparagraph f. above, the **UAO** will notify the **FDOT** in writing of the deficiencies within the time specified in the plans review transmittal.
- h. The **UAO** shall furnish the **FDOT** such information from the **UAO** files as requested by the **FDOT**.
- i. The Facilities and the Utility Design will include all utility facilities of the **UAO** which are located within the limits of the Project, except as generally summarized as follows: N/A. These exceptions shall be handled by separate arrangement.

2. Cost of Design

- a. The **UAO** shall be responsible for all costs of the Utility Design.
- b. The **UAO** agrees that it will, at least N/A (0) days prior to the **FDOT** issuing the Supplemental Agreement referred to in Paragraph 1 hereof, furnish the **FDOT** an advance deposit of \$92,806.00 for the payment of said Utility Design. It is understood that the **FDOT's Consultant** shall not begin any Utility Design until the **FDOT** has received the above payment and that if such payment is not received on or before 07/30/18 this Agreement shall be null and void. The **FDOT** shall utilize this deposit for the payment of Utility Design. Both parties further agree that in the event the final billing pursuant to the terms of Subparagraph 2. d. below is less than the advance deposit, a refund of any excess will be made by the **FDOT** to the **UAO**. No work in excess of the advance deposit shall be done. In the event that it is subsequently determined that work in addition to that described in the Supplemental Agreement described in Paragraph 1 hereof is necessary in order to properly complete the Utility Design, the **UAO** shall make an additional deposit in the amount necessary to issue a subsequent Supplemental Agreement to the **FDOT Consultant** for the additional work.
- c. The payment of funds under this Agreement will be made (choose one):
 - ☒ directly to the **FDOT** for deposit into the State Transportation Trust Fund.
 - ☐ as provided in the attached Three Party Escrow Agreement between the **UAO**, the **FDOT** and the State of Florida, Department of Financial Services, Division of Treasury. Deposits of less than \$100,000.00 must be pre-approved by the Department of Financial Services and the **FDOT** Comptroller's Office prior to execution of this agreement.
- d. Upon final payment to the **FDOT Consultant**, the **FDOT** intends to have its final and complete accounting of all costs incurred in connection with the Utility Design within three hundred sixty (360) days. All project cost records and accounts shall be subject to audit by a representative of the **UAO** for a period of three (3) years after final close out of the project. The **UAO** 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 **FDOT** to the **UAO** in accordance with Section 215.422, Florida Statutes.

3. Default

- a. In the event the **UAO** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement, the **FDOT** may exercise one or more of the following options, provided that at no time shall the **FDOT** be entitled to receive double recovery of damages:

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY DESIGN BY FDOT CONSULTANT AGREEMENT
(AT UTILITY EXPENSE)

Form No. 710-010-56
UTILITIES
11/14

- (1) Terminate this Agreement if the breach is material and has not been cured within 60 days from written notice thereof from the **FDOT**.
 - (2) Pursue a claim for damages suffered by the **FDOT**.
 - (3) Suspend the issuance of further permits to the **UAO** for the placement of Facilities on **FDOT** property if the breach is material and has not been cured within 60 days from written notice thereof from the **FDOT** until such time as the breach is cured.
 - (4) Pursue any other remedies legally available.
 - (5) Perform any work with its own forces or through contractors and seek repayment for the cost thereof under Section 337.403(3), Florida Statutes.
- b. In the event the **FDOT** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement, the **UAO** may exercise one or more of the following options:
- (1) Terminate this Agreement if the breach is material and has not been cured within 60 days from written notice thereof from the **UAO**.
 - (2) Pursue any other remedies legally available.
- c. Termination of this Agreement shall not relieve either party from any obligations it has pursuant to other agreements between the parties or from any statutory obligations that either party may have with regard to the subject matter hereof.

4. Indemnification

FOR GOVERNMENT-OWNED UTILITIES,

To the extent provided by law, the **UAO** shall indemnify, defend, and hold harmless the **FDOT** and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by the **UAO**, its agents, employees, or contractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which **FDOT** or said parties may be subject, except that neither the **UAO**, its agents, employees, or contractors will be liable under this section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the **FDOT** or any of its officers, agents, or employees during the performance of this Agreement.

When the **FDOT** receives a notice of claim for damages that may have been caused by the **UAO** in the performance of services required under this Agreement, the **FDOT** will immediately forward the claim to the **UAO**. The **UAO** and the **FDOT** will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the **FDOT** will determine whether to require the participation of the **UAO** in the defense of the claim or to require the **UAO** to defend the **FDOT** in such claim as described in this section. The **FDOT's** failure to notify the **UAO** of a claim shall not release the **UAO** from any of the requirements of this section. The **FDOT** and the **UAO** will pay their own costs for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all costs.

FOR NON-GOVERNMENT-OWNED UTILITIES,

The **UAO** shall indemnify, defend, and hold harmless the **FDOT** and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by the **UAO**, its agents, employees, or contractors during the performance of the Agreement,

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY DESIGN BY FDOT CONSULTANT AGREEMENT
(AT UTILITY EXPENSE)

Form No. 710-010-56
UTILITIES
11/14

whether direct or indirect, and whether to any person or property to which **FDOT** or said parties may be subject, except that neither the **UAO**, its agents, employees, or contractors will be liable under this section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the **FDOT** or any of its officers, agents, or employees during the performance of this Agreement.

The **UAO's** obligation to indemnify, defend, and pay for the defense or at the **FDOT's** option, to participate and associate with the **FDOT** in the defense and trial of any damage claim or suit and any related settlement negotiations, shall arise within fourteen (14) days of receipt by the **UAO** of the **FDOT's** notice of claim for indemnification to the **UAO**. The notice of claim for indemnification shall be served by certified mail. The **UAO's** obligation to defend and indemnify within fourteen (14) days of such notice shall not be excused because of the **UAO's** inability to evaluate liability or because the **UAO** evaluates liability and determines the **UAO** is not liable or determines the **FDOT** is solely negligent. Only a final adjudication or judgment finding the **FDOT** solely negligent shall excuse performance of this provision by the **UAO**. The **UAO** shall pay all costs and fees related to this obligation and its enforcement by the **FDOT**. The **FDOT's** delay in notifying the **UAO** of a claim shall not release **UAO** of the above duty to defend.

5. Force Majeure

Neither the **UAO** nor the **FDOT** shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimated duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible.

6. Miscellaneous

- a. Time is of the essence in the performance of all obligations under this Agreement.
- b. The **FDOT** may unilaterally cancel this Agreement for refusal by the **UAO** 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 **UAO** in conjunction with this Agreement.
- c. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto, except that the parties understand and agree that the **FDOT** has manuals and written policies and procedures which may be applicable at the time of the Project and the relocation of the Facilities.
- d. 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.
- e. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, or express 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. The **UAO** shall have a continuing obligation to notify each District of the **FDOT** of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY DESIGN BY FDOT CONSULTANT AGREEMENT
(AT UTILITY EXPENSE)

Form No. 710-010-56
UTILITIES
11/14

If to the UAO :
Mr. Mike Melzer, Project Manager
400 S Orange Ave, City Hall, 8 th floor
Orlando, FL 32801

If to the FDOT :
Heidi Trivett, Project Manager
719 S Woodland Blvd.
DeLand, FL 32720

7. Certification

This document is a printout of an **FDOT** form maintained in an electronic format and all revisions thereto by the **UAO** in the form of additions, deletions, or substitutions are reflected only in an Appendix entitled "Changes to Form Document" and no change is made in the text of the document itself. Hand notations on affected portions of this document may refer to changes reflected in the above-named Appendix but are for reference purposes only and do not change the terms of the document. By signing this document, the **UAO** hereby represents that no change has been made to the text of this document except through the terms of the appendix entitled "Changes to Form Document."

You MUST signify by selecting or checking which of the following applies:

- ☐ No changes have been made to this Form Document and no Appendix entitled "Changes to Form Document" is attached.
- ☒ No changes have been made to this Form Document, but changes are included on the attached Appendix entitled "Changes to Form Document."

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first written.

UTILITY: CITY OF ORLANDO

BY: (Signature) _____

DATE: _____

(Typed Name: ____)

(Typed Title: _____)

Recommend Approval by the District Utility Office

BY: (Signature) _____

DATE: _____

FDOT Legal review

BY: (Signature) _____

DATE: _____

District Counsel

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY DESIGN BY FDOT CONSULTANT AGREEMENT
(AT UTILITY EXPENSE)

Form No. 710-010-56
UTILITIES
11/14

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: (Signature)

DATE: _____

(Typed Name: Loreen Bobo)

(Typed Title: Dirtrict Director of Transportation Develop.)

FEDERAL HIGHWAY ADMINISTRATION (if applicable)

BY: _____

DATE: _____

(Typed Name: _____)

(Typed Title: _____)

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
UTILITY DESIGN BY FDOT CONSULTANT AGREEMENT
(AT UTILITY EXPENSE)

APPENDIX: "CHANGES TO FORM DOCUMENT"

The following changes are hereby made to the Utility Design by FDOT Consultant Agreement (at Utility Expense) between the **State of Florida Department of Transportation** (the "**FDOT**") and City of Orlando (the "**UAO**") dated the _____ day of _____, 20_____, for the project identified as FPN# 437341 1 32 02; SR 435 (Kirkman Road) from SR 482 (Sand Lake Road) to South of SR 408;

1. Section 6, subparagraph f. is added to read as follows:

"It is specifically understood and agreed that if post-design services are needed in connection with the performance of the work which is the subject of the Utility Design, the **UAO** shall make an additional deposit in the amount that **FDOT** will pay the **FDOT Consultant** for the payment of said post-design services. The **FDOT** will notify the **UAO** no later than 60 days prior to the date of deposit of the amount of the deposit and the date for the deposit. Said amount will be deposited into the State Transportation Trust Fund. The **FDOT** and the **UAO** acknowledge and agree that the amount stated above will include an additional ten percent (10%) to cover the **UAO's** obligation for the cost of the post-design services as set forth in Section 337.403(1)(b) of the Florida Statutes. The deposit shall constitute a lump sum payment for post design services and there shall be no subsequent adjustment or accounting for said amount. In the event that the **UAO** fails to timely make the deposit for post-design services, all post-design services for the Utility Design shall be performed by the **UAO** at the **UAO's** sole cost and expense, and at a time and in a manner, that does not cause delay to the Project."

2. Paragraph 3.a (3) is hereby deleted from this agreement.
3. Paragraph 4, Indemnification is hereby deleted in its entirety from this agreement.
4. Paragraph 6.b. The FDOT shall be changed to read Either Party.
5. Paragraph 6.b. UAO shall be changed to read Other Party.
6. Paragraph 6.e. is hereby changed to read as follows.

All notices required pursuant to the terms thereof may be sent by first class United States mail, facsimile transmission, hand delivery, or express 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. The UAO shall have a continuing obligation to notify District 5 of the FDOT of the appropriate person for notices to be sent pursuant to this agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses;

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

RESOLUTION

UTILITY AGREEMENT

FPN#	COUNTY	STATE ROAD	DOC. #	FAP #
437341 1 32 02	Orange	435	1	D517 081 B

WHEREAS, the **State of Florida Department of Transportation**, hereinafter referred to as the **FDOT**, proposes to construct or reconstruct a transportation facility identified above, hereinafter referred to as the **Project**; and

WHEREAS, in order for the **FDOT** to proceed with the Project, it is necessary for City of Orlando, hereinafter referred to as the **UAO**, to execute and deliver to the **FDOT** the agreement identified as Utility Design by FDOT Consultant Agreement (At Utility Expense), hereinafter referred to as the **Agreement**;

NOW, THEREFORE, BE IT RESOLVED BY THE UAO:

That **(Name)** _____, **(Title)** _____, be hereby authorized and directed to execute and deliver the Agreement to the FDOT.

A certified copy of this Resolution shall be forwarded to the **FDOT** along with the executed Agreement.

ON MOTION of _____, seconded by _____, the above resolution was introduced and passed by the UAO on the __ day of _____, 20__.

NAME: _____

Title: _____

ATTEST: _____

Title: _____