



Interoffice Memorandum

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

June 1, 2015

JUN 16 2015 *NPLess*

TO: Mayor Teresa Jacobs
and Board of County Commissioners

FROM: Mark V. Massaro, P. E., Director, Public Works Department *[Signature]*

CONTACT PERSON: Ruby Dempsey Rozier, Manager
Traffic Engineering Division *[Signature]*

PHONE NUMBER: (407) 836-7890

SUBJ: Quiet Zone Improvement Agreement between the State of Florida
Department of Transportation and Orange County, FM# 436014-1-52-
04

The Public Works Traffic Engineering Division, the County Attorney's Office, and Risk Management Division have completed the review of the Quiet Zone Improvement Agreement with the Florida Department of Transportation (FDOT). This agreement allows the County to accept FDOT's funding for the design and construction of Quiet Zone Improvements at 4 SunRail Crossings in unincorporated Orange County.

The project scope includes the design and construction of at-grade railroad crossings in order to establish a quiet zone that is consistent with and meets or exceeds the quiet zone requirements of Rule 222, Federal Railroad Administration (FRA), or that are necessary to permanently close when the gates come down the SunRail crossings with East Oak Ridge Road, Fairlane Road, East Lancaster Road and Glenrose Avenue. The estimated total cost of the project is \$627,338. FDOT will provide up to \$151,000 to the project. All other cost is the responsibility of Orange County.

The FDOT Agreement also includes a Resolution and Three Party Escrow Agreement.

Action Requested: Approval of Quiet Zone Improvement Agreement between the State of Florida Department of Transportation and Orange County, FM# 436014-1-52-04; Resolution of the Orange County Board of County Commissioners regarding the Quiet Zone Improvement Agreement between the State of Florida Department of Transportation and Orange County (Financial Management Number 436014-1-52-04); and Three Party Escrow Agreement. District 3.

MVM/RDR/HE/ns

Attachments

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

JUN 16 2015 NP/BS

Original Draft: 5/19/2015
Revised:

Agency: Orange County Vendor No: F596000773 001	Fund: LF Contract Amount: \$476,338.00	Financial Management No.: 436014-1-52-04
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**QUIET ZONE IMPROVEMENT AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
ORANGE COUNTY**

This AGREEMENT, made and entered into this 22nd day of June, 2015, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as the "DEPARTMENT") and ORANGE COUNTY, Florida, a charter county and political subdivision of the State of Florida, with a mailing address of P.O. Box 1393, Orlando, Florida 32802-1393 (hereinafter referred to as the "AGENCY"),

WITNESSETH:

WHEREAS, The Department has determined that the project described in Exhibit "A", attached to and incorporated into this Agreement, is for the public purpose of a quiet zone capital improvements project in response to the use of locomotive horns at highway-rail grade crossings, and the Department is authorized pursuant to Chapter 2014-51, Laws of Florida, to approve an expenditure to the Agency for up to forty percent of the nonfederal and non-private share of project costs, with the remaining share being provided by the Agency; and

WHEREAS, the Agency, by Resolution, a copy of which is attached hereto as Exhibit "C", and made apart 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 and complete the project described as the design and construction of Quiet Zone Improvements, in Fiscal Year 2014/2015, which project is identified as FM #436014-1-52-04 (the "Project" or "Quiet Zone Improvements"). The Project consists of the design and construction of quiet zone improvements which are located within the geographic limits of the SunRail corridor; and

WHEREAS, the implementation of the Project is in the interests of both the DEPARTMENT and the AGENCY and it would be most practical, expeditious, and economical for the AGENCY to provide the funds to the DEPARTMENT for the work; and

WHEREAS, in order to accomplish the Quiet Zone Improvements the DEPARTMENT will design and construct the work described in Exhibit A hereto and the cost for said work will be allocated consistent with Exhibit B.

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 AGENCY. 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 perform necessary preliminary engineering, prepare any and all design plans, perform the construction, provide all necessary engineering supervision, and otherwise perform all other necessary work, all as may be applicable for the Quiet Zone Improvements as described in Exhibit A hereto. Nothing herein shall be construed as requiring the DEPARTMENT to perform any activity which is outside the scope of the Quiet Zone Improvements that are to be constructed inside of SunRail right of way. 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 AGENCY shall not have any jurisdiction or control over the DEPARTMENT'S activities, except as specifically stated in this Agreement. The AGENCY shall be entitled to be advised of the progress of the Project at reasonable intervals upon request.

3. If necessary, the AGENCY shall perform necessary preliminary engineering, prepare any and all design plans, perform the construction, acquire any necessary right of way, provide all necessary engineering supervision, and otherwise perform all other necessary work, for roadway work that is associated with the Quiet Zone Improvements located outside of the SunRail right of way. In the event work by the AGENCY outside of the rail right of way is necessary to complete the Quiet Zone Improvements, the parties hereto may enter into a separate funding agreement to allow for the DEPARTMENT to provide funding to the AGENCY to accomplish said improvements. 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 AGENCY

deems appropriate. However, all work undertaken and completed by the AGENCY must meet all technical, legal and industry standards to allow the Quiet Zone Improvements to be put into service. The DEPARTMENT shall be entitled to be advised of the progress of the Project at reasonable intervals upon request.

4. Upon completion of the Project and subject to the Parties inspection and acceptance, the Parties agree that all improvements made except for roadway improvements, as described in Exhibit A, will become part of the SunRail and will be owned by the Department. All maintenance activities associated with the Quiet Zone Improvements located within the rail right of way (together with rail equipment located outside of rail right of way) will be the responsibility of the Department and the cost of said maintenance will be governed by an existing railroad maintenance agreement associated with the grade crossing. Said railroad maintenance agreement will be amended to include the upgrades being constructed pursuant to this Agreement. All roadway maintenance, including signs and pavement markings will be maintained by the governmental entity having jurisdiction over the roadway pursuant to the terms of an existing agreement, the terms of which will be amended to reflect and to include the upgrades.

5. Contribution by the AGENCY of the funds for the Quiet Zone Improvement Project shall be made as follows:

(A) The Parties agree the estimated total cost of all work required for the Quiet Zone Improvements is **\$627,338.00 (Six Hundred Twenty Seven Thousand Three Hundred Thirty Eight Dollars and 00/100)**, herein "Project Estimate" for the Quiet Zone Improvements. To assist the AGENCY with funding for the Quiet Zone Improvements, the DEPARTMENT is prepared to provide up to 40% of the invoices submitted, up to but not exceeding, **\$151,000.00 (One Hundred Fifty One Thousand Dollars and 00/100)**, after which all costs will be the responsibility of the LOCAL GOVERNMENT. 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 AGENCY to that effect.

(B) The AGENCY agrees that it will, upon execution of this Agreement, furnish the DEPARTMENT an advance deposit in the amount of **\$476,338.00 (Four**

Hundred Seventy Six Thousand Three Hundred Thirty Eight Dollars and 00/100), for payment of at least 60% of the estimated cost of the Quiet Zone Improvements. The DEPARTMENT will utilize the cash deposit for payment of the cost of the Quiet Zone Improvements as described in Exhibit B hereto.

(C) Both parties further agree that in the event the Quiet Zone Improvements are not constructed or this Agreement is terminated prior to commencement of construction of the Project, the funds provided by the AGENCY for construction of the Quiet Zone Improvements will be returned to the AGENCY.

(D) If the accepted bid amount for the Quiet Zone Improvements is in excess of the Project Estimate amount, the AGENCY 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. The additional deposit to be provided by the AGENCY will be equal to 100% of the difference between the Project Estimate and the accepted bid amount. The DEPARTMENT will notify the AGENCY as soon as it becomes apparent the accepted bid amount is in excess of the advance deposit amount; however, failure of the DEPARTMENT to so notify the AGENCY shall not relieve the AGENCY from its obligation to pay for its full participation. If the AGENCY cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to the DEPARTMENT'S Project Manager indicating when the deposit will be made. The AGENCY understands the request and approval of the additional time could delay the Project, and additional costs may be incurred due to delay of the Project.

(E) If the accepted bid amount for the Quiet Zone Improvements is less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit exceeds the bid amount if such refund is requested by the AGENCY in writing.

If the refund is not requested, the excess funds will be returned to the Agency at the completion of the Project.

(F) Should Project modifications or changes to bid items occur that increase the costs of the Quiet Zone Improvements, the AGENCY will be notified by the DEPARTMENT accordingly. The AGENCY agrees to provide, without delay, in advance of the Quiet Zone work being performed, adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund the Quiet Zone Improvements. The DEPARTMENT shall notify the AGENCY as soon as it becomes

apparent the actual costs will overrun the award amount; however, failure of the DEPARTMENT to so notify the AGENCY shall not relieve the AGENCY from its obligation to pay for its full participation during the Project and on final accounting as provided herein below.

(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 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 AGENCY for a period of three (3) years after final close out of the Project. The AGENCY will be notified of the final cost of the Quiet Zone Improvements. Both parties agree that in the event the final accounting of total costs for the Quiet Zone Improvements pursuant to the terms of this Agreement is less than the total deposits to date, a refund of the excess plus accrued interest will be made by the DEPARTMENT to the AGENCY. If the final accounting is not performed within three hundred and sixty (360) days, the AGENCY 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 plus accrued interest to date, the AGENCY will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The AGENCY agrees to pay interest at a rate as established pursuant to Florida Statutes, Section 55.03, on any invoice not paid within forty (40) calendar days until the invoice is paid.

(I) The payment of funds under this Agreement will be made directly to the DEPARTMENT for deposit and as provided in the attached Escrow Agreement between the AGENCY, the DEPARTMENT and the State of Florida, Department of Financial Services, Division of Treasury. All interest earned will remain in the account for purposes of the Project.

(J) The DEPARTMENT and the AGENCY agree that the payment shall be an asset of the DEPARTMENT for the cost of the work.

(G) Contact Persons:

Florida Department of Transportation

Allison Godwin
Program Coordinator
719 South Woodland Boulevard, MS 4-520
De Land, Florida 32720
PH: (386) 943-5458
Allison.godwin@dot.state.fl.us

Agency

Ruby Rozier
Engineering Division
4200 South John Young Parkway
Orlando, Florida 32839
PH: (407) 836-7894
Ruby.rozier@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 AGENCY 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 AGENCY 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 AGENCY acknowledge and agree to the following:

(A) The AGENCY 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 AGENCY during the term of the contract; and

(B) The AGENCY 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.

IN WITNESS WHEREOF, the AGENCY has executed this Agreement this _____
day of JUN 16 2015, 2015, and the DEPARTMENT has executed this Agreement
this 22nd day of June, 2015.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor

Date: June 16, 2015.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____
Name: _____
Title: _____

SEE
BELOW

Attest: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: *Craig A. Stopyra*
for Deputy Clerk

Craig A. Stopyra
Printed Name

Attest:

Rachel D. Lone
Executive Secretary ASSE. SECRETARY
(RACHEL D. LONE) FOR FINANCE & ADMIN.

Legal Review:

[Signature]

Financial Provisions Approval by
Department of Comptroller on:



EXHIBIT "A"

SCOPE OF SERVICES

Financial Project Number: 436014-1-52-04

The Department will design and construct the improvements as listed in Exhibit "B" at each of the at-grade crossings in order to establish a quiet zone that is consistent with and meets or exceeds the quiet zone requirements of Rule 222, Federal Railroad Administration (FRA), or that are necessary to permanently close the listed crossing.

Exhibit "B"
ESTIMATE
Financial Project Number 436014-1-52-04

SUMMARY OF ESTIMATED BID PRICES FOR QUIET ZONE IMPROVEMENTS

Orange County	Scope	Total QZ Estimate
E. Oak Ridge Rd.	Provide Four-Quadrant Gate System (SSM 2)	\$220,957
Fairlane Rd.	Provide Four-Quadrant Gate System (SSM 2)	\$142,070
E. Lancaster Rd.	Provide Four-Quadrant Gate System (SSM 2)	\$182,888
Glenrose Ave.	Provide Four-Quadrant Gate System (SSM 2)	\$81,423
	Total Estimated Costs	\$627,338
	Local Funds	\$476,338
	State Award Amount	\$151,000

Exhibit "C"

Resolution

FM#: 436014-1-52-04

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS
JUN 16 2015 *NP/BS*

RESOLUTION

of the

ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS

regarding the

QUIET ZONE IMPROVEMENT AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND ORANGE COUNTY (FINANCIAL MANAGEMENT NUMBER 436014-1-52-04)

Resolution No. 2015-M-19

WHEREAS, today, the Board of County Commissioners is approving an agreement with the State of Florida Department of Transportation concerning a project relating to quiet zone capital improvements in response to the use of locomotive horns at highway-rail grade crossings, Financial Management Number 436014-1-52-04 (the "Agreement"); and

WHEREAS, a requirement of the Agreement is that Orange County adopt a Resolution authorizing its officials to execute the Agreement on its behalf.

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

*Section 1. Authorization for County Mayor to Execute the Agreement
(Financial Management Number 436014-1-52-04).*

The County Mayor is hereby authorized to execute the Agreement with the FDOT on behalf of the Board of County Commissioners and the County.

Section 2. Effective Date. This Resolution shall take effect on the date of its adoption.

ADOPTED this ___ day of JUN 16 2015, 2015.

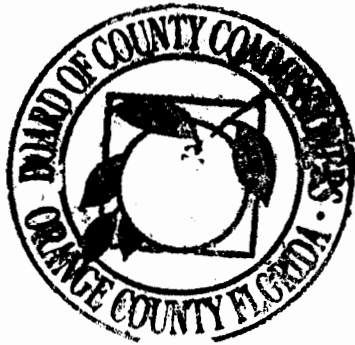
ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: Teresa Jacobs
Teresa Jacobs, County Mayor
42

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: Craig A. Stopysa
for Deputy Clerk

Print Name: Craig A. Stopysa



APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

JUN 16 2015 NP/BS

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OFF. STATE OF FLORIDA

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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: Quiet Zone Improvements
Project #: 436014-1-52-04
County: Orange County

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.

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2015 JUN - 1 10:10:11

RECEIVED
DFS, STATE OF FLORIDA
OFFICE OF THE COMPTROLLER

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

Jason Adant
For FDOT-OOC (signature)

Jason Adant, Deputy Comptroller
Name and Title

59-3024028
Federal Employer I.D. Number

6-29-15
Date

Ajit Lalchandani
For PARTICIPANT (signature)

Ajit Lalchandani County Administrator
Name and Title

596000773007
Federal Employer I.D. Number

6.16.15
Date

FDOT Legal Review:

[Signature]



Bert Wilkerson
For Escrow Agent (signature)

BERT WILKERSON, DIRECTOR
Name and Title

7/2/2015
Date

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DFS, STATE OF FLORIDA
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