

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: June 17, 2019

RE: **A Joint Project Agreement with Polk County for the Design of Water and Wastewater Infrastructure for West Pipkin Road Widening**

Attached hereto for your consideration is a Joint Project Agreement (JPA) with Polk County and the City of Lakeland for professional services to assist the Water Utilities Department with the design upgrades of new waterlines and forcemains along West Pipkin Rd.

The City of Lakeland's Water Utilities provides water and wastewater service to the West Pipkin Road commercial and residential areas (Southwest Lakeland Area). As part of the continuing infrastructure improvements to the City's Water and Wastewater System, there is a need to upgrade these systems to accommodate older infrastructure and future growth in the Utility Service Area. The design project will allow for the design of 16,800 ft of 16" new waterline and 2500 ft of 8" new forcemain.

In accordance with the JPA, Patel, Greene & Associates (Polk County's Design Engineer), will perform preliminary, final design, and permitting of this project; as Polk County's schedule progresses. Construction services will be provided under a future Construction JPA.

Work schedules and design review times will be coordinated in conjunction with the Joint Project Agreement between the City of Lakeland and Polk County. The not to exceed cost for the performance of the work under this Agreement is \$192,565.00 and includes reimbursable expenses. These funds are available in the Water Utilities budget.

It is recommended that the appropriate City Officials be authorized to execute the attached Joint Project Agreement.

attachment

**JOINT PROJECT AGREEMENT
BETWEEN POLK COUNTY AND CITY OF LAKELAND
FOR PIPKIN ROAD WEST WIDENING PROJECT**

This agreement ("Agreement") is entered into by and between Polk County, a political subdivision of the State of Florida, ("**COUNTY**") and the City of Lakeland, a Florida municipal corporation, organized and existing under the laws of the State of Florida, ("**CITY**").

WITNESSETH:

WHEREAS, the **COUNTY** is constructing, reconstructing, or otherwise changing a portion of a public road, said project being identified as **PIPKIN ROAD WEST**, Road No. 930706, ("Project"); and

WHEREAS, the **CITY** owns or desires to install certain utility facilities which are located within the limits of the Project and depicted on Exhibit "A" attached hereto ("Facilities") (Facilities 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, ("Utility Work"); and

WHEREAS, the **COUNTY** has entered into Consultant Service Agreement 18-027 ("Consultant Service Agreement") to design and engineer the Project with Patel, Greene & Associates, PLLC ("**COUNTY Consultant**"); and

WHEREAS, the **COUNTY** and the **CITY** 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 **COUNTY Consultant** (design of the Utility Work shall hereinafter be referred to as the "Utility Design"); and

WHEREAS, the **CITY**, 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 **COUNTY** and the **CITY** hereby agree as follows:

1. Design of Utility Work

- a. The County shall request the **COUNTY Consultant** prepare, at the **CITY's** sole cost and expense, final engineering design, plans, other necessary related design documents, and cost estimate for the Utility Work (the "Plans Package") more specifically described in the **COUNTY's** Supplemental Agreement #1 to Consultant Service Agreement.
- b. The Plans Package shall be in the same format as the **COUNTY'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 **Florida Department of Transportation's** ("**FDOT**") Utility Accommodation Manual and the **FDOT's** Design Manual in effect at the time the Plans Package is prepared, and the **COUNTY's** contract documents for the Project and to include the **City of Lakeland's** Policies, Standards, and Specifications for Subdivision and Commercial Developments for both Water and Wastewater Operations, latest version. If the **FDOT's** Design 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 accordance with the **FDOT's** guidelines on preparation of technical special provisions.
- f. The **COUNTY** shall provide a copy of the proposed Plans Package to the **CITY**, for review at the following stages: 90%, 100%, Final. The **CITY** shall review the Plans Package to see that it complies with the requirements of this Agreement.
- g. In the event the **CITY** finds any deficiencies in the Plans Package during the reviews performed pursuant to Subparagraph f. above, the **CITY** will notify the **COUNTY** in writing of the deficiencies within the time

specified in the plans review transmittal.

- h. The **CITY** shall furnish the **COUNTY** such information from the **CITY** files as requested by the **COUNTY**.
- i. The Facilities and the Utility Design will include all utility facilities of the **CITY** which are located within the limits of the Project.

2. **Cost of Utility Design**

- a. The **CITY** shall be responsible for all costs of the Utility Design.
- b. The **CITY** agrees that it will, no more than thirty (30) days following the **COUNTY** approval of the Supplemental Agreement referred to in Paragraph 1 hereof, furnish the **COUNTY** an advance deposit of \$192,565.00 for the payment of the Utility Design.

The **COUNTY** shall utilize this deposit for the payment of the Utility Design. Both parties further agree that in the event the final billing pursuant to the terms of Subparagraph 2.c. below is less than the advance deposit, a refund of any excess will be made by the **COUNTY** to the **CITY**. If the cost of the Utility Design exceeds or is estimated to exceed the advance deposit, the **CITY** shall submit the necessary funds to cover the costs or estimated costs of the Utility Design within thirty (30) days of receiving notice from the County. 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 **CITY** shall make an additional deposit in the amount necessary to issue a subsequent Supplemental Agreement to the **COUNTY Consultant** for the additional work.

- c. Upon final payment to the **COUNTY Consultant**, the **COUNTY** 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 **CITY** for a period of three (3) years after final close out of the project. The **CITY** will be notified of the final cost. Both parties agree that in the event the final accounting of total Design Work is less than the total deposits to date, a refund of the excess will be made by the **COUNTY** to the **CITY** within sixty (60) days of the final accounting being completed. Both parties agree that in the event the final accounting of total Design Work is more than the total deposits to date, the **CITY** shall submit the necessary funds cover the total costs of the Design Work to the **COUNTY** within thirty (30) days of receiving notice from the County.

3. **Default**

- a. In the event the **CITY** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement, the **COUNTY** may exercise one more of the following options, provided that at no time shall the **COUNTY** be entitled to receive double recovery of damages:
 - (1) Terminate this Agreement if the breach is material and has not been cured within 60 days from written notice thereof from the **COUNTY**.
 - (2) Suspend the issuance of further permits to the **CITY** for the placement of Facilities on **COUNTY** property if the breach is material and has not been cured within 60 days from written notice thereof from the **COUNTY** until such time as the breach is cured.
 - (3) Pursue a claim for damages suffered by the **COUNTY**.
 - (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 **COUNTY** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement, the **CITY** 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 **CITY**.
- (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. Liability

- a. To the extent provided by law, the **COUNTY** hereby agrees to be responsible for any loss, damage, liability, expense, penalty, fine, suit, action, claim and any expense whatsoever arising from or caused solely by any act or omission of the **COUNTY**, its officers, employees, contractors or agents.
- b. To the extent provided by law, the **CITY** hereby agrees to be responsible for any loss, damage, liability, expense, penalty, fine, suit, action, claim and any expense whatsoever arising from or caused solely by any act or omission of the **CITY**, its officers, employees, contractors or agents.
- c. **Nothing herein shall be deemed a waiver, express or implied, of either party's sovereign immunity or an increase in the limits of liability pursuant to Section 768.28, Florida Statutes, regardless of whether any such obligations are based in tort, contract, statute, strict liability, negligence, product liability or otherwise.**

5. Miscellaneous

- a. Time is of the essence in the performance of all obligations under this Agreement.
- b. Either party may unilaterally terminate this Agreement for refusal by the other party 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 **party** in conjunction with this Agreement.
- c. Neither the **CITY** nor the **COUNTY** shall be liable to the other for any failure to perform under this Agreement to the extent 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.
- d. 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. Unless otherwise notified in writing, notices shall be sent to the following addresses:

Notice to Polk County shall be:

Director, Roads and Drainage Division
Polk County Board of County Commissioners
3000 Sheffield Road
Winter Haven, FL 33880

with a copy to:

County Attorney
Polk County Board of County Commissioners
330 West Church Street
Bartow, FL 33830

Notice to the City shall be:

Director of Water Utilities
City of Lakeland
501 E. Lemon Street
Lakeland FL 33801

with a copy to:

City Attorney
City of Lakeland
228 S. Massachusetts Avenue
Lakeland, FL 33801

- e. 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 **COUNTY** has manuals and written policies and procedures which may be applicable at the time of the Project and the relocation of the Facilities.
- f. This Agreement and the rights and obligations of the Parties hereunder shall be interpreted, governed by, construed under, and enforced in accordance with the applicable laws of the State of Florida, and the ordinances, rules and regulations of Polk County including, but not limited to the Polk County Comprehensive Plan, Land Development Code and Utility Code, and any amendments thereto in effect as of the Effective Date of this Agreement. The Parties hereby consent to the sole and exclusive jurisdiction and venue for any action relating to the construction, interpretation, or enforcement of this Agreement to be in or for the Tenth Judicial Circuit, in Polk County, Florida.
- g. This Agreement shall be effective upon the date of execution of the last Party ("Effective Date").
- h. A waiver by any Party of any breach of this Agreement shall not be binding upon the waiving Party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving Party's rights with respect to any other or further breach of this Agreement. The making or acceptance of a payment by either Party with the knowledge of the other Party's existing default or breach of this Agreement shall not waive such default or breach, or any subsequent default or breach of this Agreement, and shall not be construed as doing so.
- i. Except as noted in Section 4 above, each Party shall be responsible for its own legal and attorneys' fees, costs and expenses incurred in connection with any dispute or any litigation arising out of, or relating to this Agreement, including attorneys' fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.
- j. This Agreement may be executed in multiple counterparts each of which shall be an original, but which collectively shall form a single agreement.

*****THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK*****

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized representatives, have executed this Agreement on the day(s) and year set forth below.

**CITY OF LAKELAND
CITY COMMISSIONERS**

**POLK COUNTY BOARD OF
COUNTY COMMISSIONERS**

By: _____
H. William Mutz, Mayor

By: _____
George Lindsey, III, Chairman

Date: _____

Date: _____

ATTEST:

ATTEST:

By: _____
Kelly Koos, City Clerk

By: _____
Stacy M. Butterfield, Clerk to the Board

(SEAL)

(SEAL)

Reviewed as to Form and Legal Sufficiency

Reviewed as to Form and Legal Sufficiency

By: _____
Timothy McCausland, City Attorney

By: _____
County Attorney's Office

Print Name: _____

