

ADDENDUM TO CONSTRUCTION AGREEMENT NO. 2020-C-799-00012

THIS ADDENDUM TO CONSTRUCTION AGREEMENT is a part of, and shall be read in conjunction with, State of Florida, Department of Transportation (the "DEPARTMENT") Construction Agreement No. 2020-C-799-00012 (Form 850-040-89; MAINTENANCE; OGC-07/13), entered into between the DEPARTMENT and Pinellas County, Florida (the "County"). Execution by the parties of DEPARTMENT Construction Agreement No. 2020-C-799-00012 binds the parties to the terms of this Addendum; this Addendum is not a separate agreement and therefore no separate execution of this Addendum by the parties is required.

The following recitals and paragraphs of the Agreement are revised accordingly:

The following WHEREAS clauses are inserted below the first two (2) WHEREAS clauses:

WHEREAS, throughout DEPARTMENT Right-of-Way in Pinellas County, the DEPARTMENT operates an ITS/ATMS Conduit System consisting of a four (4) inch conduit containing three (3) innerducts reserved for fiber optic cable ("Fiber") use (the "DEPARTMENT ITS/ATMS Conduit System");

WHEREAS, the first innerduct in the DEPARTMENT ITS/ATMS Conduit System is reserved for Fiber use for the ITS/ATMS transportation system, the second innerduct is reserved for Fiber use by the DEPARTMENT, and the third innerduct is reserved for Fiber use by the County (the "County Innerduct");

WHEREAS, the County seeks to use and permit other public entities to use Fiber in the County innerduct for non-transportation uses countywide;

The third WHEREAS clause is modified as follows:

WHEREAS, the DEPARTMENT agrees to permit the County's use of the County innerduct to install fiber optic cable to be used for non-transportation purposes countywide (hereinafter, the "Project") subject to authorization by DEPARTMENT Utility Permits. This permission extends to existing as well as future fiber optic cable installed within the County Innerduct.

The fourth WHEREAS clause is modified as follows:

WHEREAS, the parties desire to enter into this Agreement for the County to make improvements within DEPARTMENT Right-of-Way to construct the Project.

Paragraph 1 is revised as follows:

The recitals set forth above are specifically incorporated herein by reference and made a part of this Agreement. The County is authorized, subject to the conditions set forth herein, to enter the DEPARTMENT'S Right-of-Way to perform **all activities authorized by DEPARTMENT Utility Permits issued pursuant to Paragraph 32 of this Agreement.**

Paragraph 4 is deleted in its entirety.

The first sentence of Paragraph 8 is deleted.

Paragraph 12 is deleted in its entirety.

Paragraph 13 is deleted in its entirety.

The last sentence of Paragraph 15 is deleted.

Paragraph 17 is deleted and revised as follows:

Nothing herein shall be construed as a waiver of sovereign immunity or the limits set forth in Section 768.28, Florida Statutes by either party. Further, nothing herein shall be construed as consent by either party to be sued by third parties in any manner arising out of this Agreement.

The County agrees to include the following indemnification in all contracts with contractors, subcontractors, consultants or subconsultants, who perform work in accordance with this Agreement:

“To the extent provided by law, [ENTITY] shall indemnify, defend and hold harmless the County and the Florida Department of Transportation (the “Department”), including the Department’s officers, agents and employees against any actions, claims or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of [ENTITY] or any of its officers, agents or employees, acting within the scope or their office or employment, in connection with the rights granted to or exercised by [ENTITY] hereunder, to the extent and within the limitations of Section 768.28, Florida Statutes.”

Paragraph 21 is deleted and revised as follows:

This Construction Agreement, including both its obligations and benefits, shall pass to and be binding on the respective successors and assigns of the DEPARTMENT and the County. This Agreement may not be assigned or transferred, in whole or in part, by either party to any non-governmental entity. This Agreement is only assignable to a successor entity resulting from a merger, acquisition or consolidation by either party or an assignment to an entity under common control with, controlled by, or in control of either party.

Paragraph 29 is deleted in its entirety.

Paragraph 32 is added and provides as follows:

Prior to County installation or use of Fiber within the County Innerduct for non-transportation uses, the County shall obtain a DEPARTMENT Utility Permit authorizing such installation or use. The County may permit other public entities to install or use Fiber within the County Innerduct for non-transportation uses, so long as a separate DEPARTMENT Utility Permit is obtained authorizing such installation or use.

Paragraph 33 is added and provides as follows:

To the extent that relocation of the DEPARTMENT ITS/ATMS Conduit System within DEPARTMENT Right-of-Way is required, the DEPARTMENT shall be responsible for relocating the DEPARTMENT ITS/ATMS Conduit System, except for any Fiber within the County Innerduct used for non-transportation uses, which the County shall be responsible for relocating. The DEPARTMENT understands that the County may need to connect a separate conduit system to the DEPARTMENT ITS/ATMS Conduit System in order to facilitate non-transportation uses authorized herein. To the extent that relocation of any such

conduit systems within the DEPARTMENT Right-of-Way is required, the County shall be responsible for relocating such conduit systems.

Paragraph 34 is added and provides as follows:

This Agreement shall remain in full force and effect until such time as either the DEPARTMENT or the County desire to terminate it. If either party requires termination of the Agreement, it shall provide one hundred eighty (180) days written notice of termination. Upon termination of this Agreement, all DEPARTMENT Utility Permits issued under its authority shall terminate as well. The DEPARTMENT and the County shall cooperate with the other to ensure the safe and orderly removal of fiber optic from the County innerduct.

Paragraph 35 is added and provides as follows:

This Agreement is not a general obligation of the County. The County is under no obligation to appropriate or make monies available beyond the fiscal year in which this Agreement is executed and no liability shall be incurred by the County beyond the monies budgeted and available. In the event funds are not appropriated by the County, the County shall promptly notify the DEPARTMENT in writing and such notice may include a provision terminating this Agreement in accordance with paragraph 34 herein without liability or penalty to the County.

In the event this Agreement is for services in excess of \$25,000.00 and a term for a period of more than one (1) year, the provisions of Section 339.135(6)(a), Florida Statutes are incorporated:

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 such 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.

County Notice Information for the Agreement is provided as follows:

Ken Jacobs
Pinellas County Transportation Division Director
Pinellas County Public Works Department
22211 U.S. Highway 19 N. Building #1, Clearwater, FL 33765
kjacobs@pinellascounty.org

The County may designate alternative notice information at any time by providing written notice of same to the DEPARTMENT.

DEPARTMENT Notice Information for the Agreement is provided as follows:

Michael Lenhart
FDOT Pinellas Operations Program Engineer
FDOT Pinellas Operations
5211 Ulmerton Road
Clearwater, FL 33760
Michael.Lenhart@dot.state.fl.us

The DEPARTMENT may designate alternative notice information at any time by providing written notice of same to the County.

[End of this Addendum.]