

Clay County Agreement/Contract No. 2022/2023-_____

INTERLOCAL AGREEMENT

Between Clay County and The Clay County Utility Authority
Re: Road Work and Utility Work for the Improvement of Sandridge Road

THIS INTERLOCAL AGREEMENT is entered into between Clay County, a political subdivision of the State of Florida (the County), and the Clay County Utility Authority (CCUA).

WHEREAS, the County is currently engaged in the design and construction of road work improvements for Sandridge Road in Clay County, Florida (the Road Work); and

WHEREAS, CCUA desires to perform utility work improvement and relocation within the County right of way and CCUA utility easements adjacent to the road work improvements (the Utility Work); and

WHEREAS, CCUA desires to coordinate with the County in order that one design firm and one construction contractor may be retained to facilitate the design and construction of both the Road Work and the Utility Work, collectively referred to as the Project; and

WHEREAS, CCUA desires to cooperate with the County so that the services of one Construction Engineering Inspection (CEI) firm may be utilized for the Project; and

WHEREAS, the County agrees to accommodate CCUA in this regard so that CCUA may take advantage of the cost savings available when the Utility Work may be done at the same time as the Road Work; and

WHEREAS, the County will benefit by having CCUA perform its Utility Work at the same time as the Road Work in that the integrity of the road surface may be maintained and not cut by a later utility installation; and

WHEREAS, CCUA agrees to pay all costs associated with the incorporation of the Utility Work into the County's contracts for the design and construction of the Road Work so that all the Project work may be completed as an integrated whole; and

WHEREAS, the Parties acknowledge that while the joint installation of the Road Work and the Utility Work benefits both parties, the Utility Work is not a County project and the County accommodation to CCUA in adding the Utility Work to the Road Work is done in the interest of efficiency and the preservation of public resources of both governmental entities; and

WHEREAS, the Parties acknowledge that it is the intention of this Agreement that all costs associated with and attributable to the Utility Work be paid for entirely by CCUA, except for shared costs as provided for in Articles 3.C. and 4.C below; and

WHEREAS, the County and CCUA desire to establish their respective rights and responsibilities with respect to the Project.

NOW THEREFORE, in consideration of the foregoing recitals, the mutual covenants and conditions contained herein, and for other good and valuable consideration, the legal sufficiency of which is admitted by the Parties, the Parties agree as follows:

ARTICLE 1. Authority, General Responsibilities, and Condition Precedent.

This Agreement is entered into pursuant to the provisions of Section 163.01, Florida Statutes, commonly known as the "Florida Interlocal Cooperation Act of 1969", hereinafter referred to as the Act, and all applicable portions of the Act are made a part hereof and incorporated herein as if set forth at length herein, including, but not limited to the following specific provisions:

A. All of the privileges and immunities and limitations from liability, exemptions from laws, ordinances and rules, and all pensions and relief, disability, workers' compensation and other benefits which apply to the activity of officers, agents, or employees of the Parties hereto when performing their respective functions within their respective territorial limits for their respective agencies, shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents or employees extra-territorially under the provisions of this Agreement.

B. This Agreement does not and shall not be deemed to relieve any of the Parties hereto of any of their respective obligations or responsibilities imposed upon them by law except to the extent of the actual and timely performance of those obligations or responsibilities by one or more of the Parties to this Agreement, in which case performance provided hereunder may be offered in satisfaction of the obligation or responsibility.

C. As a condition precedent to its effectiveness, and pursuant to Section 163.01(11), Florida Statutes, this Agreement and any subsequent amendments hereto shall be filed with the Clerk of the Circuit Court of Clay County.

D. This Agreement shall be construed under the laws of the state of Florida, and venue for any actions arising out of this Agreement shall lie in Clay County. If any provision hereof is in conflict with any applicable statute or rule or is otherwise unenforceable, then such provision shall be deemed null and void to the extent of such conflict and shall be deemed severable, but shall not invalidate any other provision of this Agreement.

ARTICLE 2. The Project.

The construction of the Road Work and the Utility Work within the Sandridge Road right of way and CCUA easements from Henley Road to West of CR 209, being approximately 2.8 miles, and known as CMAR Group #1, Project No. 4.

ARTICLE 3. Obligations of the County.

A. The County has contracted with GAI Consultants, Inc. (Consultant) for design services necessary to develop the plan and specifications necessary to construct the Road Work. The County agrees at CCUA's request to seek an amendment to the County's contract with Consultant to include design services necessary to develop the plan and specifications necessary to construct the Utility Work. If CCUA determines not to proceed with Consultant's design services, CCUA shall provide an executed utility contingency work schedule to the County at the time CCUA provides notice of its intention to proceed with separate design services.

B. The County has contracted with Kiewit Infrastructure South Co. (Contractor) for the construction of the Road Work. The County agrees at CCUA's request to seek an amendment to the County's contract with Contractor to include construction of the Utility Work. The Amendment shall require Contractor to provide a single insurance policy and bond to protect the Project and to secure the payment and performance of both the Road Work and the Utility Work and to provide that the payment and performance bonds submitted by the Contractor be assignable to CCUA in the event it is necessary to pursue the bonds for defective Utility Work. The Amendment shall contain the requirement that the Contractor shall look to the County, and not to CCUA, for payment of the Utility Work and shall provide CCUA a two-year warranty, consistent with CCUA's standards and specifications for the Utility Work performed under this Agreement. If CCUA determines not to proceed with Contractor's construction services, CCUA shall provide an executed utility contingency work schedule to the County at the time CCUA provides notice of its intention to proceed with separate construction services.

C. For purposes of allocating the costs of items in the construction contract which are attributable to both the Road Work and the Utility Work including but not limited to site preparation, maintenance of traffic, bid bond, insurance, payment and performance bonds, and any other shared work for the Road Work and the Utility Work as well as costs for CEI services, the County and CCUA shall each pay a pro-rata share of the cost of these items based on the percentage that the cost of the Road Work and the Utility Work, respectively, bears to the total contract sum.

D. The County shall be responsible for securing and paying for any required permits for the work necessary for completion of the Road Work.

E. The County will facilitate the retention of Construction Engineering Inspection (CEI) services for the Project. The CEI firm may not be associated with the Consultant or the Contractor for the Project.

F. The County shall ensure that the construction contract and any amendment thereto to include the Utility Work contain the requirement that the Project is properly insured with builders' risk, against casualty and liability loss, and that worker's compensation coverage is also in place both during construction and upon completion.

G. The County will solely be responsible for the administration of the contracts with the Consultant and the Contractor as well as for the administration of the CEI services for the Project. The County will provide all direction to the Consultant and the Contractor in the

performance of the Road Work or the Utility Work as well as to the CEI firm.

H. If the CEI discovers non-compliant Utility Work, the CEI will notify the CCUA and the County immediately. CCUA will then request a meeting with the County's Project Manager to address the non-compliant work. The County agrees to meet with CCUA's representative to address non-compliant work. The County will thereafter give any direction to the Consultant, Contractor and/or CEI firm to address any agreed upon non-compliant work.

I. In the event of an unforeseen or a change condition arising during the construction which affects the Utility Work, first, the County agrees to notify CCUA of these conditions, and second, the County and CCUA representatives agree to meet to verify the cause, determine any resolution to these conditions, and approve any issuance of a change order to the design and/or construction contract. In the event of an unforeseen utility conflict with the Road Work is found and documented during the construction of the Project, the County will notify CCUA of the estimated conflict. The County and CCUA representatives agree to meet to verify the conflict, determine any resolution to the conflict, and approve any issuance of a change order to the design and/or construction contract to solve the unforeseen utility conflict. The County shall not be responsible for material, equipment, or structures directly tied to CCUA's utility system. CCUA shall not be responsible for material, equipment, or structures directly tied to the County's road or drainage systems. The County and CCUA shall negotiate and mutually determine the proper allocation of cost and schedule impacts of resolutions associated with unforeseen or changes in existing conditions in the Project.

J. The County shall cause the CEI for the Project to ensure the Contractor coordinates with CCUA on opening and closing CCUA valves, pressure testing, flushing, chlorination, de-chlorination, regulatory testing and main clearing, and public noticing procedures as required for the Utility Work. The CEI shall notify CCUA's Project Manager in advance of commencement of any procedures involved with CCUA's Utility Work that could affect public health and safety.

K. Following completion of construction, the County shall ensure the Contractor prepares and provides to CCUA As-Built Survey and CAD Drawings prepared in accordance with CCUA "As-Built Specifications Standards Manual", latest edition, and minimum technical standards for surveying as set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 61G17-6 Florida Administrative Code, pursuant to Section 472.027, Florida Statutes. Final As-Built Drawings shall represent the Utility Work that was constructed.

ARTICLE 4. Obligations of CCUA.

In addition to CCUA obligations set forth elsewhere in this Agreement, CCUA has the following obligations:

A. CCUA agrees to pay to the County the full cost for amendments to the Consultant and Contractor contracts necessitated to include the Utility Work, along with CCUA's pro-rata share of shared expenses and CEI costs, within thirty (30) calendar days of written request by the County. The pro-rata shared expenses include but are not limited to site preparation, maintenance of traffic, bid bond, insurance, payment and performance bonds, and any other shared work for the Road Work and the Utility Work.

B. CCUA agrees to coordinate with the County and review and approve the plans and specifications for the Utility Work at the 60%, 90%, and final design milestones.

C. If CCUA's existing utilities are within existing CCUA easements on private property and are required to be relocated, the County shall subordinate such and shall be responsible for the costs associated with relocating those utilities.

D. CCUA shall be responsible for securing and paying for any required permits for its respective work necessary for completion of the Utility Work and shall coordinate the permit cycle times with the County.

E. CCUA agrees to designate a design representative for the Project who will receive, review, and respond within ten (10) working days to all questions and requests from the Consultant and the County.

F. CCUA agrees to designate a Project Manager and pay a pro-rata share of the cost of the County's on-site CEI inspector (Article 3.E.) for the Project who will inspect the construction of the Utility Work portion. If the CEI representative discovers non-compliant work, such representative will notify the CCUA and the County immediately. CCUA will then request a meeting with the County's Project Manager to address these conditions. Under no circumstances may CCUA or any of its officers, contractors or agents give direction to the County's Consultant or Contractor in the performance of the Road Work or the Utility Work or to the CEI firm in the performance of CEI services related to the Road Work or Utility Work.

G. In the event of an unforeseen or a change condition arising during the construction phase which affects the Utility Work or in the event of an unforeseen utility conflict with the Road Work is found, upon notification by the County of such conditions, CCUA agrees to meet with County representatives to verify the cause or conflict, determine any resolution to these conditions, and approve any issuance of a contract change order to the Consultant and/or Contractor contracts in accordance with Article 3.I. Upon approval of issuance of a contract change order to either of the contracts for the Utility Work portion of the Project by CCUA's Project Manager, if such change order is in an amount less than five (5) percent of the cost for the Utility Work in the respective contract, work may immediately proceed and no further approval is required. For any change order for Utility Work that exceeds such five (5) percent of the respective contract, approval by CCUA's Board of Supervisors must be obtained prior to beginning of work. CCUA shall reimburse the County for any expenses incurred by the County which are associated with an approved change order to the Utility Work. CCUA agrees to pay these expenses within thirty (30) calendar days, upon submittal of a statement therefor to CCUA by the County.

ARTICLE 5. Default or Disputes.

In the event either Party to this Agreement fails to meet any of its obligations hereunder, the other Party may terminate the Agreement.

ARTICLE 6. Transfer or Assignment.

Neither the County nor CCUA shall transfer or assign this Agreement, or any rights acquired hereunder, or grant any interest, privilege, or license whatsoever in connection with this Agreement unless first obtaining the written consent of the other Party, which consent shall not be unreasonably withheld.

ARTICLE 7. Amendments.

Any changes in the provisions of this Agreement which are agreed to by the Parties shall be made by formal written amendment signed by both Parties.

ARTICLE 8. Project Management.

The Project Managers for the County and for CCUA are listed below and shall be the representative responsible for overall coordination of the Project. Either Party may change its Project Manager upon three (3) business day's prior written notice to the other Party.

County

Richard Smith, P.E.
Clay County Dept. of Engineering
P.O. Box 1366
Green Cove Springs, Florida 32043
Telephone: 904-529-3816
Email: richard.smith@claycountygov.com

CCUA

Kevin Ledbetter, P.E.
Clay County Utility Authority
3176 Old Jennings Road
Middleburg, Florida 32068
Telephone: 904-213-2453
Email: kledbetter@clayutility.org

ARTICLE 9. Term.

The term of this Agreement shall commence on the effective date and continue through the completion of the Project Road Work and the completion of the associated Utility Work.

ARTICLE 10. Effective Date.

This Agreement shall commence and be effective on the date it is fully executed by the Parties hereto.

ARTICLE 11. Audit, Access to Records, and Repayment of Funds.

Both CCUA and the County shall maintain its books and records such that receipt and expenditure of the funds provided hereunder are shown separately from other expenditures in a format that can be easily reviewed. CCUA and the County shall keep the records of receipts and expenditures and copies of all invoices and supporting documentation for at least three (3) years after expiration of this Agreement and in any event shall meet all applicable requirements for retaining public records as required by Art. 1, Section 24, Florida Constitution, and Chapter 119, Florida Statutes, as from time to time amended (together, the Public Records Laws). In accordance

with generally accepted governmental auditing standards, both CCUA and the County shall have access to and the right to examine any directly pertinent books and other records involving transactions related to this Agreement. In the event of an audit, CCUA and the County shall maintain all required records until the audit is completed and all questions are resolved. CCUA and the County will provide proper facilities for access to and inspection of all required records.

ARTICLE 12. Indemnity.

A. Subject to and within the provisions of Section 768.28, Florida Statutes, CCUA shall fully defend, protect, indemnify and hold harmless the County and all of its respective principals, employees, officers, agents, servants and contractors (collectively, the Indemnitees), from and against any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the successful contractor and persons employed or utilized by it in the performance of the Utility Work. In light of CCUA being a governmental entity, nothing herein is intended to serve as a waiver of CCUA's sovereign immunity protections nor does it extend CCUA's liability beyond the limits established in Section 768.28, Florida Statutes. Notwithstanding anything stated to the contrary in the Agreement, CCUA's obligation to compensate or indemnify is limited and shall not exceed the limits set forth in Section 768.28, Florida Statutes, as it may be amended from time to time.

B. Subject to and within the provisions of Section 768.28, Florida Statutes, the County shall fully defend, protect, indemnify and hold harmless CCUA and all of its respective principals, employees, officers, agents, servants and contractors (collectively, the Indemnitees), from and against any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the successful contractor and persons employed or utilized by it in the performance of the Road Work. In light of the County being a governmental entity, nothing herein is intended to serve as a waiver of the County's sovereign immunity protections nor does it extend the County's liability beyond the limits established in Section 768.28, Florida Statutes. Notwithstanding anything stated to the contrary in the Agreement, the County's obligation to compensate or indemnify is limited and shall not exceed the limits set forth in Section 768.28, Florida Statutes, as it may be amended from time to time.

C. The provisions of this Article shall survive any termination of this Agreement.

ARTICLE 13. Remedies.

The Parties will attempt to settle any dispute arising from this Agreement through negotiation and a spirit of mutual cooperation. The dispute will be escalated to appropriate higher-level managers of the Parties, if necessary.

ARTICLE 14. Independent Contractor.

Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

ARTICLE 15. Further Assurances.

Each of the Parties shall cooperate with one another, shall do and perform such actions and things, and shall execute and deliver such agreements, documents and instruments, as may be reasonable and necessary to effectuate the purposes and intents of this Agreement.

ARTICLE 16. Waiver.

Failure or delay by either Party to exercise a right or power under this Agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

ARTICLE 17. Severability.

Any provisions of this Agreement which are prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

ARTICLE 18. Electronic Signature.

The Parties agree to utilize electronic signatures and that the digital signatures of the Parties set forth below are intended to authenticate this Agreement and have the same force and effect as manual written signatures. Each person signing on behalf of the Parties represents and warrants that he/she has full authority to execute this Agreement on behalf of such party and that the Agreement will constitute a legal and binding obligation of such party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below.

DATE: _____, 2022

CLAY COUNTY


By: _____
Betsy Condon
Its Chairman

ATTEST:

Tara S. Green
Clay County Clerk of Court and Comptroller
Ex Officio Clerk to the Board

DATE: ^{KK} December 30th, 2022

CLAY COUNTY UTILITY AUTHORITY

By:  _____
Jeremy D. Johnston, PE, MBA
Its Executive Director