

Boggy Creek Improvement District

3501 Quadrangle Boulevard, Suite 270, Orlando, FL 32817; Phone: 407-723-5900

www.boggycreekid.org

The following is the proposed agenda for the upcoming Meeting of the Board of Supervisors for the Boggy Creek Improvement District ("District"), scheduled to be held at **3:00 p.m. on Tuesday, July 19, 2022, at Courtyard Orlando Lake Nona, 6955 Lake Nona Blvd., Orlando, FL 32827**. A quorum will be confirmed prior to the start of the meeting.

District Staff, please use the following information to join via computer or the conference line:

Phone: 1-844-621-3956

Computer: pfmgroup.webex.com

Participant Code: 796 580 192#

BOARD OF SUPERVISORS' MEETING AGENDA

Organizational Matters

- Roll Call to Confirm a Quorum
- Public Comment Period
- 1. **Consideration of the Minutes of the May 9, 2022, RFP Meeting to Open Responses for Landscaping and Irrigation Maintenance Services (*provided under separate cover*)**
- 2. **Consideration of the Minutes of the June 21, 2022, Board of Supervisors' Meeting**

Business Matters

3. **Consideration of Award of Landscape and Irrigation Maintenance Services – Lake Nona Boulevard South and Roadways**
 - a. **Construction Committee Recommendation (*provided under separate cover*)**
4. **Consideration of Traffic Engineering Services for Power Center Roundabouts with Kittleson**
5. **Consideration of First Amendment to Geophysical Services Agreement with Central Florida Locating, Inc.**
6. **Consideration of OUC Agreement for Medical City Drive Phase 2 (*provided under separate cover*)**
7. **Ratification of Operation and Maintenance Expenditures Paid in June 2022 in amount totaling \$77,875.42 (*provided under separate cover*)**
8. **Ratification of Requisition Nos. 2018-244 – 2018-254 Paid in June 2022 in an amount totaling \$1,469,501.96 (*provided under separate cover*)**
9. **Recommendation of Work Authorizations/Proposed Services (*if applicable*)**
10. **Review of District's Financial Position and Budget to Actual YTD (*provided under separate cover*)**

Other Business

- A. Staff Reports
 1. District Counsel
 2. District Manager
 3. District Engineer
 4. Landscape Supervisor



5. Irrigation Supervisor
 6. Construction Supervisor
- B. Supervisor Requests

Adjournment



BOGGY CREEK IMPROVEMENT DISTRICT

**Minutes of the May 9, 2022, RFP Meeting to Open Responses
for Landscaping and Irrigation Maintenance Services
*(provided under separate cover)***

BOGGY CREEK IMPROVEMENT DISTRICT

Minutes of the June 21, 2022, Board of Supervisors' Meeting

**BOGGY CREEK IMPROVEMENT DISTRICT
BOARD OF SUPERVISORS' MEETING MINUTES**

FIRST ORDER OF BUSINESS

Roll Call to Confirm Quorum

The Board of Supervisors' Meeting for the Boggy Creek Improvement District was called to order on Tuesday, June 21, 2022, at 3:00 p.m. at the Courtyard Orlando Lake Nona, 6955 Lake Nona Blvd, Orlando, FL 32827.

Present:

Richard Levey	Chairperson	
Damon Ventura	Vice Chairperson	
Thad Czapka	Assistant Secretary	
Jamie Bennett	Assistant Secretary	(joined at 3:01 p.m.)
Chad Tinetti	Assistant Secretary	

Also attending:

Jennifer Walden	PFM	
Lynne Mullins	PFM	
Tucker Mackie	Kutak Rock	
Jeffrey Newton	Donald W. McIntosh Associates, Inc.	(via phone)
Larry Kaufmann	Construction Supervisor	(via phone)
Amanda Lane	PFM	(via phone)
Matt McDermott	Construction Committee Member	
Ryan Dugan	Kutak Rock	

SECOND ORDER OF BUSINESS

Public Comment Period

Dr. Levey called for public comments. There were no public comments.

THIRD ORDER OF BUSINESS

**Consideration of the Minutes
of the May 17, 2022, Board of
Supervisors' Meeting**

The Board reviewed the minutes of the May 17, 2022, Board of Supervisors' Meeting.

On motion by Mr. Tinetti, seconded by Mr. Czapka, with all in favor, the Board of Supervisors for the Boggy Creek Improvement District, approved the Minutes of the May 17, 2022, Board of Supervisors' Meeting.

FOURTH ORDER OF BUSINESS

**Review and Acceptance of
Fiscal Year 2021 Audit**

Ms. Walden noted that Jamie Bennet joined the meeting at 3:01 p.m.

Ms. Walden explained that District staff and the Chair have reviewed and provided edits. It was a standard and clean audit and there were no deficiencies in internal controls that would be considered material weaknesses.

On motion by Mr. Ventura, seconded by Mr. Czapka, with all in favor, the Board of Supervisors for the Boggy Creek Improvement District accepted the Fiscal Year 2021 Audit.

FIFTH ORDER OF BUSINESS

Public Hearing on the District's Use of the Uniform Method of Levying, Collection and Enforcing Non-Ad Valorem Assessments

- **Public Comments and Testimony**
- **Board Comments**
- **Consideration of Resolution 2022-07, Adopting the Uniform Method**

Ms. Walden noted that the Public Hearing was advertised as required by Florida Statutes.

On motion by Mr. Czapka, seconded by Mr. Ventura, with all in favor, the Board of Supervisors for the Boggy Creek Improvement District opened the Public Hearing.

Dr. Levey called for public comments or testimony. There we no public comments.

On motion by Mr. Czapka, seconded by Mr. Ventura, with all in favor, the Board of Supervisors for the Boggy Creek Improvement District closed the Public Hearing.

Dr. Levey called for Board comments on Resolution 2022-07. There were no Board comments.

On motion by Mr. Czapka, seconded by Mr. Ventura, with all in favor, the Board of Supervisors for the Boggy Creek Improvement District approved Resolution 2022-07, Adopting the Uniform Method.

SIXTH ORDER OF BUSINESS

Consideration of Traffic - Engineering Services for Power Center Roundabouts with Kittelson

Mr. Newton requested that this item be tabled.

SEVENTH ORDER OF BUSINESS

Ratification of Operation and Maintenance Expenditures Paid in May 2022 in an amount totaling \$155,927.38

Ms. Walden noted that these Operation and Maintenance Expenditures have already been approved and need to be ratified by the Board.

On motion by Mr. Ventura, seconded by Mr. Czapka, with all in favor, the Board of Supervisors for the Boggy Creek Improvement District ratified the Operation and Maintenance Expenditures Paid in May 2022 in an amount totaling \$155,927.38.

EIGHTH ORDER OF BUSINESS

Ratification of Requisition Nos. 2018-239 – 2018-243 in May 2022 in an amount totaling \$14,676.67

Ms. Walden noted that these Requisitions have been approved and need to be ratified by the Board.

On motion by Mr. Ventura, seconded by Mr. Czapka, with all in favor, the Board of Supervisors for the Boggy Creek Improvement District ratified Requisition Nos. 2018-239 – 2018-243 in May 2022 in an amount totaling \$14,676.67.

NINTH ORDER OF BUSINESS

Recommendation of Work Authorizations/Proposed Services

Mr. Kaufmann requested that this item be tabled to the next meeting.

TENTH ORDER OF BUSINESS

Review of District’s Financial Position and Budget to Actual YTD

The Board reviewed the District’s Financial Statements through May 31, 2022. Ms. Walden noted that the District has expenses of \$703,000.00 vs. a budget of \$1,672,000.00.

ELEVENTH ORDER OF BUSINESS

Staff Reports

District Counsel – No report. Ms. Mackie introduced Ryan Dugan, of Kutak Rock, who will be helping her with the Lake Nona Districts.

District Manager – Ms. Walden noted that the next meeting is scheduled for Tuesday, July 19, 2022.

<u>District Engineer</u> –	No report.
<u>Landscape Supervisor</u> –	No report.
<u>Irrigation Supervisor</u> –	No report.
<u>Construction Supervisor</u> –	<p>Mr. Kaufmann wanted to alert the Board about a situation on Lake Nona Blvd. regarding trail lights that were approved by the District back in October. The installation of the conduits for the lights was contracted to OUC, and the District paid OUC \$121,786.15 for the installation of the conduits. This process should have started in November, but OUC has been delaying it. Mr. Kaufmann stated that 3 to 4 weeks ago he received a notice from OUC that they do not want to do the job and wish to turn it over to the District. Mr. Kaufmann responded to them that this was not acceptable. OUC began the job and hit two reclaimed water lines in the process. At this point, the underground directional subcontractor pulled out and said that they would not do the job. OUC represented that was the only subcontractor they had available so they could not do the work. Since then, OUC has reached out and stated that they would increase the wattage on the median cobra lights to 440W bulbs. They believe that, if they do this and the District trims the trees around the Boxi Park section of Lake Nona Blvd., then the new lights might not be necessary. Mr. Kaufmann agreed to bring that idea back to the Board for discussion.</p> <p>Dr. Levey asked if the reclaimed water lines were repaired. Mr. Kaufmann said yes, the irrigation team was there, and it was a simple repair. Dr. Levey asked if OUC is willing to increase the wattage of the bulbs at no expense. Mr. Kaufmann stated yes and that they already did it. However, nobody has seen the effect of the new bulbs in person. Mr. McDermott said that he is meeting with the arborist Wednesday morning to discuss trimming the trees and the timeline. Once the trees are trimmed, he will go at night to see how it looks.</p> <p>The Board discussed the current location of the lights along Lake Nona Blvd., and what the location of the proposed lights would have been. They also discussed the wattage change and the timeline of these updates.</p> <p>Dr. Levey stated that there is still an enforceable contract, and that whatever is discussed with OUC stays within the parameters of the contract. Ms. Mackie agreed and noted that it should be approached as allowing time for a fix but still reserving the right to enforce the contract.</p> <p>Mr. Tinetti questioned whether there was a way for OUC to provide a light study that would not require waiting for the trees to be trimmed. The Board discussed how OUC does this process, whether a third party should be consulted and what is expected to be done with the trees along Lake Nona Blvd. to improve the lighting.</p> <p>Dr. Levey noted that he would be unable to attend the July Board meeting. The other Board Members confirmed they could be in attendance.</p>

TWELFTH ORDER OF BUSINESS

Supervisor Requests

Mr. Tinetti asked about why the Power Center Roundabout item was tabled. Mr. Newton noted that Tavistock has put a 30-day pause on their work in the Power Center and have asked the District to pause

their work as well. Since the Kittelson Work Authorization is related to the Power Center roundabouts on Lake Nona Boulevard, it was requested to be tabled until next month. Dr. Levey discussed the possibility of the Board authorizing the Work Authorization ahead of time, so that it would be ready to go whenever the client is ready. Mr. Newton mentioned that, in addition to the Kittelson proposal, there was also a tabled proposal from Donald W. McIntosh Associates, Inc. and a third proposal that has not been presented yet that includes a \$19,000.00 authorization for Central Florida Locating. Dr. Levey suggested leaving it tabled then. The other Board Members agreed.

THIRTEENTH ORDER OF BUSINESS

Adjournment

Dr. Levey requested a motion to adjourn.

On motion by Mr. Czapka, seconded by Mr. Tinetti, with all in favor, the June 21,2022, Meeting of the Board of Supervisors for the Boggy Creek Improvement District was adjourned.

Secretary/Assistant Secretary

Chairman/Vice Chairman

BOGGY CREEK IMPROVEMENT DISTRICT

**Award of Landscape and Irrigation Maintenance Services –
Lake Nona Boulevard South and Roadways**

BOGGY CREEK IMPROVEMENT DISTRICT

Construction Committee Recommendation
(provided under separate cover)

BOGGY CREEK IMPROVEMENT DISTRICT

**Traffic Engineering Services for
Power Center Roundabouts with Kittleson**

**AGREEMENT FOR TRAFFIC ENGINEERING SERVICES
(POWER CENTER ROUNDABOUTS)**

THIS AGREEMENT (“Agreement”) is made and entered into this ___ day of _____ 2022, by and between:

Boggy Creek Improvement District, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, located in the City of Orlando, Florida, with a mailing address of 3501 Quadrangle Blvd., Suite 270, Orlando, Florida, 32817 (“**District**”); and

Kittelson & Associates, Inc., an Oregon corporation, with an address of 225 East Robinson Street, Suite 355, Orlando, Florida 32801 (“**Engineer**”).

RECITALS

WHEREAS, the District is a local unit of special purpose government established pursuant to the Uniform Community Development District Act of 1980, as codified in Chapter 190, Florida Statutes, by ordinance of the City Council for the City of Orlando, Florida; and

WHEREAS, the District is authorized to plan, acquire and/or maintain improvements, facilities and services in conjunction with the development and maintenance of the lands within the District; and

WHEREAS, the District desires Engineer to provide the District with certain traffic and roadway related engineering services for the roundabouts located in the Lake Nona Power Center site (“**Project**”), as described in more detail in **Exhibit A (“Proposal”)**; and

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and the acts and deeds to be performed by the parties, the receipt and sufficiency of which are hereby acknowledged by the parties, it is mutually covenanted and agreed as follows:

1. **RECITALS.** The recitals set forth above are hereby incorporated into the terms of this Agreement.
2. **SCOPE OF WORK.** The Engineer will provide certain engineering services as described in the Proposal attached hereto.
3. **REPRESENTATIONS.** The Engineer hereby represents to the District that:
 - a. It has the experience and skill to perform the services required to be performed by this Agreement.
 - b. It shall design to and comply with applicable federal, state, and local laws, and codes, including without limitation, professional registration and licensing requirements (both corporate and individual for all required basic disciplines) in effect during the term of this Agreement, and shall, if requested by District,

provide certification of compliance with all registration and licensing requirements.

- c. It shall perform said services in accordance with generally accepted professional standards in the most expeditious and economical manner, and to the extent consistent with the best interests of District.
- d. It is adequately financed to meet any financial obligations it may be required to incur under this Agreement.

4. COMPENSATION. As compensation for the services identified in **Exhibit A** and further described herein, District agrees to pay Engineer a sum not-to-exceed Twenty-Nine Thousand Five Hundred Dollars (**\$29,500.00**). Such Payment shall be due upon completion of the Services and submission of a final invoice as set forth herein. This Payment includes, but is not limited to, all permits, parts, materials and labor necessary to complete the Services as described herein. Engineer agrees to render a final invoice to the District, in writing, which shall be delivered or mailed to the District. The District shall pay the Engineer the Payment within twenty-five (25) days of receipt of such an invoice. The Engineer shall maintain records conforming to usual accounting practices. If the District should desire additional work or services not provided in **Exhibit A**, the Engineer agrees to negotiate in good faith to undertake such additional work or services. Upon successful negotiations, the parties shall agree in writing to a work order, addendum, addenda, or change order to this Agreement. The Engineer shall be compensated for such agreed additional work or services based upon a payment amount acceptable to the parties and agreed to in writing. No additional services shall be provided by the Engineer unless done at the direction of the District.

5. TERM. The term of this Agreement will be from the time of execution of this Agreement by both parties until either (1) the Project is complete, or (2) such time as this Agreement is terminated pursuant to its terms.

6. OWNERSHIP & REUSE OF DOCUMENTS. All rights in and title to all plans, drawings, specifications, ideas, concepts, designs, sketches, models, programs, software, creation, inventions, reports, or other tangible work product originally developed by Engineer pursuant to this Agreement ("**Work Product**") shall be and remain the sole and exclusive property of the District when developed and paid for by the District and shall be considered work for hire.

The Engineer shall deliver all Work Product to the District upon completion thereof unless it is necessary for the Engineer in the District's sole discretion, to retain possession for a longer period of time. Upon early termination of the Engineer's services hereunder, the Engineer shall deliver all such Work Product whether complete or not. The District shall have all rights to use any and all Work Product. Engineer shall retain copies of the Work Product for its permanent records, provided the Work Product is not used without the District's prior express written consent. The Engineer agrees not to recreate any Work Product contemplated by this Agreement, or portions thereof, which if constructed or otherwise materialized, would be reasonably identifiable with the Project.

The District exclusively retains all manufacturing rights to all materials or designs developed under this Agreement. To the extent the services performed under this Agreement

produce or include copyrightable or patentable materials or designs, such materials or designs are work made for hire for the District as the author, creator, or inventor thereof upon creation, and the District shall have all rights therein including, without limitation, the right of reproduction, with respect to such work. The Engineer hereby assigns to the District any and all rights the Engineer may have including, without limitation, the copyright, with respect to such work. The Engineer acknowledges that the District is the motivating factor for, and for the purpose of copyright or patent, has the right to direct and supervise the preparation of such copyrightable or patentable materials or designs.

7. INSURANCE. Subject to the provisions of this Article, the Engineer shall maintain insurance during the performance of its services under this Agreement, with limits of liability not less than the following:

Workers' Compensation	Statutory
General Liability	
Bodily Injury (including Contractual)	\$1,000,000/\$2,000,000
Property Damage (including Contractual)	\$1,000,000/\$2,000,000
Automobile Liability	Combined Single Limit \$1,000,000
Bodily Injury / Property Damage	
Professional Liability for Errors and Omissions	\$1,000,000

If any such policy of insurance is a "claims made" policy, and not an "occurrence" policy, the Engineer shall, without interruption, and at the District's option, maintain the insurance for at least three years after the one year anniversary of this Agreement.

The District, its officers, supervisors, agents, staff, and representatives shall be named as additional insured parties, except with respect to the Worker's Compensation Insurance and the Professional Liability for Errors and Omissions Insurance both for which only proof of insurance shall be provided. The Engineer shall furnish the District with the Certificate of Insurance evidencing compliance with the requirements of this Section. No certificate shall be acceptable to the District unless it provides that any change or termination within the policy periods of the insurance coverage, as certified, shall not be effective without written notice to the District per the terms of the applicable policy. Insurance coverage shall be from a reputable insurance carrier, licensed to conduct business in the state of Florida.

If the Engineer fails to have secured and maintained the required insurance, the District has the right (without any obligation to do so, however), to secure such required insurance in which event, the Engineer shall pay the cost for that required insurance and shall furnish, upon demand, all information that may be required in connection with the District's obtaining the required insurance.

8. CONTINGENCY FEE. The Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Engineer, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Engineer, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

9. AUDIT. Records of the Engineer pertaining to the services provided hereunder shall be kept on a basis of generally accepted accounting principles and shall be available to the District or its authorized representative for observation or audit at mutually agreeable times. The Engineer agrees that the District or any of its duly authorized representatives shall have access to and the right to examine any books, documents, papers, and records of the Engineer involving transactions related to the Agreement. The Engineer agrees that payment made under the Agreement shall be subject to reduction for amounts charged thereto that are found on the basis of audit examination not to constitute allowable costs. All required records shall be maintained until either (a) the completion of an audit and resolution of all questions arising therefrom, or (b) three years after the expenditure of all funds under this Agreement, or (c) the public record retention period established by the District's records retention policy, whichever comes later.

10. INDEMNITY. To the extent allowed under section 725.08, *Florida Statutes*, the Engineer agrees to indemnify, defend and hold the District and its officers, supervisors, agents, staff, and representatives and any successors and assigns of the foregoing (together, "**Indemnitees**") harmless from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees and costs and all fees and costs of mediation or alternative dispute resolution, which may come against the Indemnitees to the extent caused wholly or in part by negligent, reckless, or intentionally wrongful acts, omissions, or defaults by the Engineer or persons employed or utilized by Engineer in the course of any work done in connection with any of the matters set out in this Agreement.

11. SOVEREIGN IMMUNITY. The Engineer agrees and covenants that nothing in this Agreement shall constitute or be construed as a waiver of District's limitations on liability pursuant to section 768.28, *Florida Statutes*, or any other statute or law.

12. PUBLIC RECORDS. Engineer understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records, and, accordingly, Engineer agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited, to Section 119.0701, *Florida Statutes*. Among other requirements and to the extent applicable by law, Engineer shall: 1) keep and maintain public records required by the District to perform the services; 2) upon request by the Public Records Custodian, provide the District with the requested public records or allow the records to be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*; 3) ensure that public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the Agreement term and following the Agreement term if Engineer does not transfer the records to the Public Records Custodian of the District; and 4) upon completion of

the Agreement, transfer to the District, at no cost, all public records in Engineer's possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by Engineer, Engineer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the District in a format that is compatible with Microsoft Word or Adobe PDF formats. Engineer acknowledges that the designated Public Records Custodian for the District is Jennifer Walden.

IF ENGINEER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO ENGINEER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (407) 723-5900, waldenj@pfm.com, OR 3501 QUADRANGLE BOULEVARD, SUITE 270, ORLANDO, FLORIDA 32817.

13. CONFLICTS OF INTEREST. The Engineer shall bear the responsibility for acting in the District's best interests, shall avoid any conflicts of interest and shall abide by all applicable ethical canons and professional standards relating to conflicts of interest.

14. SUBCONTRACTORS. The Engineer may subcontract portions of the services, subject to the terms of this Agreement and subject to the prior written consent of the District, which may be withheld for any or no reason. Without in any way limiting any terms and conditions set forth in this Agreement, all subcontractors of Engineer shall be deemed to have made all of the representations and warranties of Engineer set forth herein and shall be subject to any and all obligations of Engineer hereunder. Prior to any subcontractor providing any services, Engineer shall obtain from each subcontractor its written consent to and acknowledgment of the terms of this Agreement. Engineer shall be responsible for all acts or omissions of any subcontractors.

15. INDEPENDENT CONTRACTOR. The District and the Engineer agree and acknowledge that the Engineer shall serve as an independent contractor of the District. Neither the Engineer nor employees of the Engineer, if any, are employees of the District under the meaning or application of any federal or state unemployment, insurance laws, or any other potentially applicable laws. The Engineer agrees to assume all liabilities or obligations by any one or more of such laws with respect to employees of the Engineer, if any, in the performance of this Agreement. The Engineer shall not have any authority to assume or create any obligation, express or implied, on behalf of the District and the Engineer shall have no authority to represent as agent, employee, or in any other capacity the District unless set forth differently herein or authorized by vote of the Board.

16. THIRD PARTIES. Nothing in the Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred by operation of law.

17. CONTROLLING LAW. The Engineer and the District agree that this Agreement shall be controlled and governed by the laws of the State of Florida. Venue for any action arising under this Agreement shall be in the State Courts located in Orange County, Florida.

18. ASSIGNMENT. Neither the District nor the Engineer shall assign, sublet, or transfer any rights under or interest in this Agreement without the express written consent of the other, and any purported assignment without such written consent is void.

19. TERMINATION. The District may terminate this Agreement for cause immediately upon notice to Engineer. The District or the Engineer may terminate this Agreement without cause upon thirty (30) days written notice. At such time as the Engineer receives notification of the intent of the District to terminate the contract, the Engineer shall not perform any further services unless directed to do so in writing by the District. In the event of any termination or breach of any kind, the Engineer shall not be entitled to consequential damages of any kind (including but not limited to lost profits), but instead the Engineer's sole remedy will be to recover payment for services rendered to the date of the notice of termination, subject to any offsets.

20. RECOVERY OF COSTS AND FEES. In the event either party is required to enforce this Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover from the other party all costs incurred, including reasonable attorneys' fees at all judicial levels.

21. AMENDMENTS. Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both of the parties hereto and formally approved by the Board.

22. AGREEMENT. This Agreement reflects the negotiated agreement of the parties, each represented by competent legal counsel. Accordingly, this Agreement shall be construed as if both parties jointly prepared it, and no presumption against one party or the other shall govern the interpretation or construction of any of the provisions of this Agreement.

23. EXHIBITS. To the extent of any conflict between this Agreement and its **Exhibit A**, this Agreement shall control. Further, the "Terms and Conditions" referenced in the Proposal do not apply to this Agreement.

24. NOTICES. All notices, requests, consents and other communications hereunder ("**Notices**") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or telecopied to the parties, as follows:

A. If to Engineer: Kittelson & Associates, Inc.
225 East Robinson Street, Suite 355
Orlando, Florida 32801
Attn: Adam Burghdoff, P.E.

B. If to District: Boggy Creek Improvement District
3501 Quadrangle Boulevard, Suite 270
Orlando, Florida 32817
Attn: District Manager

With a copy to: Kutak Rock LLP
107 West College Avenue
Tallahassee, Florida 32301
Attn: District Counsel

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the District and counsel for the Engineer may deliver Notice on behalf of the District and the Engineer. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) day's written notice to the parties and addressees set forth herein.

25. INDIVIDUAL LIABILITY. UNDER THIS AGREEMENT, AND SUBJECT TO THE REQUIREMENTS OF SECTION 558.0035, FLORIDA STATUTES, WHICH REQUIREMENTS ARE EXPRESSLY INCORPORATED HEREIN, AN INDIVIDUAL EMPLOYEE OR AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.

[THIS SPACE INTENTIONALLY LEFT BLANK]

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

Attest:

BOGGY CREEK IMPROVEMENT DISTRICT

Assistant Secretary/Secretary

Chairperson / Vice Chairperson,
Board of Supervisors

KITTELSON & ASSOCIATES, INC.

Witness

By: _____
Its: _____

EXHIBIT A - Proposal dated March 22, 2022

EXHIBIT A



225 East Robinson Street, Suite 355
Orlando, FL 32801
P 407.540.0555 F 407.540.0550

March 22, 2022

Project #: 27658

Mr. Jeffrey Newton
Boggy Creek Improvement District
12051 Corporate Boulevard
Orlando, FL 32817

RE: BCID Power Center Roundabouts

Dear Jeffrey:

Attached is a proposal for roundabout preliminary design services associated with the Lake Nona Power Center site. Part "A" identifies our proposed services for the project in accordance with the terms and conditions outlined in Part "B". This scope was developed based on our discussions with you, our review of the proposed development plan, and our familiarity with Lake Nona and the City of Orlando.

We propose to conduct the services (detailed in Part "A" herein) on a lump sum basis for \$29,500 (detailed in Table 1 of the attached Part "B").

This proposal (scope of work, budget, and timeline) is effective for sixty days.

Daniel Torre will serve as the Project Manager and Adam Burghdoff will serve as the Project Principal providing senior review and quality assurance. Any questions of a technical or contractual nature can be directed to either of us.

Please review this proposal at your earliest convenience. If the attached Professional Services Agreement is satisfactory, please return a signed copy electronically. A fully executed copy will be returned for your records. Thank you for the opportunity to propose on this project. If you have any questions, please call us at 407.373.1121.

Sincerely,
KITTELSON & ASSOCIATES, INC.

Handwritten signature of Daniel Torre in blue ink.

Daniel Torre
Engineer

Handwritten signature of Adam Burghdoff in blue ink.

Adam Burghdoff
Principal Engineer

PROFESSIONAL SERVICES AGREEMENT

March 22, 2022

Kittelson & Associates, Inc.
225 East Robinson Street, Suite 355
Orlando, FL 32801
407.540.0555 (P)
407.540.0550 (F)

Boggy Creek Improvement District with an office at 12051 Corporate Boulevard, Orlando FL 32817 (the "CLIENT") hereby enters into this Professional Services Agreement (this "Agreement") with KITTELSON & ASSOCIATES, INC. to perform the services as described in this Agreement's Part "A" - Scope of Work (the "Services") for the BCID Power Center Roundabouts (the "Project"), subject to all of the provisions described in Part "B" Terms and Conditions.

PART A - SCOPE OF WORK

TASK 1 – PRELIMINARY ROUNDABOUT HORIZONTAL DESIGN

Kittelson will prepare a horizontal roundabout design for the two proposed locations along Lake Nona Boulevard, shown in **Figure 1**.



Figure 1: Proposed Roundabout Locations

The horizontal roundabout designs will support further evaluation of the feasibility of roundabout implementation, potential impacts, and potential extents of reconstruction along Lake Nona Boulevard. The product of this task will be exhibits illustrating the roundabout designs and corresponding design checks (e.g. speed control verification, design vehicle paths, and sight-distance checks) to support internal review and external coordination with the City of Orlando. No construction plans are included under this scope of work.

The roundabout lane configurations will be based on traffic analysis conducted in the Lake Nona Power Center Traffic Analysis. The horizontal design alternative for the roundabout will be prepared utilizing survey data and design files provided by DWMA to tie into the existing Lake Nona Boulevard alignment. DWMA will provide all aerials, survey, utility, ROW, and roadway design files necessary for Kittelson to prepare the horizontal roundabout design. The design will be prepared following the principals-based process outlined in *NCHRP Report 672, Roundabouts: An Informational Guide – 2nd Edition* and augmented by Kittelson’s practical and research experience.

The following activities will be undertaken as part of Task 1:

1. Two horizontal roundabout designs will be prepared by Kittelson along Lake Nona Boulevard. Due to the iterative nature of roundabout design, multiple options may need to be tested; however, one initial design for each location will be fully developed and delivered as part of this scope. Requests for an additional alternative will be addressed after receiving additional authorizations. The designs will be developed to a level of detail to illustrate the following basic geometric and pavement marking elements: the locations of curb and gutter lines, raised splitter islands, central island and truck apron, basic pavement markings, crosswalk and ped ramp locations, and initial proposed sidewalk location.
 - a. Deliverable(s):
 - i. PDF format sheets illustrating the roundabout alternatives over aerial photography along with applicable Performance Drive alignment information.
 - ii. CADD files containing the horizontal design for the roundabout layout.
2. For each of the two roundabout design alternatives developed, Kittelson will prepare key design checks to verify adequacy of the horizontal geometry. A package of figures in PDF format will be prepared that documents the design checks. This includes checks of: fastest path vehicle speeds, design vehicle swept paths, and sight distance triangles. The design check package will be compiled in a manner suitable for submission to the reviewing agencies as part of the review package to demonstrate that the design achieves each of the key design principles outlined in NCHRP Report 672.
 - a. Deliverable: Compiled set of design check figures in PDF format for each of the two roundabout design alternatives.

Kittelson will prepare for and attend one meeting with the City of Orlando to discuss horizontal roundabout designs. Requests for major adjustments to the designs after delivery, will be addressed at a time and materials basis after receiving additional authorizations.

PART B – TERMS AND CONDITIONS

- I. **GENERAL:** The terms and conditions set forth herein shall govern all services subsequently performed on behalf of CLIENT unless changed by a written agreement signed by KITTELSON & ASSOCIATES, INC. In case any one or more of the provisions contained in this Agreement shall be held unenforceable, the enforceability of the remaining provisions contained herein shall not be impaired thereby.
- II. **LIMITATION OF LIABILITY:** CLIENT AGREES THAT IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT, KITTELSON & ASSOCIATES, INC.'S AGGREGATE JOINT, SEVERAL AND INDIVIDUAL LIABILITY, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, PROFESSIONAL MALPRACTICE, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY OF RECOVERY SHALL BE LIMITED TO AN AMOUNT NO GREATER THAN THREE TIMES THE TOTAL COMPENSATION RECEIVED BY KITTELSON & ASSOCIATES, INC. UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.
- III. **LIMITATION OF REMEDY:** CLIENT COVENANTS THAT IT WILL NOT, UNDER ANY CIRCUMSTANCES, BRING A LAWSUIT OR CLAIM AGAINST KITTELSON & ASSOCIATES, INC.'S INDIVIDUAL EMPLOYEES, OFFICERS, DIRECTORS OR SHAREHOLDERS AND THAT CLIENT'S SOLE REMEDY SHALL BE AGAINST KITTELSON & ASSOCIATES, INC.
- IV. **WAIVER OF CONSEQUENTIAL DAMAGES:** NEITHER KITTELSON & ASSOCIATES, INC. NOR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS SHALL BE LIABLE FOR ANY INDIRECT, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO FINES, PENALTIES AND LOST PROFITS, WHETHER SAID CLAIM IS BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER LEGAL OR EQUITABLE THEORY OF RECOVERY.
- V. **INDEMNITY:** To the maximum extent allowed by law, CLIENT and KITTELSON & ASSOCIATES, INC. shall indemnify and hold harmless, but not defend, each other and the indemnified party's employees, officers, directors and agents from, for and against all claims, losses, legal costs and expenses resulting from any bodily injury or property damage, but only to the extent caused by the indemnifying party's negligence.
- VI. **OWNERSHIP OF DOCUMENTS:** KITTELSON & ASSOCIATES, INC is deemed the author and owner of its documents and other instruments of service, and will retain all common law, statutory, and other reserved rights, including copyrights. So long as CLIENT complies with all terms of this Agreement, including but not limited to terms of payment, KITTELSON & ASSOCIATES, INC. grants CLIENT a nonexclusive license to use instruments of professional service for the purpose of constructing, occupying and maintaining the Project. Reuse or modification of any such documents by CLIENT, without KITTELSON & ASSOCIATES, INC.'s written permission, shall be at CLIENT's own sole risk and CLIENT agrees to defend, indemnify, reimburse and hold harmless KITTELSON &

ASSOCIATES, INC. from all claims, liabilities, losses, costs, damages and expenses, including attorney's fees and expert's fees, related to the reuse by CLIENT or others acting through CLIENT.

- VII. **ELECTRONIC DOCUMENTS:** If KITTELSON & ASSOCIATES, INC. provides CLIENT any documents or other instruments of service in electronic form ("Electronic Documents"), acceptance and use of the electronic documents by CLIENT shall be at CLIENT's sole risk and CLIENT shall:
- a. Waive and covenant not to sue KITTELSON & ASSOCIATES, INC. or its employees alleging any inaccuracy or defect of the Electronic Documents.
 - b. Agree that KITTELSON & ASSOCIATES, INC. makes no representation with regard to the compatibility of the Electronic Documents with any software or hardware or that the data is fit for any specific use.
 - c. Indemnify, hold harmless, reimburse and defend KITTELSON & ASSOCIATES, INC. from, for and against any claim, damage, liability, loss, expense or cost, including attorneys' fees and expert's fees, that may arise from CLIENT'S use of the Electronic Documents or any subsequent modification of the Electronic Documents by any person or entity.
 - d. CLIENT agrees that prior to use of the Electronic Documents on any project other than the Project, CLIENT shall retain the services of a licensed professional as necessary to review and revise the Electronic Documents for compliance with the local laws, practices and standards of the place where the Project will be located.
- VIII. **DISPUTE RESOLUTION:** In any dispute arising out of this Agreement or the Services, with the exception of disputes relating to CLIENT's non-payment, partial payment or late payment of any amount due under an invoice issued by KITTELSON & ASSOCIATES, INC. ("Payment Disputes"), for which the remedy will be in accordance with Article XVI of this Agreement, the Parties shall first attempt to resolve the dispute through good-faith negotiation. In the event that the Parties are unable to resolve the dispute through negotiation, CLIENT agrees that any claim or dispute arising out of this Agreement or the Services, with the exception of Payment Disputes, shall be submitted to non-binding mediation. If the dispute cannot be resolved by mediation, the parties agree to submit their dispute to binding arbitration before a single arbitrator. The arbitration shall be held in Multnomah County, Oregon and shall be conducted by and pursuant to the rules of Arbitration Service of Portland, Inc. (ASP), and the arbitrator shall be chosen in accordance with ASP rules. Except in the case of Payment Disputes, the parties agree that so long as they are making good-faith efforts to resolve the dispute pursuant to the terms of this Article, they shall continue to perform under this Agreement.
- IX. **GOVERNING LAW:** Without regard to conflict of laws, the rights and liabilities of the parties under this Agreement shall be governed by the laws of the State of Oregon.
- X. **TIME BAR TO LEGAL ACTION:** All legal actions by either party against the other arising out of or in any way connected with this Agreement or the services to be performed hereunder shall be barred

and under no circumstances shall any such legal action be initiated by either party after the earlier of three (3) years or the State's applicable statute of limitations, both of which shall commence to run on the last day Services are performed under this Agreement.

- XI. **DIRECT EXPENSES:** KITTELSON & ASSOCIATES, INC.'s Direct Expenses shall be those costs incurred on or directly for the Project, including but not limited to necessary transportation costs including mileage at the current IRS-allowed rates, meals and lodging. Reimbursement for automobiles, meals and lodging, and any other expenses furnished by commercial sources shall be on the basis of actual charges plus a 10% markup.

All communication fees including, but not limited to computer services, telephone, faxes, postage, overnight deliveries, and in-house copies, printing, and binding charges shall be billed on the basis of a per direct labor hour fee when furnished by KITTELSON & ASSOCIATES, INC.

- XII. **PROFESSIONAL SERVICES:** KITTELSON & ASSOCIATES, INC. staff is defined as all permanent and temporary employees, as well as any and all contract labor of KITTELSON & ASSOCIATES, INC. All KITTELSON & ASSOCIATES, INC., staff time spent working on the Project will be billed as applicable per Table 1.

- XIII. **COST ESTIMATE:** Any cost estimates provided by KITTELSON & ASSOCIATES, INC. as part of the Services will be on a basis of experience and judgment, but because it has no control over market conditions or bidding procedures KITTELSON & ASSOCIATES, INC. cannot warrant that bids, construction or other Project costs will not vary from these cost estimates.

- XIV. **PEER REVIEW:** Any peer review report prepared by KITTELSON & ASSOCIATES INC. as part of the Services herein merely represents its professional, unbiased opinion regarding the deliverable. This opinion is based solely on KITTELSON & ASSOCIATES, INC.'S evaluation of the information provided by CLIENT and should not be considered an exhaustive review, insurance against errors or omissions in the deliverable, or advocacy of the intended project. CLIENT agrees that the purpose and intent of KITTELSON & ASSOCIATES, INC.'S evaluation of the deliverable is to reduce the risk of errors or omissions only and not to eliminate such risk. KITTELSON & ASSOCIATES, INC. offers no warranty or guarantee with regard to any requested peer review performed under this AGREEMENT.

- XV. **TERMINATION FOR CONVENIENCE:** In addition to other rights of termination, either CLIENT or KITTELSON & ASSOCIATES, INC. may terminate this Agreement for its convenience by giving 30 days' written notice to the other party. In such event, CLIENT shall forthwith pay KITTELSON & ASSOCIATES, INC. in full for all work previously authorized and performed prior to effective date of termination as well as all unavoidable expenses incurred prior to termination.

- XVI. **PAYMENT TO KITTELSON & ASSOCIATES, INC./REMEDIES FOR PAYMENT DISPUTES:** Monthly invoices will be issued by KITTELSON & ASSOCIATES, INC. for all services performed under the terms of this Agreement, and reimbursement of direct expenses. A retainer, if applicable, will be required in advance of start of services and will be credited to the final invoice(s) of Project. Invoices are due

and payable within 30 days of receipt. The CLIENT must notify the KITTELSON & ASSOCIATES, INC.'s Project Manager or Project Accountant, in writing, within 30 days of receipt of any disputed charges in an invoice (the "Disputed Charges"). In the event CLIENT gives notice of any Disputed Charges in an invoice, the undisputed invoiced amounts are still due and owing under the terms of this Article. Interest at the rate of 1.5 percent per month, or alternatively at the highest monthly rate allowable in the jurisdiction where the Services are being provided, whichever is higher, will be charged on all past due amounts. Interest charges on past due amounts are in addition to the fixed ceiling for the contract and are not counted in determining whether the fixed ceiling has been reached. CLIENT'S failure to make payments to KITTELSON & ASSOCIATES, INC. within 90 days of the issuance of an invoice shall constitute a material breach of this Agreement and KITTELSON & ASSOCIATES, INC. shall have the option to withhold services until paid or terminate this Agreement. Payment Disputes, including but not limited to disputes over (a) CLIENT's non-payment or late payment of any charge on an invoice; and (b) any charge on an invoice identified by CLIENT as a Disputed Charge, are not subject to the Dispute Resolution and Arbitration provisions of Article VIII of this Agreement, and KITTELSON & ASSOCIATES, INC. may avail itself of any and all available legal and equitable remedies to address such Payment Disputes, including, but not limited, to asserting a lien against the real property where PROJECT is located. In the event KITTELSON & ASSOCIATES, INC. is required to undertake collection actions, or otherwise incur any costs in connection with the collection of amounts owing under a past-due invoice, all such costs shall be the responsibility of CLIENT. KITTELSON & ASSOCIATES, INC. prefers that all payments be made through the Automated Clearing House Network ("ACH"). The following bank account information is provided below for this purpose:

Account Name: Kittelson & Associates, Inc.
Bank Name: Chase Bank
Account Number: 179118350
ABA Number: 325070760
Remittance Advice: apinvoice@kittelson.com

- XVII. **PREVAILING PARTY ATTORNEY FEES:** In the event of any litigation between the parties arising out of this Agreement, including mandatory arbitration under Article VIII of this Agreement, the prevailing party shall be entitled to recovery of its reasonable attorney's fees incurred in the litigation.
- XVIII. **ADDITIONAL INSURED:** KITTELSON & ASSOCIATES, INC. shall cause its general liability insurers to name CLIENT as an additional insured.
- XIX. **PROFESSIONAL STANDARDS:** KITTELSON & ASSOCIATES, INC. shall be responsible for performing the Services to the level of competency currently maintained by other practicing professional engineers performing the same type of services in CLIENT'S community. KITTELSON & ASSOCIATES, INC. makes no warranty, guarantee or assurance, express or implied, that the Services will yield or accomplish a perfect or particular outcome for the Project.

XX. **ENTIRE AGREEMENT:** This Agreement constitutes the entire, legally-binding contract between the parties regarding its subject matter and supersede any and all prior or contemporaneous understandings, agreements, or representations, whether oral or written. Amendments to this Agreement will be governed by this Agreement and must be in writing and signed by both the CLIENT and KITTELSON & ASSOCIATES, INC.

XXI. **NO THIRD PARTY RIGHTS:** To the fullest extent permitted by law, no party has any third party beneficiary or other rights arising from or related to the Services.

AUTHORIZATION TO PROCEED: Signing this form shall constitute agreement with all terms and conditions of this AGREEMENT and authorization by CLIENT for KITTELSON & ASSOCIATES, INC. to proceed with performance of the Services as of the date first written above (the "EFFECTIVE DATE").

Table 1:

Project Phase Description	Billing Method	Authorized Amount
Task 1	Lump Sum	\$29,500

Accepted for:
BOGGY CREEK IMPROVEMENT DISTRICT

Approved for:
KITTELSON & ASSOCIATES, INC.

Signature

Signature

Print Name

Print Name

Title

Title

Date

Date

BOGGY CREEK IMPROVEMENT DISTRICT

**First Amendment to Geophysical Services Agreement
with Central Florida Locating, Inc.**

FIRST AMENDMENT TO GEOPHYSICAL SERVICES AGREEMENT

THIS FIRST AMENDMENT is made and entered into effective as of the 19th day of July 2022, by and between (“**First Amendment**”):

BOGGY CREEK IMPROVEMENT DISTRICT, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, located in the City of Orlando, Florida, with a mailing address of 3501 Quadrangle Boulevard, Suite 270, Orlando, Florida, 32817 (“**District**”); and

CENTRAL FLORIDA LOCATING, INC., d/b/a CFL Geological Solutions, a Florida corporation, with a mailing address of 114 N. Jumper Drive, Bushnell, Florida 33513 (the “**Contractor**”).

RECITALS

WHEREAS, the District was established for the purpose of planning, financing, constructing, installing, operating, and/or maintaining certain infrastructure improvements and recreational facilities; and

WHEREAS, the District and Contractor (the “**Parties**”), previously entered into that certain *Agreement between the Boggy Creek Improvement District and Central Florida Locating, Inc., d/b/a CFL Geological Solutions, for Geophysical Services*, dated April 21, 2022 (“**Agreement**”); and

WHEREAS, pursuant to Section 9 of the Agreement, the Parties wish to amend the Agreement in order to include additional Services and increase the compensation for the Services, as defined in the Agreement and the change order attached hereto as **Exhibit A**; and

WHEREAS, each of the Parties hereto has the authority to execute this First Amendment and to perform its obligations and duties hereunder, and each party has satisfied all conditions precedent to the execution of this First Amendment so that this First Amendment constitutes a legal and binding obligation of each party hereto.

NOW, THEREFORE, based upon good and valuable consideration and the mutual covenants of the parties, the receipt of which and sufficiency of which is hereby acknowledged, the District and the Contractor agree as follows:

SECTION 1. The recitals stated above are true and correct and are incorporated by reference as a material part of this First Amendment.

SECTION 2. The Agreement is hereby amended to include the additional Services identified in Exhibit A, and to increase the compensation for the Services to be provided under the Agreement to a lump sum total of Fifty-Two Thousand One Hundred Twenty Dollars (\$52,120.00), as identified in **Exhibit A**.

SECTION 3. All remaining terms and conditions of the Agreement are hereby adopted, reaffirmed and incorporated as if restated herein.

IN WITNESS WHEREOF, the parties execute this First Amendment the day and year first written above.

Attest:

BOGGY CREEK IMPROVEMENT DISTRICT

Secretary/Assistant Secretary

Chairperson, Board of Supervisors

Attest:

**CENTRAL FLORIDA LOCATING, INC., d/b/a CFL
Geological Solutions, a Florida corporation**





Witness

By: Sandra Rickerson

Its: President

Exhibit A: Change Order dated June 17, 2022



Central Florida Locating, Inc.
...CFL Geological Solutions

PO Box 1468
Bushnell, FL 33513
833-229-2227
cfl-inc.com

Date: 6/17/22
Client: Boggy Creek Improvement District (BCID), 3501 Quadrangle Boulevard, Suite 270, Orlando, FL 32817
E-Mail: Scott Grossman, PSM, Executive VP, Director of Survey - DWMA <sgrossman@dwma.com>
Project: BCID Lake Nona Revised FM Route **R2 CHANGE ORDER 001** **CFL 22072 R2 CO-001**

CFL Revised Change Order 001 is being provided to Boggy Creek Improvement District based upon scope of services requested by Scott Grossman of DWMA, may be subject to change should the requirements change, is valid for thirty (30) days from date of change order, and is Non-Transferrable.

SCOPE OF SERVICES

Geophysical Horizontal Locating Methodologies: 2D Ground Penetrating Radar (GPR) and Electromagnetic (EM) Technologies

- CFL will utilize 2D GPR and EM technologies to horizontally locate detectable underground utilities within the multiple red outlined areas shown on the attached image provided by DWMA. The locate areas will need to be designated at time work.
- CFL will use paint and flags to mark located utilities and will provide a technician's field drawing of located utilities.
- CFL's scope of services does not include the locating of abandoned utilities that are no longer locatable; cut utilities; electrical lines and lighting systems that are not energized at time of locate work; low voltage lines; roof drains; small irrigation lines; gravity sewer; storm lines; unshielded FOC, poly pipes, and small PVC pipes with no or non-working tracer wire; and vacant conduits. Scope of Services additional information and limitations continues in Terms and Conditions of proposal.
- CFL requests that client and/or client representative provide available as-builts, engineering prints, etc. of existing utilities.
- CFL can only perform GPR Scanning & EM Locating in accessible areas that are clear of obstacles such as construction materials, dirt/materials mounds, fencing, high weeds, landscaping, machinery, pipes, standing water, steep banks, trees, undergrowth, uneven terrain, vehicles, etc.

4-21-22 BCID EXECUTED AGREEMENT INFO & WEEKDAY DAYTIME COST – R2 CO-001: 6-17-22 Revised FM Route Cost

4-21-22 BCID Executed Agreement - Horizontal Locating-----	\$29,120.00
4-21-22 BCID Executed Agreement - 10 Vertical Excavations (Dirt Soft Digs)-----	\$ 4,000.00
4-21-22 BCID Executed Agreement – Total-----	\$33,120.00
Revision 2 Change Order 001 for Revised Scope-----	\$19,000.00
Total-----	\$52,120.00

PAYMENT

- A Lump Sum invoice will be submitted via e-mail to client and is due net 30 in full with no retainage.
- Payments not received within 30 days of date of invoice may result in legal actions.

SCHEDULE

A work start date will be provided upon receipt of an Authorization to Proceed.

Regards,

Sandra Rickerson

President
Central Florida Locating, Inc.

AUTHORIZATION TO PROCEED (ATP) – Executed Revision 2 Change Order 001 from BCID

ATP - Client legally authorizes CFL to proceed and acknowledges that Scope of Services, Compensation, Payment Terms, and Terms and Conditions in this proposal are accepted.

PLEASE E-MAIL EXECUTED REVISED CHANGE ORDER 001 TO: Contracts@cfl-inc.com

Innovative and Reliable Solutions



Central Florida Locating, Inc.
CFL Geological Solutions

Terms and Conditions

Page 2

(A) LIMITS OF GPR AND ELECTROMAGNETIC SERVICES: If Services are Provided

CFL will make every effort to horizontally detect the underground utilities, objects or voids described in the Scope of Work or as requested at the time of work within the designated work area(s). However, CFL cannot mark utilities/objects/voids that are undetectable. Therefore, CFL **cannot guarantee** that all subsurface utilities/objects/voids will be accounted for. Locate limitations that CFL will not be held liable for include but are not limited to:

- **GROUND PENETRATING RADAR (GPR):**
 - GPR investigations are highly site specific and can be limited by attenuation of GPR signals by subsurface materials.
 - GPR investigations are limited by uneven terrain conditions, bushes, trees, debris, etc.
 - All vertically stacked utilities/objects may not be detected since GPR signals are reflected by the top most utility/object.
 - Some utilities/objects may not return a reflected signal to the GPR receiver.
 - GPR scans cannot be made immediately next to buildings/objects due to equipment restrictions.
 - Pipes with little or no liquid content at time of locate work may not be detected with GPR.
- **ELECTROMAGNETIC LOCATING :**
 - The number of access points within designated locate area(s) may be limited or non-existent.
 - Utility or property owner may restrict or deny the use of utility access points.
 - Utility may not adequately carry the imposed current from the electromagnetic locate equipment.
 - Fiber & other non-metallic lines with no or non-working tracer wire are untoneable with electromagnetic locate equipment.

(B) DESIGN ENGINEER and CONTRACTORS

Due to locate limitations, the client's/owner's Design Engineer is expected to gather and identify existing facility information from various prints and underground facility owners/operators to confirm that no other subsurface utilities/objects are present in the project area, and Contractors are responsible to abide by Florida Statutes 556.106 - Sunshine 811.

(C) FIELD DRAWINGS/PRINTS/REPORTS

CFL is not liable for any print, survey, field drawing or report that identifies or fails to identify CFL detected utilities or objects. CFL field drawings represent the requested scope of services within designated area(s) as of date of work; may not reflect a comprehensive utility survey of all subsurface utilities/objects; are not technical drawings created by a professional such as surveyor, engineer, or draftsman; are not drawn to scale and only depict an approximate location of referenced utilities/objects; are not created based on any type of drawing standards; and are for informational purposes only.

(D) MACHINE DEPTHS: If Service is Provided

Machine depths are approximate readings, **are not guaranteed depths**, are provided for informational purposes only, and should not be relied upon for any type of subsurface work. CFL will not accept any responsibility for actions taken based on provided machine depths.

(E) VERTICAL EXCAVATION (DIRT SOFT DIG): Information/Limitations: If Service is Provided

Soft Digs are made within grassed or otherwise unpaved surface conditions to a maximum depth of approximately 8 feet to determine the depth of the utility/object. If requested, CFL also will provide the size and material type.

- Soft Dig vertical depth measurements are made from the top of each exposed utility/object to the ground surface.
- The vertical depth range and visual inspection ability is dependent on events such as ground water level.
- Client must obtain/provide CFL with any required soft dig permits before soft dig work is performed. Client will be responsible for any permitting soft dig fines assessed by governing agency.

(F) CORE BORE WITH VERTICAL EXCAVATION (DIRT SOFT DIG): Information/Limitations: If Service is Provided

A Core Bore is made in asphalt or concrete to vertically expose a utility/object to determine the depth of the utility/object from the top of the utility/object to the pavement surface.

- Vertical Excavation limits apply (See Item E).
- Test hole will be backfilled with like materials compacted in 6" lifts or with a flowable fill mixture.
- The current asphalt thickness will be replaced with double asphalt thickness.
- **Asphalt/Concrete Core Bore Permits are to be furnished to CFL by the client prior to work being scheduled.** Client is responsible for cost of all permits, MOT, Traffic Control, and any permitting fines assessed by governing agency.

(G) DIRECT PUSH SOIL SAMPLING: Information/Limitations: If Service is Provided

Direct Push Soil Sampling limitations that CFL will not be held liable for include but are not limited to:

- Direct push rods may not penetrate to desired depth due to subsurface sediment and/or material hardness.
- Direct push rods may not penetrate through consolidated sediment, rock and/or debris.

(H) CERTIFICATE OF INS (COI): New/Revised COI Requests

- Client COI requirements must be provided to CFL prior to the Authorization to Proceed being issued.
- CFL will invoice client for all costs associated with client COI requirements that incur billable charges to CFL.

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BOGGY CREEK IMPROVEMENT DISTRICT

**OUC Agreement for Medical City Drive Phase 2
*(provided under separate cover)***

BOGGY CREEK IMPROVEMENT DISTRICT

**Operation and Maintenance Expenditures
Paid in June 2022 in amount totaling \$77,875.42
*(provided under separate cover)***

BOGGY CREEK IMPROVEMENT DISTRICT

Requisition Nos. 2018-244 – 2018-254
Paid in June 2022 in an amount totaling \$1,469,501.96
(provided under separate cover)

BOGGY CREEK IMPROVEMENT DISTRICT

Work Authorizations/Proposed Services
(if applicable)

BOGGY CREEK IMPROVEMENT DISTRICT

Recommendation for Work Authorization / Proposed Services

Project Name: Lake Nona Blvd. West Redesign at the Power Center

Brief Description: Survey Services for redesign of Lake Nona Blvd West at the Entrance to the Power Center.

Name of Consultant /Vendor: Donald W. McIntosh Associates, Inc.

Is this work pursuant to an existing Agreement? ✓ Yes No

If so, name and date of Agreement: _____

Is this project included in the District Capital Improvement Plan? ✓ Yes No

Are the services required contemplated in the Capital Improvement Plan? ✓ Yes No

Is this a continuation of previously authorized work? ✓ Yes No

Proposal attached: ✓ Yes No

Form of Agreement Utilized: Proposal

Amount of Services: \$ 48,770.00

Recommendation: ✓ Approve Deny

By:  6/19/22
Larry Kaufmann, Chairman
Boggy Creek Improvement District, Construction Committee

- c: Jennifer Walden
- Tucker Mackie
- Jeffrey Newton
- Lynne Mullins



**DONALD W. McINTOSH
ASSOCIATES, INC.**

June 17, 2022

Boggy Creek Improvement District
3501 Quadrangle Boulevard
Suite 270
Orlando, FL 32817

Subject: Lake Nona Boulevard West Redesign
Surveying Services
DWMA Job No. 22573 (001-003)

Donald W. McIntosh Associates, Inc. (DWMA) is pleased to submit for your consideration this work authorization to provide surveying services to Boggy Creek Improvement District (BCID) (“CLIENT”). The scope of this proposal includes professional surveying services for the survey of Lake Nona Boulevard West (“Project”) in the area of the proposed power center project as detailed in the scope of work. The Attachments consist of the Basis of Proposal and Client Responsibilities. We will provide these services pursuant to our current contract dated September 8, 2003 (“Contract”) as follows:

CIVIL ENGINEERS

LAND PLANNERS

SURVEYORS

I. Scope of Work

PROFESSIONAL SURVEYING & MAPPING

A. TOPOGRAPHIC SURVEY - Preparation of a topographic survey (NAVD88 Datum) for the portion of Lake Nona Boulevard shown on the enclosed exhibit (±3,200 lf) to support engineering design of the modification of the roadway to support the power center project. The survey will be prepared in accordance with applicable State of Florida Standards of Practice as set forth by the Board of Professional Surveyors and Mappers, Chapter 5J-17.05, Florida Administrative Code, per Section 472.027, Florida Statutes. Utility and site improvements are limited to visible features only and those underground features flagged by the CLIENT’s utility locating service. (See Exhibit A for approximate limits)

B. LOCATE UTILITY FLAGS – Locate underground utility lines as flagged by a utility locating service retained by CLIENT along within the limits of the topographic survey. DWMA will schedule a field appointment with the utility locating company on a one-time basis, for the purpose of locating the marked utility lines. DWMA will survey the approximate location of these underground lines per the horizontal markings as established by the utility locating company. DWMA will be responsible only for the location of the flags and published depths of the utility locating company. Digging marked locations for verification and measuring depths by DWMA is not included. DWMA is not liable for surveying the location of any utility lines not flagged by the utility locating company.

2200 Park Ave. North

Winter Park, FL

32789-2355

Fax 407-644-8318

407-644-4068

F:\Contract\Proposals\cp14571.doc

<http://www.dwma.com>



- C. SURVEY VERTICAL TEST HOLES – Survey up to ten (10) vertical test holes within the limits of the project to be performed by a utility locating company retained by the CLIENT. Survey of vertical test holes includes field stakeout at the locations determined by the project engineer for final project design to confirm utility depths and preparation of survey documents. DWMA will coordinate the field appointments with the locating company on a one-time basis. DWMA will be responsible only for confirmation of the measurements to the top of the exposed utility lines as provided by the locating company. Digging marked locations for verification and additional measurements by DWMA is not included. DWMA is not liable for showing any utility lines or the depths of the utilities not flagged by the locating company. Surveying services will be prepared in accordance with applicable State of Florida Standards of Practice as set forth by the Board of Professional Surveyors and Mappers, Chapter 5J-17.05, Florida Administrative Code, per Section 472.027, Florida Statutes.

FEE SCHEDULE

Contract Item	Billing Item	Description	Fee
		Part I - Professional Surveying & Mapping	
A.	001	Topographic Survey	\$31,350.00
B.	002	Locate Utility Flags	11,320.00
C.	003	Survey Vertical Test Holes	6,100.00
		Total	\$48,770.00

Boggy Creek Improvement District will compensate Donald W. McIntosh Associates, Inc., pursuant to the hourly rate schedule contained in the Engineering Agreement and/or the lump sums listed above. The District will reimburse Donald W. McIntosh Associates, Inc., all direct costs, which include items such as printing, drawings, travel, deliveries, et cetera, pursuant to the Agreement.

This proposal, together with the Engineering Agreement, represents the entire understanding between the Boggy Creek Improvement District and Donald W. McIntosh Associates, Inc. (Engineer) with regard to the referenced work authorization. If you wish to accept this work authorization, please sign where indicated and return one complete copy to our office. Upon receipt, we will promptly schedule our services.

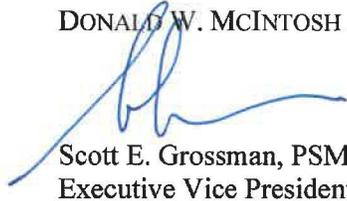
We appreciate your confidence in Donald W. McIntosh Associates, Inc., and look forward to continuing to serve you. Please contact the undersigned with any questions or clarification.



Boggy Creek Improvement District
Lake Nona Boulevard West Redesign
DWMA Job No. 22573 (001-003)
June 17, 2022
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Sincerely,

DONALD W. MCINTOSH ASSOCIATES, INC.



Scott E. Grossman, PSM
Executive Vice President

SEG/ls

Attachment: Exhibits (2)

APPROVED AND ACCEPTED

By: _____
Authorized Representative of
Boggy Creek Improvement District

Date: _____

PURSUANT TO FLORIDA STATUTE 558.0035, AN
INDIVIDUAL EMPLOYEE OR AGENT OF DONALD W.
MCINTOSH ASSOCIATES, INC. MAY NOT BE HELD
INDIVIDUALLY LIABLE FOR NEGLIGENCE.



BASIS OF PROPOSAL AND CLIENT RESPONSIBILITIES

Our Agreement is also based on the following conditions and limitations:

BASIS OF PROPOSAL

CLIENT has performed the necessary due diligence research to confirm that the site is suitable for the intended purpose.

The CLIENT is advised that concurrency management and comprehensive plan consistency will impact the land development process. Regulations regarding concurrency and consistency vary according to governmental jurisdiction. The status of concurrency, consistency and, if applicable, vested rights must be addressed for all projects within the State of Florida. DWMA presumes the CLIENT is aware of the issues and resultant impacts described. DWMA disclaims responsibility for delays that may be encountered due to failure on the part of the CLIENT to address concurrency and consistency issues prior to initiation of Services proposed herein. DWMA is **not** responsible for changes to the approved plans that may alter the concurrency vesting status or for noncompliance on the part of the property owner with regard to the performance terms and conditions established in the vesting certificate.

DWMA will not be responsible for any circumstances, acts, errors, omissions or events, of any type, beyond its control including, without limitation, construction costs, the acts or failures to act of any governmental or judicial agency, or the existence of hazardous waste of any type associated with the Project. No Services associated with hazardous waste of any type are included in any way in this Agreement.

Without limitation, architectural, traffic engineering (e.g., studies, signalization), structural engineering (e.g., retaining walls, bridges, docks), mechanical engineering (e.g., fire pumps), fire protection engineering (e.g., dedicated fire lines beyond the point of service), electrical engineering, geotechnical engineering and testing, environmental assessment, landscape and irrigation design, non-civil utility engineering (e.g., power, gas, telephone, cable television, site lighting) and any other professional or consultant services required by CLIENT and not undertaken by DWMA, shall be retained separately by the CLIENT. **No Services are included in this Agreement other than those specifically listed herein.**

DWMA may be mandated by regulatory authorities to incorporate findings, requirements and details of design in their construction plans that are prepared by professional geotechnical engineers and not by DWMA. In doing so, DWMA assumes no responsibility or liability for the design, construction or operation of geotechnical engineering components which may include, but not be limited to, underdrains, ground stabilizers, backfills, embankments, etc. CLIENT must also recognize that some of these systems (i.e., underdrains, etc.) usually require extensive field supervision during construction and certification after construction. These systems are subject to damage by other activities during or after infrastructure

construction such as other utility installations (power, telephone, cable, gas, etc.). DWMA assumes no liability for damages to any design element caused by the improper design, construction, operation or maintenance of improvements designed by others.

DWMA, in and through its review and/or use of design and calculations prepared by others, is not responsible for or liable for error or omissions in the design and permitting services provided by others. CLIENT's consultants will provide DWMA with permission to utilize and rely upon their work product as the basis of DWMA's design. Certain elements designed by others may be shown in DWMA construction plans for context only.

DWMA's performance and work product quality is dependent upon the timely provision of services from CLIENT-selected and contracted third-party consultants, including but not limited to geotechnical engineer, environmental consultant, transportation engineer, landscape/hardscape/irrigation designer and/or legal consultant whose services, while coordinated to the extent possible, are beyond the scope of responsibility of DWMA.

If locating underground utilities is expressly included in the Services, DWMA will locate such underground utilities as may be marked by a utility locating service retained by CLIENT. DWMA shall not be liable for showing any utility lines not marked by the locating company. DWMA cannot and does not guarantee or warranty that unidentified utilities will not be encountered.

Any opinion of construction cost prepared by DWMA represents its judgment as a design professional and is supplied for the general guidance of the CLIENT only since DWMA has no control over the cost of labor and material or over competitive bidding or market conditions. DWMA does not warrant or guarantee the accuracy of such opinions.

No permit applications or negotiations with regulatory agencies or permitting authorities are included other than those specifically listed herein.

If construction services or observation of construction are included herein, the Services included by DWMA will be to conduct periodic visits and observations to determine that the Work generally conforms or will conform to the applicable contract documents in relation to DWMA's engineering Services. DWMA's Service shall not include determining, supervising, implementing, or undertaking the responsibilities of the contractor, subcontractors or others, regarding means, methods, techniques, sequences and procedures of construction, nor for job conditions, safety precautions or programs. Construction phase services for systems designed and permitted by others are not included.

Construction phase retesting resulting from failures or no-shows, and therefore requiring additional site visits, shall be additional services and is not included in the scope of this agreement. Such services will be invoiced separately on an hourly basis for back-charge to the contractor by CLIENT.



Boggy Creek Improvement District
BASIS OF PROPOSAL AND CLIENT RESPONSIBILITIES
DWMA Job No. 22573 (000)
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CLIENT's contractor and/or surveyor will provide certified as-built surveys prepared by a Florida-licensed surveyor for DWMA's use and reliance in preparing project certifications and/or record drawings. Any as-built surveys required to be performed by DWMA due to failure of contractor's surveyor to provide accurate and complete survey data will be invoiced separately on an hourly basis for back-charge to the contractor by CLIENT.

Federal Emergency Management Agency (FEMA) Map revisions or amendments which may be required by regulatory agencies or lenders are not included unless specifically listed in Basic Services.

Provision of customized digital data files to CLIENT, CLIENT's consultants and/or CLIENT's contractor is not included. DWMA work product will be prepared digitally in AutoCAD Civil3D® 2018 or later.

CLIENT RESPONSIBILITIES

The CLIENT, or his representative, shall be available to meet with DWMA and provide decisions in a timely manner throughout the course of the Project.

The CLIENT will provide DWMA with plans and other pertinent information which may be necessary to properly survey or engineer the Project.

Prior to initiation of preliminary or final design, an approved site plan and final dimensioned building footprint(s) will be provided to DWMA by CLIENT, which will be complete with final geometry, and will be relied upon by DWMA.

The CLIENT will engage a professional geotechnical engineer to provide necessary hydrogeologic design support, relevant construction specifications for earthwork items and required construction inspection and certification. CLIENT's geotechnical engineer shall be responsible for final certification of all flexible and rigid pavement. DWMA has the CLIENT's authority to rely on this professional information as a basis for its design Services and certifications.

The CLIENT will engage a professional environmental consultant to provide jurisdictional determinations and necessary design and permitting support for wetland and special species issues.

The CLIENT will engage a professional environmental firm or firms who specialize in all matters relating to "hazardous" or "special" materials wastes, deposits, soils, contamination, etc., as may be required to support permitting or construction of the Project.

The CLIENT will engage a professional landscape architect to provide landscape and irrigation design related to the development of the property as intended by CLIENT.

The CLIENT will engage a professional architect to perform all architectural services including, without

limitation, incorporation of the work product of DWMA, and compliance with local, state or federal laws, regulations, codes and Americans with Disabilities Act ("ADA") requirements.

The CLIENT will engage a professional transportation consultant to provide analysis related to development of the property as intended by CLIENT, including but not limited to traffic studies, determination of turn lane requirements, traffic signal design, Maintenance of Traffic (MOT) plans and roundabout geometry, striping and signage design.

The CLIENT will engage a professional legal counselor to provide legal services related to development of the property as intended by CLIENT.

The CLIENT will engage a professional state licensed hydrogeologist for completion of hydrologic data required in support of a Consumptive Use/Water Use Permit.

The CLIENT will engage a professional archaeologist to provide archaeological analysis related to development of the property as intended by CLIENT.

The CLIENT agrees that DWMA shall have no responsibility for the accuracy of information provided by, or for any portion of the Project designed by the CLIENT or CLIENT's other consultants, or for compliance with local, state or federal ADA requirements. DWMA shall not be required to check or verify the CLIENT's or other consultants' work product, information, or construction documents and shall be entitled to rely on the accuracy and completeness thereof, as well as the compliance of such documents with applicable laws, codes, statutes, ordinances, and regulations, including, without limitation, ADA requirements. The CLIENT also agrees to require all other consultants engaged by the CLIENT to coordinate their design or construction documents or reports with the work product of DWMA, to promptly report any conflicts or inconsistencies to DWMA and to cooperate fully in the resolution of those conflicts or inconsistencies. The CLIENT further agrees, to the fullest extent permitted by law, to indemnify and hold harmless DWMA from any claims, damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising out of or relating to false, inaccurate, or non-compliant information provided by CLIENT or its other consultants, or the services performed by other consultants engaged by the CLIENT.

The CLIENT or CLIENT's contractor shall obtain the required National Pollutant Discharge Elimination System (NPDES) permit for the Project.

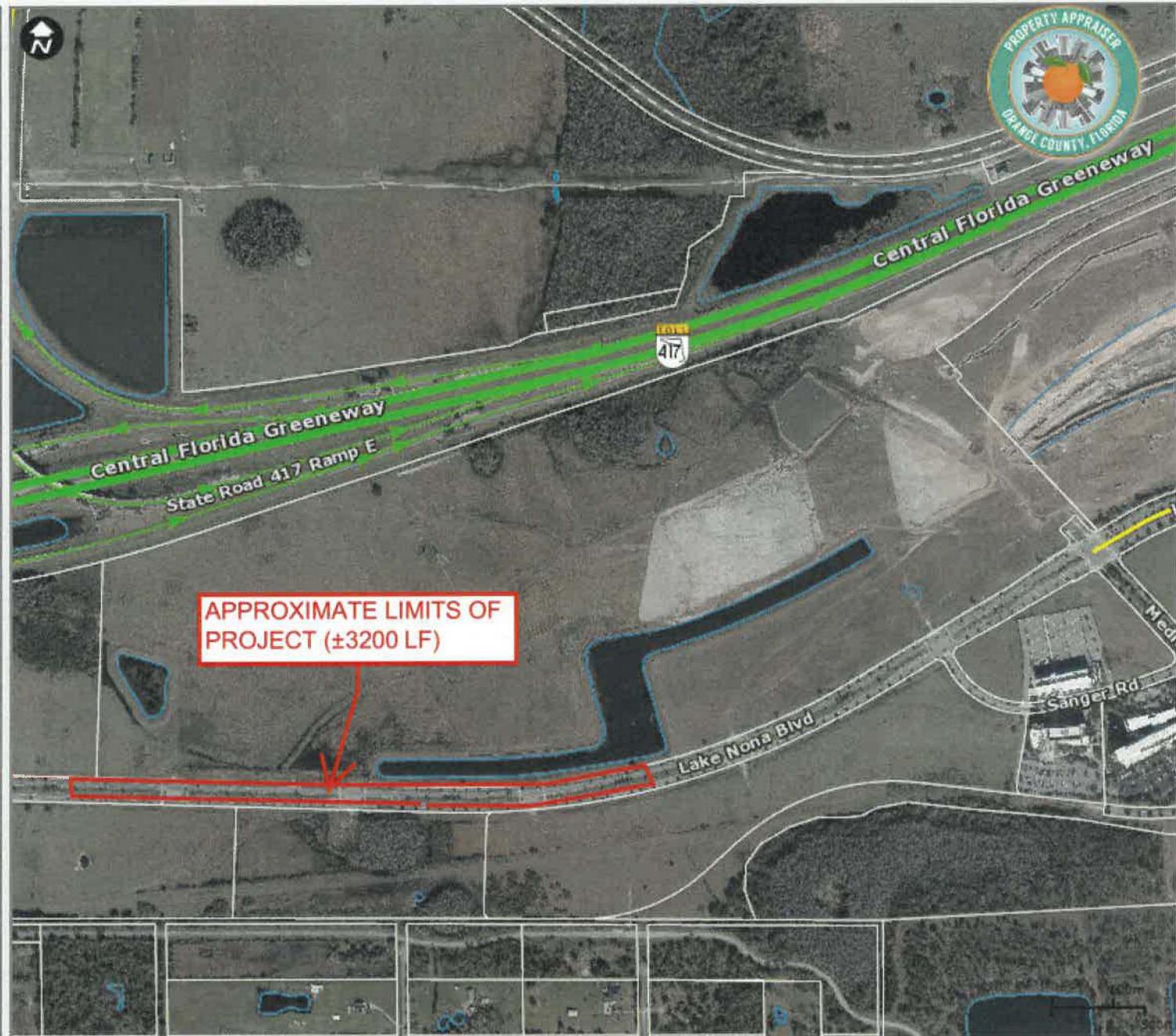
The CLIENT will provide DWMA with all applicable operation and maintenance budgets and budget reserve estimates for all gated communities prior to submittal of the final plat to satisfy local jurisdiction requirements.



This map is for reference only and is not a survey.

Created: 4/6/2022

- Florida turnpike
- Interstate 4
- Toll Road
- Major Roads
- Public Roads
- Gated Roads
- Road Under Construction
- Proposed Road
- US Road
- State Road
- County Road
- Toll Ramp
- Interstate Ramp
- One Way
- Brick Road
- Rail Road
- Proposed SunRail
- Block Line
- Lot Line
- Residential
- Agriculture
- Commercial/Institutional
- Governmental/Institutional/Misc
- Commercial/Industrial Vacant Land
- Hydro
- Waste Land
- Agricultural Curtilage
- County Boundary
- Parks
- Golf Course
- Lakes and Rivers
- Building
- Power Plant



APPROXIMATE LIMITS OF PROJECT (±3200 LF)

BOGGY CREEK IMPROVEMENT DISTRICT

District's Financial Position and Budget to Actual YTD
(provided under separate cover)