



## Agenda Item Summary

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**File #: 24-00266**

**Agenda Date: 5/14/2024**

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**Agenda Item Name:**

**Second Amendment to Contract between County and North Florida Regional Medical Center for Realignment of SW 41st Boulevard**

**Presenter:**

Ramon D. Gavarrete, P.E., Public Works Director, 352-548-1214

**Description:**

Amendment to existing contract between Alachua County (the "County") and North Florida Regional Medical Center, Inc. ("North Florida") for the realignment of SW 41<sup>st</sup> Boulevard.

**Recommended Action:**

The Board approve the *Second Amendment*, the *Assignment and Assumption Agreement* (Exhibit A to the Second Amendment), and the *Indemnification Agreement as to Pipeline Easement and Encroachment* (Exhibit B to the Second Amendment), and authorize the Chair to sign the same.

**Prior Board Motions:**

On August 22, 2023 the Board approved Capital Construction Contract # 13939 between Alachua County and North Florida Regional Medical Center, Inc. for the realignment of SW 41<sup>st</sup> Boulevard (the "Contract"). On December 12, 2023 the Board approved and authorized the Chair to sign the First Amendment.

**Fiscal Note:**

There is no fiscal impact for this Second Amendment as North Florida Regional Medical Center HCA will be conducting the work.

**Strategic Guide:**

Infrastructure

**Background:**

North Florida Regional Medical Center, Inc. ("North Florida") is developing a free-standing emergency room located at 4094 SW 41<sup>st</sup> Blvd, Gainesville, Florida in the Southwest corner of the I-75 and Archer Road intersection. This property is within the Gainesville city limits but is adjacent to SW 41<sup>st</sup> Blvd (Fred Bear Road) an existing County right-of-way. As a part of the City's project approval, the City has required North Florida to realign a portion of SW 41<sup>st</sup> Blvd for safety and traffic flow reasons.

North Florida has submitted a proposal to the Alachua County Public Works Department whereby North Florida will design and build a new section of SW 41<sup>st</sup> Blvd, at their expense, and convey the

new road and right-of-way to the County. In consideration of the new road alignment and deed for the right of way, the County will grant a drainage easement to North Florida over the existing section SW 41<sup>st</sup> Blvd right-of way.

In order to memorialize the rights and obligations of each party, and to comply with the requirements of section 336.71, Florida Statutes, on August 22, 2023, the Alachua County Board of County Commissioners approved Capital Construction Contract #13939 between Alachua County and North Florida, dated as of August 24, 2023 (the "Capital Construction Contract", a copy is attached).

Pursuant to the Contract, the Developer is required to convey fee simple title to the County over the New Road Segment without any title exceptions. Unfortunately, there is a title exception that the Developer has been unable to cure. Specifically, the Florida Gas Transmission Company, LLC (FGT) holds a gas pipeline transmission easement through the New Road Segment that would have prevented the construction of the New Road Segment. In order to construct the New Road Segment, the Developer entered into an Encroachment Agreement with FGT, which allowed the Developer to construct the New Road Segment through FGT's easement, but with some substantial limitations and conditions.

If the County were to accept title to the New Road Segment, the County would be assuming the rights and obligations of the Developer with regard to FGT's easements and the Encroachment Agreement. In short, the County's rights would be subordinate to the FGT's rights. The consequences would include, but not be limited to, the following: (1) FGT may remove/damage the New Road Segment if necessary for FGT to construct, maintain, operate, repair, remove, replace or resize its pipeline facilities and the County would be required to pay the cost of removing, replacing or reinstalling the New Road Segment; (2) the County would not be able to construct, plant or create additional improvements, or authorize others to do so, within the County RoW of the New Road Segment that lies within the easement area without FGT's prior express written approval; (3) the County would be required to indemnify, protect, and hold harmless FGT from and against any and all actions, claims, demands, and liabilities related to the construction, use, maintenance and repair of the New Road Segment; and (4) if the County were to violate any of the terms of the Encroachment Agreement, FGT would have the right to terminate the Encroachment Agreement and require the County to remove the New Road Segment from within FGT's easement area.

In an attempt to mitigate the risks of accepting title subject to FGT's rights, County staff request several items from the Developer. Those items included: (1) amendment and assignment of the Encroachment Agreement to assign the Developer's rights under that Encroachment Agreement to the County (e.g., FGT's consent to construct and operate a road through FGT's easement), but the obligations would remain with the Developer (e.g., the obligation to pay for the repair of the New Road Segment if damaged by FGT; the obligation to indemnify FGT); (2) a separate Indemnification Agreement between the County and the Developer, whereby the Developer would agree to pay for any costs associated with the County having to repair, replace or relocate the New Road Segment if required to do so by FGT; (3) the right of the County to terminate the drainage easement that the County will give to the Developer over the Old Road Segment in the event that the County needs the land to relocate the road back to its original location; and (4) a corporate parent guarantee from the Developer's parent corporation that would guarantee the Developer's performance under the Encroachment Agreement and the Indemnification Agreement. The Developer has agreed to items (1), (2) and (3), but its parent corporation would not agree to item (4). In response, County staff requested audited financial statements so that the County could more fully evaluate the Developer's financial ability to perform its obligations under the Encroachment Agreement and Indemnification Agreement; however, the Developer informed County staff that audited entity-specific financial statements are not

available.

County staff are satisfied with the Developer's ability to perform under the Encroachment Agreement and Indemnification Agreement. The Developer, North Florida Regional Medical Center, Inc., is the owner and operator of HCA Florida - North Florida Hospital, which is a 521-bed full-service medical and surgical acute care hospital in Gainesville. As such, it is one of the largest taxpayers in Alachua County, which is a strong indication of its financial capability. Annually the hospital pays more than \$5 million in property taxes and provides more than \$41 million in charity care to our community. North Florida Hospital has served this community for more than 50 years.

Working through the issues above has taken more time than anticipated. So, in addition to addressing the FGT title exception, the Second Amendment would also provide the Developer additional time to complete the project, specifically, 180 days from the date the parties approve the Second Amendment.

Accordingly, County staff is recommending that the Board approve the Second Amendment, which would: (1) grant the Developer 180 days to complete the project; (2) authorize the County to accept title to the New Road Segment subject to FGT's rights, provided that the Developer furnishes to the County: (i) the *Assignment and Assumption Agreement* (Exhibit A to the Second Amendment) executed by the Developer and FGT; and (ii) the *Indemnification Agreement as to Pipeline Easement and Encroachment* (Exhibit B to the Second Amendment) executed by the Developer. [NOTE: The legal description for the New Road Segment set forth in the attached documents are in the process of being confirmed by the Parties. If revisions are needed, the County Engineer shall review, approve, and revise accordingly prior to conveyance.