

**Indian River County, Florida
Department of Utility Services
Board Memorandum**

Date: February 24, 2024

To: Indian River County Board of County Commissioners

Through: John A. Titkanich, Jr., County Administrator

From: Sean C. Lieske, Director of Utility Services

Prepared by: Howard G. Richards, P.E., Manager - Capital Projects

Subject: CR-612/8th Street Utilities Relocation at 74th Avenue Bridge
Notice of Intent #6 Sewer Line Delay
IRCDUS Project ID 41.20.502

Background:

The State of Florida Department of Transportation (FDOT) is undertaking the CR-612 Over Lateral Canal Bridge No. 884024 project (FDOT Financial Project ID 437717-1-52-01) to replace the 8th Street bridge over the Lateral "C" Canal at 74th Avenue (hereafter referred to as "FDOT Project"). The FDOT Project requires relocation of an existing Indian River County Department of Utility Services (IRCDUS) 24-inch wastewater collection force main on CR-612/8th Street at 74th Avenue Bridge before commencement of the FDOT Project to eliminate conflicts with the bridge replacement construction.

On November 5, 2019, the Indian River County Board of County Commissioners (BCC) approved Work Order No. 7 to Masteller & Moler, Inc., to prepare the utility relocation design for the IRCDUS' CR-612/8th Street Utilities Relocation at 74th Avenue Bridge project, IRCDUS Project ID 41.20.502 (hereafter referred to as "IRCDUS Project"). The design for the IRCDUS Project was completed around September 20, 2021, after multiple rounds of revisions to address the drainage design that was incorporated into the FDOT Project.

During the permitting phase of the IRCDUS project, it was noted that a State 404 Program permit would be required for the directional drill replacement of the force main. At that time, the State 404 Program was under the Federal authority of the United States Army Corps of Engineers (USACE). After design completion of the IRCDUS Project, it was noted that authority of the State 404 Program was transferred to the State level. IRCDUS contacted the Florida Department of Environmental Protection (FDEP) to confirm if a State 404 Program permit was required to perform the directional drill. FDEP directed IRCDUS back to USACE to provide the answer to the State 404 Program permitting question. In essence, the State was deferring to the Federal authority and the Federal authority was deferring to the State to address the question of who had jurisdiction for the State 404 Program permit.

Without a clear and concise answer from either authority to the permitting question, this caused delays to the IRCDUS Project. With the start of construction for the FDOT project looming, FDOT got involved in the permitting process, applying pressure on FDEP as the regulatory authority for the State 404 Program, that

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an answer was received from FDEP, that the State 404 Program permit would not be required for the IRCDUS project. By then, the permitting delay had caused the construction phase of the IRCDUS Project to be behind schedule to meet the anticipated timeframe to start construction of the FDOT Project.

On July 25, 2022, IRCDUS provided an updated Utility Work Schedule (UWS) to FDOT for the relocation of the 24-inch force main that conflicted with the proposed bridge pilings that would be installed for the new bridge that was being constructed. The UWS denoted that the force main would be relocated 40 consecutive calendar days prior to construction commencing on the piling for the bridge. However, it should be noted that the UWS did not indicate the date of or completion of the force main nor the commencement of construction for the bridge piling.

Sometime around April of 2023, IRCDUS learned that the construction phase for the FDOT Project was about to start. At that time, IRCDUS began to solicit bids from the County's labor contractors, CK Contractors & Development, LLC, and Hinterland Group, Inc., and warehouse contract from Core & Main, for construction labor and material for the IRCDUS Project.

On June 7, 2023, IRCDUS received two letters from FDOT. One letter was a notice expressing "*concerns with IRCDUS ability to complete the work within the signed UWS' timeframe (by 06/05/23 – start of construction)*" and requested a written plan to bring IRCDUS into compliance with the UWS. It appears that this was the first time IRCDUS was given a planned start date for the FDOT Project. The other letter was a Notice of Potential Delay from the FDOT prime contractor, Cone & Graham, Inc., and stating that the 40 consecutive calendar days had expired on May 28, 2023.

On June 12, 2023, IRCDUS submitted a written plan to bring the IRCDUS project into compliance. In the written plan, it was noted that IRCDUS had bids for material and labor, all permits were secured or in the process of approval, design was complete, and the force main relocation would commence immediately upon approval by the BCC with a planned completion date by the end of July or first week of August 2023.

On June 20, 2023, the Board of County Commissioners approved the bid from Core & Main and CK Contractors for the materials and labor to perform the IRCDUS project for a total cost of \$1,923,693.72 including a \$250.00 Indian River Farms Water Control District (IRFWCD) utility construction permit (UCP) application fee. Due to the delays during permitting, as described above, the construction for the IRCDUS Project began later than anticipated, and did not align with the UWS that was provided to FDOT. This caused a delay in the construction of the bridge piles that conflicted with the 24" force main that was in the process of being relocated by IRCDUS.

On August 28, 2023, IRCDUS received Notice of Intent (NOI) #6 Sewer Line Delay from Cone & Graham for equipment cost. This was one of a series of NOIs submitted by Cone & Graham. IRCDUS then began to engage in communications with FDOT and Cone & Graham to review delay charges and align specific charges to actual delays caused by the delayed construction of the force main relocation.

On September 18, 2023, IRCDUS submitted a Notification of Completion of Construction for a Domestic Wastewater Collection/Transmission System for the force main relocation. The expense items approved by the BCC on June 20, 2023, came in under \$543,072.91. Factoring additional expenses of \$5,885.50 for project incidentals, the net savings was \$537,187.41.

On January 29, 2024, after several rounds of discussions, FDOT assessed final charges of \$235,325.81 to IRCDUS for delays to Cone & Graham. Then on February 20, 2024, IRCDUS received the FDOT Invoice Letter

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for the IRC Force Main Conflict and NOI #6 Resolution to IRCDUS, noting a delay of 38 days, and requesting payment of \$235,325.81 within thirty (30) calendar days, remitting to, Florida Department of Transportation, attention of: Kadian McLean, District Utility & VE Administrator, 3400 W Commercial Blvd, Fort Lauderdale, FL, 33309.

Funding:

Expenses in the amount of \$235,325.81 for this project will be recorded in the Utilities/WIP/8th Street Utility Relocations account, number 471-169000-20502. Since this is a Utilities operating capital project, the funds will come from fund balance. Utilities operating funds are derived from water and sewer sales.

Description	Account Number	Amount
Utilities/WIP/8th Street Utility Relocations	471-169000-20502	\$235,325.81

Recommendation:

Staff recommends that the Board of County Commissioners authorize the Indian River County Department of Utility Services to remit payment to Florida Department of Transportation in the amount of \$235,325.81 for Notice of Intent #6 Sewer Line Delay from Cone & Graham, Inc., and authorize the Chairman to execute any related agreement, subject to legal department review, on their behalf.

Attachments:

- Utility Work Schedule
- DOT letter re Notice of Non-Pursuit - Completion of Utility Work Schedule by IRCDUS
- DOT letter re Notice of Potential Delay
- IRCDUS Written Plan to Bring the Department into Compliance
- FDOT Invoice Letter for IRC Force Main Conflict and NOI #6 Resolution to IRCDUS