

Deleted

Meeting Date
3/3/2015



AGENDA	
Section	CONSENT
Item No.	II.B.2

**AGENDA REPORT**  
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approval RE: Off System Agreement and Locally Funded Agreement with the Florida Department of Transportation for Florida's East Central Regional Rail Trail- District 1
DEPT/OFFICE:	Parks and Recreation Department

**Requested Action:**  
 It is requested the Board approve and authorize the Chairman to execute the Off System Agreement and the Locally Funded Agreement with the Florida Department of Transportation (FDOT) for the design and construction of Florida's East Central Regional Rail Trail from Kingman Road/Titusville City limits to the Volusia County line; authorize the Chairman to execute all budget related documents.

**Summary Explanation & Background:**  
 FDOT will be responsible for the design and construction of the 12.7 miles of the East Central Florida Regional Rail Trail utilizing \$7,356,000 in State transportation funding. The trail will be constructed from Kingman Road/Titusville City limits to the Volusia County line and will consist of a paved asphalt trail, trailhead with parking and additional structures as funding allows. An equestrian trail will run parallel to the paved trail from Aurantia Road north to the county line. An additional amount up to \$150,000 in funding from the North Brevard Recreation Special District Bond Referendum will be utilized to construct a trailhead at Aurantia Road with amenities to include vehicle and equestrian trailer parking, non-potable water, hitching posts, and trail access for equestrian use.

By previous Board action, Brevard County Parks and Recreation Department will be responsible for the maintenance of the trail.

**Fiscal Impact:** As a result of this action there will be a fiscal impact of up to \$150,000 for FY 14-15. There will be no fiscal impact for FY 15-16. Upon final construction, anticipated in the second quarter of 2017, the initial (a 7 month period) fiscal impact is estimated at \$59,398. Annual maintenance expenses thereafter are estimated at \$93,793.

Clerk to the Board Instructions:

Exhibits Attached: Off System Agreement, Locally Funded Agreement

<b>Contract /Agreement (If attached):</b>		Reviewed by County Attorney	Yes	<input checked="" type="checkbox"/>	X	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager		Assistant County Manager, Mel Scott		Jack Masson, Parks & Recreation Department Director 633-2046					
Stockton Whitten		Assistant County Manager, Venetta Valdengo							

Please call Melissa X52517 when ready for pick up. Thanks!

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**INITIAL CONTRACT FORM**

**SECTION I**

The following information must be completed on all new contracts submitted to the Board.

<b>1. Contractor:</b> Brevard County		<b>3. Division Name:</b> Parks and Recreation Department – North Area	
<b>2. Fund/Account #:</b>		<b>4. Contract Description:</b> Off System Project Agreement between the State of Florida Department of Transportation and the BOCC (Rail Trail)	
<b>5. Contract Monitor:</b> Teri Shell		<b>6. Mail Stop #:</b> 82	
<b>7. Dept./Office Director:</b> Jack Masson		<b>8. Class Code:</b>	
<b>ACTION DATE:</b> <i>Upon Receipt</i>		<b>ACTION REQUIREMENT:</b> <i>Approval Signature</i>	

**SECTION II**

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	<u>X</u>	<u>      </u>	<u>JM</u>	<u>2/13/2015</u>
Risk Management	<u>✓</u>	<u>      </u>	<u>TJS</u>	<u>2/13/2015</u>
County Attorney	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>

If any office denies approval, the package will be returned immediately to the User Agency.

**NOTE:** *This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will then forward the Initial Contract Form to Information Systems Division and the contract will be entered into the contract Monitoring System. This initial entry will generate an entry on your monthly contract report and the first report will always show a "Required Action" for the contract. See BC-20 for additional information.*

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**OFF SYSTEM PROJECT AGREEMENT**  
**(“Agreement”)**  
**Between**  
**STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION**  
**(“FDOT”)**  
**and**  
**BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, a political**  
**subdivision of the State of Florida**  
**(“LOCAL GOVERNMENT”)**

**WHEREAS**, the State of Florida Legislature has approved and mandated the FDOT to complete the various projects included in the FDOT’s Work Program; and

**WHEREAS**, included in the FDOT Work Program is Project Number FM 424040-4 (East Central Rail Trail from Kingman Road to the Volusia County Line) located in Brevard County, Florida, a project not on the State Highway System; and

**WHEREAS**, the parties agree that it is in the best interest of each party for the FDOT to undertake and to complete all aspects of the project, including but not limited to the design, construction, construction inspection, utilities, permits, and other associated tasks; and

**WHEREAS**, all of the trail described as the Project herein below shall occur on property subleased to the LOCAL GOVERNMENT by the FDEP (“PROPERTY”); and

**WHEREAS**, the PROPERTY is owned by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (“BOARD”) and leased to the FDEP; and

**WHEREAS**, the LOCAL GOVERNMENT agrees to maintain said portion of the project to be constructed on land leased to the LOCAL GOVERNMENT for the duration of the LOCAL GOVERNMENT’s underlying sublease with FDEP; and

**NOW THEREFORE,**

1. The parties agree that the FDOT shall act on behalf of the LOCAL GOVERNMENT to undertake and to complete project number FM 424040-4, generally described as the design and construction of the East Central Rail Trail from Kingman Road to the Volusia County line, hereinafter “Project”. The Project shall include the tasks listed and the limits of right of way described in Exhibit “A” hereto and all other tasks associated with or arising out of the tasks listed therein. The LOCAL GOVERNMENT shall cooperate with and shall support the FDOT’s work efforts in these regards. FDOT shall coordinate approval with respect to the design of the Project and the design review process with the LOCAL GOVERNMENT.

2. The LOCAL GOVERNMENT shall, through the passage of a formal resolution of the County Commission, consent to and authorize the FDOT to act on behalf of, for the benefit of and in the name of Brevard County Board of County Commissioners, to further do all acts necessary, including securing all environmental and regulatory permits, easements, temporary construction easements and rights of entry associated with the Project, in the name of the LOCAL GOVERNMENT. This right of entry shall continue in full force and effect throughout the period of time that the Project is ongoing.

3. To the extent necessary, the LOCAL GOVERNMENT hereby appoints the FDOT as its agent for purposes of the construction; reconstruction, and relocation of utilities under section 337.403(1), Florida Statutes. The LOCAL GOVERNMENT agrees to fully cooperate with the FDOT in the construction, reconstruction and relocation of utilities that may be located within the existing or acquired right of way. The parties agree to meet on a periodic basis, as determined to be necessary by the FDOT, during the planning, design, construction and post-construction phase to identify, plan and to relocate utilities. The responsibility for the costs associated with the relocation of utilities shall be based on Florida law as it relates to said matters. The parties agree that if existing utilities owned by the LOCAL GOVERNMENT are required to be reconstructed or relocated as a result of the Project that the costs associated therewith shall be deemed to be a cost of the Project to be paid for by the LOCAL GOVERNMENT.

4. The LOCAL GOVERNMENT acknowledges that the FDOT will be utilizing federal funds on the Project and as a result thereof the LOCAL GOVERNMENT agrees to maintain the Project, for the duration of the LOCAL GOVERNMENT's underlying sublease of the PROPERTY, according to FDOT standards. The LOCAL GOVERNMENT further recognizes and acknowledges that if the FDOT will be utilizing federal funds on the Project that the NEPA process will need to be completed and the FDOT reserves the right to adjust the plans and or design of the Project to meet the needs of the permits. The LOCAL GOVERNMENT agrees to cooperate in the provision of any and all studies and or data that may be necessary for the NEPA process and for all other permit matters.

5. The LOCAL GOVERNMENT acknowledges that the right of way and the improvements and structures to be located within the right of way, are and will remain under the control of the LOCAL GOVERNMENT for the duration of the underlying sublease agreement between the LOCAL GOVERNMENT and FDEP, and that the FDOT will not have any ownership interest in the right of way, improvements or structures located thereon. Notwithstanding the requirements hereof, maintenance during construction shall be the responsibility of the FDOT and its contractor.

6. The parties understand and agree that the FDOT and the LOCAL GOVERNMENT shall cooperate with and keep each other well informed of the work efforts and progress hereunder. FDOT shall coordinate approval for decisions relating to, and including the need for, change orders and supplemental agreements associated with construction of the Project with the LOCAL GOVERNMENT.

7. All payment and performance bonds shall be issued in favor of the FDOT. All warranties, if any, shall be made in favor of the LOCAL GOVERNMENT.

8. The FDOT shall require its Contractor to provide insurance as required by FDOT construction contract specifications.

9. Upon completion of the Project, but prior to the issuance of the Notice of Final Acceptance, FDOT shall submit to the LOCAL GOVERNMENT written notice that:

A. 1. Project Contract Document requirements have been met.

2. Work has been inspected for compliance with Project Contract Documents.

3. Work has been completed in accordance with Project Contract Documents.

4. Equipment and systems have been tested in the presence of LOCAL GOVERNMENT's representative and are operational.

5. All minor deficiencies have been corrected or completed and the Project is ready for final inspection.

6. All operation and maintenance manuals have been submitted and are acceptable.

7. Project record documents are complete and submitted.

8.

B. LOCAL GOVERNMENT will make an inspection with FDOT to verify the status of completion with reasonable promptness after receipt of such certification.

C. Should the parties agree that the Project is incomplete or defective:

1. FDOT shall remedy any deficiencies, and send a second written notification to LOCAL GOVERNMENT that the Project is complete.

3. If necessary, the LOCAL GOVERNMENT will re-inspect the Project with FDOT.

D. Upon completion, the FDOT shall issue a Notice of Final Acceptance to the Department's Contractor with a copy of said notice being provided to the LOCAL GOVERNMENT.

9.2. Upon issuance of the Notice of Final Acceptance, the LOCAL GOVERNMENT shall be immediately responsible for the maintenance of the Project for the duration of the underlying sublease agreement between the LOCAL GOVERNMENT and FDEP. The FDOT shall also have the right to assign interim maintenance responsibility to the LOCAL GOVERNMENT for specified portions of the Project before the issuance of the Notice of Final Acceptance. Said assignment of maintenance responsibility shall be sent by the FDOT to the LOCAL GOVERNMENT in writing with sufficient description to place the LOCAL GOVERNMENT on notice of the interim maintenance responsibility. Notwithstanding the issuance of the Notice of Final Acceptance, the FDOT shall have the right to assure completion of any punch list by the contractor. Additionally, the LOCAL GOVERNMENT understands and agrees that the FDOT shall transfer all permits to the LOCAL GOVERNMENT as the operational maintenance entity and the LOCAL GOVERNMENT agrees to accept said transfer and to become fully responsible to comply with all operational and maintenance conditions of the permits.

10. This Agreement shall become effective as of the date all parties hereto have executed the Agreement and shall continue in full force and effect until the Project is completed by the FDOT and the improvements have been turned over to the LOCAL GOVERNMENT by the FDOT by formal notice from the FDOT. The FDOT reserves the right to unilaterally cancel its performance hereunder if either determines that it is in the best interest of the public to do so. This discretion shall include, but shall not be limited to budgetary and bid cost considerations. It shall be the responsibility of the party cancelling performance of this Agreement to restore the PROPERTY to substantially the same condition as found on the date of execution of said Agreement.

11. Pursuant to Section 287.058, Florida Statutes, the FDOT may unilaterally cancel this agreement for refusal by the LOCAL GOVERNMENT to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes and made or received by the LOCAL GOVERNMENT in conjunction with this agreement except for the obligation of the LOCAL GOVERNMENT to maintain the Project, and said agreement shall be perpetual as to that obligation.

12. In the event that any election, referendum, approval or permit, notice or other proceeding or authorization is required to be undertaken by the LOCAL GOVERNMENT to enter into this agreement or to undertake the Project, the LOCAL GOVERNMENT will expeditiously initiate and consummate, as provided by law, all actions necessary with respect to any such matters with time being of the essence.

13. It is understood that the FDOT's participation in said Project is subject to:

- a.) Legislative approval of the FDOT's appropriation request in the work program year that the Project is scheduled;
- b.) Availability of funds based on the following limitations:
  - i.) The FDOT's performance and obligations to pay under this agreement is contingent upon an annual appropriation by the Legislature. If the FDOT's funding for this Project is in multiple years, funds approved from

the Department's Comptroller must be received every year prior to costs being incurred.

ii.) In the event this agreement is in excess of \$25,000.00 and has a term for a period of more than one year, the provisions of §339.135(6)(a), Fla. Stat. are hereby incorporated: The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000.00 and which have a term for a period of more than 1 year."

14. This agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

15. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery or express mail and shall be deemed to have been received by the end of five business days from the proper sending thereof unless proof of prior actual receipt is provided. Each party hereto shall have the continuing obligation to notify each other of the appropriate persons for notices to be sent to pursuant to the terms of this agreement. Unless otherwise notified in writing, notices shall be sent to the following:

16. No modification of this Agreement shall be binding on the Parties unless reduced to writing and signed by a duly authorized representative of the Parties.

17. In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.

To LOCAL GOVERNMENT:

Jack Masson  
Parks and Recreation Director  
Brevard County Parks & Recreation  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

11B2

To the FDOT:

State of Florida, Department of Transportation  
Alan E. Hyman, P.E., Director of Transportation  
719 South Woodland Boulevard  
DeLand, FL 32720

The individual identified as the person to receive notice hereunder shall have the authority to act on behalf of and to bind the LOCAL GOVERNMENT and the FDOT, respectively, as to all determinations required to be made under the terms of this agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement on the dates exhibited by the signatures below.

**STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION  
an Agency of the State of Florida**

**BREVARD COUNTY, a political  
subdivision of the  
State of Florida**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: Robin Fisher

Title: \_\_\_\_\_

Title: Chairman

Date: \_\_\_\_\_

Date: 3-3-15

\_\_\_\_\_

Attest: \_\_\_\_\_

FDOT Legal Review

By: Scott Ellis  
Title: Clerk  
Date: 3-3-15

1182

To the FDOT:

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\_\_\_\_\_

\_\_\_\_\_

By:

By: Robin Fisher

Title:

Title: Chairman

Date: \_\_\_\_\_

Date: 3-3-15 \_\_\_\_\_

\_\_\_\_\_

Attest: \_\_\_\_\_

FDOT Legal Review

By: Scott Ellis

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**OFF SYSTEM PROJECT AGREEMENT**

**("Agreement")**

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**("FDOT")**

**and**

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**WHEREAS**, the State of Florida Legislature has approved and mandated the FDOT to complete the various projects included in the FDOT's Work Program; and

**WHEREAS**, included in the FDOT Work Program is Project Number FM 424040-4 (East Central Rail Trail from Kingman Road to the Volusia County Line) located in Brevard County, Florida, a project not on the State Highway System; and

**WHEREAS**, the parties agree that it is in the best interest of each party for the FDOT to undertake and to complete all aspects of the project, including but not limited to the design, construction, construction inspection, utilities, permits, and other associated tasks; and

**WHEREAS**, all of the trail described as the Project herein below shall occur on property subleased to the LOCAL GOVERNMENT by the FDEP ("PROPERTY"); and

**WHEREAS**, the PROPERTY is owned by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida ("BOARD") and leased to the FDEP; and

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2. The LOCAL GOVERNMENT shall, through the passage of a formal resolution of the County Commission, consent to and authorize the FDOT to act on behalf of, for the benefit of and in the name of Brevard County Board of County Commissioners, to further do all acts necessary, including securing all environmental and regulatory permits, easements, temporary construction easements and rights of entry associated with the Project, in the name of the LOCAL GOVERNMENT. This right of entry shall continue in full force and effect throughout the period of time that the Project is ongoing.

3. To the extent necessary, the LOCAL GOVERNMENT hereby appoints the FDOT as its agent for purposes of the construction; reconstruction, and relocation of utilities under section 337.403(1), Florida Statutes. The LOCAL GOVERNMENT agrees to fully cooperate with the FDOT in the construction, reconstruction and relocation of utilities that may be located within the existing or acquired right of way. The parties agree to meet on a periodic basis, as determined to be necessary by the FDOT, during the planning, design, construction and post-construction phase to identify, plan and to relocate utilities. The responsibility for the costs associated with the relocation of utilities shall be based on Florida law as it relates to said matters. The parties agree that if existing utilities owned by the LOCAL GOVERNMENT are required to be reconstructed or relocated as a result of the Project that the costs associated therewith shall be deemed to be a cost of the Project to be paid for by the LOCAL GOVERNMENT.

4. The LOCAL GOVERNMENT acknowledges that the FDOT will be utilizing federal funds on the Project and as a result thereof the LOCAL GOVERNMENT agrees to maintain the Project, for the duration of the LOCAL GOVERNMENT's underlying sublease of the PROPERTY, according to FDOT standards. The LOCAL GOVERNMENT further recognizes and acknowledges that if the FDOT will be utilizing federal funds on the Project that the NEPA process will need to be completed and the FDOT reserves the right to adjust the plans and or design of the Project to meet the needs of the permits. The LOCAL GOVERNMENT agrees to cooperate in the provision of any and all studies and or data that may be necessary for the NEPA process and for all other permit matters.

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9. Upon completion of the Project, but prior to the issuance of the Notice of Final Acceptance, FDOT shall submit to the LOCAL GOVERNMENT written notice that:

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  2. Work has been inspected for compliance with Project Contract Documents.
  3. Work has been completed in accordance with Project Contract Documents.
  4. Equipment and systems have been tested in the presence of LOCAL GOVERNMENT's representative and are operational.
  5. All minor deficiencies have been corrected or completed and the Project is ready for final inspection.
  6. All operation and maintenance manuals have been submitted and are acceptable.
  7. Project record documents are complete and submitted.
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- B. LOCAL GOVERNMENT will make an inspection with FDOT to verify the status of completion with reasonable promptness after receipt of such certification.
- C. Should the parties agree that the Project is incomplete or defective:
  1. FDOT shall remedy any deficiencies, and send a second written notification to LOCAL GOVERNMENT that the Project is complete.
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To LOCAL GOVERNMENT:

Jack Masson  
Parks and Recreation Director  
Brevard County Parks & Recreation  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

Please call Melissa X52517 when ready for pick up. Thanks!

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**INITIAL CONTRACT FORM**

**SECTION I**

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<b>ACTION DATE:</b> <i>Upon Receipt</i>	<b>ACTION REQUIREMENT:</b> <i>Approval Signature</i>

**SECTION II**

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	<u>X</u>	<u>      </u>	<u>JM</u>	<u>2/13/2015</u>
<b>Risk Management</b>	<u>✓</u>	<u>      </u>	<u>JLS</u>	<u>2/13/2015</u>
County Attorney	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>

If any office denies approval, the package will be returned immediately to the User Agency.

**NOTE:** *This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will then forward the Initial Contract Form to Information Systems Division and the contract will be entered into the contract Monitoring System. This initial entry will generate an entry on your monthly contract report and the first report will always show a "Required Action" for the contract. See BC-20 for additional information.*

Please call Melissa X52517 when ready for pick up. Thanks!

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**INITIAL CONTRACT FORM**

**SECTION I**

The following information must be completed on all new contracts submitted to the Board.

<b>1. Contractor:</b> Brevard County	
<b>2. Fund/Account #:</b>	<b>3. Division Name:</b> Parks and Recreation Department – North Area
<b>4. Contract Description:</b> Locally Funded Agreement between the State of Florida Department of Transportation and Brevard County (Rail Trail)	
<b>5. Contract Monitor:</b> Teri Shell	<b>6. Mail Stop #:</b> 82
<b>7. Dept./Office Director:</b> Jack Masson	<b>8. Class Code:</b>
<b>ACTION DATE:</b> Upon Receipt	<b>ACTION REQUIREMENT:</b> Approval Signature

**SECTION II**

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	X	_____	JM	2/13/2015
Risk Management	_____	_____	_____	_____
County Attorney	<i>A</i>	_____	<i>MDS</i>	2/13/15

*Legal form 4 contents*

If any office denies approval, the package will be returned immediately to the User Agency.

**NOTE:** This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will then forward the Initial Contract Form to Information Systems Division and the contract will be entered into the contract Monitoring System. This initial entry will generate an entry on your monthly contract report and the first report will always show a "Required Action" for the contract. See BC-20 for additional information.

<b>Agency: Brevard County</b> <b>Vendor No: F596000523</b>	<b>Fund: LF</b> <b>Contract Amount: \$230,000.00</b>	<b>Financial Management No.:</b> <b>424040-4-52-01</b>
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**LOCALLY FUNDED AGREEMENT  
BETWEEN  
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
AND  
BREVARD COUNTY**

This **AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as the “DEPARTMENT”) and BREVARD COUNTY, a political subdivision of the State of Florida (hereinafter referred to as the “LOCAL GOVERNMENT”),

**WITNESSETH:**

WHEREAS, the Parties have been granted specific legislative authority to enter into this Agreement pursuant to Section 339.12, Florida Statutes; and

WHEREAS, the LOCAL GOVERNMENT has authorized its Chairman to execute this Agreement on its behalf; and

WHEREAS, the DEPARTMENT is prepared, in accordance with its Adopted Five Year Work Program, to undertake the project described as: “East Central Rail Trail from Kingman Road to the Volusia County Line”, said project being known as Financial Management (FM) Number 424040-4-52-01, hereinafter referred to as the “Project”; and

WHEREAS, the Project is not revenue producing and is contained in the Adopted Work Program; and

WHEREAS, the implementation of the Project is in the interests of both the DEPARTMENT and the LOCAL GOVERNMENT and it would be most practical, expeditious, and economical for the LOCAL GOVERNMENT to provide the funds for: “Construction of an Unpaved Equestrian Trail to be Constructed Parallel to the Multi-use Trail from Kingman Road to the Volusia County Line in Brevard County”, in Fiscal Year 2014/2015, said Project being known as FM# 424040-4-52-01, and said improvements shall hereinafter be referred to as the “Additional Improvements”; and

WHEREAS, in order to maintain uniformity throughout the Project and to provide for the Additional Improvements in a cost effective manner, the LOCAL GOVERNMENT desires to

have said Additional Improvements made a part of the Project and to provide funding to the DEPARTMENT to be used for the Additional Improvements as described in "Exhibit A";

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the joint participation of this Agreement, the parties agree as follows:

1. The term of this Agreement shall begin upon the date of signature of the last party to sign and shall remain in full force and effect through completion of all services required of the LOCAL GOVERNMENT. The DEPARTMENT may, at any time and at any stage, amend or terminate the Project in whole or in part if the DEPARTMENT determines that such action is in the best interests of the public. It shall be the responsibility of the party cancelling performance of this Agreement to restore the PROPERTY to substantially the same condition as found on the date of execution of said Agreement.

2. The DEPARTMENT shall cause the Additional Improvements described in Exhibit "A" to be incorporated into the DEPARTMENT'S plans for the East Central Rail Trail from Kingman Road to the Volusia County Line and to be constructed as a part of said Project.

In the event the LOCAL GOVERNMENT fails to enter into an Off-System Agreement, a copy of which is attached hereto as Exhibit "C", and made apart hereof, with the DEPARTMENT to provide the DEPARTMENT the authorization to construct the Project in accordance with the terms of this Agreement and in accordance with the terms of the Off System Agreement, this Locally Funded Agreement shall be terminated upon written notice provided by the DEPARTMENT to the LOCAL GOVERNMENT.

3. The DEPARTMENT shall perform necessary preliminary engineering, prepare any and all design plans, acquire all necessary right-of-way, perform the construction, provide all necessary engineering supervision, and otherwise perform all other necessary work, all as may be applicable for the Project as previously defined. The Project as previously defined may include some or all of the foregoing activities. Nothing herein shall be construed as requiring the DEPARTMENT to perform any activity which is outside the scope of the Project as previously defined. Except as specifically stated otherwise in this Agreement, all such activities shall be performed by such entities, at such times, in such manner, under such conditions, and pursuant to such standards as the DEPARTMENT, in its sole discretion, deems appropriate. The LOCAL GOVERNMENT shall not have any jurisdiction or control over the DEPARTMENT'S activities, except as specifically stated in this Agreement. The LOCAL GOVERNMENT shall be entitled to be advised of the progress of the Project at reasonable intervals upon request.

4. After construction is complete, the LOCAL GOVERNMENT agrees to inspect and maintain, the Additional Improvements for the duration of the underlying sublease agreement between the LOCAL GOVERNMENT and FDEP. The parties also agree that the DEPARTMENT shall be entitled to inspect the Additional Improvements at all times.

5. Participation by the LOCAL GOVERNMENT of the funds for the construction phase of the Project shall be made as follows:

(A) The DEPARTMENT'S current estimate of cost for the Additional Improvements is **\$230,000.00 (Two Hundred Thirty Thousand Dollars and No/100)**. The DEPARTMENT'S performance and obligation to construct the Project is contingent upon an annual appropriation by the Florida Legislature. The parties agree that in the event funds are not appropriated to the DEPARTMENT for the Project, this Agreement may be terminated, which shall be effective upon the DEPARTMENT giving written notice to the LOCAL GOVERNMENT to that effect.

(B) The LOCAL GOVERNMENT agrees that it will, on or before but no later than March 15, 2015, furnish the DEPARTMENT an advance deposit in the amount of **\$230,000.00 (Two Hundred Thirty Thousand Dollars and No/100)** for full payment of the estimated cost of the Additional Improvements. The advance deposit shall be the total estimated cost for the Additional Improvements. The DEPARTMENT may utilize this deposit for payment of the cost of the Additional Improvements.

(C) Both parties further agree that in the event the Additional Improvements are not constructed or this Agreement is terminated prior to commencement of construction of the Project, the funds provided by the LOCAL GOVERNMENT for construction of the Additional Improvements will be returned to the LOCAL GOVERNMENT. However, in the event the LOCAL GOVERNMENT decides not to participate in the Additional Improvements of the Project prior to construction, the LOCAL GOVERNMENT agrees to furnish the DEPARTMENT 25% (twenty five percent) of the estimated Additional Improvements cost to cover the extra cost associated with design plan revisions. The LOCAL GOVERNMENT will provide the 25% charge to the DEPARTMENT within thirty (30) calendar days of notification that the LOCAL GOVERNMENT will not participate in this Agreement. If in the event the LOCAL GOVERNMENT has made the advance deposit required herein prior to their decision not

to participate, the DEPARTMENT shall be entitled to retain 25% of the advance deposit amount and to remit the 75% balance to the LOCAL GOVERNMENT.

(D) If the lowest responsive bid amount for the Additional Improvements is in excess of the advance deposit amount, the Department shall coordinate approval of the lowest responsive bid amount with the LOCAL GOVERNMENT. Upon approval by the LOCAL GOVERNMENT, the LOCAL GOVERNMENT will provide an additional deposit within thirty (30) calendar days of notification from the DEPARTMENT or prior to posting of the accepted bid, whichever is earlier, so that the total deposit is equal to the bid amount for the Additional Improvements. The DEPARTMENT will notify the LOCAL GOVERNMENT as soon as it becomes apparent the accepted bid amount is in excess of the advance deposit amount; however, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation. If the LOCAL GOVERNMENT cannot provide the additional deposit within thirty (30) days, a letter must be submitted to the DEPARTMENT'S Project Manager indicating when the deposit will be made. The LOCAL GOVERNMENT understands the request and approval of the additional time could delay the Project, and additional costs may be incurred due to delay of the Project.

(E) If the accepted bid amount for the Additional Improvements is less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit exceeds the bid amount within thirty (30) days of Final Payment, if such refund is requested by the LOCAL GOVERNMENT in writing.

(F) Should Project modifications or changes to bid items occur that increase the costs of the Additional Improvements, the LOCAL GOVERNMENT will be notified by the DEPARTMENT accordingly. The Department shall coordinate approval of Project modifications or changes to bid items with the Local Government. The LOCAL GOVERNMENT agrees to provide, without delay, in advance of the additional work being performed, adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund the Additional Improvements. The DEPARTMENT shall notify the LOCAL GOVERNMENT as soon as it becomes apparent the actual costs will overrun the award amount; however, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its

obligation to pay for its full participation during the Project and on final accounting as provided herein below.

(G) The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within ninety (90) days of final payment to the Contractor. The DEPARTMENT considers the Project complete when the final payment has been made to the Contractor, not when the construction work is complete. All Project cost records and accounts shall be subject to audit by a representative of the LOCAL GOVERNMENT for a period of three (3) years after final close out of the Project. The LOCAL GOVERNMENT will be notified of the final cost of the Additional Improvements. Both parties agree that in the event the final accounting of total costs for the Additional Improvements pursuant to the terms of this Agreement is less than the total deposits to date, a refund of the excess plus accrued interest will be made by the DEPARTMENT to the LOCAL GOVERNMENT. If the final accounting is not performed within ninety (90) days, the LOCAL GOVERNMENT is not relieved from its obligation to pay.

(H) In the event the final accounting of total Additional Improvements cost is greater than the total deposits plus accrued interest to date, the LOCAL GOVERNMENT will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The LOCAL GOVERNMENT agrees to pay interest at a rate as established pursuant to Florida Statutes, Section 55.03, on any invoice not paid within forty (40) calendar days until the invoice is paid.

(I) The payment of funds under this Locally Funded Agreement will be made directly to the DEPARTMENT for deposit and as provided in the attached Three Party Escrow Agreement between the LOCAL GOVERNMENT, the DEPARTMENT and the State of Florida, Department of Financial Services, Division of Treasury. All interest earned will remain in the account for purposes of the Project.

(J) The DEPARTMENT and the LOCAL GOVERNMENT agree that the payment shall be an asset of the DEPARTMENT for the cost of the work.

(K) Contact Persons:

**Florida Department of Transportation**

Holly Lopenski	Todd Long
Government Agreements/MS 4-520	Project Management Supervisor/MS 2-542
719 South Woodland Boulevard	719 South Woodland Boulevard
DeLand, Florida 32720-6834	DeLand, Florida 32720-6834
PH: (386) 943-5520	PH: (386) 943-5558
holly.lopenski@dot.state.fl.us	todd.long@dot.state.fl.us

**Brevard County**

Jack Masson  
Parks and Recreation Director  
Brevard County Parks & Recreation  
2725 Judge Fran Jamieson Way  
Viera, FL 32940 [Jack.Masson@brevardcounty.us](mailto:Jack.Masson@brevardcounty.us)

6. All tracings, plans, specifications, maps, models, reports, or other work product prepared or obtained under this Agreement shall be considered works made for hire for the DEPARTMENT and shall at all times be and remain the property of the DEPARTMENT without restriction or limitation on their use. Copies of these documents shall be provided to the LOCAL GOVERNMENT within ninety (90) days of Final Payment.

7. In the event this Agreement is in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) or has a term for a period of more than one (1) year, the provisions of Chapter 339.135(6)(a), Florida Statutes, are hereby incorporated as follows:

“The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year.”

8. The DEPARTMENT may unilaterally cancel this Agreement for refusal by the LOCAL GOVERNMENT to allow public access to all documents, papers, letters, or other

material subject to the provisions of Chapter 119, Florida Statutes, and made or received by such party in conjunction with this Agreement.

9. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof, and incorporates and includes all proper negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written.

10. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement. In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.

11. The DEPARTMENT and the LOCAL GOVERNMENT acknowledge and agree to the following:

(A) The LOCAL GOVERNMENT shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the LOCAL GOVERNMENT during the term of the contract; and

(B) The LOCAL GOVERNMENT shall expressly require any contractors and subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the contractor/subcontractor during the contract term.

IN WITNESS WHEREOF, the LOCAL GOVERNMENT has executed this Agreement  
this \_\_\_\_\_ day of \_\_\_\_\_, 2015, and the DEPARTMENT has executed  
this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA**

**STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Robin Fisher \_\_\_\_\_

Name: Frank J. O'Dea, P.E. \_\_\_\_\_

Title: Chairman \_\_\_\_\_

Title: Director of Transportation Development

Attest:

Attest:

DRAFT

\_\_\_\_\_

\_\_\_\_\_

Executive Secretary

Legal Review

Legal Review:

\_\_\_\_\_

County Attorney

\_\_\_\_\_

Financial Provisions Approval by  
Department of Comptroller on:

\_\_\_\_\_

## Exhibit "A"

### SCOPE OF SERVICES

FM#: 424040-4-52-01

The LOCAL GOVERNMENT wishes to add the construction an eight (8) foot equestrian trail, with two (2) foot shoulders on both sides, beginning at Aurantia Trail Head north 5.4 miles to the County Line. In addition, the LOCAL GOVERNMENT desires to provide the following at the Aurantia Trail Head:

- Stabilized earth parking to accommodate a minimum of four (4) vehicles with horse trailers;
- Fencing around parking less openings, total of 550 linear feet; and
- The following amenities: one (1) bathroom facility, two (2) covered shelters, ten (10) picnic tables, four (4) benches, four (4) trash receptacles, four (4) bicycle racks and two (2) timber hitching posts.

The DEPARTMENT'S Contractor shall construct the Additional Improvements as part of the construction contract for the above referenced Project.

The LOCAL GOVERNMENT is responsible for the cost of the construction and maintenance of the Additional Improvements.

## Exhibit "B"

### Estimate

FM#: 424040-4-52-01

#### SUMMARY OF ESTIMATED BID PRICES FOR EQUESTRIAN TRAIL

The estimate is based on Statewide and District Average Bid Price for the following items times an escalation to bring the cost up to the construction fiscal year.

#### *COST ESTIMATE FOR 424040-4 AMENITIES*

<b>Item</b>	<b>Quantity</b>	<b>Unit</b>	<b>Unit Cost</b>	<b>Total Cost</b>
CXT Tioga Special Double Vault Details, Plans, Specs	1.00	EA	\$22,360.00	\$22,360.00
RCP Shelter (LW-G1212-03-M)	2.00	EA	\$2,000.00	\$4,000.00
Pilot Rock XT Series 8 Foot Table - Regular	6.00	EA	\$2,500.00	\$15,000.00
Pilot Rock XT Series 8 Foot Table – Wheelchair Accessible	4.00	EA	\$2,500.00	\$10,000.00
Webcoat 6' Regal Bench Details	4.00	EA	\$3,000.00	\$12,000.00
Webcoat TR32 Trash Receptacle System	4.00	EA	\$1,500.00	\$6,000.00
Bike Rack	4.00	EA	\$700.00	\$2,800.00
Concrete Hitching Post	2.00	EA	\$500.00	\$1,000.00
Fencing - Enclosing Equestrian Trailer Parking	550.00	LF	\$30.00	\$16,500.00
Embankment - Equestrian Trailer Parking	370.00	CY	\$3.00	\$1,110.00
Stabilization - Equestrian Trailer Parking	2224.00	SY	\$2.50	\$5,560.00
Embankment - Equestrian Trail	12890.00	CY	\$3.00	\$38,670.00
Stabilization - Equestrian Trail	38000.00	SY	\$2.50	\$95,000.00
<b>Total</b>				<b>\$230,000.00</b>

**Note: This is only an estimate and is subject to change based on actual bid prices.**