

**REVISION**

AGENDA	
Section	CONSENT
Item No.	II B 1

Meeting Date
3/17/2015



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

SUBJECT:	Approval RE: Off System 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 with the Florida Department of Transportation (FDOT) for the design and construction of a section of Florida's East Central Regional Rail Trail from Kingman Road/Titusville City limits to the Volusia County line.

**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~~ Federal 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 with parking and additional structures as funding allows.

Located within two central Florida counties, the East Central Regional Trail corridor traverses northern Brevard County and southern Volusia County and spans 50.8 miles from the community of Enterprise in southwestern Volusia County to the City of Titusville with an additional spur from the former community of Maytown to the City of Edgewater.




Construction of trails throughout the State of Florida have provided significant positive economic impacts through a unique draw for cyclists, long distance runners, hikers, equestrian users and families seeking to explore new opportunities. Three local trails in Orange County have an estimated impact of \$42.6 million annually.

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

**Fiscal Impact:** There will be no fiscal impact as a result of this action for FY 14-15.  
There will be no fiscal impact for FY 15-16.  
Upon final construction, anticipated to be completed in the second quarter of FY 2017 (a 7 month period), the initial fiscal impact is estimated at \$30,000. Annual maintenance expenses thereafter are estimated at \$50,000.

Clerk to the Board Instructions:

Exhibits Attached: Off System Agreement, Exhibit "A"

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



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972

March 18, 2015

MEMORANDUM

TO: Jack Masson, Parks and Recreation Director

RE: Item II.B.1, Off System Agreement with Florida Department of Transportation for Florida's East Central Regional Rail Trail

The Board of County Commissioners, in regular session on, March 17, 2015, executed Off System Agreement with the Florida Department of Transportation (FDOT) for the design and construction of a section of Florida's East Central Regional Rail Trail from Kingman Road/Titusville City limits to the Volusia County line. Enclosed are four executed copies of the Agreement.

**Upon execution by FDOT, please return a fully-executed copy of the Agreement to this office for inclusion in the official minutes.**

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Etheridge*

Tammy Etheridge, Deputy Clerk

/cm

cc: Budget  
Finance  
Contracts Administration

*3/31 mailed to FDOT*

*4/14 Original To: Clerk*

*cc: NAPA  
File*

PARKS&RECS-ADMIN

MAR202015PM12:35

**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. Project Completion

9.1 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.
- 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.
  2. 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:

To LOCAL GOVERNMENT:  
Jack Masson, Director  
Brevard County Parks and Recreation Department  
2725 Judge Fran Jamieson Way, B-203  
Viera, FL 32940  
[jack.masson@brevardparks.com](mailto:jack.masson@brevardparks.com)

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

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.

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.

To LOCAL GOVERNMENT:  
Jack Masson, Director  
Brevard County Parks and Recreation Department  
2725 Judge Fran Jamieson Way, B-203  
Viera, FL 32940  
[jack.masson@brevardparks.com](mailto:jack.masson@brevardparks.com)

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

**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: Frank J. O'Dea, P.E.

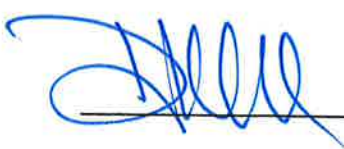
By:   
By: Robin Fisher


Title: Director of Transportation Development

Title: Chairman

Date: 4-6-15

Date: 3-17-2015

  
FDOT Legal Review

Attest:   
By: Scott Ellis  
Title: Clerk  
Date: 3-17-2015



## Exhibit "A"

### SCOPE OF SERVICES

FM#: 424040-4-52-01

The project consists of the design and construction of the section of the Florida East Central Regional Rail Trail (FECRRT), a paved multi-use trail from Kingman Rd./Smokey Ln. to the Volusia County line in Brevard County, an approximate distance of 12.7 miles. Work is to begin at the southern project limits of Kingman Rd./Smokey Ln. (approx. 200' north of Lagrange Rd.), and will end at approximately the Volusia County line, where it will tie into the upcoming Volusia County Local Agency Program (LAP) trail project, FPN 415434-3-58-01. The proposed multi-use trail shall generally follow the horizontal and vertical alignment of the existing rail bed. The multi-use trail geometry shall be designed to an 18 mph Design Speed, and shall have a minimum typical section consisting of a 12' wide paved asphalt trail, 2' sodded unpaved shoulders, and sodded side slopes tying into the existing ground. The existing rail bed shall not be graded down more than 6" in depth. Bahia sod shall be used for all sodding on the project. Clearing and grubbing for the trail shall extend to a minimum distance of 4' beyond each edge of the 12' wide paved trail. Clearing and grubbing shall also provide a minimum vertical clearance of 13' 6" above the trail for uninterrupted passage of emergency vehicles and utility work vehicles. This vertical clearance shall be provided within the full width of clearing and grubbing described above for the trail. Any fence or railing that is required for drop-off protection shall be constructed with the wood fence that is shown in the "Wood Rail Fence Detail" provided as an Attachment to this RFP. Seven (7) concrete bridges are to be constructed within the project limits crossing existing water/wetland areas.

An 8' wide unpaved equestrian trail with 2' wide sodded shoulders shall be designed and constructed parallel to the paved multi-use trail from the Aurantia Road Trailhead to the Volusia County line. There shall not be more than a 1' elevation difference between the centerline of the multi-use trail and centerline of the equestrian trail. Clearing and grubbing for the unpaved equestrian trail shall extend to a minimum distance of 2' beyond the outside edge of the equestrian trail, and shall provide a minimum 10' vertical clearance over the equestrian trail and 2' sodded shoulder width. The inside edge of the equestrian trail shall be a minimum distance of 10' from the nearest edge of the paved multi-use trail. The separation between the equestrian trail and paved multi-use trail shall be sodded. At the seven bridge locations, the unpaved equestrian trail shall merge onto the paved multi-use trail to provide a single trail crossing over these water/wetland areas. The equestrian trail shall merge onto (and off of) the multi-use trail within 50' of the concrete bridge approaches.

No additional Right of Way shall be acquired by the Design-Build Firm for this project. The Concept Plans that were developed in 2010 depict the trail corridor Right of Way that is owned by the Florida Department of Environmental Protection (FDEP), and subleased to Brevard County for the purpose of the trail.

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>6. Mail Stop #:</b> 82	
<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>8. Class Code:</b>	
<b>7. Dept./Office Director:</b> Jack Masson			
<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>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**

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<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>      </u>	<u>      </u>
County Attorney	<u>      </u>	<u>      </u>	<u>MDS</u>	<u>2/13/15</u>

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