

## CONTRACT, LEASE, AGREEMENT CONTROL FORM

Date: 11/17/2016

Contract/Lease Control #: C17-2486-PW

Bid #: N/A

Contract/Lease Type: OFF SYSTEM Agreement

Award To/Lessee: STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

Owner/Lessor: OKALOOSA COUNTY

Effective Date: 10/05/2016

Term: UNTIL DEPARTMENT DUTIES ARE COMPLETE

Description of Contract/Lease: REPLACEMENT OF BRIDGE No. 574013 over PENNY CREEK on STEELE ROAD

Department: PW

Department Monitor: AUTREY

Monitor's Telephone #: 850-689-5772

Monitor's FAX # or E-mail: jautrey@co.okaloosa.fl.us

Closed: \_\_\_\_\_

cc: Finance Department Contracts & Grants Office



## BOARD OF COUNTY COMMISSIONERS AGENDA REQUEST

**DATE:** August 16, 2016  
**TO:** Honorable Chairman and Members of the Board  
**FROM:** Jason Autrey  
**SUBJECT:** Replacement of Penny Creek Bridge on Steele Road  
**DEPARTMENT:** Public Works  
**BCC DISTRICT:** 3

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**STATEMENT OF ISSUE:** The Florida Department of Transportation (FDOT) is asking Okaloosa County to accept a revised Off System Project Agreement for the replacement of Penny Creek Bridge on Steele Road in the Baker area.

**BACKGROUND:** October 20, 2015 the BCC adopted an Off System Project Agreement along with two resolutions (#2015-214, #2015-215) for the replacement of Penny Creek Bridge #574013 located on Steele Road in Baker. The signed agreement and resolutions were provided to FDOT but were held by their Department. The Department has since made changes to include modified verbiage for the responsibilities of the Department and the County in regards to the Design and Operations phases, including ROW acquisition, road closures and funding sources.


FDOT contracted with Johnson, Mirmiran & Thompson, Inc. for the design of the construction plans. The project final plans were completed June 24, 2016. Construction of the project is scheduled for FY19 of the FDOT District 3 Work Program. All costs associated with the design, permitting any needed right-of-way, construction and inspection of the project will still be funded by FDOT utilizing various federal funding. The County will submit a separate Local Agency Program (LAP) Agreement to be executed at a later date to govern County duties to complete the project.

As originally planned, in order to construct the project Steele Road will need to be temporarily closed for a period of 180 days. The most convenient detour route to bypass the Penny Creek Bridge was determined to be West Dodson Road to Dodson Road to Griffith Mill Road.

Along with the Off System Project Agreement, FDOT is asking the Board of County Commissioners to adopt two revised resolutions supporting FDOT's efforts in acquiring any needed right-of-way and in support of the proposed detour.

**OPTIONS:** Approve/Disapprove acceptance of the attached FDOT Off System Project Agreement and related resolutions for the replacement of Penny Creek Bridge on Steele Road and authorize the Chairman to sign all documents.

**RECOMMENDATIONS:** Approve acceptance of the attached FDOT Off System Project Agreement and related resolutions for the replacement of Penny Creek Bridge on Steele Road and authorize the Chairman to sign all documents.

  
\_\_\_\_\_  
Jason Antrey, Director, Public Works 8/9/2016

**RECOMMENDED BY:**

  
\_\_\_\_\_  
John Hofstad, County Administrator 8/11/2016

**APPROVED BY:**

**John Hofstad, County Administrator**

# CONTRACT & LEASE INTERNAL COORDINATION SHEET

Contract/Lease Number: LAP Agreement Tracking Number: 1934-16

Contractor/Lessee Name: FDOT - Off System Project - Steele Rd over Penny Creek Grant Funded: YES  NO

Purpose: Design & right of way acquisition

Date/Term: \_\_\_\_\_ 1.  GREATER THAN \$50,000

Amount: \_\_\_\_\_ 2.  GREATER THAN \$25,000

Department: PW 3.  \$25,000 OR LESS

Dept. Monitor Name: Aulay

Document has been reviewed and includes any attachments or exhibits.

**Purchasing Coordination**

Zan Fedorak Date: 8/3/16

Purchasing Manager or Designee Zan Fedorak, Joanne Kublik or Charles Powell

**Risk Management Review**

Approved as written:

No insurance element of Date: \_\_\_\_\_

Risk Manager or designee Laura Porter or Krystal King

**County Attorney Review**

Approved as written:

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

County Attorney Gregory T. Stewart, Lynn Hoshihara, Kerry Parsons or designee

see attached.

Following Okaloosa County approval:

**Contracts & Grants**

Document has been received:

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

Contracts & Grants Manager

**Zan Fedorak**

**From:** Parsons, Kerry <KParsons@ngn-tally.com>  
**Sent:** Monday, August 01, 2016 4:19 PM  
**To:** Scott Bitterman  
**Cc:** Zan Fedorak; Greg Stewart; Christy Jones; Greg Stewart  
**Subject:** RE: 433910-1\_ Steele Rd over Penny Creek Bridge Replacement - Agreements

This is approved for legal sufficiency.

**From:** Scott Bitterman [mailto:sbitterman@co.okaloosa.fl.us]  
**Sent:** Wednesday, July 20, 2016 3:17 PM  
**To:** Parsons, Kerry  
**Cc:** Zan Fedorak; Greg Stewart; Christy Jones; Greg Stewart  
**Subject:** FW: 433910-1\_ Steele Rd over Penny Creek Bridge Replacement - Agreements

Kerry,

You provided review of some FDOT agreements for us October 7, 2015 concerning a bridge replacement on Steele Road. The agreements were signed by the Board and returned to FDOT. The link below is to agenda item:

[http://okaloosacountyfl.igm2.com/Citizens/Detail\\_LegiFile.aspx?ID=4849&highlightTerms=steele](http://okaloosacountyfl.igm2.com/Citizens/Detail_LegiFile.aspx?ID=4849&highlightTerms=steele)

FDOT has changed the funding for this project to LAP; thus, the agreements from last October were not signed by FDOT. The agreements attached to this Email now need reviewed. The documents contain modified verbiage for the responsibilities of the Department and the County in regards to the Design and Operations phases, including ROW acquisition and road closure.

Zan, can you handle the routing? I will try to get this on the Aug 16 agenda.

Scott

**From:** Miller, Jon [mailto:JMiller@jmt.com]  
**Sent:** Tuesday, June 21, 2016 2:35 PM  
**To:** Scott Bitterman <sbitterman@co.okaloosa.fl.us>  
**Cc:** Jason Autrey <jautrey@co.okaloosa.fl.us>; Bercea, Cristian <CBercea@jmt.com>; Nikole Arrant (narrant@hntb.com) <narrant@hntb.com>  
**Subject:** 433910-1\_ Steele Rd over Penny Creek Bridge Replacement - Agreements

Mr. Bitterman-

As you aware, the subject bridge replacement project is now a Local Agency Program (LAP) project

Phase IV (100%) plans dated June 24, 2016 will be provided to the County for review and comment

Please find PDF's of the following LAP documents for execution by the County:

- *Off-System Agreement*
- *Road Closure Resolution*
- *Right-of-Way Resolution*

*Please confirm receipt and let us know if you have any questions*

Johnson, Mirmiran & Thompson, Inc.  
An Employee Owned Company

Jon D. Miller, PE  
Vice President  
615 Crescent Executive Court, Suite 106  
Lake Mary, FL 32746  
P. 407-562-4951  
M. 407-340-3758  
[jmiller@jmt.com](mailto:jmiller@jmt.com)

Packet Pg. 1395

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Thank You.

OFF SYSTEM AGREEMENT  
BETWEEN  
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
AND  
OKALOOSA COUNTY

This Agreement is between the State of Florida Department of Transportation ("DEPARTMENT"), and Okaloosa County, a political subdivision of the State of Florida ("COUNTY").

1. Highway Bridge Replacement and Rehabilitation Program funds are available for the costs of the replacement, rehab, or inspection of bridges located off of the Federal-aid system under 23 CFR 650.413(c); and

2. Penny Creek Bridge, Bridge No. 574013, requires replacement; and

3. Penny Creek Bridge is on Steele Road located in Okaloosa County, Florida, a road not on the State Highway System; and

4. The parties agree that it is in the best interest of the State of Florida and the COUNTY for the DEPARTMENT, if necessary, to act for the COUNTY in the acquisition of the real property through voluntary acquisition and through the use of the power of eminent domain, if necessary, to complete this project, as authorized by Section 336.467, Florida Statutes; and

5. The parties agree that it is in the best interest of each party for the DEPARTMENT to undertake and to complete only the design and right-of-way acquisition elements necessary for the completion of this project; and

6. The parties agree that it is in the best interest of each party for the COUNTY to undertake and to complete all other elements of the project, including but not limited to, construction; construction inspection; utilities construction, reconstruction and relocation; and any other associated tasks, said tasks to be further governed by a separate Local Agency Program Agreement to be executed by the parties at a later date.

**NOW THEREFORE**, in consideration of the mutual benefits to be derived by the terms of this Agreement, the parties hereby agree as follows:

7. The recitals in paragraphs 1-6 above are true and correct and are made a part of this Agreement.

8. Project No. 433910-1, generally described as the replacement of Bridge No. 574013 over Penny Creek, from Beginning CMP 0.194 to End CMP 0.336 on Steele Road ("PROJECT"). The PROJECT is further described in the Construction Plans dated June 24, 2016, including any revisions thereof as exist on file with the DEPARTMENT ("PLANS"). The PLANS are hereby incorporated by reference and made a part of this Agreement.

CERTIFIED A TRUE  
AND CORRECT COPY  
JD PEACOCK II  
CLERK CIRCUIT COURT

BY Nancy L. Cannon  
DEPUTY CLERK

DATE Nov 16, 2016



9. The parties agree that the DEPARTMENT shall undertake and complete only the design and right-of-way acquisition elements necessary for completion of the PROJECT ("DEPARTMENT'S DUTIES"), and the COUNTY shall undertake and complete all other elements of the PROJECT, including but not limited to, construction; construction inspection; utilities construction, reconstruction and relocation; and any other associated tasks ("COUNTY'S DUTIES"). It is understood between the parties that the COUNTY'S DUTIES shall be further governed by a separate Local Agency Program Agreement to be executed by the parties at a later date.

10. The COUNTY shall cooperate with and shall support the DEPARTMENT's work efforts with respect to its tasks under this Agreement. The DEPARTMENT shall have final decision authority with respect to the design of the PROJECT and the design review process.

11. The COUNTY shall, through the passage of a formal resolution of the County Commission, consent to and authorize the DEPARTMENT for the COUNTY, if necessary, to take property (both real and personal) in the name of the COUNTY that is necessary in order to allow the COUNTY to perform the COUNTY'S DUTIES to complete the PROJECT. Said authority and action shall be deemed to include the DEPARTMENT'S use of the power of eminent domain to condemn the property necessary for the PROJECT and to exercise prudent engineering judgment in the design of the PROJECT.

a) The recording of documents transferring real property acquired under this Agreement in the official records of the appropriate county shall constitute and be deemed as acceptance of ownership by the COUNTY. Recording of said documents shall be the responsibility of the DEPARTMENT.

12. The COUNTY shall provide to the DEPARTMENT all documents necessary to establish encumbrances and encroachments, if any, within the existing COUNTY right of way necessary for completion of the PROJECT. The DEPARTMENT shall be responsible for performing all title work necessary for any additional right of way that is required for the PROJECT. In the event there is any action necessary to be taken to acquire ownership or to extinguish any interest in or encumbrance or encroachment on any property within the COUNTY'S existing right of way, the COUNTY shall take all actions reasonably requested by the DEPARTMENT to accomplish the ends required. In the event title ownership issues cannot be resolved so as to allow the PROJECT to move forward, the DEPARTMENT retains the right to terminate this Agreement on that basis. Further, the COUNTY acknowledges that the right of way must be cleared of all ownership interests, encumbrances or encroachments within the limits of construction at least 90 days prior to the execution of the Local Agency Program Agreement between the DEPARTMENT and the COUNTY. The DEPARTMENT shall have the sole discretion to determine the need to clear any ownership, encroachment or encumbrance.

13. The COUNTY hereby appoints the DEPARTMENT as its agent for purposes of utility coordination, but this appointment shall be limited to only the design phase of the PROJECT. The COUNTY shall be responsible for the implementation of the utility coordination, which shall include the construction, reconstruction and relocation of utilities under section 337.403(1), Florida Statutes. The COUNTY agrees to fully cooperate with the DEPARTMENT as it relates to utility coordination during the design phase for 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 DEPARTMENT, during the planning and design phase to identify and plan for relocation of 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 COUNTY 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 the by the COUNTY.

14. The COUNTY acknowledges and agrees that the right of way as described in the PLANS and the improvements and structures located within the right of way, are and will remain under the ownership of the COUNTY and that the DEPARTMENT will not have any ownership interest in the right of way, improvements or structures located thereon.

15. This Agreement shall become effective as of the date both parties hereto have executed the Agreement and shall continue in full force and effect until the DEPARTMENT'S DUTIES are complete. The DEPARTMENT reserves the right to unilaterally cancel its performance hereunder if it 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.

16. Pursuant to Section 287.058, Florida Statutes, the DEPARTMENT may unilaterally cancel this Agreement for refusal by the COUNTY 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 COUNTY in conjunction with this Agreement.

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

18. The COUNTY shall initiate and prosecute to completion all proceedings or actions necessary to enable the COUNTY to provide any necessary funds for completion of the PROJECT.

19. It is understood that the DEPARTMENT's participation in said PROJECT is subject to Legislative approval of the DEPARTMENT's appropriation request in the work program year that the PROJECT is scheduled.

20. The DEPARTMENT's performance and obligations to pay under this Agreement is contingent upon an annual appropriation by the Legislature. If the DEPARTMENT'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.

21. 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 Section 339.135(6)(a), Florida Statutes 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.”

22. 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.

23. COUNTY:

a) 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 COUNTY during the term of the contract; and

b) Shall expressly require any 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 subcontractor during the contract term.

24. The Parties agree that this Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and/or understandings applicable to the matters herein, and 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. Therefore, it is agreed that no deviation from the terms shall be predicated upon prior representations or agreements, whether oral or written.

25. 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:

COUNTY:

Okaloosa County  
Public Works/Engineering  
1759 South Ferndon Boulevard  
Crestview, Florida 32536

DEPARTMENT:

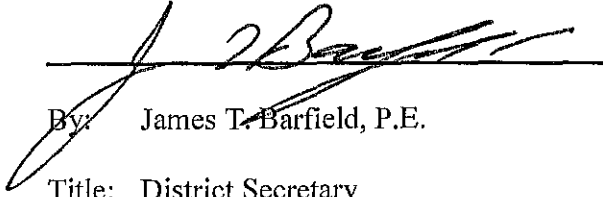
Florida Department of Transportation  
Attn: Office of the General Counsel  
1074 Highway 90 East  
Chipley, Florida 32428

*The remainder of this page intentionally left blank*

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

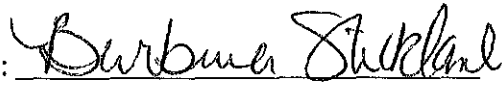
**STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION**

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

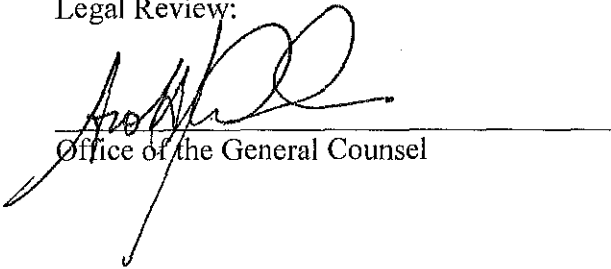
  
By: James T. Barfield, P.E.

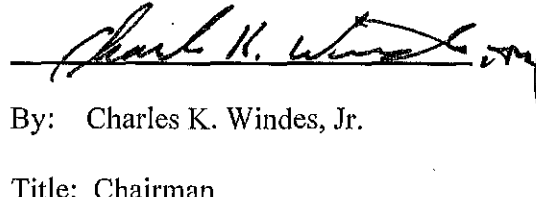
Title: District Secretary

Date: 10-05-2016

Attest: 

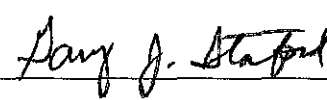
Legal Review:

  
Office of the General Counsel

  
By: Charles K. Windes, Jr.

Title: Chairman

Date: 8/19/14

Attest: 

Legal Review:

