

Board of County Commissioners Agenda Request

Date of Meeting: June 21, 2016

Date Submitted: June 7, 2016

To: Honorable Chairperson and Members of the Board

From: Robert M. Presnell, County Administrator
Curtis Young, Public Works Director

Subject: Approval of Off System Project Agreement – County Road 159
Bridge Replacement

Statement of Issue:

This item seeks Board approval and execution of the attached Off System Project Agreement – County Road 159 Bridge Replacement and Resolution 2016-012 for acceptance of State of Florida funding.

Background:

The Florida Department of Transportation (FDOT) has approved the replacement of a bridge on County Road 159. At this time, the Grant funding is for constructing a new bridge to replace a scour critical bridge.

Analysis:

FDOT is providing funding for a replacement bridge on County Road 159 (Salem Road) that is not on the State Highway System. The attached agreement will provide details for the funding of this project.

Fiscal Impact:

There is no fiscal impact to Gadsden County.

Options:

Option 1: Approve the attached agreement and Resolution 2016-012 and authorize the Chairperson to sign.

Option 2: Do not approve.

Option 3: Board direction.

County Administrator's Recommendation:

Option 1

Attachment (s):

1. Off System Project Agreement–County Road 159 Bridge Replacement (4 copies)
2. Resolution 2016-012 – County Road 159 bridge replacement (4 copies)

RESOLUTION #2016-012

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF GADSDEN COUNTY, FLORIDA, AUTHORIZING THE CHAIRPERSON OF THE BOARD OF COUNTY COMMISSIONERS TO EXECUTE AND ENTER INTO THE “STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION OFF SYSTEM PROJECT AGREEMENT”.

WHEREAS, Gadsden County, Florida, has requested the State of Florida, Department of Transportation, for financial assistance for costs directly related to the Gadsden County - County Road 159 (Salem Road) Bridge Replacement; and

WHEREAS, the State of Florida, Department of Transportation, is willing to provide the COUNTY WITH FINANCIAL ASSISTANCE UNDER Financial Project No.: 428624-1-52-01 for costs directly related to Gadsden County - County Road 159 (Salem Road) Bridge Replacement; and

WHEREAS, the State of Florida, Department of Transportation, has requested that Gadsden County enter into a “State of Florida, Department of Transportation, Off System Project Agreement”, attached hereto; and

WHEREAS, the State of Florida, Department of Transportation, Local Agency Program Agreement”, requires that a Resolution be passed by the Board of County Commissioners of Gadsden County, Florida, authorizing the Chairperson of the Board of County Commissioners of Gadsden County, Florida, to execute and enter into the “State of Florida, Department of Transportation, Off System Project Agreement”, attached hereto.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Gadsden County, Florida, as follows:

1. The Chairperson of the Board of County Commissioners of Gadsden County, Florida, is authorized to enter into and execute the “State of Florida, Department of Transportation, Off System Project Agreement” for Financial Project No. 428624-1-52-01.

DULY PASSED AND ADOPTED by the Board of County Commissioners of Gadsden County, Florida, this _____ day of _____, 2016.

GADSDEN COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

Chairperson

Nicholas Thomas, Clerk

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
OFF SYSTEM PROJECT AGREEMENT

This Agreement is between the State of Florida Department of Transportation (“DEPARTMENT”), and **Gadsden 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. **County Road 159 over Attapulugus Creek, Bridge No. 500033**, requires replacement; and

3. **Attapulugus Creek Bridge** is on **County Road 159** located in Gadsden 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 all aspects of the bridge replacement work, including but not limited to the design, construction, construction inspection, utilities, permits, easements and other associated tasks.

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

6. The recitals in paragraphs 1-5 above are true and correct and are made a part of this Agreement.

7. The parties agree that the DEPARTMENT shall undertake and complete Project No. **428624-1-52-01**, generally described as the replacement of Bridge No. 500033 over Attapulugus Creek, from Beginning MP 3.776 to End MP 4.017 on CR 159 (“PROJECT”). The PROJECT is further described in the Construction Plans dated **October 14, 2015**, including any revisions thereof as exist on file with the DEPARTMENT (“PLANS”). The PLANS and any revisions thereof as exist on file with the DEPARTMENT are hereby incorporated by reference and made a part of this Agreement. The COUNTY shall cooperate with and shall support the DEPARTMENT’s work efforts in these regards. The DEPARTMENT shall have final decision authority with respect to the design of the PROJECT and the design review process.

8. 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) that is necessary to complete the PROJECT and, if

necessary, 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 COUNTY. 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 and construction 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.

9. 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 DEPARTMENT advertising the PROJECT for construction. The DEPARTMENT shall have the sole discretion to determine the need to clear any ownership, encroachment or encumbrance.

10. The COUNTY hereby appoints the DEPARTMENT as its agent for purposes of the construction, reconstruction and relocation of utilities under section 337.403(1), Florida Statutes. The COUNTY agrees to fully cooperate with the DEPARTMENT 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 DEPARTMENT, 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 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.

11. The COUNTY acknowledges that the DEPARTMENT will be utilizing federal funds on the PROJECT and as a result thereof the COUNTY agrees to maintain the PROJECT in perpetuity according to DEPARTMENT standards. The COUNTY further recognizes and acknowledges that if the DEPARTMENT will be utilizing federal funds on the PROJECT that the National Environmental Policy Act ("NEPA") process will need to be completed and the DEPARTMENT reserves the right to adjust the plans and or design of the PROJECT to meet the

needs of the permits. The COUNTY agrees to fully 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.

12. 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. Notwithstanding the requirements hereof, the DEPARTMENT is authorized to temporarily use the COUNTY's existing right of way for construction of the PROJECT and maintenance during construction shall be the responsibility of the DEPARTMENT and its contractor.

13. The parties understand and agree that the DEPARTMENT and the COUNTY shall cooperate with and keep each other well informed of the work efforts and progress hereunder. In the event change orders or supplemental agreements become necessary during the prosecution of the work the COUNTY agrees that it will sign all documents necessary to allow the change order to be finalized and to allow the supplemental agreements to be fully executed. The DEPARTMENT shall have the sole authority with respect to make all decisions relating to, and including the need for, change orders and supplemental agreements.

14. All payment and performance bonds shall be issued in favor of the DEPARTMENT. All warranties shall be made in favor of the COUNTY.

15. Upon completion of the PROJECT, the DEPARTMENT shall issue a Notice of Final Acceptance to the contractor with a copy of said notice being provided to the COUNTY. Upon issuance of the Notice of Final Acceptance, the COUNTY shall be immediately responsible for the perpetual maintenance of the PROJECT. The DEPARTMENT shall also have the right to assign interim maintenance responsibility to the COUNTY 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 DEPARTMENT to the COUNTY in writing with sufficient description to place the COUNTY on notice of the interim maintenance responsibility. Notwithstanding the issuance of the Notice of Final Acceptance, the DEPARTMENT shall have the right to assure completion of any punch list by the contractor. Additionally, the COUNTY understands and agrees that the DEPARTMENT shall transfer all permits to the COUNTY as the operational maintenance entity and the COUNTY agrees to accept said transfer and to become fully responsible to comply with all operational and maintenance conditions of the permits.

16. 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 PROJECT is completed by the DEPARTMENT and the improvements have been turned over to the COUNTY by the DEPARTMENT by formal notice from the DEPARTMENT. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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."

23. 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.

24. In the event there are cost overruns, supplemental agreements (specifically incurred in the areas located off the State Highway System), and or liquidated damages not eligible to be paid for by federal funds due to the Federal Highway Administration determining that said costs are non-participating costs, the COUNTY shall be responsible for one-hundred percent (100%) of the funds required to make up the shortfall not paid by federal funds. The PROJECT is off of the "State Highway System," therefore, in accordance with Section 339.08(1), F.S., State funding cannot be used for payments of non-participating costs on this PROJECT. (Examples of non-participating items could be fishing piers; premium costs due to design or CEI errors or omissions; material or equipment called for in the plans but not used in the construction, as referenced in the Federal Aid Policy Guide 23, CFR Section 635.120).

- a. Should such shortfalls occur due to a determination that said costs are non-participating, the COUNTY agrees to provide, without delay, a deposit within fourteen (14) calendar days of notification from the DEPARTMENT, to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund the shortfall. The DEPARTMENT shall notify the COUNTY as soon as it becomes apparent there is a shortfall; however, failure of the DEPARTMENT to so notify the COUNTY shall not relieve the COUNTY of its obligation to pay for its full participation of non-participating costs during the PROJECT and on final accounting, as provided herein below. If the COUNTY cannot provide the deposit within fourteen (14) days, a letter must be submitted to and approved by the DEPARTMENT'S contract manager indicating when the deposit will be made. The COUNTY understands the request and approval of the additional time could delay the PROJECT, and additional non-participating costs may be incurred due to the delay of the PROJECT.

The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred sixty days (360) 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 non-participating Project cost records and accounts shall be subject to audit by a representative of the COUNTY for a period of three (3) years after final close out of the PROJECT. The COUNTY will be notified of the final non-participating cost of the PROJECT. Both parties agree that in the event the final accounting of total non-participating costs pursuant to the terms of this Agreement is less than the total deposits to date, a refund of the excess will be made by the DEPARTMENT to the COUNTY. If the final accounting is not performed within three hundred and sixty (360) days, the COUNTY is not relieved from its obligation to pay.

In the event the final accounting of total non-participating costs are greater than the total deposits to date, the COUNTY will pay the additional amount within forty (40) calendar days from the date of the invoice from the DEPARTMENT. The COUNTY agrees to pay interest at a rate as established pursuant to Section 55.03, F.S., on any invoice not paid within forty (40) calendar days until the invoice is paid.

The payment of funds under this Agreement provision will be made directly to the DEPARTMENT for deposit.

25. 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.

26. 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.

27. 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:

DEPARTMENT:

FDOT Midway Operations Engineer
17 Commerce Boulevard
Midway, FL 32343-6601

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

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

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

By: James T. Barfield, P.E.

By:

Title: District Secretary

Title:

Date: _____

Date: _____

Attest: _____

Attest: _____

Legal Review:

Legal Review:

Office of the General Counsel
