



**Florida Department of Transportation**

RICK SCOTT  
GOVERNOR

1109 South Marion Avenue  
Lake City, Florida 32025

JIM BOXOLD  
SECRETARY

August 8, 2016

The Honorable John Meeks, Chair  
Levy County Board of County Commissioners  
Post Office Box 310  
Bronson, Florida 32621

**Subject: CONSTRUCTION & MAINTENANCE AGREEMENT**  
**Bridge replacement of bridge # 340010**  
**on CR 456/Gulf Blvd. from Creek to Daughtry Bayou**  
**Financial Project ID: 415252-1-52-01**

Dear Chair Meeks:

Enclosed are two (2) copies of the Construction & Maintenance Agreement for the subject project. Your assistance is requested to secure execution by Levy County.

In addition to executing the attached Agreement, a resolution must be adopted and a certified copy attached to each copy of the Agreement.

Your assistance in securing execution as soon as possible is appreciated. Should you have questions or need additional information, I can be reached at 1-800-749-2967, Extension 7823.

Sincerely,

Kim Evans  
District Local Programs Administrator

/ke  
Enclosures

CC: Ms. Alice Lalonde, Office Manager, Levy County Road Department  
Ms. Cindy Dunkel, P.E., Chiefland Maintenance  
Ms. Melissa Morgan, Bridge Department  
Ms. Leigh Ann Bennett, Project Management

**TRANSFER AND MAINTENANCE AGREEMENT**

**THIS TRANSFER AND MAINTENANCE AGREEMENT** ("Agreement") is made and entered into by and between the State of Florida Department of Transportation ("Department") and Levy County, Florida ("Agency").

**-RECITALS-**

1. The term "Property" shall collectively refer to certain real property located in Levy County, Florida, portions of which are owned by the Agency and referred to as the "Maintained Property", portions of which are currently owned or in the process of being purchased by the Department and referred to as the "Transferred Property", as is more particularly shown in **Exhibit "A"**; the Maintained Property is shaded in green and the Transferred Property is shaded in blue; and
2. Portions of the Transferred Property include a perpetual easement acquired by the Department from the Trustees of the Internal Improvement Trust Fund ("TIITF Easement"), as more particularly shown on **Exhibit A**; the areas of the Transferred Property that include the TIITF Easement are shaded in red; and
3. Bridge Number 340010, known as the Daughtry Bayou Bridge ("Bridge"), as shown in **Exhibit "B"**, is owned by the Agency and currently exists on or within the Maintained Property;
5. The Department will be constructing a transportation construction project in order to replace the Bridge ("Project"); and
6. The Project will be constructed via Financial Project Number ("FIN") 415252-1-52-01 and will require acquisition of additional right-of-way in order to complete the Bridge replacement; and
7. The term "Improvements" means and shall refer to the bridge removal, replacement, and expansion of the existing Bridge as well as the new approaches necessary to complete it, all of which will be constructed on or within the Property; and
8. Upon completion of the Project, the Agency shall continue to own, operate, maintain, and repair the Maintained Property which includes County Road 456 over Daughtry Bayou and the Bridge, and certain portions of the "Improvements" shall be transferred to the Agency including without limitation parcel numbers 100A, 100B, 101 and 102, as more particularly shown in **Exhibit "A"**
9. The Department shall construct the Improvements on the Property; and
10. The Department's ability to fund construction of the Improvements is wholly contingent on appropriation of funds to the Department; and
11. A date for the commencement of construction of the Improvements has not been established; and
12. Upon completion of the Project and construction of the Improvements, the Department will transfer the Transferred Property to the Agency via map transfer or any other means of conveyance as required by law; and
13. The Agency agrees to receive and accept ownership of the Transferred Property via map transfer or any other means of conveyance as required by law; and
14. Upon completion of the Project and contemporaneously with the conveyance of the Transferred Property, the Agency agrees to make every reasonable good faith effort to cause the TIITF to allow the transfer or assignment of the TIFT Easement, acquired by the Department for the sole purpose of constructing the Project, from the Department to the Agency; and

Financial Project Id. No. 415252-1-52-01  
Federal Id. No. N/A  
Project Description County Road 456 ("CR 456") creek to Daughtry Bayou Bridge No. 340010  
Off System Department Construct Agency Maintain

15. Upon completion of the map transfer, the Agency agrees that it shall own, operate, maintain and repair the Transferred Property and the Improvements therein at its sole cost and expense; and

16. Upon transfer or assignment of the TIITF Easement from the Department to the Agency, the Agency agrees that it shall own, operate, maintain and repair the TIITF Easement and any Improvements therein at its sole cost and expense; and

17. The Agency, by Resolution 2016-051 dated 10-4-16, has authorized its representative to execute and enter this Agreement on behalf of the Agency, see Exhibit "C".

**NOW THEREFORE**, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the above recitals and the mutual covenants and conditions contained in this Agreement, the parties, intending to be legally bound, acknowledge and agree as follows:

### **1. RECITALS AND EXHIBITS**

The above recitals and attached Exhibits are specifically incorporated by reference and made part of this Agreement.

### **2. EFFECTIVE DATE**

The effective date of this Agreement shall be the date the last of the parties to be charged executes the Agreement.

### **3. ACCESS**

This Agreement authorizes the Department to access the Property for the limited purpose of performing this Agreement.

### **4. TERM**

The initial term of this Agreement shall be for a period of one (1) year, commencing on the Effective Date and concluding on the anniversary of the Effective Date. This Agreement shall automatically renew for successive and continuing like one (1) year terms unless terminated by the Department in writing.

### **5. E-VERIFY**

The Agency (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 Agency 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.

### **6. COMPLIANCE**

The Agency shall perform the Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards, specifications and permits, as the same may be constituted and amended from time to time, including, without limitation, those of the Department, Water Management District with requisite jurisdiction, Florida Department of Environmental Protection, Environmental Protection Agency, Army Corps of Engineers, United States Coast Guard and local governmental entities ("Governmental Law").

### **7. PERMITS**

In the performance of the Agreement the Agency may be required to obtain one or more Department permits which may include copies of the Agreement as an exhibit. Notwithstanding the inclusion or incorporation of the Agreement as part of any such Department permits, the Agreement shall remain separate and apart from such permits and shall not be merged into the same absent the prior written express consent of the Department. Should any term or provision of the Agreement conflict with any term, provision or requirement of any Department permit, the terms and provisions of the Agreement shall control unless specifically noted otherwise in any such Department permit. For purposes of this Agreement, the term "permit" shall also include the Department's Construction Agreement which may be required for permanent improvements installed within the Department's right-of-way.

## **8. PROJECT MANAGEMENT**

A. The Department shall manage the Project for the design and construction of the Improvement and perform such activities as the Department deems necessary and appropriate to complete the Project for the Improvement, including, without limitation, seeking and obtaining approval and participation by one or more federal agencies, design of the Improvement, acquisition of right-of-way, construction of the improvement, and any other activities to facilitate satisfactory completion of the Improvement. The Department shall commence construction of the Improvement at its convenience after the appropriation of sufficient funds.

B. Prior to commencement of construction and at their sole cost and expense, the Agency shall ensure that the Property is free and clear of any and all encroachments that may impede or in any way interfere with the Department's construction of the Improvement.

## **9. UTILITIES**

The Agency shall be responsible for locating, removing and relocating utilities, both aerial and underground, if required for the Agency to perform this Agreement. The Agency shall ensure all utility locations are accurately documented on the construction Plans and Specifications, including the final as-built plans. All utility conflicts shall be resolved by the Agency directly with the applicable utility.

## **10. TRANSFERRED PROPERTY AND TIIF EASEMENT**

A. Upon completion of the Project, the Department shall convey the Transferred Property to the Agency by map transfer or any other means of conveyance as required by or allowable by law. The Agency, by execution of this Agreement, agrees that it will accept the Transferred Property and all Improvements contained therein as well as all maintenance responsibilities described in paragraph 11 below, immediately upon conveyance by the Department.

B. Contemporaneously with the conveyance of the Transferred Property, the Agency further agrees to make every good faith effort to cause the TIIF Easement, all Improvements contained therein, owned by the Department to be transferred or assigned to the Agency by the TIIF. Upon conveyance of the TIIF Easement, the Agency will assume all maintenance responsibilities described in paragraph 11 below.

## **11. OPERATION, MAINTENANCE & REPAIR**

A. Upon conveyance of the Transferred Property and TIIF Easement, the Agency shall own, operate, maintain, and repair the same, as well as all Improvements therein, at its sole cost and expense, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement including applicable Governmental Law.

B. The Agency agrees that it will be solely responsible for the operation, maintenance, and repair of the Improvements. Should the Agency fail to operate, maintain, and repair the Improvements in accordance with the terms and provisions of this Agreement and applicable Governmental Law, and the Department be required to perform such operation, maintenance, or repair pursuant to the *Inspection of Federal-Aid Projects Under Local, Jurisdiction, Topic No. 850-065-001*, under the authority of *Title 23, Section 116, U.S. Code*, the Agency agrees that it shall be fully responsible to the Department for repayment of any funds expended by the Department for the operation, maintenance, or repair of the Improvements. The Department shall invoice the Agency for any operation, maintenance, or repair expenses charged to the Department, and the Agency shall pay such invoices in accordance with the Payment section of this Agreement. Nothing in this Agreement shall relieve the Agency of its financial obligations to the Department should this occur.

C. The Agency further agrees to allow the Department access to the Property and the Improvements pursuant to Paragraph 3 above should the events described in Paragraph B occur.

## **12. WARRANTIES**

After completion of construction of the Improvement and upon the Agency's written request, the Department shall transfer all transferable warranties concerning construction of the Improvement to the Agency. The assignment shall be evidenced by a separate written agreement signed by the parties and shall be subject

to applicable Governmental Law and the construction agreement entered between the Department and its contractor.

### **13. EMINENT DOMAIN AND DAMAGES**

Under no circumstances shall the Department's exercise of any right provided in this Agreement create any right, title, interest or estate entitling the Agency to full and just compensation from the Department either through inverse condemnation or eminent domain laws or any similar laws regarding the taking of property for public purposes. The Agency forever waives and relinquishes all legal rights and monetary claims which it has, or which may arise in the future, for compensation or damages, including, without limitation, special damages, severance damages, removal costs, and loss of business profits resulting in any manner from the Department's exercise of any right provided in this Agreement. This waiver and relinquishment specifically includes all damages flowing from adjacent properties owned, leased or otherwise controlled by the Agency, as a result of the Department's exercise of any right provided in this Agreement.

### **14. PAYMENT**

All Department invoices submitted for payment pursuant to the terms and provisions of this Agreement are due and payable within thirty (30) days of the date of the invoice ("Due Date"). Any portion of an invoice not received by the Department by the Due Date shall immediately thereafter begin accruing interest at a rate of interest established pursuant to §55.03, Florida Statutes, until paid in full (past due principal and accrued interest shall be collectively referred to as "Past Due Sums").

### **15. INDEMNIFICATION**

A. The Agency shall promptly defend, indemnify, hold the Department harmless from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, construction delay costs / penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, arising out of or related to the Agency's performance, or breach, of this Agreement ("Liabilities"). The term "Liabilities" shall also specifically include all civil and criminal environmental liability arising, directly or indirectly under any Governmental Law, including, without limitation, liability under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Air Act ("CAA") and the Clean Water Act ("CWA"). The Agency's duty to defend, indemnify and hold the Department harmless specifically does not encompass indemnifying the Department for its negligence, intentional or wrongful acts, omissions or breach of contract.

B. The Agency shall notify the Department in writing immediately upon becoming aware of any Liabilities. The Agency's obligation to defend, indemnify and hold the Department harmless from any Liabilities, or at the Department's option to participate and associate with the Department in the defense and trial of any Liabilities, including any related settlement negotiations, shall be triggered by the Department's written notice of claim for indemnification to the Agency. The Agency's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph.

### **16. SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY**

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving either party's sovereign immunity protections, or as increasing the limits of liability set forth in §768.28, Florida Statutes, as the same may be amended from time to time. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the Department's limits of liability set forth in sections 376.305 and 337.27(4), Fla. Stat. (2014).

### **17. NOTICE**

All notices, communications and determinations between the parties hereto and those required by the Agreement, including, without limitation, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States Mail, postage prepaid, to the parties at the following addresses:

Department: Florida Department of Transportation  
Attention: Cindy Dunkel, P.E.  
Chiefland Maintenance Engineer  
1820 South Young Boulevard  
Chiefland, Florida 32626

Agency: Levy County  
Attention: County Manager  
Post Office Box 310  
Bronson, Florida 32621

#### **18. GOVERNING LAW**

This Agreement shall be governed in all respect by the laws of the State of Florida.

#### **19. INITIAL DETERMINATION OF DISPUTES**

The Department's District Two Secretary ("District Secretary") shall act as the initial arbiter of all questions, difficulties, and disputes concerning the interpretation, validity, performance or breach of the Agreement.

#### **20. VENUE AND JURISDICTION**

A. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of the Agreement that are not resolved to the mutual satisfaction of the parties by the Department's District Secretary shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

B. The Agency and all persons and entities accepting an assignment of this Agreement, in whole or in part, shall be deemed as having consented to personal jurisdiction in the State of Florida and as having forever waived and relinquished all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity, performance or breach of this Agreement.

#### **21. JURY TRIAL**

The parties hereby waive the right to trial by jury of any dispute concerning the interpretation, validity, performance or breach of the Agreement, including, without limitation, damages allegedly flowing therefrom.

#### **22. ASSIGNMENT**

The Agency shall not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the Department's District Secretary or his/her designee. The Department has the sole discretion and authority to grant or deny proposed assignments of this Agreement, with or without cause. Nothing herein shall prevent the Agency from delegating its duties hereunder, but such delegation shall not release the Agency from its obligation to perform the Agreement.

#### **23. THIRD PARTY BENEFICIARIES**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for herein.

#### **24. VOLUNTARY EXECUTION OF AGREEMENT**

Each party warrants and represents to the other: (i) that it understands all of the rights and obligations set forth in the Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of the Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and disadvantages of the Agreement and executes the Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influence; and (iv) it had the opportunity to have independent legal advice by counsel of its own choosing in the negotiation and execution of the Agreement.

#### **25. ENTIRE AGREEMENT**

This instrument, together with any exhibits and documents made part hereof by reference, contains the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in the Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of the Agreement, and any part hereof, are waived, merged herein and superseded hereby.

**26. EXECUTION OF DOCUMENTS**

The parties agree that they shall promptly execute and deliver to the other all documents necessary to accomplish the intent and purpose of the Agreement and shall do all other acts to effectuate the Agreement.

**27. SUFFICIENCY OF CONSIDERATION**

By their signature below, the parties hereby acknowledge the receipt, adequacy and sufficiency of consideration provided in the Agreement and forever waive the right to object to or otherwise challenge the same.

**28. WAIVER**

The failure of either party to insist on the strict performance or compliance with any term or provision of the Agreement on one or more occasions shall not constitute a waiver or relinquishment thereof and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

**29. INTERPRETATION**

No term or provision of the Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

**30. CAPTIONS**

Paragraph title or captions contained herein are inserted as a matter of convenience and reference and in no way define, limit, extend or describe the scope of the Agreement, or any provision hereof.

**31. SEVERANCE**

If any section, paragraph, clause or provision of the Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of the Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of the Agreement remain enforceable.

**32. COMPUTATION OF TIME**

In computing any period of time prescribed in the Agreement, the day of the act, event or default from which the designated period of time begins to run, shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

**33. MODIFICATION OF AGREEMENT**

A modification or waiver of any of the provisions of the Agreement shall be effective only if made in writing and executed with the same formality as the Agreement.

**34. ANNUAL APPROPRIATION / FUNDING**

Pursuant to §339.135(6)(a), Florida Statutes, the Department's obligation to fund construction of the Improvement is contingent upon annual appropriation by the Florida Legislature. This Agreement may be terminated by the Department without liability to the Agency if sufficient funds are not appropriated to the Department. The provisions of §339.135(6)(a), Florida Statutes, are set forth herein verbatim and made part of this Agreement, to wit:

"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 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 and which have a term for a period of more than 1 year."

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties execute this Agreement, consisting of ten (10) pages.

**Florida Department of Transportation**

**Attest:**

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

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

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

**Legal Review:**

By: \_\_\_\_\_  
Office of the General Counsel  
Florida Department of Transportation

**Levy County**

**Attest:**

By: John Meeks

By: Danny J Shipp

Printed Name: John Meeks

Printed Name: Danny J Shipp

Title: Chairman

Title: Clerk of Court

Date: 10/4/16

Date: 10/4/16

**Legal Review:**

By: Anna Rose Brown  
Legal Counsel for Agency

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EXHIBIT "A"

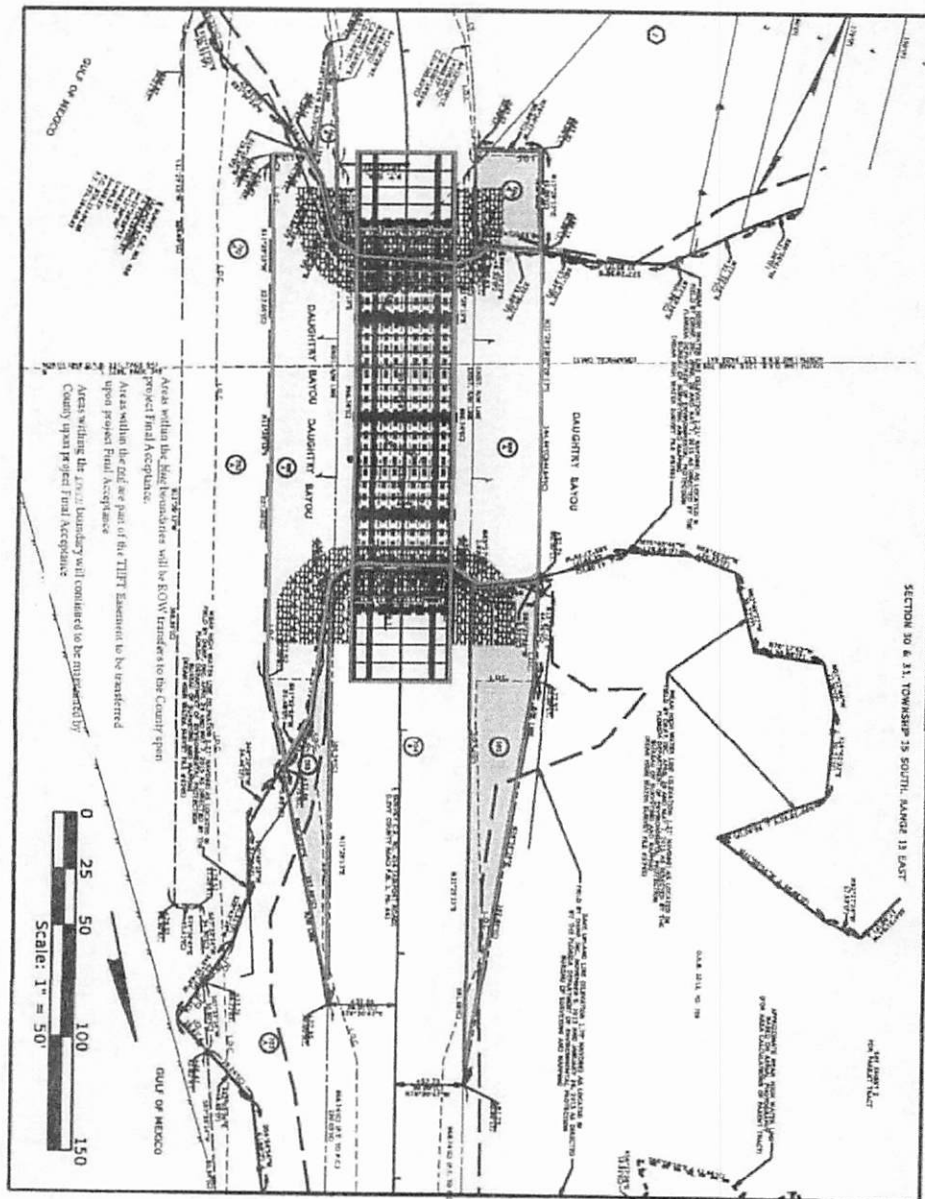
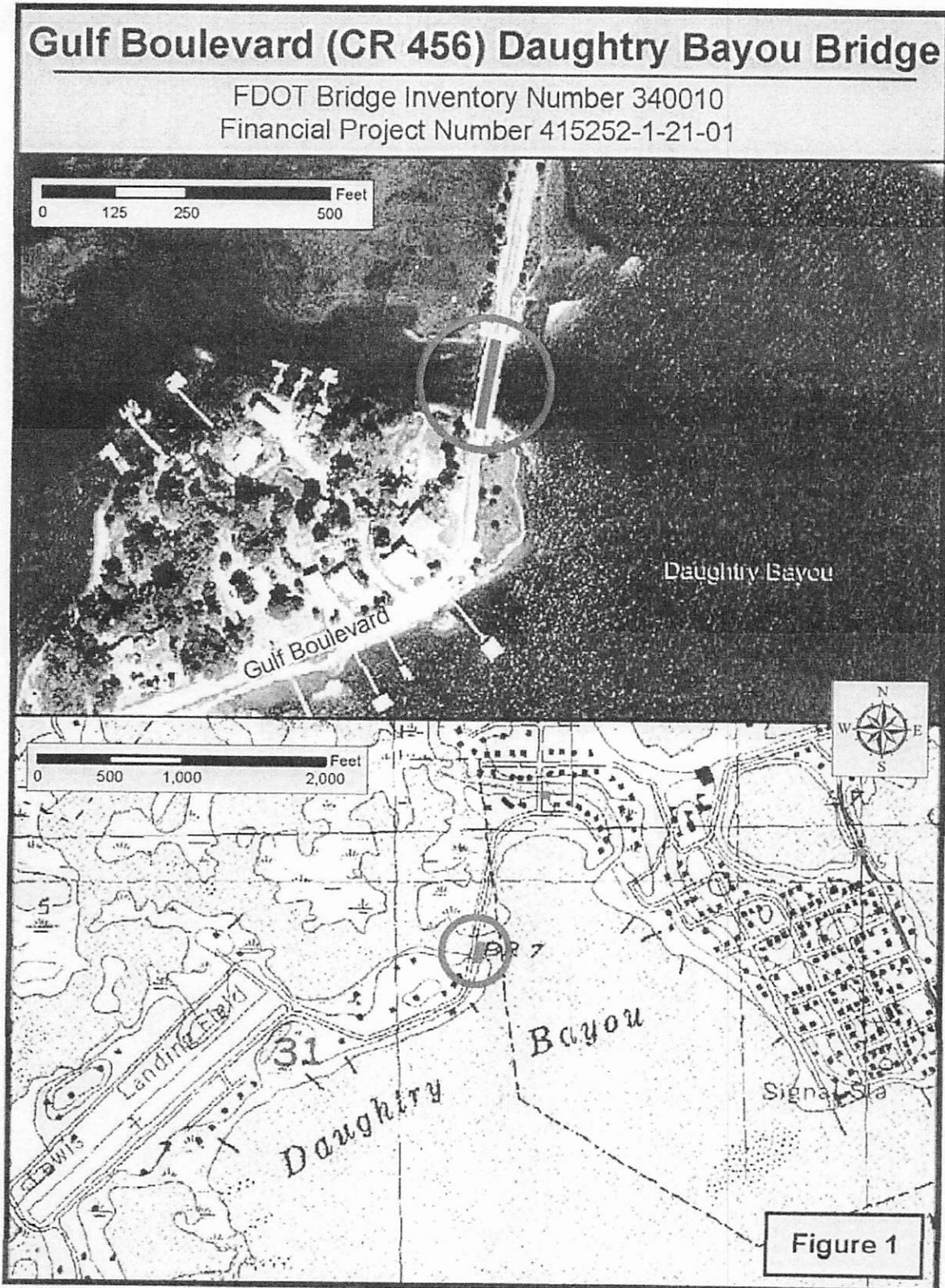


EXHIBIT "B"



Financial Project Id. No. 415252-1-52-01

Federal Id. No. N/A

Project Description County Road 456 ("CR 456") creek to Daughtry Bayou Bridge No. 340010  
Off System Department Construct Agency Maintain

**EXHIBIT "C"**

**(RESOLUTION)**

**RESOLUTION  
2016-016**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEVY COUNTY ENDORSING DELIVERY OF A PROJECT FOR BRIDGE NO. 340010, AT CR 456 (GULF BLVD.) AT DAUGHTRY BAYOU BY THE FLORIDA DEPARTMENT OF TRANSPORTATION IN LEVY COUNTY, FLORIDA.**

**WHEREAS**, the Board of County Commissioners of Levy County, Florida (Board) has the authority to enter into agreements with the Florida Department of Transportation (DOT); and

**WHEREAS**, the Board desires to endorse delivery by DOT providing for DOT construction of Bridge No. 340010, in Levy County, Florida, under Financial Project No. 415252-1; and

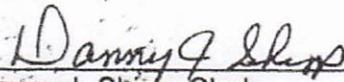
**WHEREAS**, Levy County is LAP certified, however, the County requests DOT to deliver the bridge project allowing for greater efficiency, innovation, cost or time savings to allow for optimal project delivery.

**NOW, THEREFORE, BE IT RESOLVED BY THE LEVY COUNTY BOARD OF COUNTY COMMISSIONERS:**

The County endorses delivery of the construction project for Bridge No. 340010 located on CR 456 (Gulf Blvd.) at Daughtry Bayou by DOT under Financial Project No. 415252-1.

**DULY PASSED AND ADOPTED THIS 5<sup>th</sup> day of April, 2016.**

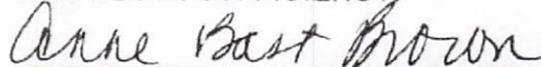
ATTEST:  
Clerk of the Circuit Court  
and Ex-Officio Clerk to the Board  
of County Commissioners

  
\_\_\_\_\_  
Danny J. Shipp, Clerk

**BOARD OF COUNTY COMMISSIONERS  
OF LEVY COUNTY, FLORIDA**

  
\_\_\_\_\_  
John Meeks, Chairman

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
Anne Bast Brown, County Attorney **R**