

1. REQUESTED MOTION:

ACTION REQUESTED: Approve authorizing resolution and agreement for Chairman to execute attached Resolution and Joint Project Agreement between Lee County and Florida Department of Transportation (FDOT) for landscape and irrigation design on US 41 from Corkscrew Road to Old U.S. 41 on behalf of the BoCC. Also, approve budget amendment resolution in the amount of \$60,000 for Project 5024 and amend FY 03-07 CIP.

WHY ACTION IS NECESSARY: The Board must approve the agreement and authorize the Chairman to sign it so that it may become fully executed.

WHAT ACTION ACCOMPLISHES: Provides an agreement that will reimburse the County for landscape and irrigation design expenses up to \$60,000.00 for this section of U.S. 41. The irrigation design will also provide FDOT with the proper information to install irrigation sleeves during roadway construction, which will reduce landscape and irrigation installation expenses by eliminating the need for directional boring under the roadway for irrigation system pipe sleeves.

2. DEPARTMENTAL CATEGORY: 9
COMMISSION DISTRICT #3

C9A

3. MEETING DATE:

10-22-2002

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE
 - ORDINANCE
 - ADMIN. CODE
 - OTHER
- LeeScape Master Plan

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
 - B. DEPARTMENT Transportation
 - C. DIVISION Operations
- BY: Scott M. Gilbertson, P.E.,
Director, DOT

7. BACKGROUND: Last fall the Governor and Florida legislature accelerated funding for the six-laning of this segment of U.S. 41 from fiscal year 2005/2006 to this year. As a result, construction started on September 16, 2002. FDOT has allocated \$704,000 for the design and installation of landscaping. Up to \$60,000 of the \$704,000 funded by FDOT will be used for design expenses associated with this project at the County's initial expense, with reimbursement of these expenses to follow pending approval from FDOT.

The entire project covers approximately 3.5 miles of roadway, with approximately 0.71 miles located within the City of Bonita Springs. Under the terms of this agreement and by consent from FDOT and City staff, this portion of roadway in the City will also be designed under this contract to provide continuity to the landscaping along the entire segment and avoid the need for separate contracts and possibly separate design firms.

CONTINUED ON PAGE 2

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

| A Department Director | B Purchasing or Contracts | C Human Resources | D Other | E County Attorney | F Budget Services | | | G County Manager | |
|--------------------------------------|------------------------------------|-------------------------|--------------------------------------|--|--|--|---|--|--------------------------------------|
| <i>9/27/02</i> <i>[Signature]</i> | <i>[Signature]</i> | NA | <i>[Signature]</i> <i>9/30/02</i> | <i>[Signature]</i> <i>[Signature]</i> | OA <i>[Signature]</i> <i>10-2-02</i> | OM <i>[Signature]</i> <i>10/1/02</i> | Risk <i>[Signature]</i> <i>10/06/02</i> | GC <i>[Signature]</i> <i>10/1/02</i> | <i>[Signature]</i> <i>9.30.02</i> |

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by *CoAtty*
Date: *10/3/02*
Time: *2:40 pm*
Forwarded To: *[Signature]*

REC'D BY
ADMIN. *RK*
10-3-02
4:43
BY ADMIN.
FORWARDED TO:
10/8/02

BLUE SHEET NO. 20021094:

7. BACKGROUND (Continued):

FDOT and Lee County staff have worked with the Estero Concerned Citizens Organization (ECCO) and their Community Planning Panel to develop this agreement for the reimbursement of landscaping and irrigation design expenses. The Roadway Landscape Advisory Committee approved this project at their March 5, 2002 meeting.

Funds will be available in following account: 20502430700.503490.

RESOLUTION

Amending the Budget of Transportation Capital Improvements-Fund 30700 to incorporate the unanticipated receipts into Estimated Revenues and Appropriations for the fiscal year 2002-2003.

WHEREAS, in compliance with the Florida Statutes 129.06(2), it is the desire of the Board of County Commissioners of Lee County, Florida, to amend the Transportation Capital Improvements-Fund 30700 budget for \$60,000 of the unanticipated revenue from State of Florida and an appropriation of a like amount for construction costs and;

WHEREAS, the Transportation Capital Improvements-Fund 30700 budget shall be amended to include the following amounts which were previously not included.

ESTIMATED REVENUES

| | | |
|----------------------------------|-------------------------|--------------|
| Prior Total: | | \$68,911,706 |
| Additions | | |
| 20502430700.369900.9183 | Reimbursement from FDOT | 60,000 |
| Amended Total Estimated Revenues | | \$68,971,706 |

APPROPRIATIONS

| | | |
|------------------------------|---------------------------|--------------|
| Prior Total: | | \$68,911,706 |
| Additions | | |
| 20502430700.503490 | Other Contracted Services | 60,000 |
| Amended Total Appropriations | | \$68,971,706 |

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Lee County, Florida, that the Transportation Capital Improvements-Fund 30700 budget is hereby amended to show the above additions to its Estimated Revenue and Appropriation accounts.

Duly voted upon and adopted in Chambers at a regular Public Hearing by the Board of County Commissioners on this ____ day of _____, 2002.

ATTEST:
CHARLIE GREEN, EX-OFFICIO CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

BY: _____
DEPUTY CLERK

CHAIRMAN

APPROVED AS TO FORM

OFFICE OF COUNTY ATTORNEY

DOC TYPE YA
LEDGER TYPE BA

LEE COUNTY RESOLUTION NO. _____

**A RESOLUTION BY LEE COUNTY, FLORIDA,
SUPPORTING AN AGREEMENT BETWEEN LEE
COUNTY GOVERNMENT AND STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION FOR
LANDSCAPE AND IRRIGATION DESIGN FOR U.S. 41
FROM OLD U.S. 41 TO CORKSCREW ROAD**

WHEREAS, landscaping provides beautification to our community; and

WHEREAS, Lee County desires to landscape and irrigate U.S. 41 from Old U.S. 41 to Corkscrew Road; and

WHEREAS, Lee County desires to enter into a joint project agreement with the State of Florida Department of Transportation (Department FM No. 19569323801), whereby the Department will compensate the County for costs directly related to the landscape and irrigation of U.S. 41 from Old U.S. 41 to Corkscrew Road.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, that:

Section 1: The Board of County Commissioners supports the Joint Project Agreement for landscape and irrigation design for U.S. 41 from Old U.S. 41 to Corkscrew Road.

Section 2: The Board of County Commissioners hereby authorizes the Chairman of the Board of County Commissioners to enter into the Joint Project Agreement between Lee County and State of Florida Department of Transportation.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and, being put to a vote, the vote was as follows:

BOB JANES _____
DOUGLAS ST. CERNY _____
RAY JUDAH _____
ANDREW COY _____
JOHN ALBION _____

DULY PASSED AND ADOPTED this ____ day of _____, 2002.

ATTEST: CHARLIE GREEN
CLERK OF THE COURT

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of the County Attorney

FM NO.: 195693 2 38 01
COUNTY: LEE

**JOINT PROJECT AGREEMENT
BETWEEN THE
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
LEE COUNTY
FOR LANDSCAPE AND IRRIGATION DESIGN FOR US 41 FROM OLD US 41
TO CORKSCREW ROAD**

This is an Agreement by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT" and the LEE COUNTY, FLORIDA, hereinafter referred to as the "COUNTY".

W I T N E S S E T H

WHEREAS, the COUNTY has the authority to enter into said Agreement and to undertake the Project hereinafter described; and

WHEREAS, the Project is on the State Highway System and the DEPARTMENT has the authority, under Section 334.044, Florida Statutes, to enter into this Agreement; and

WHEREAS, the DEPARTMENT will compensate the COUNTY for costs directly related to the landscape and irrigation design of the Project; and

WHEREAS, the DEPARTMENT is prepared, in accordance with its Five Year Work Program to fund design in fiscal year 2002/2003, for US 41 from Old US 41 to Corkscrew Road, under FM Number 195693 2 38 01, herein after referred to as the "PROJECT"; and

WHEREAS, completion of the PROJECT is in the best interest of both the DEPARTMENT and the COUNTY, it would be most practical and expeditious for the COUNTY to undertake the landscape and irrigation design for said PROJECT: and

WHEREAS, the COUNTY by Resolution, dated the ___ day of _____, 2002, a copy of which is attached hereto and made a part hereof, has authorized the Chairman of the Board of County Commissioners to enter into this Agreement.

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

1. The COUNTY agrees to undertake this project, and the DEPARTMENT agrees to pay for said services, as stated in paragraph 6 herein and in accordance with DEPARTMENT'S standards. Design to be completed within 30 months from execution of this agreement.

2. The project consists of landscape and irrigation design for US 41 from Old US 41 to Corkscrew Road.

3. This contract shall not be renewed. Any extension shall be in writing and executed by both parties, and shall be subject to the same terms and conditions set forth in this Agreement.

4. The COUNTY shall submit plans to the DEPARTMENT for approval. The COUNTY shall provide the DEPARTMENT with one hundred percent (100%) completed PROJECT design plans.

5. a) The DEPARTMENT must approve any consultant scope of services prior to advertising by the COUNTY. All work to be performed under this Agreement to be in accordance with the requirements listed in Exhibit "A"

b) The DEPARTMENT must approve any consultant selected for the PROJECT. The COUNTY must certify that the consultant has been selected in accordance with the Consultants' Competitive Negotiation Act (Section 287.055, Florida Statutes).

6. The DEPARTMENT agrees to a maximum participation in the PROJECT (design) in the amount of SIXTY THOUSAND AND NO/100 DOLLARS (\$60,000.00).

7. In the event the COUNTY proceeds with design of the PROJECT with its own forces, the COUNTY will only be reimbursed for direct costs (this excludes general and administrative overhead).

8. The COUNTY agrees to provide project schedule progress reports to the DEPARTMENT in the standard format used by the DEPARTMENT and at intervals established by the DEPARTMENT. The DEPARTMENT will be entitled at all times to be advised, at its request, as to the status of work being done by the COUNTY and of the details thereof. Either party to the Agreement may request and be granted a conference.

9. All tracings, plans, specifications, maps and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the DEPARTMENT without restriction or limitation on their use. The DEPARTMENT will have the right to visit the site for inspection of the work and the drawings of the COUNTY at any time.

10. All notices under this Agreement shall be directed to the following addresses:

TO DEPARTMENT:
Sarah Clarke
Project Manager
Florida Department of Transportation
Post Office Box 1030
Fort Myers, Florida 33902-1030

TO COUNTY:
Paul Wingard, P.E.
Deputy Director, DOT
Lee County Department of Transportation
Post Office Box 398
Fort Myers, Florida 33902-0398

11. a) The DEPARTMENT agrees to pay the COUNTY for the herein described services at a compensation as detailed in paragraph 2, hereinabove.
- b) Payment shall be made only after receipt and approval of goods and services.
- c) If this Contract involves units of deliverables, then such units must be received and accepted in writing by the Contract Manager prior to payments.
- d) Any penalty for delay in payment shall be in accordance with Section 215.422(3)(b), Florida Statutes.
- e) Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.
- f) Bills for travel expenses specifically authorized in this Agreement shall be submitted and paid in accordance with Section 112.061, Florida Statutes.
- g) Contractors providing goods and services to the DEPARTMENT should be aware of the following time frames. Upon receipt the DEPARTMENT has five (5) working days to inspect and approve the goods and services, unless the Agreement specifies otherwise. The DEPARTMENT has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.
- h) If payment is not available within 40 days, a separate interest penalty of .03333 percent per day will be due and payable, in addition to the invoice amount, to the Contractor. Interest penalties of less than one (1) dollar will not be enforced unless the Contractor requests payment. Invoices which have to be returned to a Contractor because of Contractor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT.
- i) A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (904) 488-2924 or by calling the State Comptroller's Hotline, 1-800-848-3792.
- j) Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this Agreement and for three years after final payment is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred include the Contractor's general accounting records and the project records, together with supporting documents and records, of the Contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered

necessary by the DEPARTMENT for a proper audit of costs.

k) The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the DEPARTMENT that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one 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. Accordingly, the State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature.

12. The DEPARTMENT reserves the right to unilaterally cancel this Agreement for refusal by the COUNTY, its contractor/subcontractors, consultants/subconsultants 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 in conjunction with this Agreement.

13. a) This Agreement may be canceled by the DEPARTMENT in whole or in part at any time the interest of the DEPARTMENT requires such termination. The DEPARTMENT also reserves the right to seek termination or cancellation of this Agreement in the event the COUNTY shall be placed in either voluntary or involuntary bankruptcy. The DEPARTMENT further reserves the right to terminate or cancel this Agreement in the event an assignment be made for the benefit of creditors.
- b) If the DEPARTMENT determines that the performance of the COUNTY is not satisfactory, the DEPARTMENT shall have the option of (i) immediately terminating the Agreement, or (ii) notifying the COUNTY of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or (iii) take whatever action is deemed appropriate by the DEPARTMENT.
- c) If the DEPARTMENT requires termination of the Agreement for reasons other than unsatisfactory performance of the COUNTY, the DEPARTMENT shall notify the COUNTY of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
- d) If the Agreement is terminated before performance is completed, the COUNTY shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress will

become the property of the DEPARTMENT and will be turned over promptly by the COUNTY.

14. The COUNTY shall not sublet, assign or transfer any work under this Agreement without the prior written consent of the DEPARTMENT.

15. No funds received pursuant to this contract may be expended for lobbying the Legislature or a state agency.

16. The DEPARTMENT shall not be obligated or liable hereunder to any party other than the COUNTY.

17. In no event shall the making by the DEPARTMENT of any payment to the COUNTY constitute or be construed as a waiver by the DEPARTMENT of any breach of covenant or any default which may then exist, on the part of the COUNTY, and the making of such payment by the DEPARTMENT while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the DEPARTMENT with respect to such breach or default.

18. Unless otherwise specifically stated herein, this Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

19. If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having the jurisdiction to make such determination, the remainder of this Agreement shall remain in full force and effect provided that the part of this Agreement thus invalidated or declared unenforceable is not material to the intended operation of this Agreement.

20. a) To the extent allowed by Section 768.28, Florida Statutes, the COUNTY hereby agrees to indemnify, defend, save and hold harmless the DEPARTMENT and all of its officers, agents or employees from all suits, actions, claims, demands, liabilities of any nature whatsoever arising out of, because of, or due to breach of this Agreement by the COUNTY, its officers, agents, employees or subcontractors or due to any negligent act or occurrence of omission or commission of the COUNTY, its officers, agents, employees or subcontractors. Neither COUNTY nor any of its officers, agents, employees or subcontractors will be liable under this section for the negligence of the DEPARTMENT or any of its officers, agents or employees. The parties agree that 1% of the total compensation to the COUNTY for performance of this Agreement is the specific consideration from the DEPARTMENT to the COUNTY for the COUNTY's indemnity agreement.

b) The COUNTY agrees to include the following indemnification in all contracts with contractors/subcontractors, consultants/subconsultants who perform work in connection with this Agreement:

"The contractor shall indemnify, defend, save and hold harmless the DEPARTMENT and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any

nature whatsoever arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor, its officers, agents or employees. Neither the contractor, nor any of its officers, agents or employees will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of the DEPARTMENT or any of its officers, agents or employees."

21. This Agreement shall continue in effect and be binding on the parties until the PROJECT is completed, final costs are known and legislatively appropriated reimbursements, if approved, are made by the DEPARTMENT.

22. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained 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. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

IN WITNESS WHEREOF the COUNTY has caused this Agreement to be executed in its behalf this ____ day of _____, 2002, by the Chairperson of the Board of Commissioners, authorized to enter into and execute same by Resolution Number _____ of the Board on the ____ day of _____, 2002, and the DEPARTMENT has executed this Agreement through its District Secretary for District One, Florida Department of Transportation, this ____ day of _____, 2002.

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____
CHAIRMAN

By: _____
DISTRICT SECRETARY

ATTEST: CHARLIE GREEN
CLERK OF CIRCUIT COURT

ATTEST:

By: _____ (Seal)

By: _____ (Seal)
EXECUTIVE SECRETARY

APPROVED AS TO FORM:

LEGAL REVIEW:

By: _____
COUNTY ATTORNEY

By: _____
DISTRICT LEGAL COUNSEL

EXHIBIT "A"

All proposals, plans, specifications, environmental permits, acquisition, construction, reconstruction or improvement of facilities or equipment within or connecting to State Owned Right of Way shall comply with the following:

- a) Section 287.055, F. S. "Consultants' Competitive Negotiations Act".
- b) FDOT "Project Development and Environment Manual".
- c) Section 404 of the Clean Water Act, Wetlands Permitting Program (U.S. A. C. O. E.).
- d) Rule Chapter 62-312 FAC, Dredge and Fill Activities (DEP).
- e) Rule Chapter 40D-4 and 40D-40, Surface Water Management (S.W.F.W.M.D.), as applicable.
- f) Rule Chapter 40E-4 and 40E-40, Surface Water Management (S.F.W.M.D.), as applicable.
- g) A policy on Geometric design of Highways and Streets (AASHTO), 1990, as amended.
- h) Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, State of Florida, 1994 Edition, "Green Book".
- i) Roadway and Traffic Design Standards for Design, Construction, Maintenance and Utility Operations for Streets and Highways on State Maintained Systems, 1994, as amended.
- j) Florida Department of Transportation Roadway Plans Preparation Manual (2 Volumes), 1989, as amended.
- k) Manual on Uniform Traffic Control Devices, 1988 Edition.
- l) Florida Department of Transportation Standard Specifications for Road and Bridge Construction, 1991, as amended.
- m) Structures Standard Drawings, FDOT, 1996 Edition.
- n) Florida Department of Transportation Structures Design Guidelines, 1987, as amended.
- o) Rule Chapter 14-96, Florida Administrative Code (FAC), State Highway System Connection Permits, Administrative Process and Rule Chapter 14-97 FAC, State Highway System Access Management Classification System and Standards.

- p) Rule Chapter 14-86 FAC, Drainage Connections.
- q) State of Florida Department of Transportation Drainage Manual, 1996, as amended.
- r) Minimum Specifications for Traffic Control Signals and Devices, 1994.
- s) Florida Statutes regulating acquisition of right-of-way for transportation facilities, including, but not limited to Chapters 73, 74, 287, 336, 337, 339 F. S.
- t) Title 23, Code of Federal Regulations, Chapter 1, Subchapter A, Part 1, Section 1.23 and Subchapter H, Part 710, Subparts B, C. & D.