

Lee County Board Of County Commissioners

Agenda Item Summary

Blue Sheet No. 20041273

1. REQUESTED MOTION: Approve Local Agency Program Agreement with Florida Department Of Transportation and Tri-party Cooperative Agreement with Federal Highway Administration, The Florida Department Of Transportation and Lee County for the Colonial Blvd. @ Metro Pkwy Queue Jump Design. Also approve authorizing resolutions for Chairman to execute agreements as well as budget amendment resolution. Approve budget transfer from Gas Tax Reserves and amend FY 04-05 – 08-09 CIP accordingly.

WHY ACTION IS NECESSARY: Requires BOCC approval for agreements and amendments to Capital Improvement Program.

WHAT ACTION ACCOMPLISHES: Allows DOT to proceed with design value pricing queue jump, which will address point periodic congestion problems (bottlenecks) in the local transportation network.

2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT # 2

C9A

3. MEETING DATE:

10-19-2004

4. AGENDA:

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

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT Transportation
- C. DIVISION

BY: Scott M. Gilbertson

7. BACKGROUND:

In accordance with Section 1216 of the Transportation Equity Act for the 21st Century (TEA-21), Lee County proposes to enter into a three party agreement with the Federal Highway Administration (FHWA), and the Florida Department of Transportation (FDOT) for a Value Priced Queue Jump design at Metro Parkway @ Colonial Boulevard. This agreement may incorporate more than one Value Pricing Pilot Study.

In accordance with Section 338.251 of the Florida Statutes, Lee County Proposes to enter into a Local Agency Program Agreement with the Florida Department of Transportation (FDOT) for Value Priced Queue Jump Design at Metro Pkwy @ Colonial Blvd. The total project cost is estimated at \$ 1,336,250 with an 80/10/10 FHWA, FDOT, and Lee County matching share, respectfully.

The Value Priced Queue Jump program will address point periodic congestion problems (bottlenecks) in the local transportation network. Project described as design and pre-implementation evaluation and monitoring for a queue jump at

CONTINUED ON PAGE 2

8. MANAGEMENT RECOMMENDATIONS: Approve the agreement.

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>10/7/04</i> <i>[Signature]</i>	<i>10/7/04</i> <i>[Signature]</i>	NA	<i>10/7/04</i> <i>[Signature]</i>	<i>10/7/04</i> <i>[Signature]</i>	OA	OM	Risk	GC	<i>10-7-04</i> <i>[Signature]</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
Date: <i>10/7/04</i>
Time: <i>11:40</i>
Forwarded To:

RECEIVED BY COUNTY ADMIN:
<i>10-7-04</i>
<i>3:00</i>
COUNTY ADMIN FORWARDED TO:
<i>10/7/04</i>
<i>330</i>

EW

7. BACKGROUND (Cont'd):

Metro Pkwy./Colonial Blvd. This bypass facility, or queue jump, would be electronically tolled with possibly a variable toll structure to further induce use during peak periods.

In addition to executing these agreements, the Board is requested to approve a transfer of funds from Gas Tax Reserves in the amount of \$1,336,250 to fund this project. FHWA and FDOT funds will be on a reimbursement basis.

Funds will be available in the follow accounts:

20606430700.506510 \$133,625 (Lee County Matching Share)

21606430700.506510 \$1,069,000 (FHWA Share)

22606430700.506510 \$133,625 (FDOT Share)

Lee County Resolution No. _____

**A Resolution Authorizing Lee County To Enter Into an a
Local Agency Program with The Florida Department Of Transportation**

This Is A Resolution of the Board Of County Commissioners. Lee County, Florida, a political subdivision of the State, authorizing the execution of a Local Agency Program Agreement with the Florida Department Of Transportation.

WHEREAS, Lee County, Florida, has the statutory authority to enter into an Agreement with the Florida Department Of Transportation in accordance with Section 338.251, Florida Statutes.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, Lee County, Florida, That:

1. The Local Agency Program Agreement for the Colonial Blvd. @ Metro Pkwy Queue Jump Design Project is hereby approved.
2. The Chairman of, and the Clerk to the Board of Lee County Commissioners are hereby authorized to execute said Agreement.
3. The Clerk of the Circuit Court is hereby authorized and directed to transmit one (1) certified copy of this Resolution to the Florida Department of Transportation along with the executed Agreements.

DONE AND ADOPTED with a quorum present and voting on this ____ day of _____, 2004.

ATTEST: CHARLIE GREEN

BOARD OF COUNTY COMMISSIONERS OF
LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of the County Attorney

Lee County Resolution No. _____

A Resolution Authorizing Lee County To Enter Into a Tri-Party Cooperative Agreement with The Federal Highway Administration and The Florida Department Of Transportation

This Is A Resolution of the Board Of County Commissioners. Lee County, Florida, a political subdivision of the State, authorizing the execution of a Tri-Party Cooperative Agreement with the Federal Highway Administration and the Florida Department Of Transportation.

WHEREAS, Lee County, Florida, has the statutory authority to enter into an Agreement with the Federal Highway Administration and the Florida Department Of Transportation in accordance with Section 1216 of the Transportation Equity Act for the 21st Century (TEA-21).

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, Lee County, Florida, That:

1. The Tri-Party Cooperative Agreement for the Colonial Blvd. @ Metro Pkwy Queue Jump Design Project is hereby approved.
2. The Chairman of, and the Clerk to the Board of Lee County Commissioners are hereby authorized to execute said Agreement.
3. The Clerk of the Circuit Court is hereby authorized and directed to transmit one (1) certified copy of this Resolution to the Florida Department of Transportation along with the executed Agreements.

DONE AND ADOPTED with a quorum present and voting on this ____ day of _____, 2004.

ATTEST: CHARLIE GREEN

BOARD OF COUNTY COMMISSIONERS OF
LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of the County Attorney

GRANT AT A GLANCE
 GRANT AWARD INFORMATION

1. County Grant ID (project #): 216064 & 226064
2. Title of Grant: Queue Jump - Metro Pkwy @ Colonial Blvd.
3. Amount of Award: \$1,202,625
4. Amount of Match Required: \$133,625
5. Type of Match: Cash
 (cash, in-kind etc)

6. SOURCE OF GRANT FUNDS & CATALOG NUMBER:

FEDERAL <input checked="" type="checkbox"/> CFDA #20.205	STATE <input type="checkbox"/> CSFA #
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7. Agency Contract Number: FPN No. 409185 1 28 02

8. Contract Period:	Begin Date:	End Date: <u>12/30/05</u>
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9. Name of Subrecipient(s) Florida Department Of Transportation

10. Business Unit(s): 20606430700, 21606430700, 22606430700

11. Scope of Grant: (describe project). Funds will be utilized for design of queue jump Metro Pkwy @ Colonial Blvd., which will address point periodic congestion problems (bottlenecks) in the local transportation network. Design and pre implementation evaluation and monitoring for a queue jump at Metro Pkwy/Colonial Blvd. This bypass facility, or queue jump, would be electronically tolled with possibly a variable toll structure to further induce use during peak periods.

12. Has this Grant been Funded Before? YES NO If YES When? _____

13. Is Grant Funding Anticipated in Subsequent Years? YES NO

14. If Grant Funding Ends Will This Program Be Continued at County Expense? YES NO
 If YES What is the Lee County Budget Impact: _____

1st Year	2 nd Year	3 rd Year
4 th Year	5 th Year	

Check Box if Additional Information on Program and Budget Impact is provided in *Comment Section* on page 2

ADMINISTERING DEPARTMENT INFORMATION

1. Department: Public Works/D.O.T.
2. Contacts:

Program Mgr. Don DeBerry	Phone #:479-8503
Fiscal Mgr. Cinde Davis	Phone #:479-8507

GRANTOR AGENCY INFORMATION

(The agency you signed this agreement with)

- 1. Grantor Agency: State Of Florida Department of Transportation
- 2. Program Title/Division: Local Agency Program, FDOT, District 1
- 3. Agency Contact: Michelle S. Peronto
- 4. Phone Number: 863-519-2791
- Mailing Address: P.O. Box 1249, Bartow, Florida 33831-1249

SOURCE OF FUNDS

- 1. Original Funding
Source: US DOT
(name of agency where funding originated from)
 - 2. Pass Through Agency: State of Florida Department Of Transportation
(middleman if any? Example: federal \$\$ from US DOT given to STATE of FL DOT- --then from STATE DOT to Lee County DOT --- STATE of FL DOT is the pass-through agency).
 - 3. Additional Information for Other Agencies Involved:
none
- 3a. Is the County a Grantee
or Subrecipient in #3 above: Grantee

REPORTING REQUIREMENTS

- 1. Does this grant require a separate subfund? YES NO
- (Example: you need to return interest earnings)

Please Explain: _____

- 2. Is funding received in advance? YES NO
- (If YES, please indicate conditions for returning residual proceeds, or interest and the address to return it to, if different from the Grantor Agency Information)

COMMENTS--INSTRUCTIONS:
 Lee County to be reimbursed on a quarterly basis.

LOCAL AGENCY PROGRAM AGREEMENT

FPN No. <u>409185 1 28 02</u>	Fund: <u>FEDR</u>	FLAIR Approp: <u>088849</u>
Federal No: <u>VPPP 001 R</u>	Org. Code: <u>55014080121</u>	FLAIR Obj.: <u>790089</u>
FPN No: _____	Fund: _____	FLAIR Approp: _____
Federal No: _____	Org. Code: _____	FLAIR Obj.: _____
County No. <u>12</u>	Contract No: _____	Vendor No.: <u>596000702083</u>
Catalog of Federal Domestic Assistance (CFDA): <u>20.205 Highway Planning and Construction</u>		

THIS AGREEMENT, made and entered into this _____ day of _____, _____ by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter called the Department, and LEE COUNTY, FLORIDA hereinafter called the Agency.

WITNESSETH:

WHEREAS, the Agency has the authority to enter into said Agreement and to undertake the project hereinafter described, and the Department has been granted the authority to function adequately in all areas of appropriate jurisdiction including the implementation of an integrated and balanced transportation system and is authorized under Section 334.044, Florida Statutes to enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree as follows:

1.00 Purpose of Agreement: The purpose of this Agreement is to provide for the Department's participation in QUEUE JUMP DESIGN and as further described in Exhibit "A" attached hereto and by this reference made a part hereof, hereinafter called the project, and to provide departmental financial assistance to the Agency and state the terms and conditions upon which such assistance will be provided and the understandings as to the manner in which the project will be undertaken and completed.

1.01 Modifications and Additions: Exhibit(s) A & B are attached hereto and by this reference made a part hereof.

2.00 Accomplishment of the Project:

2.01 General Requirements: The Agency shall commence, and complete the project as described in EXHIBIT "A" with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The project will be performed in accordance with all applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Agency Program Manual, which by this reference is made a part hereof as if fully set forth herein.

A full time employee of the Agency, qualified to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of this Agreement shall be in charge of each project.

2.02 Expiration of Agreement: The Agency agrees to complete the project on or before 12/30/2005. If the Agency does not complete the project within this time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. Expiration of this Agreement will be considered termination of the project. The cost of any work performed after the expiration date of the Agreement will not be reimbursed by the Department.

2.03 Pursuant to Federal, State, and Local Law: In the event that any election, referendum, approval, permit, notice, or other proceeding or authorization is requisite under applicable law to enable the Agency to enter into this Agreement or to undertake the project hereunder, or to observe, assume or carry out any of the provisions of the Agreement, the Agency will initiate and consummate, as provided by law, all actions necessary with respect to any such matters so requisite.

2.04 Funds of the Agency: The Agency shall initiate and prosecute to completion all proceedings necessary, including Federal-aid requirements, to enable the Agency to provide the necessary funds for completion of the project.

2.05 Submission of Proceedings, Contracts, and Other Documents: The Agency shall submit to the Department such data, reports, records, contracts, and other documents relating to the project as the Department and the Federal Highway Administration may require.

3.00 Project Cost:

3.01 Total Cost: The estimated total cost of the project is \$ 1,336,250.00. This amount is based upon the schedule of funding in Exhibit "B" attached hereto and by this reference made a part hereof. The Agency agrees to bear all expenses in excess of the total cost of the project and any deficits involved. The schedule of funding may be modified by mutual agreement as provided for in paragraph 4.00 of this agreement.

3.02 Department Participation: The Department agrees to participate, including contingencies, in the project cost to the extent provided in Exhibit "B". This amount includes Federal-aid funds which are limited to the actual amount of Federal-aid participation.

3.03 Limits on Department Funds: Project costs eligible for Department participation will be allowed only from the date of this Agreement. It is understood that Department participation in eligible project costs is subject to:

- a) Legislative approval of the Department's appropriation request in the work program year that the project is scheduled
- b) Availability of funds as stated in paragraphs 3.04 and 3.05 of this Agreement;
- c) Approval of all plans, specifications, contracts or other obligating documents and all other terms of this Agreement;
- d) Department approval of the project scope and budget at the time appropriation authority becomes available.

3.04 Appropriation of Funds: The Department's performance and obligation 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 fiscal years, funds approval from the Department's Comptroller must be received each fiscal year prior to costs being incurred. See Exhibit B for funding levels by fiscal year. Project costs utilizing these fiscal year funds are not eligible for reimbursement if incurred prior to funds approval being received. The Department will notify the Agency, in writing, when funds are available.

3.05 Multi-Year Commitment: In the event this Agreement is in excess of \$25,000 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 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."

3.06 Notice to Proceed: No cost may be incurred under this contract until the Agency has received a Notice to Proceed from the Department.

3.07 Limits on Federal Participation: Federal-aid funds shall not participate in any cost which is not incurred in conformity with applicable federal and state law, the regulations in 23 C.F.R. and 49 C.F.R., and policies and procedures prescribed by the Division Administrator of the Federal Highway Administration (FHWA). Federal funds shall not be paid on account of any cost incurred prior to authorization by the FHWA to the Department to proceed with the project or part thereof involving such cost. (23 CFR 1.9 (a)). If FHWA or the Department determines that any amount claimed is not eligible, federal participation may be approved in the amount determined to be adequately supported, the Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for Federal participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, federal funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA or the Department may deny participation in parcel or project costs in part or in total.

For any amounts determined to be ineligible for federal reimbursement for which the Department has advanced payment, the Agency shall promptly reimburse the Department for all such amounts within 90 days of written notice.

4.00 Project Estimate and Disbursement Schedule: Prior to the execution of this Agreement, a project schedule of funding, shall be prepared by the Agency and approved by the Department. The Agency shall maintain said schedule of funding, carry out the project and shall incur obligations against and make disbursements of project funds only in conformity with the latest approved schedule of funding for the project. The schedule of funding may be revised by mutual written agreement between the Department and the Agency. If revised, a copy of the revision should be forwarded to the Department's Comptroller and to the Department's Federal-Aid Program Office. No increase or decrease shall be effective unless it complies with fund participation requirements established in Exhibit "B" of this Agreement and is approved by the Department's Comptroller.

5.00 Records:

5.01 Establishment and Maintenance of Accounting Records: 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 five(5) years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred includes the Agency's general accounting records and the project records, together with supporting documents and records, of the Agency and all subcontractors performing work on the project and all other records of the Agency and subcontractors considered necessary by the Department for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the five(5) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

5.02 Costs Incurred for the Project: The Agency shall charge to the project account all eligible costs of the project. Costs in excess of the latest approved schedule of funding or attributable to actions which have not received the required approval of the Department shall not be considered eligible costs.

5.03 Documentation of Project Costs: All costs charged to the project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.

5.04 Audit Reports: Recipients of Federal and State funds are to have audits done annually using the following criteria:

Federal awards are to be identified using the Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, and name of the awarding federal agency. State awards will be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the awarding State Agency.

In the event that a recipient expends \$300,000 or more in federal awards in its fiscal year, the recipient must have a single or program specific audit conducted in accordance with the **United States Office of Management and Budget (OMB) Circular A-133**.

If a recipient expends less than \$300,000 in federal awards during its fiscal year, an audit conducted in accordance with the **OMB Circular A-133** is not required. If a recipient expends less than \$300,000 in federal awards during its fiscal year and elects to have an audit conducted in accordance with **OMB Circular A-133**, the cost of the audit must be paid from non-federal funds.

Reporting Packages and management letters generated from audits conducted in accordance with **OMB Circular A-133** shall be submitted to the awarding FDOT office, by the recipient, within 30 days of receiving it. The aforementioned items are to be received by the appropriate FDOT office no later than 9 months after the end of the recipient's fiscal year.

The recipient shall follow up and take corrective action on audit findings. Preparation of a summary schedule of prior year audit findings, including corrective action and current status of the audit finding is required. Current year audit findings require corrective action and status of finding.

Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is completed or the dispute is resolved. Access to project records and audit work papers shall be given to the FDOT, the Comptroller, and the Office of the Auditor General.

The recipient shall submit required audit documentation as follows:

A Reporting Package and Data Collection Form for each audit conducted in accordance with **OMB Circular A-133** shall be sent to:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jefferson, IN 47132

5.05 Inspection: The Agency shall permit, and shall require its contractors to permit, the Department's authorized representatives and authorized agents of the Federal Highway Administration to inspect all work, workmanship, materials, payrolls, records and to audit the books, records and accounts pertaining to the financing and development of the project.

The Department reserves the right to unilaterally cancel this Agreement for refusal by the Agency or any contractor, sub-contractor or materials vendor 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.
(Section 287.058(1)(c), Florida Statutes)

5.06 Uniform Relocation Assistance and Real Property Statistical Report: For any project requiring additional right of way, the Agency must submit to the Department an annual report of its real property acquisition and relocation assistance activities on the project. Activities shall be reported on a federal fiscal year basis, from October 1 through September 30. The report must be prepared using the format prescribed in 49 CFR 24, Appendix B and be submitted to the Department no later than October 15 each year.

6.00 Requisitions and Payments: Requests for reimbursement for fees or other compensation for services or expenses incurred shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. (Section 287.058(1)(a), Florida Statutes)

All recipients of funds from this agreement, including those contracted by the Agency, must submit bills for any travel expenses, when authorized by the terms of this agreement, in accordance with Section 112.061 Florida Statutes and Chapter 3-Travel of the Department's Disbursement Operations Manual, Topic 350-030-400.
(Section 287.058(1)(b), Florida Statutes)

If, after project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting any amount pursuant to this section shall not be considered a breach of contract by the Department.

7.00 The Department's Obligations: Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department to be proper to ensure the carrying out of the project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect, by notice in writing, not to make a payment if:

7.01 Misrepresentation: The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;

7.02 Litigation: There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the project, this Agreement or payments to the project;

7.03 Approval by Department: The Agency shall have taken any action pertaining to the project, which under this Agreement, requires the approval of the Department or has made related expenditure or incurred related obligations without having been advised by the Department that same are approved;

7.04 Conflict of Interests: There has been any violation of the conflict of interest provisions contained herein in 12.06; or

7.05 Default: The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

7.06 Federal Participation: The Department may suspend or terminate payment for that portion of the project which the FHWA, or the Department acting in lieu of the FHWA, may designate as ineligible for federal-aid.

7.07 Disallowed Costs: In determining the amount of the payment, the Department will exclude all project costs incurred by the Agency prior to the effective date of this Agreement or the date of authorization, costs incurred after the expiration of the Agreement, costs which are not provided for in the latest approved schedule of funding for the project, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.

7.08 Final Invoices: The Agency must submit the final invoice on the project to the Department within one hundred twenty (120) days after the completion of the project. Invoices submitted after the one hundred twenty (120) day time period may not be paid.

8.00 Termination or Suspension of Project:

8.01 Termination or Suspension Generally: The Department may, by written notice to the Agency, suspend any or all of its obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected, or the Department may terminate this Agreement in whole or in part at any time the interest of the Department requires such termination.

If the Department determines that the performance of the Agency is not satisfactory, the Department shall have the option of (a) immediately terminating this Agreement or (b) suspending this Agreement and notifying the Agency 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. Suspension of the contract will not affect the time period for completion of this Agreement.

If the Department requires termination of this Agreement for reasons other than unsatisfactory performance of the Agency, the Department shall notify the Agency of such termination, with instructions as to the effective date of termination or specify the stage of work at which this Agreement is terminated.

If this Agreement is terminated before performance is completed, the Agency shall be paid for the work satisfactorily performed. Payment is to be on the basis of substantiated costs.

8.02 Action Subsequent to Notice of Termination or Suspension. Upon receipt of any final termination or suspension notice under this paragraph, the Agency shall proceed promptly to carry out the actions required therein which may include any or all of the following: (a) necessary action to terminate or suspend, as the case may be, project activities and contracts and such other action as may be required or desirable to keep to the minimum the costs upon the basis of which the financing is to be computed; (b) furnish a statement of the project activities and contracts, and other undertakings the cost of which are otherwise includable as project costs. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and costs approved by the Department or upon the basis of terms and conditions

imposed by the Department upon the failure of the Agency to furnish the schedule, plan, and estimate within a reasonable time. The closing out of federal financial participation in the project shall not constitute a waiver of any claim which the Department may otherwise have arising out of this Agreement.

9.00 Contracts of the Agency:

9.01 Third Party Agreements: Except as otherwise authorized in writing by the Department, the Agency shall not execute any contract or obligate itself in any manner requiring the disbursement of Department funds, including consultant or construction contracts or amendments thereto, with any third party with respect to the project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department. The Department specifically reserves unto itself the right to review the qualifications of any consultant or contractor and to approve or disapprove the employment of the same.

9.02 Compliance with Consultants' Competitive Negotiation Act: It is understood and agreed by the parties hereto that participation by the Department in a project with an Agency, where said project involves a consultant contract for engineering, architecture or surveying services, is contingent on the Agency complying in full with provisions of Section 287.055, Florida Statutes, Consultants Competitive Negotiation Act. At the discretion of the Department, the Agency will involve the Department in the Consultant Selection Process for all projects. In all cases, the Agency's attorney shall certify to the Department that selection has been accomplished in compliance with the Consultants' Competitive Negotiation Act.

10.00 Disadvantaged Business Enterprise (DBE) Policy and Obligation:

10.01 DBE Policy: It is the policy of the Department that disadvantaged business enterprises, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state regulations apply to this Agreement.

10.02 DBE Obligation: The Agency and its contractors agree to ensure that Disadvantaged Business Enterprises as defined in applicable federal and state regulations, have the opportunity to participate in the performance of contracts and this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. The Agency shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department assisted contracts.

10.03 Disadvantaged Business Enterprise (DBE) Obligations: If Federal Transit Administration or FHWA Funding is a part of this project, the Agency must comply with applicable federal and state regulations.

11.00 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (Applicable to all federal-aid contracts – 49 CFR 29)

By signing and submitting this Agreement, the Agency is providing the certification set out below:

The inability of the Agency to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Agency shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department's determination whether to enter into this transaction. However, failure of the Agency to furnish a certification or an explanation shall disqualify the Agency from participation in this transaction.

The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Agency knowingly rendered an erroneous certification, in addition to other remedies available, the Department may terminate this transaction for cause of default.

The Agency shall provide immediate written notice to the Department if any time the Agency learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The terms "covered," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. Contact the Department for assistance in obtaining a copy of those regulations.

The Agency further agrees by executing this Agreement that it shall not knowingly enter into any contracts with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department.

The Agency further agrees by submitting this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the Department, without modification, in all contracts and in all solicitations for contracts.

The Agency may rely upon a certification of a prospective sub-contractor that the person or entity is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. The Agency may decide the method and frequency by which it determines the eligibility of its sub-contractors. The Agency may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the Agency is not required to exceed that which is normally processed by a prudent person in the ordinary course of business dealings.

Unless authorized by the Department, if the Agency knowingly enters into a contract with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available, the Department may terminate this agreement for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:

The Agency certifies, by execution of this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the Agency is unable to certify to any of the statements above, an explanation shall be attached to this proposal.

12.00 Restrictions, Prohibitions, Controls, and Labor Provisions:

12.01 Equal Employment Opportunity: In connection with the performance of any project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Agency shall insert the foregoing provision in all contracts modified only to show the particular contractual relationship in all its contracts in connection with the development of operation of the project, except contracts for the standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

12.02 Title VI - Civil Rights Act of 1964: The Agency will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Regulations of the Federal Department of Transportation issued thereunder, and the assurance by the Agency pursuant thereto.

The Agency shall include provisions in all contracts with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

12.03 Americans with Disabilities Act of 1990 (ADA): The Agency will comply with all the requirements as imposed by the ADA, the regulations of the federal government issued thereunder, and assurance by the Agency pursuant thereto.

12.04 Public Entity Crime: A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

12.05 Discrimination: In accordance with Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the Discriminatory Vendor List, maintained by the Florida Department of Management Services, may not submit a bid on a contract to provide goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

12.06 Prohibited Interests: Neither the Agency nor any of its contractors or their subcontractors, shall enter into any contract, subcontract, or arrangement in connection with the project or any property included or planned to be included in the project in which any member, officer, or employee of the Agency or the locality during his tenure, or for two years thereafter, has any interest, direct or indirect. If any such present or former member, officer, or employee involuntarily acquires or had acquired any such interest prior to the beginning of his tenure, and if such interest is immediately disclosed to the Agency, the Agency with prior approval of the Department may waive the prohibition contained in this subsection, provided, that any such present member, officer or employee shall not participate in any action by the Agency or the locality relating to such contract, subcontract, or arrangement.

The Agency shall insert in all contracts entered into in connection with the project or any property included or planned to be included in any project, and shall require its contractors to insert in each of its subcontracts, the following provision:

"No member, officer or employee of the Agency or of the locality during his tenure, or for two years thereafter, shall have any interest, direct or indirect, in this contract or the proceeds thereof."

The provisions of this subsection shall not be applicable to any agreement between the Agency and its fiscal depositories, or to any agreement for utility services the rates for which are fixed or controlled by a governmental agency.

12.07 Interest of Members of or Delegate to, Congress: No member of or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

13.00 Miscellaneous Provisions:

13.01 Environmental Regulations: The Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department for any loss incurred in connection therewith. The Agency will be responsible for securing any applicable permits.

13.02 Department Not Obligated to Third Parties: The Department shall not be obligated or liable hereunder to any party other than the Agency.

13.03 When Rights and Remedies Not Waived: In no event shall the making by the Department of any payment to the Agency 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 Agency 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.

13.04 How Agreement Is Affected by Provisions Being Held Invalid: If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

13.05 Bonus or Commission: By execution of the Agreement, the Agency represents that it has not paid and, also, agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.

13.06 State Law: Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable state law, provided, that if any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the project.

13.07 Contractual Indemnity: To the extent permitted by law, the Agency shall indemnify, defend, save, and hold harmless the Department and all its officers, agents and employees from any claim, loss, damage, cost, charge or expense arising out of any act, error, omission or negligent act by the Agency, its officers, agents or employees during the performance of the Agreement except that neither the Agency, its officers, agents or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge or expense arising out of any act, error, omission or negligent act by the Department or any of its officers, agents or employees during the performance of the Agreement.

When the Department receives a notice of claim for damages that may have been caused by the Agency in the performance of services required under this Agreement, the Department will immediately forward the claim to the Agency. The Agency and the Department will evaluate the claim and report their findings to each other within 14 working days and will jointly discuss options in defending the claim. After reviewing the claim, the Department will determine whether to require the participation of the Agency in the defense of the claim or to require the Agency defend the Department in such claim as described in this section. The Department's failure to promptly notify the Agency of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by the Agency. The Department and the Agency will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all expenses at trial.

The parties agree that this clause shall not waive the benefits or provisions of Section 768.28, Florida Statutes, or any similar provision of law.

13.08 Plans and Specifications: In the event that this Agreement involves constructing and equipping of facilities on the State Highway System, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the project and comments or recommendations covering any remainder of the project deemed appropriate. After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval regarding the remainder of the project. Failure to obtain this written approval shall be sufficient cause for nonpayment by the Department.

13.09 Right of Way Certification: Upon completion of right of way activities on the project, the Agency must certify compliance with all applicable federal and state requirements. Certification is required prior to advertisement for or solicitation of bids for construction of the project, including those projects for which no right of way is required.

13.10 Agency Certification: The Agency will certify in writing, prior to project closeout, that the project was completed in accordance with applicable plans and specifications, is in place on the Agency facility, that adequate title is in the Agency, and that the project is accepted by the Agency as suitable for the intended purpose.

13.11 Agreement Format: All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

13.12 Execution of Agreement: This Agreement may be simultaneously executed in a minimum of two counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one in the same instrument.

13.13 Restrictions on Lobbying:

Federal: The Agency agrees that no federally appropriated funds have been paid, or will be paid by or on behalf of the Agency, to any person for influencing or attempting to influence any officer or employee of any federal agency, a member of Congress an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid by the Agency to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Agency shall require that the language of this section be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

13.14 Maintenance: The Agency agrees to maintain any project not on the State Highway System, constructed under this Agreement. If the Agency constructs any improvement on Department right-of-way, the Agency will will not maintain the improvements made for their useful life.

13.15 Vendors Rights: Vendors (in this document identified as Agency) 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 bid specifications, purchase order, or contract specifies otherwise. The Department has twenty (20) days to deliver a request for payment (voucher) to the Florida Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

If a payment is not available within forty (40) days after receipt of the invoice and receipt, inspection, and approval of goods and services, a separate interest penalty in accordance with Section 215.422(3)(b), Florida Statutes, will be due and payable, in addition to the invoice amount to the Agency. Interest penalties of less than one dollar (\$1) will not be enforced unless the Agency requests payment. Invoices which have to be returned to an Agency because of Agency 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.

A Vendor Ombudsman has been established within the Florida Department of Financial Services. The duties of this individual include acting as an advocate for Agencies who may be experiencing problems in obtaining timely payment(s) from the Department. The Vendor Ombudsman may be contacted at (850)410-9724 or by calling the State Comptroller's Hotline at 1-800-848-3792.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above written.

AGENCY

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

By: _____
Title: Chairman

By: _____
Title: District Secretary

Attest: _____
Title: Deputy Clerk, Clerk of Courts

Attest: : _____
Title: Executive Secretary

As to form:

As to form:

Attorney

District Attorney

See attached Encumbrance Form for date of funding approval by Comptroller.

FPN NO 409185 1 28 02

EXHIBIT A
Project Description and Responsibilities

This exhibit forms an integral part of that certain Reimbursement Agreement between the State of Florida, Department of Transportation and

Lee County, Florida

Dated

PROJECT LOCATION:

Colonial Boulevard/Metro Parkway in Lee County, Florida

The project is is not on the National Highway System.

The project is is not on the State Highway System.

PROJECT DESCRIPTION:

The Value Priced Queue Jump program will address point periodic congestion problems (bottlenecks) in the local transportation network. Project described as design and pre implementation evaluation and monitoring for a queue jump at Colonial Boulevard/Metro Parkway. This bypass facility, or queue jump, would be electronically tolled with possibly a variable toll structure to further induce use during peak periods.

SPECIAL CONSIDERATION BY AGENCY:

The audit report(s) required in the Agreement shall include a schedule of project assistance that will reflect the Department's contract number and the amount of state funding (receipt and disbursement of funds) and any Federal or local funding action and the funding action from any other source with respect to the project.

Lee County shall invoice FDOT as they incur costs on a monthly or quarterly basis.

SPECIAL CONSIDERATION BY DEPARTMENT:

As of the date of this agreement the Department has certified Lee County for the procurement of consultant services under the Consultant Competitive Negotiations Act (Section 287.055, Florida Statutes).

AGENCY NAME & BILLING ADDRESS Lee County P.O. Box 398 Fort Myers, FL 33902-0398	STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION LOCAL AGENCY PROGRAM AGREEMENT EXHIBIT "B" SCHEDULE OF FUNDING	FPN. NO. 409185 1 28 02
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PROJECT DESCRIPTION

Name Colonial Boulevard/Metro Parkway Queue jump design Length _____
 Termini Lee County, Florida

TYPE OF WORK by Fiscal Year		FUNDING			
		(1) TOTAL PROJECT FUNDS	(2) AGENCY FUNDS	(3) STATE & FEDERAL FUNDS	
P.E.	2003-2004 _____	_____	_____	_____	
	2004-2005 <u>Design of queue jump</u>	<u>\$1,336,250.00</u>	<u>\$133,625.00</u>	<u>\$1,202,625.00</u>	
	2005-2006 _____	_____	_____	_____	
	Total PE _____	<u>\$1,336,250.00</u>	<u>\$133,625.00</u>	<u>\$1,202,625.00</u>	
Right-of-Way	2003-2004 _____	_____	_____	_____	
	2004-2005 _____	_____	_____	_____	
	2005-2006 _____	_____	_____	_____	
	Total Right-of-Way Cost _____	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	
Construction	2003-2004 _____	_____	_____	_____	
	2004-2005 _____	_____	_____	_____	
	2005-2006 _____	_____	_____	_____	
	2006-2007 _____	_____	_____	_____	
	Total Contract Costs _____	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	
	Construction Engineering and Inspection				
	2003-2004 _____	_____	_____	_____	
	2004-2005 _____	_____	_____	_____	
	2005-2006 _____	_____	_____	_____	
	Total Construction Engineering _____	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	
Total Construction Cost _____	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>		
ESTIMATED TOTAL COST OF THE PROJECT		\$1,336,250.00	\$133,625.00	\$1,202,625.00	

The Department's fiscal year begins on July 1. For this project, funds are not projected to be available until after September 1st each fiscal year.
 The Department will notify the Agency, in writing, when funds are available.

PROJECT NUMBER 409185 1 28 02

CONGESTION PRICING PROGRAM

COOPERATIVE AGREEMENT

BETWEEN

THE FEDERAL HIGHWAY ADMINISTRATION

THE FLORIDA DEPARTMENT OF TRANSPORTATION

LEE COUNTY

DESIGN GRANT AGREEMENT

FOR

VALUE PRICED QUEUE JUMP DESIGN

September 15, 2004

The Federal Highway Administration (FHWA), pursuant to Section 1216 (a) of the Transportation Equity Act for the 21st Century (TEA-21) hereby enters into a cooperative agreement with the State of Florida operating through the Florida Department of Transportation and Lee County for a Value Priced Queue Jump design at Metro Parkway @ Colonial Boulevard. This agreement may incorporate more than one Value Pricing Pilot study. The Scope of Work for the study proposed shall be approved by FHWA. Particular project to be undertaken through this Cooperative Agreement includes a Value Priced Queue Jump design at Colonial Boulevard @ Metro Parkway for Lee County according to the proposal attached hereto as Exhibit A, and by this reference made a part hereof.

Estimated Cost/Funding

The State shall be reimbursed for allowable costs incurred in the performance of work under this cooperative agreement in an amount NOT TO EXCEED \$1,069,000.00 Federal Value Pricing Pilot Program funds. The total project cost for the Value Priced Queue Jump Design for Lee County is \$1,336,250.00. Total Federal Funds in the amount of \$1,069,000.00 for the Value Priced Queue Jump with the County providing funds in the amount of \$133,625.00, and Florida Department of Transportation (FDOT) providing funds in the amount of \$133,625.00 which satisfies the minimum 80/10/10 (Federal/State/Local) funding match required under this program. Reimbursement for costs incurred will follow regular Federal-aid billing and payment procedures.

Responsibilities of the State/County Coalition:

To carry out this project, the Florida Department of Transportation and Lee County shall enter into a Local Agency Program (LAP) Agreement as necessary to accomplish the tasks contained in the Scope of Work.

Schedule:

The period of performance for the Value Priced Queue Jump Design shall be 12 months after the Notice to Proceed from Lee County to Consultant.

FHWA Participation

The FHWA shall be considered a full participant in the project. As such, the agency shall be a member of appropriate project management committees as they develop. The FHWA shall be provided the opportunity for membership on all subcommittees, working groups, task forces, and other such groups related to the project. The FHWA will provide names, addresses, and telephone numbers of committee representatives to the Florida Department of Transportation/Lee County program manager.

Reporting Requirements

Every three months, the State of Florida and Lee County shall submit to FHWA a project progress report, which briefly summarizes work accomplished, work planned, problems encountered, expenditures, recommended solutions, and any other pertinent information. Copies of all project reports, correspondence, meeting announcements, and other documents shall be supplied directly to the FHWA Division Administrator. The FHWA will provide names and addresses of specific individuals to receive these documents.

Programmatic Changes

The State of Florida Department of Transportation and Lee County must obtain the prior approval of FHWA whenever any significant change is anticipated. These include, but are not limited to:

1. Changes in overall budget.
2. Any revision of the scope, goals, objective or tasks Scope of Work or related activities (regardless of whether there is an associated budget revision requiring prior approval)
3. Changes in key personnel.

Intellectual Property

Intellectual property consists of copyrights, patents, and any other form of intellectual property rights covering any databases, software, inventions, training manuals, systems design or other proprietary information in any form or medium.

- A. **Copyrights:** The FHWA reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:
- The copyright in any works developed under this agreement, or under a subgrant or contract under this agreement; and
 - Any rights of copyright to which the State/Lee County, its subgrantee or contractor purchases ownership with Federal financial assistance provided by this agreement.
- B. **Patents:** Rights to inventions made under this agreement shall be determined in accordance with 37 C.F.R. Part 401. The standard patent rights clause at 37 C.F.R. Section 401.14 as modified below is hereby incorporated by reference.
- The terms “to be performed by a small business firm or domestic non-profit organization” shall be deleted from paragraph (g) (1) of the clause,
 - Paragraphs (g) (2) and (g) (3) of the clause shall be deleted, and
 - Paragraph (1) of the clause, entitled “Communications” shall read as follows: “(1) Communications. All notifications required by this clause shall be submitted to the FHWA Division office.”

Costs

The State of Florida and Lee County shall limit their progress claims and final claims to those costs incurred in accordance with this Cooperative Agreement, and shall submit their final claim within 90 days after the project is completed.

Additional Requirements

The State and Lee County shall comply with all applicable laws, regulations and FHWA requirements, including but not limited to 49 C.F.R. Parts 18, 20, 21, 27, and 29.

Certification Regarding Lobbying

The State of Florida and Lee County make the certification regarding lobbying which is attached hereto as Appendix A.

Termination

Either party may terminate this agreement with 30 days written notice.

Effective Date

This agreement may be executed in counterparts with all of the signatures of the requesting parties thereby constituting a completed grant agreement and shall become effective upon execution by all parties hereto.

Length of Cooperative Agreement/Expiration of Funds

Since the design included in this Cooperative Agreement has not reached the construction phase, the beginning of the three-year funding limit contained in Section 1012(b)(2) of the Intermodal Surface Transportation Act of 1991 has not yet commenced. In the future, if the State of Florida receives funding for the construction phase of a Value Priced Queue Jump for Lee County under this agreement, the three-year funding limit would commence at the time the project is approved for construction.

Federal Highway Administration

Division Administrator

Date

Florida Department of Transportation

Title

Date

Lee County

Title

Date

CERTIFICATION REGARDING LOBBYING

By execution of this Cooperative Agreement, the undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any partnership agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or partnership agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or partnership agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and partnership agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 3 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**FHWA Discretionary Programs
Value Pricing Pilot Program**

**Project Development, Design, and Construction
Value Priced Queue Jumps**

Submitted By:
Scott M. Gilbertson, Director
Lee County Department of Transportation
1500 Monroe Street
Fort Myers, Florida 33901
(941) 479-8580

Submitted To:
Michael G. Rippe
District Director, Southwest Area Office
Florida Department of Transportation
P. O. Box 1030
Fort Myers, Florida 33902-1030

James E. St. John
Division Administrator
U.S. Department of Transportation
Federal Highway Administration
227 N. Bronough Street, Suite 2015
Tallahassee, FL 32301

January 3, 2003

**FHWA Discretionary Programs
Value Pricing Pilot Program**

**Project Development, Design, and Construction
Value Priced Queue Jumps**

Lee County is pleased to present this refined proposal for the value priced queue jump project. This refined proposal represents a summary of the *Value Priced Queue Jump Study Draft Final Report* which is currently being reviewed by FHWA and the value priced queue jump team. For this reason some reviewers of this proposal may wish additional information on specific issues. If additional information is desired and the reviewer does not have a copy of the draft final report, a copy of report may be obtained by e-mailing crs@crspe.com or by telephoning (239) 573-7960.

1. Congestion Problem

Like many communities in the United States, Lee County has problems with congestion at specific points in the roadway network. In some cases, relieving this point congestion will alleviate a significant portion of the delay experienced in the making of any given trip.

Additionally, the County experiences daily periods of congestion associated with peak period traffic. Spreading these peaks would result in a more efficient use of the County's existing transportation facilities with the resulting benefits which accompany changes of this type. The County has already implemented a value-pricing program on two of its existing bridges. These bridges act as "throttles" for a significant portion of the County's roadway network, thus the effect of the value pricing program extends beyond the bridges themselves.

The County is proposing a program that would attack the point congestion problem while also attacking the periodic peak congestion problem. As a result, the County is nearing completion of another study, the Value Priced Queue Jump Study, which addresses point and periodic congestion. A queue jump is a roadway facility that can be used by drivers for a small toll to bypass points on the transportation network where congestion is typically severe.

The queue jumps planned for Lee County are elevated facilities similar to an expressway ramp that would "jump" over the intersection. The existing free lanes will still exist, and the queue jump would simply provide a choice for drivers. The congestion reduction for those using the queue jump is obvious; however, all drivers benefit from the reduction in intersection traffic brought about by some drivers diverting to the queue jump. Also, the value pricing elements of the program proposed would reinforce and enhance the effect of the county's existing value pricing effort.

Lead that Lee County has traditionally been among the fastest-growing counties in the United States. This high-level growth is anticipated to continue well into the 21st century. For that reason, traffic congestion is, and will continue to be, a significant issue for Lee County.

Significant congestion analysis was performed in the initial queue jump study for Lee County, and that analysis is documented in the draft final report. Currently, the Metro Parkway and Colonial Boulevard intersection is operating at level of service E. The San Carlos Boulevard and Summerlin Road intersection is operating at level of service C, however, recent analysis associated with design work in the area has indicated a level of service F.

2. Nature of Proposed Project to Respond to the Problem

This program would involve the placing of queue jumps at strategic locations in the County. A queue jump is defined as a facility which can be used by certain types of traffic to bypass points on the transportation network where congestion is particularly severe and occurs in a predictable pattern (colloquially, a "bottleneck"). The queue jumps planned for Lee County are elevated facilities similar to an expressway ramp. Concept drawings are contained in the draft final report for the project, and in an appendix to this document.

Specifically, the program would involve locations within Lee County where queue jumps could be reasonably implemented. Based on the results of the Lee County *Value Priced Queue Jump Study*, queue jumps are proposed at the intersection of Metro Parkway and Colonial Boulevard and the intersection of Summerlin Road and San Carlos Boulevard. Use of the queue jumps would be limited to those vehicles willing to pay a toll for the use of the facility, or possibly, to high occupancy vehicles (HOVs) also. Tolls would vary by time of day. Tolls for queue jump use, based on revenue analysis and stated preference surveys, are projected to vary by time of day between 15 and 40 cents per use. Tolling would occur electronically and would be tied into the County's existing Electronic Toll Collection (ETC) system. Toll enforcement would occur through a video violation enforcement system (VES).

Because the County's ETC system is in-place, electronic tolling could occur quickly and for a reasonable cost. While each individual toll is not likely to be as high as tolls normally associated with variable pricing projects, the capital costs should also be significantly less than most systems.

As with any value pricing project the goal of the Lee County queue jump study is to provide congestion relief to the citizens of Lee County. The study also has significant benefits beyond that it that immediate goal. The study benefits to FHWA include information on the toll elasticity of "point" congestion. This study also provides the possibility of a variable pricing system that can readily be exported to others areas of the country.

Of particular importance, this study examines the possibility of a congestion reduction program that can readily be exported to others areas of the country. Because of the relatively low capital costs involved, this type of program could lead to the congestion reducing benefits of value pricing in areas with smaller populations than would normally be considered in more traditional value pricing programs. Further, if the program does prove to be self funding over the life of the project, it could also provide the means for many communities to get needed transportation infrastructure in place much faster than traditional funding methods allow.

To achieve these goals, the specific purpose of this effort would be to implement value priced queue jumps at two locations in Lee County. This would lead to:

- Additional traffic demand management using variable pricing
- Data on interaction between various types of value pricing programs
- Additional information on the effects of value pricing applied at point locations
- Reduced emissions resulting from reduced congestion
- Further integration of the ETC system into the County's infrastructure thereby increasing the effectiveness of the County's existing variable pricing program
- Fast-tracked infrastructure improvements

In summary, implementing queue jumps in Lee County increases the overall effectiveness of the County's existing Variable Pricing Program by increasing the number of time of day pricing elements in the County's transportation system. This increased effectiveness brings about an even more efficient use of transportation infrastructure increasing the economic, environmental and social benefits brought about by value pricing.

3. Preliminary Estimates of Social and Economic Impacts of the Pricing Program

During the development of the queue jump concept, significant consideration was given to the social implications of queue jump implementation. Issues associated with equity were specifically considered.

The queue jump concept involves development of increased capacity for selected intersections. This increased capacity would be financed through tolls from those persons using queue jumps; however, all existing capacity at the intersection would remain and would continue to be available to drivers without toll payment. For this reason, queue jumps are not anticipated to have a negative impact on drivers that choose not to use the queue jump. In fact, due to a reduced number of vehicles using the at grade approaches, all drivers, not just those choosing to pay the queue jump toll, will experience reduced congestion.

Based on discussions with focus group participants, equity issues do not appear to be a major factor in public perception of queue jump concept. While there were some initial equity concerns among focus group participants, once the overall concept was explained, equity issues were no longer a concern to focus group participants.

In the mail back survey there were however, some indications that the equity issue needs to be addressed. As discussed above, there appears to be a strong relationship between understanding of the queue jump concept and equity concerns. In general, it appears that the more knowledge the person has regarding queue jumps the fewer equity concerns exist. For this reason, it is felt that a solid public outreach program should be an integral part of the queue jump effort.

4. The Role of Alternative Transportation Modes in the Project, and Anticipated Enhancements Proposed to Be Included in the Pricing Program.

Consideration was given to the potential for use of alternative transportation modes in the Lee County queue jump project. The extent to which this can be accomplished will depend on the availability of technology to allow the automatic detection of vehicle occupancy.

Queue jumps are designed so that the toll collection process is automatic, and vehicles are not required to stop at any point in the queue jump. The current technology available for automatic vehicle occupancy has not yet reached the point where detection can be automatic. While manual enforcement is possible, the increased costs associated with manual enforcement do not make it desirable. For this reason it is not currently contemplated that HOVs will be allowed to access the queue jump at a reduced fare. However, with advances in automatic vehicle occupancy detection, this decision can be revisited. If detection technology increases sufficiently so that it may be performed automatically, it is likely that HOVs would be allowed to access queue jumps at a reduced fare.

It will, however, be possible to allow LeeTran buses to access the queue jump at no cost. This will facilitate transit use on routes served by queue jumps and will reduce any potential reduction in transit use brought about by queue jumps.

It should be noted that transit use was one of the criteria used in selecting the queue jump locations. Higher transit use resulted in higher scores for particular intersection. A discussion of this can be found in the final draft of the *Lee County Queue Jump Study*.

5. Timeline

With the *Lee County Queue Jump Study* reaching the draft final stage, finalizing the print project report should be complete by the end of January.

Due to the fact that the Lee Summerlin Road/San Carlos Boulevard intersection is currently under design in conjunction with the Summerlin Road widening to six lanes, design of the queue jump in that location could proceed rapidly. It is anticipated that design can be complete in 12 months.

For the Metro Parkway and Colonial Boulevard intersection, selection of a design consultant will be required. It is anticipated that the County can complete the selection

process within four months, and the design of the road would be complete 12 months after consultant selection.

Once design is complete, construction of the queue jump is anticipated to take an additional 12 months. This time schedule would allow queue jumps come on-line for the Summerlin Road and San Carlos Boulevard intersection in early 2005. The Metro Parkway and Colonial Boulevard intersection would come on-line in mid 2005.

6. Description of Tasks by Phase and Cost Estimates.

For both of the potential queue jump locations, tasks are basically the same. These can be described as design and pre implementation evaluation and monitoring, construction and implementation, and post implementation monitoring. It should be noted that during the design phase environmental evaluation will be performed. This will include both natural and social environmental issues, but it appears that both of these projects will qualify as categorical exclusions.

Additionally, for the Colonial Boulevard and Metro Parkway intersection, the specific level of impact that the queue jump will have on various access points in the vicinity of the intersection will be evaluated. This evaluation is needed as the level of impact on nearby access points will be dependent on decisions made during final design.

As it is possible that only one of the two queue jumps will be constructed at present time, implementation and monitoring and evaluation cost estimates for each of the two queue jumps are listed separately.

For the outreach budget, there are no significant savings if only one of the two queue jumps is constructed. The task of educating the public regarding the queue jump concept will require a similar level of effort whether one queue jump or two queue jumps are constructed. The outreach budget is therefore presented as combined for both projects.

The overall project budget is presented below.

Lee County Queue Jump Project Budget

Summerlin/San Carlos

Construction Costs	\$5,000,000	
Project Development and Design	\$750,000	
Construction Engineering Inspection	\$250,000	
ETC and VES	\$200,000	
Total Implementation	\$6,200,000	
Monitoring and Evaluation	\$386,400	
Total Summerlin/San Carlos	\$6,586,400	\$6,586,400

Metro/Colonial

Construction Costs	\$7,000,000	
Project Development and Design	\$1,050,000	
Construction Engineering Inspection	\$350,000	
ETC and VES	\$200,000	
Total Implementation	\$8,600,000	
Monitoring and Evaluation	\$354,000	
Total Metro/Colonial	\$8,954,000	\$8,954,000

Outreach

Newsletter 1	\$9,100	
Newsletter 2	\$9,100	
Earned Media Work	\$14,400	
Public Speaking	\$12,600	
Public Meeting	\$13,820	
Paid Media Prep	\$6,310	
Paid Media Buys	\$50,000	
Printing	\$30,000	
Postage	\$30,000	
Total Outreach	\$175,330	\$175,330
TOTAL APPLICATION		\$15,715,730

7. Monitoring and Evaluation Plan

A complete monitoring and Evaluation Plan (MEP) has been prepared as part of the Lee County value priced queue jumps study. The plan calls for collection of traffic counts and queues as well as time delay runs, average vehicle occupancy, and, through mail back surveys, collection of socioeconomic data and other factors which might affect queue jump use.

The MEP is currently being reviewed by FHWA and other members of the project team. A copy of the MEP can be obtained by e-mailing crs@crspe.com or telephoning (239) 573-7960. The proposed MEP budget is shown below.

Summerlin/San Carlos Queue Jump

Mailback Survey	\$65,000	
Turning Movement Counts*		
1 Prior	\$13,000	
4 Yr Following Install	\$52,000	
2 each Following 2 yrs	\$52,000	
Total	\$117,000	\$117,000
Speed/Delay Runs		
1 Prior	\$2,000	
6 Yr Following Install	\$12,000	
4 each Following 2 yrs	\$16,000	
Total	\$30,000	\$30,000
Speed/Delay Runs		
1 Prior	\$2,000	
6 Yr Following Install	\$12,000	
4 each Following 2 yrs	\$16,000	
Total	\$30,000	\$30,000
Analysis and Reporting	\$80,000	
Sub Total	\$322,000	\$322,000
Management and Administration (20%)	\$64,400	
Total	\$386,400	

* Total for 5 intersections per count it is likely that a permanent count station could be established for the queue jump intersection itself within this budget

Metro/Colonial Queue Jump

Mailback Survey	\$65,000	
Turning Movement Counts*		
1 Prior	\$10,000	
4 Yr Following Install	\$40,000	
2 each Following 2 yrs	\$40,000	
Total	\$90,000	\$90,000
Speed/Delay Runs		
1 Prior	\$2,000	
6 Yr Following Install	\$12,000	
4 each Following 2 yrs	\$16,000	
Total	\$30,000	\$30,000
Speed/Delay Runs		
1 Prior	\$2,000	
6 Yr Following Install	\$12,000	
4 each Following 2 yrs	\$16,000	
Total	\$30,000	\$30,000
Analysis and Reporting	\$80,000	
Sub Total	\$295,000	\$295,000
Management and Administration (20%)	\$59,000	
Total	\$354,000	

* Total for 4 intersections per count it is likely that a permanent count station could be established for the queue jump intersection itself within this budget

8. Finance and Revenue Plans

A significant characteristic of queue jumps is their ability to generate revenue for needed roadway improvements while simultaneously contributing to travel demand management. While this phenomenon is inherent in the queue jump concept, the lack of any existing queue jump facilities leaves no direct basis for developing the potential revenue stream for such a facility. For this reason, specific questions were developed for the driver

survey that was performed during the queue jump project to allow projections for traffic to be developed from the stated preferences of drivers participating in the survey.

Based on survey results, peak hour usage of the queue jump was set at twenty five percent of the traffic stream performing the movement served by the queue jump. Based on the judgment of the project team peak hour usage of twenty percent in the shoulder hours and fifteen percent usage in the off peak hours was established. An all day weekend value of twenty percent was also established.

As previously discussed, based on the results of the survey and analysis previously performed on toll elasticity in the county, a toll rate of \$0.40 during the peak hours, \$0.25 during the shoulder hours, and \$0.15 during off peak hours was used. A toll rate of \$0.25 was used for weekends.

Analysis of the revenue stream generated by these assumptions shows that the queue jump concept, at least in Lee County, does not meet the criteria for the traditional bond financing. In all cases, the bonding capacity of the queue jump is less than the projected cost of the queue jump. The queue jump and Metro Parkway and Colonial Boulevard to generate net bond proceeds of \$5,750,000. The Summerlin Road and San Carlos Boulevard queue jump could generate net bond proceeds of \$2,900,000. This is significantly less than their projected implementation costs of \$8,600,000 and \$6,200,000 respectively.

The fact that queue jumps are not likely to lend themselves to traditional toll bond financing should not be construed as rendering queue jumps unfeasible. To more fully examine the overall financial feasibility of queue jumps, two additional elements were examined, toll indexing to offset the affects of inflation and evaluation of the likely growth in traffic over the entire life of the facility. When likely growth in traffic and toll indexing for inflation are taken into account, it appears likely that the queue jumps can be financially self-supporting. Over a thirty-year design life, the Metro Parkway and Colonial Boulevard queue jump is projected to generate \$38,500,000 revenue. The Summerlin Road and San Carlos Boulevard queue jump is projected to generate \$19,300,000. These numbers assume that traffic will increase at 2 percent per year, and that tolls will be adjusted based on the consumer price index. The consumer price index has been assumed to increase by 4 percent per year.

Analysis of the revenue stream generated under these assumptions reveals that the rate of return on the construction cost of the Summerlin Road in San Carlos Boulevard queue jump is 7 percent. The rate of return for the Metro Parkway and Colonial Boulevard queue jump is 8.75 percent. If it should be noted that, since queue jump users will pay a toll, the value of their time savings is not included in the revenue analysis. Also, conservatively, the value of time savings for non queue jump users is also not included in the analysis.

The analysis indicated that, while queue jumps are not a good candidate for traditional toll bond financing, they are nonetheless financially feasible. It will however be

necessary to find a "bridge" funding source until such time as queue jumps can become self-supporting.

In Lee County, for at least one of the proposed queue jumps, it is likely that the existing revenue stream from the county's other toll facilities can provide the "bridge" financing needed to allow construction. However, as part of the queue jump effort and the overall value pricing effort nationally, it would be desirable for a funding source to be established that could provide a long range funding source for financially worthy projects.

Significant financial analysis was performed as part of the Value Priced Queue Jumps Study. This analysis goes into significantly more detail that is presented in this proposal. The analysis is contained in the draft final report, and may be obtained as outlined in the opening paragraph.

9. Public Participation and Coalition Building

Significant public participation has been done for the current queue jump study as well as other value-pricing projects in the County. Value pricing, including the queue jump study has enjoyed excellent public support in the County, and this proposal reflects the opportunity that this support brings to expand the program.

Public participation for value pricing has included a series of public meetings held specifically to introduce the Lee County variable pricing concept to the citizens of Lee County, telephone surveys, focus groups, surveys of LeeWay customers, roadside surveys, presentations to numerous civic associations, and presentations to the MPO and its Technical and Citizen's Advisory Committees. Additionally, the project has enjoyed exceptionally strong coverage from the local media including two editorial endorsements.

Public participation specifically for the queue jump study has included: a focus group, roadside surveys, presentations to municipalities in the area, presentations to the MPO and its Technical and Citizen's Advisory Committees and a public meeting. The input throughout the entire process has been generally favorable. The roadside surveys show an approval rating of 59% with 12% being undecided. The focus group participants explored the concept in depth including location, design criteria, tolls, fairness for low-income people, and overall, the participants approved of the queue jump concept.

Finally, the citizens of Lee County have actually been able to participate in previously implemented, ongoing, variable pricing projects, and significant changes in traffic patterns have occurred on facilities offering variable pricing. This usage is basically the ultimate measure of public participation and acceptance and bodes well for the future of expanding the project into queue jump bypasses.

While equity concerns can be a potential issue in value pricing projects, the design of the queue jump concept significantly decreases any potential equity impacts. Provision of queue jumps expands the total capacity available at key locations throughout the County.

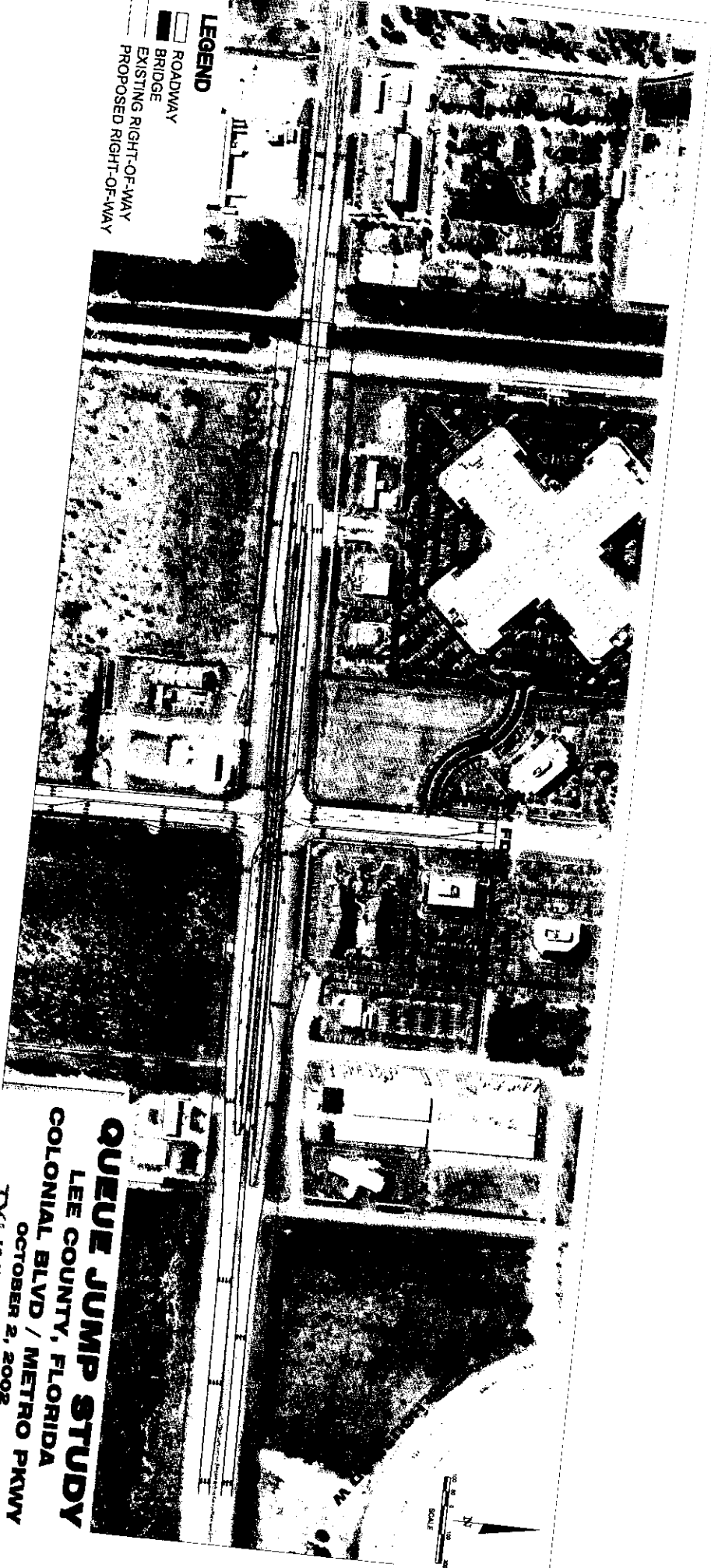
While the queue jumps themselves will be tolled, with higher tolls during peak hours, the existing capacity remains available without a toll. As some demand will be transferred to the queue jump facility, the level of service on the existing facility will actually improve. While the greatest time savings benefits from the queue jump program will go to those who choose and are able to pay the toll, there are no disadvantages, and all users actually receive some type of improved service benefit.

10. Plans for Meeting Federal State and Local Legal and Administrative Requirements for Project Implementation.





Lee County and the Florida Department of Transportation have significant experience in meeting the legal and administrative requirements of implementing FHWA value pricing projects. Florida Department of Transportation's willingness to work with Lee County and FHWA on the queue jump project is shown in the attached letter. Based on this past experience and the past record of Lee County and the Florida Department of Transportation, no problems are foreseen from an administrative or legal standpoint in implementing value priced queue jumps in Lee County.

Environmentally, it is anticipated that the queue jump implementation project will be a categorical exclusion. It is anticipated that this determination will be made in conjunction with the design process. As neither proposed queue jump is anticipated to require right-of-way, it is unlikely that federal requirements for right-of-way acquisition will apply.

Lee County has enjoyed a very good working relationship with FHWA during past value pricing projects. We look forward to continuing that relationship during the design and construction of queue jumps in Lee County.



LEGEND

-  ROADWAY
-  BRIDGE
-  EXISTING RIGHT-OF-WAY
-  PROPOSED RIGHT-OF-WAY

QUEUE JUMP STUDY
LEE COUNTY, FLORIDA
COLONIAL BLVD / METRO PKWY
OCTOBER 2, 2002
TYLINT/INTERNATIONAL

