

**Lee County Board Of County Commissioners  
Agenda Item Summary**

Blue Sheet No. 20051483

**1. ACTION REQUESTED/PURPOSE:** Approve County Incentive Grant Program Agreement with FDOT for Gunnery Road from SR 82 to Lee Boulevard, and approve authorizing resolution for Chairman to execute agreements. Also, approve budget amendment resolution in the amount of \$995,000 and amend FY05/06 -09/10 Capital Improvement Program accordingly.

**2. WHAT ACTION ACCOMPLISHES:** Allows County to enter into a CIGP Agreement with FDOT for Gunnery Road with a maximum contribution of \$995,000 from FDOT.

**3. MANAGEMENT RECOMMENDATION:** Approve.

<b>4. Departmental Category:</b> 9 <b>C9A</b>		<b>5. Meeting Date:</b> 11-01-2005
<b>6. Agenda:</b> <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	<b>7. Requirement/Purpose: (specify)</b>	
	<input type="checkbox"/> Statute	
	<input type="checkbox"/> Ordinance	
	<input type="checkbox"/> Admin. Code	
	<input checked="" type="checkbox"/> Other	
		<b>8. Request Initiated:</b> Commissioner _____ Department <u>Transportation</u> Division _____ By: <u>Scott M. Gilbertson</u>

**9. Background:** On August 31, 2005, Lee County DOT applied for 11% matching funds under the County Incentive Grant Program for the six-lane construction of Gunnery Road from SR 82 to Lee Boulevard. On September 22, 2005, Lee County DOT was notified by the Florida Department of Transportation that the Gunnery Road project was selected for funding in fiscal year 2005/06 in the maximum amount of \$995,000. Funds will be received from FDOT on a reimbursement basis.

Funds will be made available in account: 22405530700.506510

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>Amelia Davis</i> S. Gilbertson Date 10-13-05	<i>[Signature]</i> Date 10/11/05	NA	DAO 10/14	<i>[Signature]</i> 10/18/05	<i>[Signature]</i> 10-18-05	or 10/20/05	<i>[Signature]</i> 11/18/05	<i>[Signature]</i> 10/20/05	<i>[Signature]</i> J. Lavender Date 10-13-05

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

Rec. by CoAtty

Date: 10/17/05

Time: 4:00pm

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Forwarded To:  
Co. Inq.  
10/18/05

RECEIVED BY  
COUNTY ADMIN: *[Signature]*

DATE: 10/18/05

COUNTY ADMIN  
FORWARDED TO: *[Signature]*

DATE: 10/20/05

TIME: 4:15 PM

# RESOLUTION #

Amending the Budget of Transportation Capital Improvements-Fund 30700 to incorporate the unanticipated receipts into Estimated Revenues and Appropriations for the fiscal year 2005-2006.

**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 \$995,000 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: \$95,969,273  
Additions

22405530700.334490.9003 DOT-FL Dept of Trans 995,000

Amended Total Estimated Revenues \$96,964,273

## APPROPRIATIONS

Prior Total: \$95,969,273  
Additions

22405530700.506540 Improvements Construction 995,000

Amended Total Appropriations \$96,964,273

**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 \_\_\_\_\_, 2005.

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

**FORWARD WITH AGREEMENT AND BLUE SHEET**

ALL INFORMATION IS REQUIRED - DO NOT LEAVE ANY BLANKS - USE N/A WHEN NOT APPLICABLE

**GRANT AT A GLANCE**

GRANT AWARD INFORMATION

- 1. County Grant ID (project #): 224055
- 2. Title of Grant: County Incentive Grant Program
- 3. Amount of Award: \$995,000
- 4. Amount of Match Required: 89% of project costs
- 5. Type of Match: cash  
(cash, in-kind etc)

6. SOURCE OF GRANT FUNDS & CATALOG NUMBER:

FEDERAL <input type="checkbox"/> CFDA #	STATE <input checked="" type="checkbox"/> CSFA # 55.008
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7. Agency Contract Number: FPN No. 41995215801

8. Contract Period:	Begin Date: <u>upon exec</u>	End Date: <u>6/2007</u>
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9. Name of Subrecipient(s) N/A

10. Business Unit(s): 224055

11. Scope of Grant: (describe project). Construction of Gunnery Road from SR 82 to Lee Blvd.

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 <u>\$6,428,651</u>	2 <sup>nd</sup> Year <u>2,557,000</u>	3 <sup>rd</sup> Year
4 <sup>th</sup> Year	5 <sup>th</sup> Year	

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

**ADMINISTERING DEPARTMENT INFORMATION**

1. Department: Engineering Services/DOT

2. Contacts:

Program Mgr. <u>Nicole Maxey</u>	Phone #: <u>479-8569</u>
Fiscal Mgr. <u>Eileen Webster</u>	Phone #: <u>479-8507</u>

**GRANTOR AGENCY INFORMATION**

(The agency you signed this agreement with)

1. Grantor Agency: State Of Florida Department of Transportation
2. Program Title/Division: Southwest Area Office, Ft. Myers
3. Agency Contact: Karen Miracola
4. Phone Number: 239-461-4300
- Mailing Address: PO Box 1030, Ft. Myers, FL 33902

**SOURCE OF FUNDS**

1. Original Funding  
Source: FDOT  
(name of agency where funding originated from)
2. Pass Through Agency: N/A  
(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 prepare invoices periodically at the direction of FDOT.

LEE COUNTY RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING LEE COUNTY TO ENTER  
INTO AN A COUNTY INCENTIVE GRANT PROGRAM  
AGREEMENT 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 an amendment to County Incentive Grant 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 339.2817, Florida Statutes.

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

1. The County Incentive Grant Program Agreement for Gunnery Road from SR 82 to Lee Boulevard in the sum of a maximum participation from Florida Department of Transportation of Nine Hundred Ninety-Five Thousand and No/100 Dollars (\$995,000.00) is hereby approved.
2. The Chairman of and the Clerk, to the Board of County Commissioners of Lee County, Florida, 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.

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:

DOUGLAS ST. CERNY \_\_\_\_\_  
BOB JANES \_\_\_\_\_  
RAY JUDAH \_\_\_\_\_  
TAMMY HALL \_\_\_\_\_  
JOHN E. ALBION \_\_\_\_\_

DULY PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

ATTEST:  
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Deputy Clerk

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Office of County Attorney

## STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

**COUNTY INCENTIVE GRANT PROGRAM AGREEMENT**

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

## WITNESSETH

WHEREAS, the DEPARTMENT has the authority, under Section 334.044, Florida Statutes, to enter into this Agreement; and

WHEREAS, the County Incentive Grant Program has been created by Section 339.2817, Florida Statutes, to provide grants to counties to improve a transportation facility which is located on the State Highway System or which relieves traffic congestion on the State Highway System; and

WHEREAS, the COUNTY has certified to the DEPARTMENT that it has met the eligibility requirements of said Section 339.2817, Florida Statutes; and

WHEREAS, the DEPARTMENT is willing to provide the COUNTY with financial assistance under Financial Project No. 419552 1 58 01 for Gunnery Road from SR 82 to Lee Boulevard, hereinafter referred to as the "PROJECT," in accordance with Section 339.2817, Florida Statutes; and

WHEREAS, the COUNTY by Resolution No. \_\_\_\_\_ dated the \_\_\_\_ day of \_\_\_\_\_, 2005, a copy of which is attached hereto and made a part hereof, has authorized the Chairman of its Board of Commissioners to enter into this Agreement.

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

**1-SERVICES AND PERFORMANCE**

A. The COUNTY shall furnish the services with which to construct the PROJECT. Said PROJECT consists of: Four-laning of Gunnery Road from SR 82 to Lee Boulevard, as further described in Exhibit "A," attached hereto and made a part here of.

B. The COUNTY agrees to undertake the construction of the PROJECT in accordance with all applicable federal, state and local statutes, rules and regulations, and standards. The COUNTY shall be responsible for obtaining clearances/permits required for the construction of the PROJECT from the appropriate permitting authorities. Upon completion of the PROJECT, the COUNTY shall certify to the DEPARTMENT that the PROJECT has been completed in accordance with the applicable standards, statutes, rules and regulations in writing.

C. 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. Coordination shall be maintained by the COUNTY with representatives of the DEPARTMENT. COUNTY shall provide the DEPARTMENT with quarterly progress reports.

D. i) For projects located on the State Highway System, the DEPARTMENT must approve any consultant and/or contractor scope of services including project budget. COUNTY shall obtain DEPARTMENT approval of plans and specifications prior to bidding the project. This provision applies only to projects located on the State Highway System.

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

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

**TO DEPARTMENT:**

Joe Montoya, NFM Operations Engineer  
Florida Department of Transportation  
2981 NE Pine Island Road  
Cape Coral, Florida 33909

**TO COUNTY:**

Nicole Maxey, Project Manager  
Lee County DOT  
P.O. Box 398  
Fort Myers, Florida 33902-0398

**2-TERM**

A. The COUNTY shall perform the PROJECT activities in accordance with the following schedule:

- a) Construction contract to be let on or before January 2006.
- b) Construction to be completed on or before July 2007.

B. This Agreement 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.

**3-COMPENSATION AND PAYMENT**

A. The parties agree that the estimated total project costs are THIRTEEN MILLION THREE HUNDRED TWENTY THREE THOUSAND AN NO/100 DOLLARS (\$13,323,000.00). The parties further agree that the DEPARTMENT's maximum participation is NINE HUNDRED NINETY FIVE THOUSAND AND NO/100 DOLLARS (\$995,000.00) and all remaining costs of the project will be borne by the COUNTY.

i) The COUNTY shall submit one invoice (4 copies) plus supporting documentation required by the DEPARTMENT to the Project Manager for approval and processing:

       - monthly, or

  X   - quarterly, or

       - once the PROJECT has been accepted by the COUNTY and approved by the DEPARTMENT.



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

iii) All costs charged to the PROJECT shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges.

B. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the DEPARTMENT's Comptroller under Section 334.044 (29), Florida Statutes.

C. If this Agreement involves units of deliverables, then such units must be received and accepted in writing by the Contract Manager prior to payments.

D. The DEPARTMENT's obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

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. Travel costs will not be reimbursed.

G. 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 payments(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 410-9724 or by calling the State Comptroller's Hotline, 1-800-848-3792.

H. 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 includes the COUNTY's general accounting records and the project records, together with supporting documents and records of the COUNTY and all subcontractors performing work on the project, and all other records of the COUNTY and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs.

I. 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.

J. It is unlawful for the board of county commissioners to expend or contract for the expenditure in any fiscal year more than the amount budgeted in each fund's budget, except as provided herein, and in no case shall the total appropriations of any budget be exceeded, except as provided in s. 129.06, and any indebtedness contracted for any purpose against either of the funds enumerated in this chapter or for any purpose, the expenditure for which is chargeable to either of said funds, shall be null and void, and no suit or suits shall be prosecuted in any court in this state for the collection of same, and the members of the board of county commissioners voting for and contracting for such amounts and the bonds of such members of said boards also shall be liable for the excess indebtedness so contracted for. Section 129.07, Florida Statutes.

K. 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.

#### 4-INDEMNITY AND INSURANCE

A. i) To the extent allowed by law, the COUNTY shall indemnify, defend, and hold harmless the DEPARTMENT and all of its officers, agents, and employees from any claim, loss, damages, cost, charge, or expense arising out of act, error, omission, or negligent act by the COUNTY, its agents, or employees, during the performance of the Agreement, except that neither the COUNTY, its agents, or its employees will be liable under this paragraph for any claim, loss, damages, cost, charge, or expense arising out of act, error, omission, or negligent act by the DEPARTMENT, or any of its officers, agents, or employees, during the performance of the Agreement.

ii) When either party receives notice of claim for damages that may have been caused by the other party in the performance of services required under this Agreement, that party will immediately forward the claim to the other party. Each party will evaluate the claim, and report its findings to each other within fourteen (14) working days and jointly discuss options in defending the claim. A party's failure to promptly notify the other of a claim will not act as a waiver or any right herein.

iii) 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/consultant 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/consultant, 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."

B. **LIABILITY INSURANCE.** The COUNTY shall carry and keep in force during the period of this Agreement a general liability policy or policies with a company or companies authorized to do business in Florida, affording public liability insurance with combined bodily injury limits of at least \$100,000 per person and \$300,000 each occurrence, and property damage insurance of at least \$50,000 each occurrence, for the services to be rendered in accordance with this Agreement. However, in the event the COUNTY maintains a self-insurance fund to cover such liability, the COUNTY agrees to maintain sufficient reserves in the fund to pay the above-described liability limits. In addition to any other forms of insurance or bonds required under the terms of this Agreement, the COUNTY must comply or cause its contractor to comply with Section 7-13 of the DEPARTMENT's Standard Specifications for Road and Bridge Construction (2000), as amended.

C. **WORKERS' COMPENSATION.** The COUNTY shall also carry and keep in force Workers' Compensation insurance as required for the State of Florida under the Workers' Compensation Law.

## **5-COMPLIANCE WITH LAWS**

A. The COUNTY shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the COUNTY in conjunction with this Agreement. Failure by the COUNTY to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the DEPARTMENT.

B. The COUNTY shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.

C. No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch, or a state agency.

D. The COUNTY and the DEPARTMENT agree that the COUNTY, its employees, and subcontractors are not agents of the DEPARTMENT as a result of this Agreement for purposes other than those set out in Section 337.274, Florida Statutes.

E. Recipients of state funds are to have audits done annually using the following criteria.

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 the recipient expends a total amount of State awards (i.e., State financial assistance provided to the recipient to carry out a State project) equal to or in excess of \$500,000 in any fiscal year of such recipient, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Executive Office of the Governor and the Comptroller, and Chapter 10.600, Rules of the Auditor General.

In connection with the audit requirements addressed in the paragraph above, the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a reporting package as defined by Section 215.97(2)(d), Florida Statutes, and Chapter 10.600, Rules of the Auditor General.

If the recipient expends less than \$500,000 in State awards in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$300,000 in State awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from non-State funds (i.e., the cost of such an audit must be paid from recipient funds obtained from other than State entities).

Reporting Packages and management letters generated from audits conducted in accordance with Section 215.97, Florida Statutes, and Chapter 10.600, Rules of the Auditor General shall be submitted to the awarding FDOT office, by the recipient, within 30 days of receiving it. The afore mentioned 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.

Project records shall be retained and available for at least 3 years from the date the audit report is issued. 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 workpapers shall be given FDOT, the Comptroller, and the Office of the Auditor General.

The recipient shall submit required audit documentation as follows:

A Financial Reporting Package of audits conducted in accordance with Section 215.97, Florida Statutes, and *Chapter 10.600, Rules of the Auditor General* shall be sent to:

State of Florida Auditor General  
Attn: Ted J. Sauerbeck  
Room 574, Claude Pepper Building  
111 West Madison Street  
Tallahassee, FL 32302-1450

## **6-TERMINATION AND DEFAULT**

A. This Agreement may be canceled by either the COUNTY or the DEPARTMENT upon sixty (60) days written notice..

B. If the DEPARTMENT determines that the performance of the COUNTY is not satisfactory, the DEPARTMENT shall have the option of (a) immediately terminating the Agreement, or (b) 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 (c) taking 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 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.

## **7-MISCELLANEOUS**

A. 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.

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

C. 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 exists shall in no way impair or prejudice any right or remedy available to the DEPARTMENT with respect to such breach or default.

D. 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.

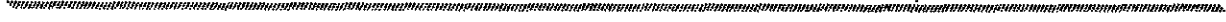
E. If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having the jurisdiction to make such determination, the remainder of this Agreement shall remain in full force and effect provided that the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

F. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue of any judicial proceedings arising out of this Agreement shall be in Leon County, Florida.

G. This Agreement shall be effective upon execution by both parties and shall continue in effect and be binding on the parties until the PROJECT is completed and accepted and payment made by the DEPARTMENT or terminated in accordance with Section 6.

H. An entity or affiliate which has been placed on the discriminatory vendor list 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 WITNESS WHEREOF, the COUNTY has caused this Agreement to be executed in its behalf this \_\_\_\_ day of \_\_\_\_\_, 2005, by the Chairman of the Board of Commissioners, authorized to enter into and execute same by Resolution Number \_\_\_\_\_ of the Board on the \_\_\_\_ day of \_\_\_\_\_, 2005, and the DEPARTMENT has executed this Agreement through its District Secretary for District \_\_\_\_\_, Florida Department of Transportation, this \_\_\_\_ day of \_\_\_\_\_, 2005.



**LEE COUNTY, FLORIDA**

ATTEST: \_\_\_\_\_ (SEAL)  
CLERK

BY: \_\_\_\_\_  
CHAIRMAN, BOARD OF  
COUNTY COMMISSIONERS

**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**

ATTEST: \_\_\_\_\_ (SEAL)  
EXECUTIVE SECRETARY

BY: \_\_\_\_\_  
DISTRICT SECRETARY  
DISTRICT \_\_\_\_\_

NAME: \_\_\_\_\_

DOT Legal Review:  
\_\_\_\_\_

Availability of Funds Approval:  
\_\_\_\_\_

(Date)

## **EXHIBIT A**

The proposed project is the 4-lane widening of the existing portion of Gunnery Road, from SR 82 (Immokalee Road) to Lee Boulevard. Connecting to the 4-lane extension of Daniels Parkway, the Gunnery Rod project is part of a larger corridor that provides relief to I-75, SR 82 and Colonial Boulevard.