

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

**Blue Sheet No. 20051486**

**1. ACTION REQUESTED/PURPOSE:** Approve a County Incentive Grant Program Agreement and Locally Funded Memorandum of Agreement with FDOT for SR 82 PD&E from Lee Boulevard to Hendry County line. Also, approve authorizing resolution for Chairman to execute agreements and a transfer of \$1,000,000 from the SR 82 PD&E CIP Project #205055 to District 23 Impact Fee Reserves and approve the 05/06-09/10 CIP accordingly.

**2. WHAT ACTION ACCOMPLISHES:** Allows County to contribute \$1,000,000 to FDOT for the PD&E of SR 82 and use the additional \$1,000,000 budgeted in the SR 82 PD&E project within District 23.

**3. MANAGEMENT RECOMMENDATION:** Approve.

**4. Departmental Category:** 9

**C9B**

**5. Meeting Date:** 11-01-2005

**6. Agenda:**  
 Consent  
 Administrative  
 Appeals  
 Public  
 Walk-On

**7. Requirement/Purpose: (specify)**  
 Statute  
 Ordinance  
 Admin. Code  
 Other

**8. Request Initiated:**  
 Commissioner \_\_\_\_\_  
 Department Transportation  
 Division \_\_\_\_\_  
 By: Scott Gilbertson, Director

**Background:** FDOT staff suggested that Lee and Collier County advance the PD&E of SR 82 from Lee Boulevard to SR 29 with a later reimbursement from FDOT. Full reimbursement from FDOT is generally only possible when FDOT is able to program the study within the Five Year Work Program and Department staff has not yet identified a source of funding for the study. Lee and Collier County included funds in their respective budgets in FY 05/06 for the study with \$2,000,000 coming from Lee and \$1,000,000 coming from Collier. Through this year's County Incentive Grant Program process Lee and Collier County DOT's separately applied for 50% matching funds and on September 22, 2005, FDOT notified the counties that the funds had been awarded, \$1,000,000 to Lee and \$500,000 to Collier. FDOT will now undertake the PD&E on as their own, so with the CIGP match Lee County only has to provide FDOT \$1,000,000 of the \$2,000,000 budgeted. FDOT also announced they will provide \$995,000 in CIGP match for Lee County's Gunnery Road project.

continued on page 2

**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.	
RX/ 10/17/05 S. Gilbertson Date	<i>[Signature]</i> 10/17		DAD 10/13	<i>[Signature]</i> 10/17/05	2 hrs 10/19/05	SR 10/20/05	M 11/19/05	M 10/20/05	<i>[Signature]</i> Lavender Date 10-17-05

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

RECEIVED  
 COUNTY ADMIN.  
 10-17-05  
 2:10  
 COUNTY ADMIN.  
 FORWARDED TO:  
 10/20/05  
 upm

Rec. by CoAtty  
 Date: 10/14/05  
 Time: 2:10pm  
 Forwarded To:  
 Co. Mgr.  
 10/17/05

**Background (cont):**

The remaining can be returned to Road Impact Fee District 23 Reserves to potentially advance other projects such as Ortiz Avenue (depending on the success of the County's SIB loan request, which will be determined in November).

Although the CIGP award for SR 82 results in \$1,000,000 of County funds not being reimbursed as originally envisioned, the funds are in essence reimbursed (less \$5,000) with the additional \$995,000 CIGP award for the Gunnery Road Project. Also, with the Lee and Collier advancement allowing the SR 82 PD&E study to proceed forward in FY 05/06, subsequent phases toward SR 82 widening may be leveraged. The local FDOT staff is working very hard to move up the design phase in the upcoming Work Program Update, which should be published in December. A portion of SR 82 is identified as a concurrency problem in the County's latest Concurrency Management Report.

Funds are available for the \$1,000,000 payment to FDOT in account: 20505518823.508120

**REQUEST FOR TRANSFER OF FUNDS**

FUND NAME: Impact Fees-District 23 DATE: 10/18/05 BATCH NO.: \_\_\_\_\_

FISCAL YEAR: 05-06 FUND NO.: 18823 DOC. TYPE: YB LEDGER TYPE: BA

TO: Non-Departmental Reserves  
 (Division Name) (Program Name)

NOTE: Please list the account number below in the following order:  
 Business Unit (dept/div, program, fund, subfund); Object Account; Subsidiary; Subledger  
 (Example: BB 5120100100.503450)

<u>Account Number</u>	<u>Object Name</u>	<u>DEBIT</u>
GC5890118823. <del>506540</del> 509930 kw	Reserves Future Capital Outlay	\$1,000,000

TOTAL TO: \$1,000,000

FROM: Capital Improvement Transportation Capital Projects  
 (Division Name) (Program Name)

<u>Account Number</u>	<u>Object Name</u>	<u>CREDIT</u>
20505518823.506540	Professional Services	\$1,000,000

TOTAL FROM: \$1,000,000

EXPLANATION: Transfer to Reserves for future use. Project will now be completed by FDOT.

\_\_\_\_\_  
 DIVISION DIRECTOR SIGNATURE/DATE

[Signature] 10/18/05 AKL  
 DEPARTMENT HEAD SIGNATURE/DATE

DBO: APPROVAL  DENIAL

[Signature] 10-19-05  
 OPS. ANALYST SIGNATURE DATE

OPS. MGR.: APPROVAL  DENIAL

[Signature] 10/20/05  
 OPS. MGR. SIGNATURE DATE

CO. MGR.: APPROVAL  DENIAL

\_\_\_\_\_  
 CO. MANAGER SIGNATURE DATE

BCC APPROVAL DATE: \_\_\_\_\_

\_\_\_\_\_  
 BCC CHAIRMAN SIGNATURE

BA. NO. \_\_\_\_\_ AUTH CODE \_\_\_\_\_ TRANS DATE \_\_\_\_\_

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

**A RESOLUTION AUTHORIZING LEE COUNTY TO ENTER  
INTO AN A COUNTY INCENTIVE GRANT PROGRAM  
AGREEMENT AND LOCALLY FUNDED MEMORANDUM  
OF 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 a County Incentive Grant Program Agreement and Locally Funded Memorandum of 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 and the Locally Funded Memorandum of Agreement(s) for SR 82 from Lee Boulevard to Hendry County Line in the sum of a maximum participation by Lee County of One Million and No/100 Dollars (\$1,000,000.00) 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

## MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_, day of \_\_\_\_\_, 2005, by and between the State of Florida, Department of Transportation, hereinafter referred to as "FDOT" and the State of Florida, Department of Financial Services, Division of Treasury and Lee County, hereinafter referred to as the "Participant".

### WITNESSETH

WHEREAS, "FDOT" is currently constructing the following project:

Financial Project Number:419950 1 22 01  
County:Lee

hereinafter referred to as the "Project".

WHEREAS, FDOT and the Participant entered into a **Locally Funded Agreement** dated \_\_\_\_\_, wherein DOT agreed to perform certain work on behalf of the Participant in conjunction with the Project.

WHEREAS, the parties to this AGREEMENT mutually agreed that it would be in the best interest of the FDOT and the Participant to establish an interest bearing escrow account to provide funds for the work performed on the Project on behalf of the Participant by the FDOT.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties agree to the following:

1. An initial deposit in the amount of \$1,000,000.00 (ONE MILLION DOLLARS AND NO/100 DOLLARS) will be made by the Participant into an interest bearing escrow account established by the FDOT for the purposes of the project. Said escrow account will be opened with the Department of Financial Services, Division of Treasury, Bureau of Collateral Management on behalf of the FDOT upon receipt of this Memorandum of Agreement. Such account will be an asset of FDOT.

2. Other deposits will be made only by the Participant as necessary to cover the cost of additional work prior to the execution of any Supplemental Agreements.

3. All deposits shall be made payable to the Department of Financial Services, Revenue Processing and mailed to the FDOT Office of Comptroller for appropriate processing at the following address:

Florida Department of Transportation  
Office of Comptroller  
605 Suwanee Street  
Mail Station 42B  
Tallahassee, Florida 32399  
ATTN: LFA Section

**A copy of this Agreement should accompany any deposits.**

4. The FDOT's Comptroller and/or her designees shall be the sole signatories on the escrow account with the Department of Financial Services and shall have sole authority to authorize withdrawals from said account.

5. Unless instructed otherwise by the parties hereto, all interest accumulated in the escrow account shall remain in the account for the purposes of the project as defined in the LFA.

6. The Department of Financial Services agrees to provide written confirmation of receipt of funds to the FDOT.

7. The Department of Financial Services further agrees to provide periodic reports to the FDOT.

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STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION  
COMPTROLLER

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STATE OF FLORIDA  
DEPARTMENT OF FINANCIAL SERVICES  
DIVISION OF TREASURY

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PARTICIPANT SIGNATURE

---

PARTICIPANT NAME & TITLE

---

PARTICIPANT ADDRESS

---

FEDERAL EMPLOYER I.D. NUMBER

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".

W I T N E S S E T H

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. 419950 1 22 01 for SR 82 from CR 884 (Lee Boulevard) to Hendry County Line PD&E Study, 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. The PROJECT consists of SR 82 from CR 884 (Lee Boulevard) to Hendry County Line PD&E Study.
2. The COUNTY agrees to participate in the PROJECT in the amount of ONE MILLION DOLLARS AND NO/100 DOLLARS (\$1,000,000.00). This amount to be deposited by the COUNTY, within thirty (30) days of the execution of this Agreement, in an escrow account in the



name of the Florida Department of Transportation with the Department of Financial Services, Division of Treasury and in accordance with the terms and conditions of the Memorandum of Agreement executed by the DEPARTMENT, the COUNTY and the Department of Financial Services and by this reference made a part of this Agreement as though fully set forth herein. Interest from the account is to be left in the account to cover future deficiencies. All deposits shall be made to the Department of Financial Services, Revenue Processing and mailed to the Florida Department of Transportation for processing as follows:

Florida Department of Transportation  
Office of the Comptroller  
605 Suwannee Street  
Mail Station 42 B  
Tallahassee, FL 32399  
Attention: LFA Section

Failure of the COUNTY to deposit said amount within the time frame specified above shall be grounds for termination of this Agreement.

3. The DEPARTMENT, after receiving the funds from the COUNTY, in accordance with paragraph 1, hereinabove, will advertise the PROJECT for bid.

4. a) If the accepted bid amount plus allowances is in excess of the advance deposit amount, the COUNTY will provide an additional deposit within fourteen (14) calendar days of notification from the DEPARTMENT or prior to posting of the accepted bid, whichever is earlier, so that the total deposit is equal to the bid amount plus allowances. The DEPARTMENT will notify the COUNTY as soon as it becomes apparent the accepted bid amount plus allowances is in excess of the advance deposit amount; however, failure of the DEPARTMENT to so notify the COUNTY shall not relieve the COUNTY from its obligation to pay for its full participation on final accounting as provided herein below. If the COUNTY cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to and approved by the DEPARTMENT's project manager indicating when the deposit will be made. The COUNTY understands the request and approval of the additional time could delay the PROJECT, and additional costs may be incurred due to a delay of the PROJECT.

b) If the accepted bid amount plus allowances is less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit exceeds the bid amount plus allowances if such refund is requested by the COUNTY in writing.

c) Should PROJECT modifications occur that increase the COUNTY's share of total PROJECT costs, the COUNTY will be notified by the DEPARTMENT accordingly. The COUNTY agrees to provide, without delay, in advance of the additional work being preformed, adequate funds to insure that cash on deposit with the DEPARTMENT is sufficient to fully fund its share of the PROJECT. The DEPARTMENT shall notify the COUNTY as soon as it becomes apparent the actual costs will overrun the award amount; however, failure of the DEPARTMENT to so notify the COUNTY shall not relieve the COUNTY from its obligation to pay for its full participation on final accounting as provided herein below.

d) Upon final payment to the Contractor, the DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred sixty (360) days of that final payment. All PROJECT cost records and accounts shall be subject to audit by a representative of the COUNTY for a period of three (3) years after final close out of the PROJECT. The COUNTY will be notified of the final cost. Both parties agree that in the event the final accounting of total PROJECT costs pursuant to the terms of this agreement is less than the total deposits to date, a refund of the excess will be made by the DEPARTMENT to the COUNTY.

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

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

6. All tracings, plans, specifications, maps and/or reports prepared or obtained under this Agreement shall be considered works made for hire and shall become the property of the DEPARTMENT without restriction or limitation on their use.

7. 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 Agreement is contingent upon an annual appropriation by the Legislature.

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

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

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

**TO DEPARTMENT:**

Dick Combs  
Deputy Director of Transportation Development  
Florida Department of Transportation  
P.O. Box 1249  
Bartow, Florida 33831-1249

**TO COUNTY:**

Eileen Webster  
Senior Fiscal Officer  
Lee County DOT  
P.O. Box 398  
Fort Myers, Florida 33902-0398

11. 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.

12. To the extent allowed by Section 768.28, Florida Statutes, the COUNTY hereby agrees to indemnify, defend, save and hold harmless the DEPARTMENT and all of its officers, agents or employees from all suits, actions, claims, demands, liabilities of any nature whatsoever arising out of, because of, or due to breach of this Agreement by the COUNTY, its officers, agents, employees, contractors/subcontractors, consultants/subconsultants or due to any negligent act or occurrence of omission or commission of the COUNTY, its officers, agents, employees, contractors/subcontractors, consultants/subconsultants. Neither COUNTY nor any of its officers, agents, employees, contractors/subcontractors, consultants/subconsultants will be liable under this section for the negligence of the DEPARTMENT or any of its officers, agents or employees.

13. The term of this Agreement commences upon execution by both parties and shall continue in effect and be binding on the parties until the PROJECT is completed and accepted, final costs are known and all payments from the COUNTY are made to the DEPARTMENT.

14. This Agreement 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 representations or agreements whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

IN WITNESS WHEREOF the COUNTY has caused this Joint Project Agreement to be executed in its behalf this \_\_\_\_ day of \_\_\_\_\_, 2005, by the Chairperson of the Board of Commissioners, authorized to enter into and execute same by Resolution Number \_\_\_\_\_ of the Board on the \_\_\_\_ day of \_\_\_\_\_, 2005, and the DEPARTMENT has executed this Joint Project Agreement through its District Secretary for District One, Florida Department of Transportation, this \_\_\_\_ day of \_\_\_\_\_, 2005.

BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY, FLORIDA

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_ By: \_\_\_\_\_  
CHAIRMAN DISTRICT SECRETARY or DESIGNEE

ATTEST: \_\_\_\_\_ ATTEST:  
CLERK OF CIRCUIT COURT

By: \_\_\_\_\_ (Seal) By: \_\_\_\_\_ (Seal)  
EXECUTIVE SECRETARY

Legal Review:

By: \_\_\_\_\_  
DISTRICT LEGAL COUNSEL