

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

**Blue Sheet No. 20060641**

**1. ACTION REQUESTED/PURPOSE:** Approve and execute Memorandum of Agreement with the Florida Department of Transportation for \$1,500,000 interest free loan from the Toll Facilities Revolving Trust Fund. Also, authorize Chairwoman to sign authorizing resolution, approve budget amendment resolution in the amount of \$1,500,000 million and amend the FY 2005/06 – 2009/10 CIP accordingly.

**2. WHAT ACTION ACCOMPLISHES:** Allows Lee County to receive an interest free loan for a PD&E Study of Colonial Boulevard.

**3. MANAGEMENT RECOMMENDATION:** Approve.

**4. Departmental Category:** 09

**C9B**

**5. Meeting Date:** 05-30-2006

**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:** \_\_\_\_\_

**9. Background:** The funds will provide for a Project Development and Environment (PD&E) study for Colonial Boulevard elevated expressway from west of McGregor Boulevard to east of Metro Parkway. The interest free loan will be repaid in increments of \$500,000 over 3 years beginning in 2013.

Funds should be posted upon appropriation to the following account: 20505442146.506540

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services			County Manager/P.W. Director
					Analyst	Risk	Grants	
S. Gilbertson Date 5/11/06		NA		[Signature] 5/16/06	RK [Signature] 5/18	ME [Signature] 5/18/06	[Signature] 5/18/06	J. Lavender Date 5-15-06

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

RECEIVED BY COUNTY ADMIN: [Signature]  
 Date: 5-17-06  
 8am  
 COUNTY ADMIN FORWARDED TO: [Signature]  
 Date: 5/18/06  
 4:30pm

Rec. by CoAtty  
 Date: 5/16/06  
 Time: 11:15 AM  
 Forwarded To: [Signature]  
 3:45 pm  
 5/16/06

# RESOLUTION #

Amending the Transportation Facility – FDOT Loan – Colonial fund #42146 budget 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 Facility – FDOT Loan – Colonial fund #42146 budget for \$1,500,000 of unanticipated sub-fund transfer and fund balance receipts and an appropriation of a like amount for reserves;

**WHEREAS**, the Transportation Facility – FDOT Loan – Colonial fund #42146 budget shall be amended to include the following amounts which were previously not included.

## ESTIMATED REVENUES

Prior Total:		\$0
Additions		
20505442146.384000.9004	State of Florida Revolving Trust	\$1,500,000
Amended Total Estimated Revenues		\$1,500,000

## APPROPRIATIONS

Prior Total:		\$0
Additions		
20505442146.506540	Improvement Construction	\$1,500,000
Amended Total Appropriations		\$1,500,000

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Lee County, Florida, that the Transportation Facility – FDOT Loan – Colonial fund #42146 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 \_\_\_\_\_, 2006.

ATTEST:  
CHARLIE GREEN, EX-OFFICIO CLERK

BOARD OF COUNTY COMMISSIONERS  
LEE COUNTY, FLORIDA

BY: \_\_\_\_\_  
DEPUTY CLERK

\_\_\_\_\_  
CHAIRWOMAN

APPROVED AS TO FORM

\_\_\_\_\_  
OFFICE OF COUNTY ATTORNEY

DOC TYPE YA  
LEDGER TYPE BA

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**TOLL FACILITIES REVOLVING TRUST FUND**  
**MEMORANDUM OF AGREEMENT**

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Financial Project No.: 421237-1

Contract No.: AOE15

CSFA No.: 55.019

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**THIS AGREEMENT**, made and entered into this        day of        , 2006, by and between **LEE COUNTY**, hereinafter called "**ENTITY**", and the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, a component state agency, hereinafter called "**DEPARTMENT**".

**W I T N E S S E T H:**

**WHEREAS**, by and in accordance with the provisions of Section 338.251, Florida Statutes (F.S.), and Rule Chapter 14-88, Florida Administrative Code (F.A.C.), the **DEPARTMENT** is authorized, upon request of an entity or entities that desire to undertake revenue-producing road projects within a county or combination of contiguous counties, to advance from the Toll Facilities Revolving Trust Fund, hereinafter called "**FUND**", such moneys necessary and desirable in the judgment of the **DEPARTMENT** to conduct preliminary engineering studies, traffic and revenue studies, environmental impact studies, financial advisory services, engineering design, right-of-way map preparation, appropriate project-related professional services, and advanced right-of-way acquisition activities as defined by Chapter 14-88, F.A.C.

**WHEREAS**, the **ENTITY** has requested the **DEPARTMENT** to advance to the **ENTITY** an amount not to exceed **One Million Five Hundred Thousand Dollars (\$1,500,000)** from the **FUND** to perform the items specified in the application (see Exhibit II) and incorporated herein to conduct an Engineering Design Study hereinafter called the "project".

**WHEREAS**, the **ENTITY** by Resolution \_\_\_\_\_ dated        day of        , 2006, a copy of which is attached hereto and made a part hereof, has authorized the Chair to execute this Memorandum of Agreement.

**NOW, THEREFORE, THIS INDENTURE WITNESSETH:** In consideration of the mutual covenants herein expressed and the benefits to accrue to the parties of this Agreement by advancement of the amount mentioned herein:

**THE DEPARTMENT HEREBY COVENANTS AND AGREES:** To advance out of the **FUND** an amount not to exceed **One Million Five Hundred Thousand Dollars (\$1,500,000)** to be paid to the **ENTITY** after determination that the **ENTITY** provided necessary documentation to the **DEPARTMENT** to establish that the application and project complies with Section 338.251, F.S. and Chapter 14-88, F.A.C.

**THE DEPARTMENT's** obligation to pay is contingent upon annual appropriation by the Florida legislature.

**THE PARTIES AGREE THAT:** Provisions of 339.135(6)(a), F.S., 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 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; 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 one year."

**THE ENTITY HEREBY COVENANTS AND AGREES:**

1. Funds advanced under this Agreement and interest derived from the investment of said funds shall be used by the **ENTITY** to implement the project as specified in this Agreement.

2. The **DEPARTMENT** shall hold the **ENTITY** accountable for compliance with all provisions of this Agreement, Section 338.251, F.S., and Chapter 14-88, F.A.C.

3. Upon execution of this Agreement by the **DEPARTMENT** and **ENTITY** and the satisfaction of special conditions by the **ENTITY**, (see Exhibit I), the **DEPARTMENT** shall start **FUND** advance processing (drawdown). In accordance with projected financial needs specified in approved project budgets in Exhibit II, the **DEPARTMENT** will drawdown and provide to the **ENTITY** the first and second quarters' financial requirements for awards of \$1,500,000 or less. Subsequent drawdowns shall be requested by the **ENTITY** semi-annually but no earlier than 60 days prior to the six month period to be financed. **ENTITY** drawdown requests shall be filed with the **DEPARTMENT** concurrently with project quarterly progress reports. For awards of more than \$1,500,000, subsequent drawdowns shall be made on an annual basis. Cumulative expenditures that result in savings each quarter shall be deducted from the requested funds of future drawdown requests.

4. Advances made from the **FUND** to the **ENTITY** shall be repaid as required by Subsections 338.251(4) and (9), F.S., including interest earnings accrued from the investment of advances.

(a) The **ENTITY** shall provide written notice to the **DEPARTMENT** at the times of initial bond issuances whether it elects to repay advances from: initial bond proceeds; or, on the basis of repayment schedules. When a repayment schedule option is selected, a schedule in the form of a resolution from the governing body of the **ENTITY** shall accompany the notification. When repayment is elected out of the initial bond issue proceeds, provision shall be made for such repayment in the bond resolution and repayable in full upon sale of the bonds.

(b) When bonds are not issued, repayment shall remain a requirement. In such case, a repayment schedule in the form of resolution from the governing body of the **ENTITY** shall be furnished the **DEPARTMENT** no later than 90 days prior to the end of the sixth year from the date of this Agreement. Repayments of principal and investment interest earnings shall begin no later than 7 years after the date of the advance, provided repayment shall be completed no later than 12 years after the date of the advance.

5. The **ENTITY** acknowledges that it shall be wholly responsible, to the extent permitted by law, for any claim, loss, damage, charge, cost, expense or cause of action, of any kind or nature whatsoever, or portion thereof, arising out of any act, action, neglect or omission by the **ENTITY**, the **ENTITY'S** assigns, agents, employees or officers relating to its work under this Agreement. The **ENTITY** further acknowledges that whether or not any claim, loss, damage, charge, cost expense or cause of action, or portion thereof, arose out of any act, action, neglect or omission by the **ENTITY**, the **ENTITY'S** assigns, agents, employees, or officers regarding works under this Agreement shall be as determined by a court of competent jurisdiction or administrative agency or other tribunal with authority to bind the parties. Moreover, the **ENTITY** shall actively cooperate and participate as required by the **DEPARTMENT** at the **ENTITY'S** expense at the initiation of any suit or administrative or other proceeding in any way related to or regarding the **ENTITY'S** work under this Agreement. The **ENTITY** will remain an active participating party throughout the duration of such suit or proceeding unless or until the court or tribunal conducting the suit or proceeding determines that the **ENTITY** has no liability for the damages claimed.

6. The **DEPARTMENT'S** District Secretary of District One shall actively participate in the selection of consultants with the **ENTITY**, and in the approval of the scope of work proposals and products by consultants.

7. The **ENTITY** shall comply with the provisions of:

- (a) Chapter 287, F.S. - Procurement of Personal Property and Services;
- (b) Chapter 119, F.S. - Public Records; and,
- (c) Chapter 69I-40, F.A.C.- Rules of the Bureau of Auditing.

8. The **ENTITY** is authorized to obligate and expend trust funds and interest earnings on the basis of approved project budgets, but is not authorized to use funds for

administrative, audit, legal, contingency costs, or for those items prohibited by Rule 69I - 40.103, F.A.C., except that legal costs may be advanced for the right-of-way acquisition process. No authority is granted to obligate or expend funds, or initiate or conduct activities that would result in the obligation of trust funds for items or activities that have not been authorized in approved project budgets, schedules or objectives. Any unauthorized expenditure of funds plus interest shall be immediately returned to the **DEPARTMENT** in accordance with a schedule approved by the **DEPARTMENT**. Amended project budgets, schedules and objectives can be requested by local government entities at any time after the execution of this Agreement but approval is at the discretion of the **DEPARTMENT** and shall be limited to achieving the objectives and activities first approved in the affected agreements.

9. The **ENTITY** shall structure and manage consultant contracts in phases to provide for the termination and payment for work to date if a candidate project is determined non-feasible.

10. Upon termination of the project, unspent proceeds (fund balances and interest earned) shall be immediately remitted to the **DEPARTMENT** by the **ENTITY**. The returned proceeds shall be counted toward the repayment of the **FUND** loan.

11. The **ENTITY** shall immediately remit to the **DEPARTMENT** all remaining funds and interest earned upon completion of work approved in this Agreement.

12. Funds or interest earnings not expended after one year from the date of this Agreement shall be remitted to the **DEPARTMENT**. A balance of proceeds can be retained sufficient to liquidate executed contracts financed by funds approved in the Agreement.

13. If the candidate project is determined to be financially unfeasible by the **DEPARTMENT** or **ENTITY**, further obligation of awarded applicant project funds shall be terminated by the **ENTITY** until it is documented to and approved by the **DEPARTMENT** that it is in the best interest of the **ENTITY** and State of Florida to continue with this project.

14. The **DEPARTMENT** is the Trustee of the **FUND**. As such, it is legally responsible for and shall safeguard advances from improper use or fiscal irresponsibility when detected, and enforce the repayment of advances and interest earnings with all legal means appropriate. In this regard, the following shall be implemented:

(a) The **ENTITY** shall provide to the **DEPARTMENT** progress reports on "program and financial activities" that occur each quarter following the award of this Agreement. The reports shall be signed by an individual authorized by the **ENTITY**. The following program information shall be included: program accomplishments (specific actions taken to implement approved objectives/activities and percent of accomplishments for each from 0% to 100%); problems delaying implementation; and revised project schedules if activities are not conforming to approved project schedules. The following financial information shall be included: beginning fund

balances; list and purpose of expenditures for each approved activity; ending fund balances for each approved activity; interest earned to date; the interest percentage rate being earned; and, the amount and percent of funds being contributed to the project from other sources. The **ENTITY** shall provide additional information as deemed appropriate by the **DEPARTMENT**.

(b) Program records and financial records of the project shall be maintained separate and apart from non-project records and accounts by the **ENTITY** to prevent commingling and to assure a clear audit trail of all activities. Separate financial accounts shall be maintained for each **FUND** Memorandum of Agreement executed. The **DEPARTMENT** shall have the right to conduct on-site monitoring visits and audits, and the **ENTITY** shall assist the **DEPARTMENT** in the inspection and audit of books, records, accounts, data, and all related project information, or in the copying or removal of the same for such purposes at all reasonable times.

(c) The **DEPARTMENT** shall have the authority to take the following actions when it is determined the **ENTITY** has not complied with Section 338.251, F.S., Chapter 14-88, F.A.C., or this Agreement.

(1) Notify the **ENTITY** of the violation and require proof of correction within a specified time period, or

(2) Suspend the processing of drawdown requests until it is documented that the violation is corrected, or

(3) Notify the **ENTITY** to suspend activities approved in this Agreement and to stop the obligation and expenditure of funds until further notice at which time appropriate legal action shall be taken by the **DEPARTMENT**.

15. The **ENTITY** will not use the funds for the purpose of lobbying the Legislature, the Judicial Branch, or other state agencies as ordered in Section 216.347, F.S.

16. In accordance with Section 287.134(3)(a), F.S., an entity or affiliate who 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.

17. The administration of funds awarded by the **DEPARTMENT** may be subject to audits and/or monitoring by the **DEPARTMENT**. By entering into this Agreement, the **ENTITY** agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the **DEPARTMENT**.

18. In the event that the **ENTITY** expends a total amount of State awards (i.e., State financial assistance provided to the **ENTITY** to carry out a State project) equal to or in excess of \$500,000 in any fiscal year of such **ENTITY**, the **ENTITY** must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; applicable rules of the Executive Office of the Governor and the Comptroller, and Chapter 10.550, Rules of the Auditor General. In determining the State awards expended in its fiscal year, the **ENTITY** shall consider all sources of State awards, including State funds received from the **DEPARTMENT**, except that State awards received by a nonstate entity for Federal program matching requirements shall be excluded from consideration. State funded assistance is to be identified with the Financial Project Number, Contract Number, and include the Catalog of State Financial Assistance (CSFA) Number.

19. In connection with the audit requirements addressed in paragraph 18., the **ENTITY** shall ensure that the audit complies with the requirements of Section 215.97(7), F.S. This includes submission of a reporting package as defined by Section 215.97(2)(e), F.S., and Chapter 10.550, Rules of the Auditor General.

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

21. Copies of reporting packages required by Section 215.97, F.S., shall be submitted by or on behalf of the **ENTITY** within 45 days after delivery of the audit report but no later than 12 months after the end of the fiscal year of the **ENTITY** directly to each of the following:

Florida Department of Transportation  
Office of Financial Development  
605 Suwannee Street, MS 7  
Tallahassee, FL 32399-0450

State of Florida Auditor General  
Room 401, Claude Pepper Building  
111 West Madison Street  
Tallahassee, FL 32399-1450

22. The **ENTITY** shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of three years from the date the audit report is issued, and shall allow the **DEPARTMENT**, or its designee, access to such records upon request. This shall also include access to audit working papers as necessary.



## **EXHIBIT I**

### **SPECIAL CONDITIONS OF THE MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT AND ENTITY:**

The Finance Plan in Attachment VIII and the Financial Feasibility Documentation in Attachment IX of the Application is approved by the **DEPARTMENT**, including repayment in equal installments beginning in 2013 continuing through 2015.

The **ENTITY** further agrees that as part of its commitment to repay the loan and associated investment interest to the **FUND**, the repayment will be from revenues of the Transportation Facilities of Lee County or if insufficient, from other lawfully available county revenues.

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

**STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
WITNESS:

BY: \_\_\_\_\_  
Denver J. Stutler, Jr., P.E.  
SECRETARY of TRANSPORTATION

\_\_\_\_\_  
WITNESS:

ATTEST: \_\_\_\_\_  
EXECUTIVE SECRETARY

\_\_\_\_\_

\_\_\_\_\_  
WITNESS:

BY: \_\_\_\_\_  
CHAIR

\_\_\_\_\_  
WITNESS:

ATTEST: \_\_\_\_\_

SEAL

Legal Review

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

**EXHIBIT II**



**Application for  
Toll Facilities Revolving Trust Funds**

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

**A RESOLUTION AUTHORIZING LEE COUNTY TO ENTER  
INTO A 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 Memorandum of Agreement with the Florida Department of Transportation.

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

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

1. The Memorandum of Agreement for an interest free loan from the Toll Facilities Revolving Trust Fund in the sum of One Million Five Hundred Thousand Dollars (\$1,500,000) for the PD&E of Colonial Boulevard.
2. The Chairwoman or Chairman of and the Clerk, to the Board of County Commissioners of Lee County, Florida, or designee per Lee County Administrative Code 1-3 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 \_\_\_\_\_  
TAMMARA HALL \_\_\_\_\_  
JOHN E. ALBION \_\_\_\_\_

DULY PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

ATTEST:  
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

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

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

APPROVED AS TO FORM:

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