

Agenda Item Summary

**1. ACTION REQUESTED/PURPOSE:** Approve the resolution authorizing the Chairwoman to execute the attached County Incentive Program Agreement and Memorandum of Agreement with FDOT for Business 41 North from Littleton Road to US 41. Also, approve budget transfer from Project #205061-Business 41 Littleton-US 41 to District 02 and District 22 Road Impact Fee Reserves and amend the FY 2006/07-2010/11 CIP accordingly.

**2. WHAT ACTION ACCOMPLISHES:** Allows County to enter into a CIGP and MOA Agreement with FDOT for Lee County to provide \$700,000 to FDOT for the Design phase of Business 41 North.

**3. MANAGEMENT RECOMMENDATION:** Approve.

**4. Departmental Category:** C9A **5. Meeting Date:** NOV 14 2006

<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> Statute _____	<b>8. Request Initiated:</b> Commissioner _____ Department <u>Transportation</u> Division _____ By: <u>Scott Gilbertson, P.E.</u> Director
	Ordinance _____	
	Admin. Code _____	
	Other _____	

**Background:** Lee County committed to contribute \$1,400,000 to FDOT for the Design phase of Business 41 from Littleton to US 41 in FY 06/07. DOT staff submitted an application and was awarded a County Incentive Grant Program for 50% matching funds or \$700,000 in the 06/07 CIGP cycle. Execution of the attached CIGP and MOA will allow Lee County to provide FDOT with \$700,000 for the Design phase.

The FY 2006/07-2010-11 CIP includes \$1,400,000 for the contribution to FDOT since staff wasn't aware when the CIP was completed whether the CIGP funds would be awarded. The attached transfer will move the additional \$700,000 back to Reserves.

Funds are available in account: 20506118802.506540

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>S. Gilbertson</i> S. Gilbertson Date <i>10/23/06</i>			<i>SAD 10/23/06</i>	<i>Clutter</i> <i>Faser</i>	<i>ekw</i> 10-31-06	<i>ok</i> 10/31/06	<i>g</i> 10/31/06	<i>MS</i> 10/31/06	<i>J. Lavender</i> J. Lavender Date <i>10-25-06</i>

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

RECEIVED BY  
COUNTY ADMIN:  
*10/31/06*  
*8:00 AM*  
COUNTY ADMIN  
FORWARDED TO:

Rec. by CoAtty  
Date: *10/31/06*  
Time: *1:00pm*  
Forwarded To: *Adm. n*





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

**A RESOLUTION AUTHORIZING LEE COUNTY TO ENTER  
INTO A COUNTY INCENTIVE GRANT PROGRAM  
AGREEMENT AND 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 Locally Funded Agreement and 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 339.2817, Florida Statutes.

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

1. The Locally Funded Agreement and Memorandum of Agreement for the design phase of Business 41 from Littleton Road to US 41 in the sum of Seven Hundred Thousand and No/100 Dollars (\$1,400,000.00) from Lee County is hereby approved.
2. The Chairman or Chairwoman of 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

**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**  
**COUNTY INCENTIVE GRANT PROGRAM AGREEMENT**  
**(FDOT LETTING)**

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

W I T N E S S E T H

1. WHEREAS, the DEPARTMENT has the authority, under Fla. Stat. §334.044, to enter into this Agreement; and
2. WHEREAS, the County Incentive Grant Program has been created by Fla. Stat. §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
3. WHEREAS, the COUNTY has certified to the DEPARTMENT that it has met the eligibility requirements of said Fla. Stat. §339.2817; and
4. WHEREAS, the DEPARTMENT is willing to provide the COUNTY with financial assistance under Financial Project # 421116 1 32 01, hereinafter referred to as the PROJECT, in accordance with Fla. Stat. §339.2817; and
5. WHEREAS, the COUNTY by Resolution No. \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, a copy of which is attached hereto and made a part hereof, has authorized the Chairman of its Board of Commissioners or designee 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 US 41 Business from Littleton Road to US 41 design phase.
2. The COUNTY agrees to participate in the PROJECT in the amount of **SEVEN HUNDRED THOUSAND DOLLARS (\$700,000.00)**.
3. The COUNTY shall deposit the above upon 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 (hereinafter, "MOA"). The MOA is incorporated by reference into this Agreement.

4. 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 42B  
Tallahassee, FL 32399  
Attention: LFA Coordinator

5. Failure of the COUNTY to deposit said amount within the time frame specified above shall be grounds for termination of this Agreement.
6. The DEPARTMENT, after receiving the funds from the COUNTY, in accordance with the terms of this Agreement and the MOA, will proceed with the design consultant process.
7. If the accepted 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 design consultant selection, whichever is earlier, so that the total deposit is equal to the amount plus allowances. The DEPARTMENT will notify the COUNTY as soon as it becomes apparent the accepted 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.
8. If the accepted amount plus allowances is less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit exceeds the amount plus allowances if such refund is requested by the COUNTY in writing.
9. 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 performed, 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.

10. Upon final payment to the Consultant, 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.
11. 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 Fla. Stat. § 55.03, F.S. on any invoice not paid within forty (40) calendar days until the invoice is paid.
12. 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.
13. 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.
14. 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.
15. The DEPARTMENT shall not be obligated or liable hereunder to any party other than the COUNTY.
16. Unless otherwise specifically stated herein, this Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

17. 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.
18. To the extent allowed by Fla. Stat. §768.28, 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.
19. 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.
20. 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.
21. All notices under this Agreement shall be directed to the following:

**TO DEPARTMENT:**

Mark Peronto, Project Manager  
Florida Department of Transportation  
801 N. Broadway  
P.O. Box 1249  
Bartow, FL 33881-1249

**TO COUNTY:**

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

IN WITNESS WHEREOF, LEE COUNTY has caused this Agreement to be executed in its behalf, by its Chairman or designee, as authorized by Resolution Number \_\_\_\_\_, and the FLORIDA DEPARTMENT OF TRANSPORTATION has caused this Agreement to be executed in its behalf through its District Secretary or authorized designee:

**LEE COUNTY, FLORIDA**

ATTEST

BY:

\_\_\_\_\_  
CHAIRMAN,  
LEE COUNTY BOARD OF  
COUNTY COMMISSIONERS

\_\_\_\_\_  
CLERK

(SEAL)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
DATE

LEE COUNTY LEGAL REVIEW:

BY:

\_\_\_\_\_  
DATE

**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**

ATTEST

BY:

\_\_\_\_\_  
EXECUTIVE SECRETARY

(SEAL)

\_\_\_\_\_  
DISTRICT ONE SECRETARY  
OR DESIGNEE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
DATE

\_\_\_\_\_  
FLA. DEPT. OF TRANS. LEGAL REVIEW:

BY:

\_\_\_\_\_  
DATE

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE FLORIDA DEPARTMENT OF TRANSPORTATION  
AND  
LEE COUNTY**

THIS AGREEMENT, made and entered into this \_\_\_\_\_, day of \_\_\_\_\_, 2006, by and between the State of Florida, Department of Transportation (hereinafter, "FDOT") and the State of Florida, Department of Financial Services, Division of Treasury and LEE COUNTY (hereinafter, "COUNTY").

**WITNESSETH**

1. WHEREAS, "FDOT" is currently constructing the following project (hereinafter, "Project"):  
FINANCIAL PROJECT #421116 1 32 01  
LEE COUNTY
2. WHEREAS, FDOT and the COUNTY entered into a **Locally Funded Agreement** dated \_\_\_\_\_, wherein FDOT agreed to perform certain work on behalf of the COUNTY in conjunction with the Project.
3. WHEREAS, the parties to this AGREEMENT mutually agreed that it would be in the best interest of FDOT and the COUNTY to establish an interest bearing escrow account to provide funds for the work performed on the Project on behalf of the COUNTY by 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 **\$700,000.00 (SEVEN HUNDRED THOUSAND DOLLARS)** will be made by the COUNTY into an interest bearing escrow account established by 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 FDOT upon receipt of this Memorandum of Agreement. Such account will be an asset of FDOT.
2. Other deposits will only be made by the COUNTY as necessary to cover the cost of additional work prior to the execution of any Supplemental Agreements or Amendments

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

4. The COUNTY shall include a copy of this Agreement along with all deposits.
5. 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.
6. 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.
7. The Department of Financial Services agrees to provide written confirmation of receipt of funds to FDOT.
8. The Department of Financial Services further agrees to provide periodic reports to FDOT.

\_\_\_\_\_  
STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION  
COMPTROLLER

\_\_\_\_\_  
STATE OF FLORIDA  
DEPARTMENT OF FINANCIAL SERVICES  
DIVISION OF TREASURY

LEE COUNTY  
REPRESENTATIVE SIGNATURE: \_\_\_\_\_

LEE COUNTY REPRESENTATIVE  
NAME & TITLE: \_\_\_\_\_

LEE COUNTY REPRESENTATIVE  
ADDRESS: \_\_\_\_\_

FEDERAL EMPLOYEE ID NUMBER: \_\_\_\_\_