

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

**Blue Sheet No. 20030850**

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Authorize the Chairman to execute the attached interlocal agreement between the County and the City of Fort Myers for the CONSTRUCTION AND MAINTENANCE phases of the Veronica S. Shoemaker Boulevard (FKA Palmetto Avenue) Extension from Colonial Boulevard to Dr. Martin Luther King, Jr. Boulevard.

**WHY ACTION IS NECESSARY:** Board authorization is required for execution of interlocal agreements.

**WHAT ACTION ACCOMPLISHES:** Allows the final phase to proceed as a 50/50-funded effort between Lee County and the City of Fort Myers.

**2. DEPARTMENTAL CATEGORY:  
COMMISSION DISTRICT # 02**

*A9C*

**3. MEETING DATE:**

*08-05-2003*

**4. AGENDA:**

CONSENT  
ADMINISTRATIVE  
APPEALS

PUBLIC  
WALK ON

TIME REQUIRED:

**5. REQUIREMENT/PURPOSE:  
(Specify)**

STATUTE  
 ORDINANCE  
 ADMIN.  
CODE  
 OTHER

5 Min

**6. REQUESTOR OF INFORMATION:**

A. COMMISSIONER \_\_\_\_\_  
B. DEPARTMENT Transportation  
C. DIVISION Administration

BY: Scott Gilbertson, Director

**7. BACKGROUND:** The County has previously executed agreements with the City to jointly fund the design and right-of-way acquisition phases for this project, and those phases are proceeding. This project was previously planned to be a two-lane road, but the City was successful in obtaining a \$5 million grant from the State Transportation Outreach Program toward the construction phase, which allowed the project to go right to four lanes. The total four-lane construction cost, which includes Construction Engineering Inspection (CEI) services, material testing, and post-design services, is estimated to be around \$9,628,000. This excludes the costs the County is not participating in, which are utility installation, landscaping, streetlighting and frontage roads. With the \$5 million grant, a total of \$4,628,000 remains to be split by the two jurisdictions. The County's share is further reduced by its use of Little Pine Island Mitigation Bank credits toward this project, leaving a total County obligation of about \$2,307,000.

(CONTINUED ON NEXT PAGE)

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<i>[Signature]</i>	<i>[Signature]</i>	NA	<i>[Signature]</i>	<i>[Signature]</i>	OA <i>[Signature]</i>	OM <i>[Signature]</i>	Risk <i>[Signature]</i>	GC <i>[Signature]</i>	<i>[Signature]</i>

**10. COMMISSION ACTION:**

\_\_\_\_\_ APPROVED  
\_\_\_\_\_ DENIED  
\_\_\_\_\_ DEFERRED  
\_\_\_\_\_ OTHER

Rec. by Comtty  
Date: *7/23/03*  
Time: *4:20 PM*  
Forwarded To:  
*Budget*  
*7/24/03 10:35A*

RECEIVED BY  
COUNTY ADMIN *EM*  
*7-24-03*  
COUNTY ADMIN  
FORWARDED TO  
*[Signature]*

**BLUE SHEET NO. 20030850:**

**7. BACKGROUND: (CONTINUED)**

The attached agreement changes one aspect of the previously-executed right-of-way agreement for this project. Under the previous agreement, the County's share of the construction cost was to be reduced by the value of the interest generated by its share of right-of-way acquisition funds previously paid to the City. However, the final expenditure of funds for right-of-way acquisition and an accounting of the interest generated by the County's contribution will not occur until after funds are due for the construction phase. Therefore, the City will instead reimburse the County all interest generated by our funds when the right-of-way phase is completed. The County funds for the construction phase will be provided to the City upon execution of the attached agreement, and the City will manage the construction phase. Due to the recent Dunbar annexation approval, the City will be fully responsible for all future maintenance costs once the road is built. The City authorized execution of the attached interlocal agreement at its meeting of July 21, 2003, and an executed copy will be available prior to Board action. The Board is asked to approve the interlocal agreement and authorize its execution by the Chairman. Funds for the County's share of the construction cost are available in account 20407330700.506540.

**INTERLOCAL AGREEMENT BETWEEN  
THE CITY OF FORT MYERS AND LEE COUNTY  
FOR CERTAIN IMPROVEMENTS TO VERONICA  
S. SHOEMAKER BOULEVARD (FKA PALMETTO AVENUE)**

**CONSTRUCTION AND MAINTENANCE**

THIS INTERLOCAL AGREEMENT is made on this \_\_\_\_ day of \_\_\_\_\_, 2003, by and between LEE COUNTY, a political subdivision and charter county of the State of Florida ("County") and the CITY OF FORT MYERS, a Florida municipality within Lee County ("City"), collectively the "Parties" hereto, and constitutes the third Interlocal Agreement between the County and the City for the development of certain improvements to Veronica S. Shoemaker Boulevard (formerly known as Palmetto Avenue).

The proposed improvements to Veronica S. Shoemaker Boulevard consist of the design, acquisition of necessary right-of-way and construction of a four-lane arterial road extending from Dr. Martin Luther King, Jr. Boulevard (SR 82) to Colonial Boulevard.

**WITNESSETH:**

WHEREAS, the project will be built within the jurisdictional boundaries of both City and County, with a majority of the facility presently located within the County; and,

WHEREAS, the Project will benefit vehicular traffic and the traveling public in both the City and the County; and,

WHEREAS, the Project will provide both the City and County with an alternative

north/south corridor, alleviating the congestion being experienced on other City and County north/south corridors, including Metro Parkway (SR 739), Cleveland Avenue (US 41), Interstate 75, and Ortiz Avenue, and provide an opportunity for certain development of properties along the corridor as well as surrounding the corridor that represent the last major undeveloped area of the City and County within the urbanized City Urban Reserve Area and the Dunbar area; and,

WHEREAS, the Project will benefit the City/County Enterprise Zone area at the north end of the proposed facility; and,

WHEREAS, the construction of the Project will provide a more direct route for the transportation of children to and from Dunbar High School; and,

WHEREAS, the City and County desire to share in the cost of said Project and desire to delineate their respective rights and obligations under Florida Statutes, County and City Ordinances, and this Agreement as set forth below; and,

WHEREAS, the Parties entered into the Project "Design Phase" Interlocal Agreement on February 13, 2001; and,

WHEREAS, the Parties entered in to the project "Right-of-Way Acquisition" Interlocal Agreement on June 11, 2002; and,

WHEREAS, the Parties now desire to enter into a "Construction and Maintenance" Interlocal Agreement for the purpose of continuing with the Project through the construction and maintenance phases; and,

WHEREAS, this Interlocal Agreement constitutes the third Interlocal Agreement between the Parties for the development of the Project and defines the obligations of the

Parties through the construction and maintenance phases; and,

WHEREAS, the Project and this Interlocal Agreement for Construction and Maintenance serves a public purpose and will benefit the citizens and residents of both the City and the County.

NOW THEREFORE, it is agreed between the Parties as follows:

I. **OVERALL PROJECT**

1. The City and the Lee County Department of Transportation, have developed a cost estimate for the construction phase of the Project based on the selected alignment in the approximate amount of \$9,628,223.23 (Exhibit "A", hereto). The construction costs include the cost of Construction Engineering Inspection (CEI) services, material testing, and post design services, and excludes the costs of utility installation, landscaping, streetlighting and frontage roads. This estimate may be further refined by the Parties and adjusted either upwards or downwards to reflect new information and actual costs.
2. On February 13, 2001, the Parties entered into an Interlocal Agreement for the design of the Project with certain terms and conditions (copy attached hereto as Exhibit "B").
3. On June 11, 2002, the Parties entered into an Interlocal Agreement for the right-of-way acquisition of the Project with certain terms and conditions (copy attached hereto as Exhibit "C").

## II. CONSTRUCTION PHASE

1. The City shall hire the consultant consistent with standard practices and provide the CEI services by utilizing the City's RFP process.
2. The City and County agree to equally split the cost of the Construction Phase of the Project (as defined above in Section I.1) The City has received a State of Florida Transportation Outreach Program (TOP) grant toward the construction phase in the amount of \$5,000,000.00, leaving a balance to be shared equally by the City and the County of \$4,628,223.23. Based on this balance, the estimated participation of each jurisdiction is \$2,314,111.60.
3. The County's share of \$2,314,111.60 is to be reduced by 50% of the value of its Little Pine Island Mitigation Bank credits that were used to mitigate the environmental impacts of this project (total value was \$13,860.00; 50% of that is \$6,930.00). Pursuant to the Right-of-Way Acquisition Interlocal Agreement entered into on June 11, 2002 , the County's share of the construction cost would be reduced by the value of the interest generated by its share of the right-of-way acquisition funds previously paid to the City. However, the final expenditure of funds for right-of-way acquisition and an accounting of the interest generated on the County's contribution will not occur until after the funds are due for the construction phase; therefore, the County's construction share will not be reduced by that amount. Instead, upon completion of the right-of-way acquisition the City will refund to the County all interest generated by the County's right-of-way funds. Based on

the single reduction for the mitigation contribution, the County's actual cash contribution to the City for the construction phase will be \$2,307,181.60.

4. The County agrees to transfer its share of the construction funds to the City within 30 days of execution of this Agreement. Should the actual construction costs (as defined above) be less than \$9,628,223.23, the savings will be shared equally by the City and the County. Any costs for construction (as defined above) in excess of \$9,628,223.23 will be split 50/50 as well, subject to amendment of this Agreement.
5. The City will manage the construction of the Project and will consult with the County on at least a monthly basis to provide updates and progress reports during the construction contract.

### **III. MAINTENANCE**

Due to the recent approval of the annexation of the unincorporated portion of Dunbar into the City, effective October 1, 2003, the City will maintain all aspects and portions of the roadway after completion of construction for its entire length north of Colonial Boulevard, including mowing, repavement, water management, landscaping, streetlighting and signage along the Project.

### **IV. MISCELLANEOUS PROVISIONS**

1. The provisions of this Interlocal Agreement shall be construed so as to effect the purposes as stated herein. The obligations conferred by the provisions of this Agreement shall be supplemental to the powers conferred upon the Parties by general, special or local law.

2. This Agreement shall remain in full force and effect until such time as the Project is completed and all accounts settled between the Parties, at which time this Agreement shall expire.

**V. NOTICES**

Any notices or other documents permitted or required to be delivered pursuant to this Interlocal Agreement, shall be delivered to the County at the Office of the County Manager, and to the City, at the Office of the Mayor.

**VI. AMENDMENT**

This Interlocal Agreement may only be amended in writing and duly executed by the City and the County with the same formalities as this Interlocal Agreement.

**VII. CONSTRUCTION**

This Interlocal Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

**VIII. DEFAULT**

If the City or the County shall fail to perform or observe any of the material terms or conditions of this Interlocal Agreement applicable to it for a period of thirty (30) days after receipt of written notice of such default from the other Party, the Party giving the notice of default may be entitled to terminate this Interlocal Agreement. Failure of any Party to exercise its rights in the event of any breach by another Party shall not constitute a waiver of such rights. No Party shall be deemed to have waived any failure to perform by another Party unless such waiver is in writing and signed by the waiving Party. Such waiver shall be limited to the terms specifically contained herein.

**IX. SEVERABILITY**

If any provision of this Interlocal Agreement is held invalid, the remainder of the Interlocal Agreement shall not be affected thereby and all other parts of this Interlocal Agreement shall nevertheless be in full force and effect.

**X. LIABILITY**

The Parties agree that by execution of this Interlocal Agreement, no Party will be deemed to have waived its statutory defense of sovereign immunity, or increased its limits of liability as provided for by Section 768.28, Florida Statutes.

**XI. FILING**

This Interlocal Agreement and any subsequent amendments hereto shall be filed with the Lee County Clerk of the Circuit Court, Minutes Department, and the Clerk of the City.

IN WITNESS WHEREOF, the Parties hereto have caused the execution hereof by their duly authorized officials on the dates as set forth below.

ATTEST: CITY CLERK

CITY OF FORT MYERS

By: \_\_\_\_\_  
City Clerk

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

ATTEST: CHARLIE GREEN  
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

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

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

APPROVED AS TO FORM:

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

**EXHIBIT "A"**

Construction Cost	\$7,787,565.66
Contingency 10%	\$ 778,756.57
Subtotal	\$8,566,322.23
CEI	\$ 890,901.00
Material Testing	\$ 150,000.00
Post Design Services	\$ 21,000.00
Subtotal	\$9,628,223.23
FDOT Grant	(\$5,000,000.00)
<b>TOTAL</b>	<b>\$4,628,223.23</b>