

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

Blue Sheet No. 20070418

1. ACTION REQUESTED/PURPOSE: Authorize the Chairman to execute an Interlocal Agreement with the City of Cape Coral for reimbursement of right-of-way costs up to \$4 million for Del Prado Boulevard from Pine Island Road to NE 7th Street.

2. FUNDING SOURCE: (\$26,222) Fund – Road Impact Fees Cape Coral Pine Island; Program – Capital Projects; Project – Del Prado ROW and (\$3,973,778) Fund – Road Impact Fees North District; Program – Capital Projects; Project – Del Prado ROW.

3. WHAT ACTION ACCOMPLISHES: Allows County to contribute up to \$4 million to the right-of-way costs for Del Prado Boulevard from Pine Island Road to NE 7th Street to the City of Cape Coral on a reimbursement basis.

4. MANAGEMENT RECOMMENDATION: Approve

| | | |
|--|--|---|
| 5. Departmental Category: 09 C9A | | 6. Meeting Date: APR 17 2007 |
| 7. Agenda: <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On | 8. Requirement/Purpose: (specify) Statute _____ Ordinance _____ Admin. Code _____ Other _____ | 9. Request Initiated: Commissioner _____ Department Transportation Division _____ By: Scott Gilbertson, Director |

10. Background: The City of Cape Coral is beginning to acquire right-of-way for the widening of Del Prado Boulevard from the vicinity of NE 7th Street through the Kissmet Parkway intersection. The City and County have agreed to also acquire right-of-way for the approximately 0.2 mile section of Del Prado between Pine Island Road and NE 7th Street under County jurisdiction at this time. Execution of this Interlocal Agreement will allow Lee County to provide funding to the City on a reimbursement basis up to \$4 million for costs associated with the acquisition of land under County jurisdiction only. Upon acquisition of all necessary right-of-way the City will transfer the property to the County.

Funds are available in the following account (s) : 20506218805.506540 - \$26,222 and 20506218822 - \$3,973,778

RECEIVED
MAR 22 2007
LCDOT

11. 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>Scott Gilbertson</i> Date: 3/26/07 | | | | <i>3/27/07</i> | <i>3-27-07</i> | <i>MP 3/27/07</i> | <i>4/3/27/07</i> | <i>3-21-07</i> | <i>3-21-07</i> |

12. Commission Action:

- Approved
- Deferred
- Denied
- Other

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|--|
| RECEIVED BY COUNTY ADMIN: <i>3/27 9-15 MP.</i> |
| COUNTY ADMIN FORWARDED TO: <i>PLC</i> |
| <i>3/26 10:42</i> |

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|----------------------------------|
| Rec. by CoAtty |
| Date: <i>3/26/07</i> |
| Time: <i>2:20pm</i> |
| Forwarded To: <i>CAD 3/27/07</i> |

**INTERLOCAL AGREEMENT BETWEEN
LEE COUNTY AND
THE CITY OF CAPE CORAL
REGARDING ACQUISITION OF RIGHT-OF-WAY
FOR WIDENING OF DEL PRADO NORTH BOULEVARD**

THIS INTERLOCAL AGREEMENT is made and entered into this _____ day of _____, 200_ by and between **LEE COUNTY**, a charter county and a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, the governing body thereof, hereinafter referred to as "COUNTY," and the **CITY OF CAPE CORAL**, a municipal corporation of the State of Florida lying within Lee County, acting by and through its City Council, the governing body thereof, hereinafter referred to as "CITY."

RECITALS

WHEREAS, the CITY plans to acquire right-of-way to enable the widening of Del Prado Boulevard from the vicinity of NE 7th Street northward through the Kismet Parkway intersection, a total distance of approximately 2.5 miles. A portion of Del Prado Boulevard between Pine Island Road and NE 7th Street, having an approximate distance of 0.2 miles, is within the portion of Del Prado Boulevard under COUNTY jurisdiction; and

WHEREAS, the COUNTY and the CITY desire to cooperate in the acquisition of necessary right-of-way for the 0.2 mile portion of Del Prado Boulevard under COUNTY jurisdiction; and

WHEREAS, both the COUNTY and the CITY are duly empowered, pursuant to Florida Statutes, in particular Section 163.01, to enter into interlocal agreements for the sharing of certain governmental powers and obligations; and

WHEREAS, it is in the public's interest for the COUNTY and CITY to enter into this Agreement.

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

SECTION I. PURPOSE

It is the purpose and intent of this Agreement to define the terms and conditions under which the COUNTY will reimburse the CITY for right-of-way acquisition costs incurred by the CITY for the widening of Del Prado Boulevard between Pine Island Road and NE 7th Street (as identified in Exhibit A). The Recitals as set forth above are incorporated into the terms of this Agreement as if set out herein at length. All terms and conditions of this Agreement shall be interpreted in a manner that is consistent with, and in furtherance of, the purpose as set forth above.

SECTION II. AUTHORITY FOR AGREEMENT

The CITY represents to the COUNTY that the execution and delivery of this Agreement has been duly authorized by all appropriate actions of the governing body of the CITY, has been executed and delivered by an authorized officer of the CITY, and constitutes a legal, valid and binding obligation of the CITY. The COUNTY represents to the CITY that the execution and delivery of this Agreement has been duly authorized by all appropriate actions of the governing body of the COUNTY, has been executed and delivered by an authorized officer of the COUNTY, and constitutes a legal, valid and binding obligation of the COUNTY.

SECTION III. OBLIGATIONS OF THE CITY

The CITY will be responsible for acquisition of all right-of-way needed for the widening of Del Prado Boulevard North, commencing at the intersection of Pine Island Road and running south to the intersection of NE 7th Street. CITY shall follow CITY Ordinances and other policies, rules and regulations of CITY to acquire said property. CITY shall be responsible for payment of all acquisition costs as they are incurred, but will be reimbursed by COUNTY for all such costs up to a maximum of \$4 million, as provided in Section IV below. Upon acquisition of all necessary right-of-way, CITY shall transfer said right-of-way to the COUNTY which the County shall accept.

SECTION IV. OBLIGATIONS OF THE COUNTY

The COUNTY agrees to reimburse the CITY for all right-of-way acquisition costs incurred by CITY up to a maximum of \$4 million. Said costs shall include, but not be limited to, compensation paid to property owners for the right-of-way; all attorney's fees and costs paid to property owners in connection with the acquisition of right-of-way; attorney's fees and costs incurred by CITY to acquire the right-of-way. Said reimbursement shall be made to CITY not later than six months following the final closing on property acquired.

SECTION V. DISPUTE RESOLUTION

As a condition precedent to termination of this Agreement by one party or to either party filing suit for breach of this Agreement, the party terminating or filing suit must first notify the other party in writing of the nature of the dispute and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party who is acceptable to both parties. The parties shall each pay fifty percent (50%) of all costs for the services provided by such third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement. This remedy shall be supplemental to any other remedies available at law.

SECTION VI. ASSIGNMENT

No assignment, delegation, transfer, or novation of this Interlocal Agreement or any part hereof, shall be made by either Party unless approved in writing by the COUNTY and the CITY.

SECTION VII. 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 City Manager.

SECTION VIII. 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 Agreement.

SECTION IX. CONSTRUCTION

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

SECTION X. LIABILITY

The parties agree that by execution of this 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 Florida Statutes.

SECTION 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 and shall be recorded in the Public Records of Lee County, Florida.

IN WITNESS WHEREOF, the CITY and the COUNTY have executed this Interlocal Agreement on the day, month, and year first written above.

ATTEST:

BY: Bonnie J. Vent
Bonnie J. Vent
City Clerk

CITY OF CAPE CORAL

BY: Eric P. Feichthaler
Eric P. Feichthaler
Mayor

APPROVED AS TO FORM:

BY: Maury W. Miller
City Attorney's Office

ATTEST: CHARLIE GREEN
CLERK OF COURTS

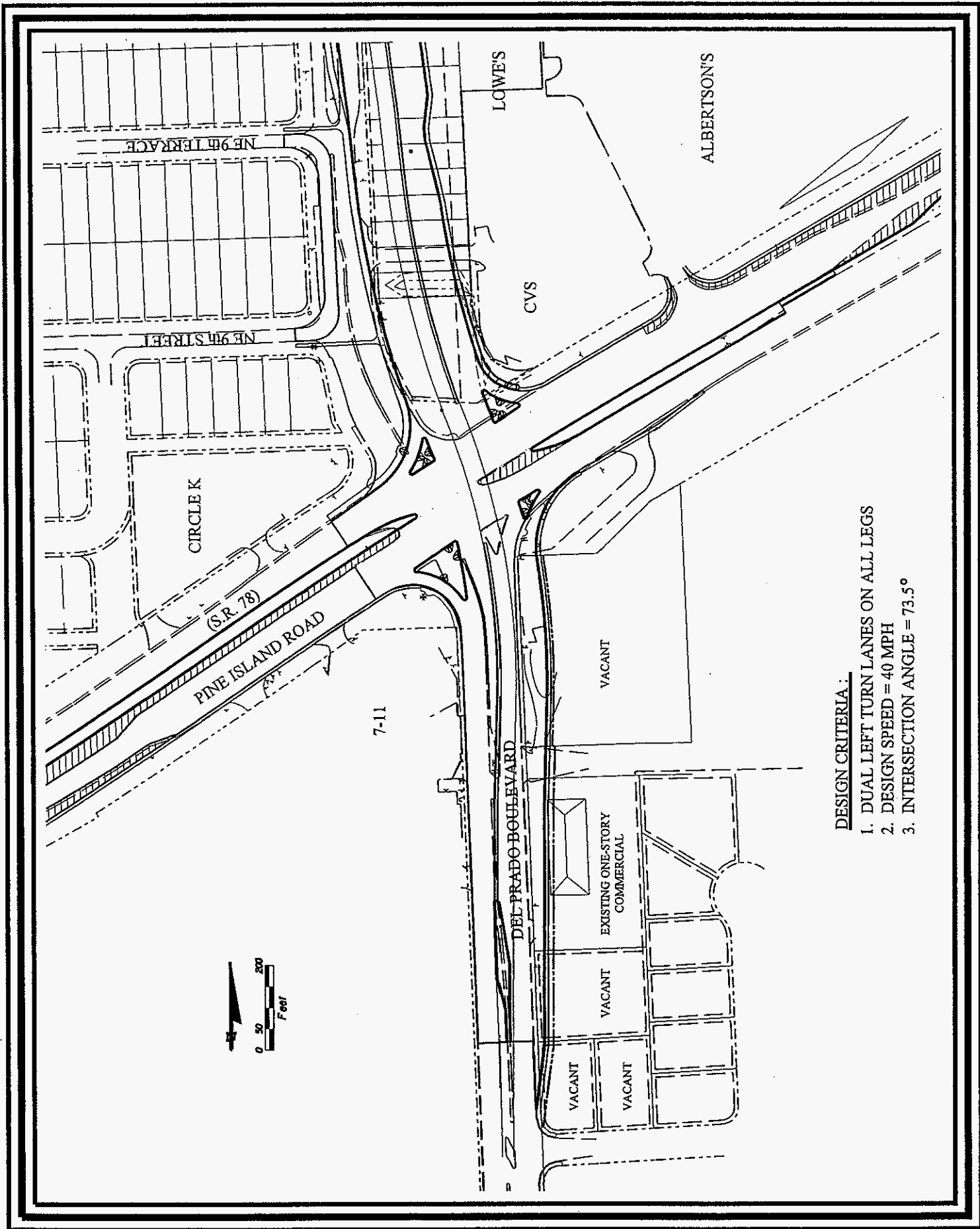
BY: _____
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Chair

APPROVED AS TO FORM:

BY: _____
Office of the County Attorney



DESIGN CRITERIA :

1. DUAL LEFT TURN LANES ON ALL LEGS
2. DESIGN SPEED = 40 MPH
3. INTERSECTION ANGLE = 73.5°