

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

Blue Sheet No. 20021063

1. REQUESTED MOTION:

ACTION REQUESTED: Approve Locally Funded Agreement and Memorandum of Agreement with FDOT to advance fund the design for improvements to US 41 from Corkscrew Road to San Carlos Boulevard, and approve authorizing resolution for Chairman to execute agreements. Also, approve transfer from Gas Tax Reserves in the amount of \$1.7 million and amend FY 03-07 Capital Improvement Program.

WHY ACTION IS NECESSARY: BOCC approval required for agreements and amendments to CIP.

WHAT ACTION ACCOMPLISHES: Allows FDOT to proceed with six-lane design of the last four-lane segment of south US 41 two years earlier than scheduled.

**2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT # 3,5**

A9A

3. MEETING DATE:

10-08-2002

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:

FDOT has just completed the six-laning of US 41 from San Carlos Boulevard north, and will be starting six-lane construction soon from Corkscrew Road south to the Collier County line. The segment between Corkscrew Road and San Carlos Boulevard is the only remaining four-lane part of south US 41 not yet programmed for six-laning. The state has programmed the design phase in FY 2004/05, at a present day cost of \$1.7 million, and programmed 60% of the right-of-way costs in FY 2006/07. The remainder of the right-of-way phase should be programmed in FY 2007/08. The construction phase is not yet programmed.

(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>9/23/02</i> <i>[Signature]</i> | <i>[Signature]</i> <i>9/23/02</i> | <i>NA</i> | | <i>Andrea Maser</i> | OA <i>9/26</i> | OM <i>9/26</i> | Risk <i>9/26</i> | GC <i>9/24/02</i> | <i>[Signature]</i> |

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by *Collety*
Date: *9/26/02*
Time: *11:30 am*
Forwarded To: *[Signature]*

RECEIVED BY COUNTY ADMIN. *[Signature]*
9/26 1:45
COUNTY ADMIN. FORWARDED TO: *BH*
[Signature]

7. BACKGROUND: (CONTINUED)

The portions of US 41 south of Corkscrew Road were actually advanced significantly by the Mobility 2000 program and the Governor's Economic Stimulus Package. Some large developers in the area also helped by taking the water from US 41 into their drainage systems, thereby eliminating the right-of-way acquisition phase. The ability to take advantage of such opportunities often depends on a project's production-readiness, which begins with having the design phase done. Lee County DOT staff is proposing to advance \$1.7 million to FDOT so that they can start the design phase for US 41 from Corkscrew Road to San Carlos Boulevard now, with reimbursement to the County in FY 2004/05. Such an arrangement requires execution of both a Locally Funded Agreement (Attachment A) and a Memorandum of Agreement (Attachment B) with FDOT. The first agreement provides for the advancement of funds to FDOT to do the work, and the second agreement establishes the funding mechanism, an escrow account. A resolution authorizing the Chairman to execute the agreement (Attachment C) is also required.

Funds will be available in 20409130700.506540.

REQUEST FOR TRANSFER OF FUNDS

FUND NAME: Transportation Capital Improvements DATE: 09/16/02 BATCH NO. _____

FISCAL YEAR: 2003 FUND #: 30700 DOC TYPE: YB LEDGER TYPE: BA

TO: Capital Projects Transportation Capital
 (DIVISION NAME) (PROGRAM NAME)

NOTE: PLEASE LIST THE ACCOUNT NUMBER BELOW IN THE FOLLOWING ORDER:
 FUND #-DEPT/DIV #-PROGRAM #-OBJECT CODE #-SUBFUND #-PROJECT#-COST CENTER #.
 (EXAMPLE: BB5120100100.503450)

| | | |
|-----------------------|---------------------|--------------|
| <u>ACCOUNT NUMBER</u> | <u>OBJECT NAME</u> | <u>DEBIT</u> |
| 20409130700.506540 | Improvements Const. | \$ 1,700,000 |

TOTAL TO: \$ 1,700,000

FROM: Non-Departmental Reserves
 (DIVISION NAME) (PROGRAM NAME)

| | | |
|-----------------------|-----------------------------|---------------|
| <u>ACCOUNT NUMBER</u> | <u>OBJECT NAME</u> | <u>CREDIT</u> |
| GC5890130700.509930 | Reserves for Future Capital | \$1,700,000 |

TOTAL FROM: \$ 1,700,000

EXPLANATION For US 41 from Corkscrew to San Carlos

| | | | |
|---|-------------|--|-------------|
| <u>DIVISION DIRECTOR SIGNATURE</u> | <u>DATE</u> | <u>DEPARTMENT DIRECTOR SIGNATURE</u> | <u>DATE</u> |
| DBS: APPROVAL <input checked="" type="checkbox"/> DENIAL <input type="checkbox"/> | | <i>[Signature]</i> | 9/23/02 |
| APPROVAL <input type="checkbox"/> DENIAL <input type="checkbox"/> | | <u>OPERATIONS ANALYST SIGNATURE</u> | <u>DATE</u> |
| | | <i>[Signature]</i> | 9/26/02 |
| CO. ADMIN.: APPROVAL <input type="checkbox"/> DENIAL <input type="checkbox"/> | | <u>BUDGET OPERATIONS MANAGER SIGNATURE</u> | <u>DATE</u> |
| | | <u>CO. ADMIN. SIGNATURE</u> | <u>DATE</u> |
| BCC APPROVAL DATE _____ | | <u>BCC CHAIRMAN SIGNATURE</u> | |

BA NO: _____ AUTH CODE: _____ TRANS DATE: _____

REV. 05/93

LEE COUNTY RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING LEE COUNTY TO
ENTER INTO A LOCALLY FUNDED AGREEMENT
AND A MEMORANDUM OF AGREEMENT
WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION**

THIS IS A RESOLUTION to 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.

WHEREAS, Lee County, Florida, has the statutory authority to enter into an Agreement with the Florida Department of Transportation in accordance with Section 339.12(4)(a), Florida Statutes.

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

1. The Locally Funded Agreement and a Memorandum of Agreement for the design phase of US 41 from Corkscrew Road to San Carlos Boulevard in the sum of One Million Seven Hundred Thousand Dollars (\$1,700,000.00), is hereby approved.
2. The Chairman of, and the Clerk to the Board of Lee County Commissioners 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.

DONE AND ADOPTED with a quorum present and voting on this ____ day of _____, 2002.

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 the County Attorney



Florida Department of Transportation

JEB BUSH
GOVERNOR

September 3, 2002

THOMAS F. BARRY, JR.
SECRETARY

Ms. Amy Davies
Transportation Program Manager
Lee County
P. O. Box 398
Fort Myers, Florida 33902-0398

Re: Locally Funded Agreement for design of US 41 from Corkscrew Road to San Carlos Boulevard – FM# 195765 1 32 01

Dear Amy:

Enclosed are five (5) originals of the Locally Funded Agreement (LFA) and five (5) originals of the Memorandum of Agreement (MOA) for the above referenced project. Please have all ten (10) originals executed by the Chairman of the Board of County Commissioners, returned to me, together with two (2) originals or certified copies of the original resolution authorizing the Chairman to enter into and execute the agreements.

If you have any questions, please feel free to contact me at (941) 461-4302.

Sincerely,

Karen A. Miracola
District LFA/JPA Coordinator

Enclosures

Cc: Hank Henry, Project Manager, MS 1-29
Tony Stevens, District Legal, MS 1-13
Johnny Limbaugh, Community Liaison, MS 1-98

RECEIVED
SEP 04 2002

District One, Southwest Area Office
2295 Victoria Avenue*Post Office Box 1030*Fort Myers, FL 33902-1030
(239) 461-4300 *(239) 338-2353 (Fax) * MS 1-98
www.dot.state.fl.us

RECYCLED PAPER

FM NO : 195765 1 32 01
COUNTY : LEE

**LOCALLY FUNDED AGREEMENT
BETWEEN THE
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
LEE COUNTY
FOR DESIGN OF US 41 FROM
CORKSCREW ROAD TO SAN CARLOS BOULEVARD**

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

WITNESSETH

WHEREAS, the DEPARTMENT has included in its Five Year Work Program the design phase of US 41 from Corkscrew Road to San Carlos Boulevard under FM No. 195765132 01 in Fiscal Year 2004/2005, hereinafter referred to as the "PROJECT"; and

WHEREAS, the DEPARTMENT is willing to advance the PROJECT to Fiscal Year 2002/2003 and the COUNTY is willing to advance the funds in accordance with Section 339.12(4)(a), Florida Statutes; and

WHEREAS, the COUNTY, by Resolution dated the ___ day of _____, 2002, a copy of which is attached hereto and made a part hereof, has authorized the Chairperson of its Board of Commissioners to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual benefits to be derived from joint participation in this Agreement, the parties agree as follows:

1. The COUNTY agrees to advance funds to the DEPARTMENT for the total estimated cost of the design phase of US 41 from Corkscrew Road to San Carlos Boulevard (the PROJECT), in the amount of ONE MILLION SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,700,000.00). This amount to be deposited by the COUNTY, within thirty (30) days of execution of this Agreement, in an interest bearing escrow account in the name of the Florida Department of Transportation with the Department of Insurance, 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 Insurance and by this reference made a part of this Agreement as though fully set forth herein. Interest from the account to be left in the account to cover future deficiencies. All deposits shall be made to the Department of Insurance, Revenue Processing and mailed to the Florida Department of Transportation for processing as follows:

Florida Department of Transportation
Office of the Comptroller
3717 Apalachee Parkway
Mail Station 24
Tallahassee, FL 32311
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.

2. The DEPARTMENT, after receiving the funds from the COUNTY, in accordance with paragraph 1, hereinabove, will begin the design phase of the PROJECT.

3. The DEPARTMENT agrees to a lump sum reimbursement to the COUNTY in accordance with Section 339.12(4)(a), Florida Statutes, totally subject to legislative approval and appropriation. In any event, payback will not take place before 2004/05, the fiscal year in which the PROJECT is currently programmed.

4. The DEPARTMENT and the COUNTY recognize that the exact cost of design for the PROJECT are not known at this time, the parties recognize that adjustments to the above-referenced costs may be required in the future and that at the option of the parties, amendments may be entered into to revise the funds available for the PROJECT. The COUNTY agrees to advance reasonable additional funds, as requested by the DEPARTMENT, to provide the necessary funding with which to complete the PROJECT. Said request to be in writing and the additional costs to be substantiated by the DEPARTMENT.

5. Upon final payment to the consultant(s), the DEPARTMENT shall, within three hundred sixty (360) days, furnish the COUNTY with a copy of its final and complete billing of all cost incurred in connection with the work performed hereunder, such statement to follow as closely as possible the order of items contained in the job estimate. All cost records and accounts shall be subject to audit by a representative of the COUNTY within three (3) years after final closeout of the PROJECT. If the final cost exceeds the advanced reimbursable payment, the COUNTY will be invoiced for the balance. Upon receipt of the final invoice, the COUNTY agrees to reimburse the DEPARTMENT in the amount of such actual cost within forty (40) days from the date of the invoice. The COUNTY shall pay an additional charge as specified in Section 55.03, Florida Statutes, on any invoice not paid within the time specified in the preceding sentence, until the invoice is paid.

6. 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.

7. 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.

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

9. In no event shall the making by the DEPARTMENT of any payment to the COUNTY constitute or be construed as a waiver by the DEPARTMENT of any breach of covenant or any default which may then exist, on the part of the COUNTY, and the making of such payment by

the DEPARTMENT while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the DEPARTMENT with respect to such breach or default.

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

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

TO DEPARTMENT:

Hank Henry
Project Manager
Florida Department of Transportation
Post Office Box 1249
Bartow, Florida 33831-1249

TO COUNTY:

Amy Davies
Transportation Program Manager
Lee County
P.O. Box 398
Fort Myers, Florida 33902-0398

12. 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.

13. To the extent provided by Section 768.28, Florida Statutes, the COUNTY shall indemnify, defend, and hold harmless the DEPARTMENT and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the COUNTY, its agents, or employees during the performance of this Agreement, except that neither the COUNTY, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the DEPARTMENT or any of its officers, agents, or employees during the performance of this Agreement.

The parties recognize and accept the funding restrictions set forth in Section 339.135(6)(a), and Section 129.07, Florida Statutes, which may affect each of the parties' obligations. Those provisions are as follows:

(a) 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 (1) 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. Section 339.135(6)(a), Florida Statutes. Accordingly, the State of Florida's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Legislature.

(b) It is unlawful for the Board of County Commissioners to expend or contract for the

expenditure in any fiscal year more than the amount budgeted in each fund's budget, except as provided herein, and in no case shall the total appropriations of any budget be exceeded, except as provided in s. 129.06, and any indebtedness contracted for any purpose against either of the funds enumerated in this chapter or for any purpose, the expenditure for which is chargeable to either of said funds, shall be null and void, and no suit or suits shall be prosecuted in any court in this state for the collection of same, and members of the Board of County Commissioners voting for and contracting for such amounts and the bonds of such members of said boards also shall be liable for the excess indebtedness so contracted for. Section 129.07, Florida Statutes.

When either party receives a notice of claim for damages that may have been caused by the other party in the performance of services required under this Agreement, that party will immediately forward the claim to the other party. Each party will evaluate the claim and report its findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim.

14. *This Agreement shall continue in effect and be binding on the parties until the PROJECT is completed, final costs are known and legislatively appropriated reimbursements, if approved, are made by the DEPARTMENT. However, the COUNTY's obligation to maintain the PROJECT after completion by the DEPARTMENT shall survive the term of this Agreement.*

15. This document 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 Locally Funded Agreement to be executed in its behalf this _____ day of _____, 2002, 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 _____, 2002, and the DEPARTMENT has executed this Locally Funded Agreement through its District Secretary for District One, Florida Department of Transportation, this ____ day of _____, 2002.

LEE COUNTY, FLORIDA

BY: _____
CHAIRMAN

BY: _____
COUNTY ATTORNEY

ATTEST: _____ (SEAL)
CLERK

NAME: _____

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

ATTEST: _____ (SEAL)
EXECUTIVE SECRETARY

BY: _____
DISTRICT SECRETARY
DISTRICT ONE

NAME: _____

DOT Legal Review:

MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made and entered into this ___ day of _____, 2002, by and between the State of Florida Department of Transportation, hereinafter referred to as "FDOT", and the State of Florida, Department of Insurance, Division of Treasury, hereinafter referred to as "TREASURY" and Lee County, Florida, hereinafter referred to as the "COUNTY".

WITNESSETH:

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

FM No.: 195765 1 32 01
County: Lee

hereinafter referred to as the "Project"; and

WHEREAS, FDOT and the COUNTY entered into a Locally Funded Agreement dated _____, 2002, wherein FDOT agreed to perform certain work on behalf of the COUNTY in conjunction with the Project.

WHEREAS, the parties to this AGREEMENT mutually agree that it would be in the best interest of the 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 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 ONE MILLION SEVEN HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,700,000.00) will be made by the COUNTY into an interest bearing escrow account established by the Department for the purposes of the project. Said escrow account will be opened with the Department of Insurance, 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 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 Insurance, Revenue Processing, and mailed to the FDOT Office of Comptroller for appropriate processing at the following address:

Florida Department of Transportation
Office of Comptroller
3717 Apalachee Parkway
Mail Station 24
Tallahassee, Florida 32311
ATTN: LFA Section

A copy of this Agreement shall accompany the deposits.

4. The FDOT's Comptroller or designee shall be the sole signatories on the escrow account with the Department of Insurance 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 Treasurer agrees to provide written confirmation of receipt of funds to the FDOT.

7. The Treasurer's Office further agrees to provide periodic reports to the FDOT.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
COMPTROLLER

STATE OF FLORIDA
DEPARTMENT OF INSURANCE
DIVISION OF TREASURY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
CHAIRMAN

ATTEST:

BY: _____ (Seal)
CLERK

APPROVED AS TO FORM AND
CORRECTNESS

BY: _____
COUNTY ATTORNEY

FEDERAL TAX I.D.
