

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

**Blue Sheet No. 20030791**

**1. REQUESTED MOTION:** Approve Joint Project Agreement with the Florida Department of Transportation for Construction of Buccaneer Mobile Home Park Noise Barrier, in the amount of \$750,000.00. Also, approve budget transfer from reserves as stated in background. Amend FY03-07 Capital Improvement Program. And, approve authorizing resolution for Chairman to execute agreement.

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

**WHAT ACTION ACCOMPLISHES:** Allows County to proceed with Construction Of Buccaneer Mobile Home Park Noise Barrier.

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

*C9B*

**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

**6. REQUESTOR OF INFORMATION:**

- A. COMMISSIONER
- B. DEPARTMENT Transportation
- C. DIVISION

BY: Scott M. Gilbertson

**7. BACKGROUND:**

In accordance with our County Incentive Grant Program agreement with the FDOT, Lee County has agreed to construct the widening of US Business 41 from Marianna to Littleton Rd. In conjunction with that project FDOT has asked us to also construct the noise wall required by federal standards in front of Buccaneer Mobile Home park with the roadway. This agreement provides reimbursement for the funds required to accomplish that.

Transfer from District 2 Impact Fee Reserves in the amount of \$750,000, needed to fund FDOT JPA agreement to be reimbursed by FDOT in their Fiscal Year 2007/2008.

Funds are available as follows: 20402018802.506540

**8. MANAGEMENT RECOMMENDATIONS:** Approve the agreement.

**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>7/14/03</i> <i>[Signature]</i>	<i>[Signature]</i>	NA		<i>[Signature]</i>	OA <i>ebw</i> <i>7-22-03</i>	OM <i>[Signature]</i> <i>7/22</i>	Risk <i>58</i> <i>2/22/03</i>	GC <i>[Signature]</i> <i>7/22/03</i>	<i>[Signature]</i> <i>7-15-03</i>

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

RECEIVED BY  
COUNTY ADMIN: *EW/PM*

*7/22* *9:20*

COUNTY ADMIN  
FORWARDED TO:

*7/22* *11:00*

REC'D.  
by CO. ATTY:  
*7/17/03*

*4:50 PM*

CO. ATTY: *7/18/03*

FORWARDED TO:  
*Budget*

*9:00 AM*



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

**A RESOLUTION AUTHORIZING LEE COUNTY  
TO ENTER INTO AN A JOINT PROJECT 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 Joint Project Agreement with the Florida Department Of Transportation.

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

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

1. The Joint Project Agreement for Construction Of Buccaneer Mobile Home Park Noise Barrier 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 \_\_\_\_\_, 2003.

ATTEST: CHARLIE GREEN

BOARD OF COUNTY  
COMMISSIONERS OF LEE COUNTY,  
FLORIDA

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

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

APPROVED AS TO FORM:

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

FM NO: 195754 1 54 01  
COUNTY: LEE

**JOINT PROJECT AGREEMENT  
BETWEEN THE  
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
AND  
LEE COUNTY  
FOR CONSTRUCTION OF BUCCANEER MOBILE HOME PARK  
NOISE BARRIER**

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 adopted work program for fiscal years 2001/2002 – 2002/2003 for construction of the Buccaneer Mobile Home Park Noise Barrier, as further described in Exhibit "A", attached hereto and made a part hereof.

WHEREAS, the DEPARTMENT is authorized under Section 339.12(4)(c) to enter into this Agreement, the PROJECT is on the State Highway System and is not revenue producing; and

WHEREAS, the completion of the PROJECT is in the best interest of both the DEPARTMENT and the COUNTY, it would be most practical and expeditious for the COUNTY to undertake construction of the PROJECT; and

WHEREAS, the COUNTY, by Resolution dated the \_\_\_ day of \_\_\_\_\_, 2003, 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:

**SERVICES AND PERFORMANCE**

A. The COUNTY shall furnish the services with which to construct the PROJECT, Said PROJECT consists of: Buccaneer Mobile Home Park Noise Barrier, as further described in Exhibit "A", attached hereto and made a part hereof.

B. The COUNTY agrees to undertake construction and construction engineering inspection services (CEI) of the PROJECT in accordance with all applicable federal, state and local statutes, rules and regulations, and standards. Upon completion of the PROJECT, the COUNTY shall certify to the DEPARTMENT that the PROJECT has been completed in accordance with the applicable standards, statutes, rules and regulations in writing.

C. The DEPARTMENT will be entitled at all times to be advised, at its request, as to the status of the work being done by the COUNTY and of the details thereof. Coordination shall be maintained by the COUNTY with representatives of the DEPARTMENT. COUNTY shall provide the DEPARTMENT with quarterly progress reports.

D. i) This project is located on the State Highway System. The DEPARTMENT shall provide to the COUNTY specifications with the plans and post design services for this PROJECT. The DEPARTMENT will be responsible for obtaining clearances/permits required for the construction of the PROJECT from the appropriate permitting authorities. This agreement authorizes the COUNTY to bid the project, and to hire consultant CEI services using the DEPARTMENT'S scope of services as basis for selection, all in accordance with the terms of D. ii).

ii) The COUNTY must certify that the consultant has been selected in accordance with the Consultants's Competitive Negotiation Act (Section 287.055, Florida Statutes). Contractor must be prequalified by the DEPARTMENT as required by Section 2 of the Standard Specifications for Road and Bridge Construction (2000), as amended.

iii) It is understood and agreed by the COUNTY that upon completion of construction and pursuant to Section 336.021(3), Florida Statutes, the DEPARTMENT shall be responsible for maintenance of the PROJECT.

E. The COUNTY shall not sublet, assign, or transfer any work under this Agreement without prior written consent of the DEPARTMENT.

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

<i>Mr. Paul Theberge, P.E.</i>	<i>Ms. Betsy Rowan</i>
<i>Resident Construction Engineer</i>	<i>Project Manager</i>
<i>Florida Department of Transportation</i>	<i>Lee County Department of Transportation</i>
<i>P.O. Box 789</i>	<i>1500 Monroe Street</i>
<i>Fort Myers, Florida 33902</i>	<i>Fort Myers, Florida 33901</i>

## **2-TERM**

A. The COUNTY shall perform the PROJECT activities in accordance with the following schedule:

- a) Construction contract to be let on or before \_\_\_\_\_.
- b) Construction to be completed on or before \_\_\_\_\_.

B. This Agreement shall not be renewed. Any extension shall be in writing and executed by both parties, and shall be subject to the same terms and conditions set forth in this Agreement.

### **3-COMPENSATION AND PAYMENT**

A. The DEPARTMENT agrees to a maximum participation for construction of the PROJECT in the amount of SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$750,000.00).

B. The DEPARTMENT agrees to pay the COUNTY in accordance with Section 339.12(4)(c), Florida Statutes, and totally subject to legislative approval and appropriation, in accordance with paragraph 7 herein. Said payback will take place in 2007/2008, the fiscal year in which the PROJECT is currently programmed, and after receipt of invoice from the COUNTY once the PROJECT has been finally accepted by the DEPARTMENT. Invoice is to be sent to the Project Manager for approval and processing. In the event the COUNTY proceeds with construction of the PROJECT with its own forces, the COUNTY will only be reimbursed for direct costs (this excludes general and administrative overhead).

C. The COUNTY agrees to provide project schedule progress reports to the DEPARTMENT in the standard format used by the DEPARTMENT and at intervals established by the DEPARTMENT. The DEPARTMENT will be entitled at all times to be advised, at its request, as to the status of work being done by the COUNTY and of the details thereof. Either party to the Agreement may request and be granted a conference.

D. 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. The DEPARTMENT will have the right to visit the site for inspection of the work and the drawings of the COUNTY at any time.

E. (1) The COUNTY shall allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the COUNTY in conjunction with this Agreement. Failure by the COUNTY to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the DEPARTMENT.

(2) Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this Agreement and for three years after final payment is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred include the contractor(s)/consultant(s) general accounting records and the project records, together with supporting documents and records, of the contractor(s)/consultant(s) and all subcontractor(s)/subconsultant(s) performing work on the project, and all other records of the contractor(s)/consultant(s) and subcontractor(s)/subconsultant(s) considered necessary by the DEPARTMENT for a proper audit of costs.

(3) 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 Contract is contingent upon an annual appropriation by the Legislature.

(4) The COUNTY shall not sublet, assign or transfer any work under this Agreement without the prior written consent of the DEPARTMENT.

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

(6) 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.

(7) A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime 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 in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

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

F. 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.

G. (1) To the extent allowed by Section 768.28, Florida Statutes, 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 any negligent act or occurrence of omission or commission of the COUNTY, its officers, agents, employees or subcontractors. Neither COUNTY nor any of its

officers, agents, employees or subcontractors will be liable under this section for the negligence of the DEPARTMENT or any of its officers, agents or employees.

(2) The COUNTY agrees to include the following indemnification in all contracts with contractors/subcontractors, consultants/subconsultants who perform work in connection with this Agreement:

"The contractor shall indemnify, defend, save and hold harmless the DEPARTMENT and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor, its officers, agents or employees. Neither the contractor, nor any of its officers, agents or employees will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of the DEPARTMENT or any of its officers, agents or employees."

H. 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 legislatively appropriated reimbursements, if approved, are made by the DEPARTMENT.

I. 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 representation 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 Joint Project Agreement to be executed in its behalf this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by the Chairman of the Board of Commissioners and the DEPARTMENT has executed this Joint Project Agreement through its District Secretary for District One, Florida Department of Transportation, this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

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

By: \_\_\_\_\_  
DISTRICT SECRETARY

ATTEST: CHARLIE GREEN  
CLERK OF CIRCUIT COURT

ATTEST:

By: \_\_\_\_\_ (Seal)

By: \_\_\_\_\_ (Seal)  
EXECUTIVE SECRETARY

APPROVED AS TO FORM:

LEGAL REVIEW:

By: \_\_\_\_\_  
COUNTY ATTORNEY'S OFFICE

By: \_\_\_\_\_  
DISTRICT LEGAL COUNSEL

## **EXHIBIT "A"**

The proposed project is a wall to be built in front of Buccaneer Estates on the right (east) side of US 41 Business (SR 739). The wall will be on the backside of the canal/ditch approximately 4' from the right of way line. It will be 2060 feet in length from approximately Sta. 250+00 to approximately Sta. 271+00. This is from the entrance north to the property line opposite Littleton Road. Proposed height is 16' and will benefit 38 receivers. Design is proposed to be post and panel.