

1. ACTION REQUESTED/PURPOSE:

Approve Joint Project Agreement with the Florida Department of Transportation for installation of 72" buried pipe across Three Oaks Parkway in the amount of \$90,720.00. Also, approve authorizing resolution for Chairwoman to execute agreement and budget amendment resolution in the Transportation Capital Improvement Fund. Amend the FY 07-11 CIP.

2. WHAT ACTION ACCOMPLISHES:

Allows contractor on-site (Posen Construction) to install pipe.

3. MANAGEMENT RECOMMENDATION: Recommend approval.

4. Departmental Category: 09

C9B

5. Meeting Date: Nov. 14, 2006

6. Agenda:

- Consent
- Administrative
- Appeals
- Public
- Walk-On

7. Requirement/Purpose: (specify)

- Statute
- Ordinance
- Admin. Code
- Other

8. Request Initiated:

Commissioner _____
Department Transportation
Division _____
By: Scott M. Gilbertson,
Director

Background:

On March 21, 2006, Lee County BoCC awarded Posen Construction to construct the Three Oaks Parkway South project.

The Florida Department of Transportation is requesting Lee County DOT's on-site contractor, Posen Construction to install a 72 inch pipe to be buried across Three Oaks Parkway. The FDOT has agreed to reimburse Lee County for these services.

A change order for Posen Construction is in process.

Funds will be available in account: 20404330700.506540

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/ P.W. Director
<i>[Signature]</i>	<i>[Signature]</i>	N/A		<i>[Signature]</i>	Analyst	Risk	Grants	Mgr.	<i>[Signature]</i>
					<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY
COUNTY ADMIN:
11/1/06
4:03 PM
COUNTY ADMIN
FORWARDED TO:
11/1/06
11/2/06

Rec. by CoAtty
Date: 11/1/06
Time: 1:00 PM
Forwarded To:
11/1/06
2:45 PM

RESOLUTION

Amending the Budget of Transportation Capital Improvements-Fund 30700 to incorporate the unanticipated receipts into Estimated Revenues and Appropriations for the fiscal year 2006-2007.

WHEREAS, in compliance with the Florida Statutes 129.06(2), it is the desire of the Board of County Commissioners of Lee County, Florida, to amend the Transportation Capital Improvements-Fund 30700 budget for \$90,720 of the unanticipated revenue from FDOT and an appropriation of a like amount for construction costs and;

WHEREAS, the Transportation Capital Improvements-Fund 30700 budget shall be amended to include the following amounts which were previously not included.

ESTIMATED REVENUES		
Prior Total:		57,095,220
Additions		
20404330700.369900.9183	Reimbursement from FDOT	90,720
Amended Total Estimated Revenues		\$57,185,940

APPROPRIATIONS		
Prior Total:		\$57,095,220
Additions		
20404330700.506540	Improvements Construction	90,720
Amended Total Appropriations		\$57,185,940

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Lee County, Florida, that the Transportation Capital Improvements-Fund 30700 budget is hereby amended to show the above additions to its Estimated Revenue and Appropriation accounts.

Duly voted upon and adopted in Chambers at a regular Public Hearing by the Board of County Commissioners on this ____ day of _____, 2006.

ATTEST:
CHARLIE GREEN, EX-OFFICIO CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY, FLORIDA

BY: _____
DEPUTY CLERK

CHAIRWOMAN

APPROVED AS TO FORM

OFFICE OF COUNTY ATTORNEY

DOC TYPE YA
LEDGER TYPE BA

LEE COUNTY RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING LEE COUNTY TO
ENTER INTO A JOINT PROJECT 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 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 334.044, Florida Statutes.

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

1. The Joint Project Agreement for the installation of 72 inch buried pipe across Three Oaks Parkway in the amount of ninety thousand seven hundred twenty dollars (\$90,720.00).
2. The Florida Department of Transportation agrees to pay 100% for the pipe installation in the maximum participation of \$90,720.00. Lee County agrees to undertake the project.
3. The Chairwoman of, and the Clerk of the Board of Lee County Commissioners are hereby authorized to execute said Agreement.
4. 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 _____, 2006.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY

By: _____
Deputy Clerk

By: _____
Chairwoman

APPROVED AS TO FORM:

By : _____
Office of the County Attorney

**JOINT PROJECT AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
LEE COUNTY**

This is an Agreement by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter, "DEPARTMENT") and LEE COUNTY, FLORIDA (hereinafter, "COUNTY"), for pipe installation construction and CEI.

WITNESSETH

1. WHEREAS, the DEPARTMENT plans in its work program to Fund installation of 72 inch buried pipe across Lee County Three Oaks Parkway project. Work is to be performed by Lee County DOT contractor already on site for the construction of the Three Oaks Parkway. The pipe is to be plugged to allow the FDOT to connect this pipe from the I-75 ROW to a pond owned by the DEPARTMENT (p. 108 on FPID #406255-2). Location of the pipe installation is on the west side of I-75, approximately 3.3 miles north of Bonita Beach Road. Approximate MP 4.3 on Section ID 12075 under FM # 422479 1 58 01, in FY 06/07 (hereinafter "PROJECT"); and
2. WHEREAS, said PROJECT is on the State Highway System, is not revenue producing and is contained in the tentative Five Year Transportation Plan; and
3. WHEREAS, the COUNTY is willing to undertake the PROJECT and the DEPARTMENT is willing to compensate the COUNTY for costs directly related to the work as described herein; and
4. WHEREAS, the COUNTY by Resolution, dated the ___ day of _____, 2006, a copy of which is attached hereto and made a part hereof, has authorized the Chairman of the County Commission or designee 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:

I. SERVICES AND PERFORMANCE

1. The COUNTY agrees to undertake the PROJECT and the DEPARTMENT agrees to pay for said services, as stated in section II.2 below, provided they are performed in accordance with the DEPARTMENT'S specifications and the terms and conditions of this Agreement.
2. The DEPARTMENT, at its expense, shall maintain the pipe upon completion of installation and acceptance by the DEPARTMENT.

3. 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. Coordination shall be maintained by the COUNTY with representatives of the DEPARTMENT.

II. PAYMENT TERMS

1. The DEPARTMENT agrees to pay the COUNTY for the herein described services at the compensation amount as detailed in this Agreement. The COUNTY agrees to complete the PROJECT by January, 2007 for the amount set forth in this Agreement.
2. The DEPARTMENT agrees to a maximum participation in the PROJECT in the amount of NINETY THOUSAND SEVEN HUNDRED TWENTY DOLLARS (\$90,720.00).
3. The DEPARTMENT agrees to pay the COUNTY in accordance with F.S. §339.12; the DEPARTMENT'S obligation to pay shall be subject to legislative approval and appropriation. In the event the COUNTY proceeds with the PROJECT with its own forces, the COUNTY will only be reimbursed for direct costs (this excludes general and administrative overhead).
4. Except as otherwise provided herein, 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.
5. Invoices or requests for payment from the COUNTY shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof and in sufficient detail for the DEPARTMENT to confirm the extent of work completed and compliance of such work with the terms of this Agreement.
6. Bills or invoices for travel expenses, if applicable, specifically authorized in this Agreement shall be submitted and paid in accordance with F.S. §112.061.
7. If a payment is not available within 40 days, a separate interest penalty at the rate established pursuant to F.S. §55.03(1), per day will be due and payable, in addition to the invoice amount, to the Vendor. Interest penalties of less than one (1) dollar will not be enforced unless the Vendor requests payment. Invoices which have to be returned to a Vendor because of Vendor preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT.

8. Vendors (in this document identified as COUNTY) providing goods and services to the DEPARTMENT should be aware of the following time frames. Upon receipt, the DEPARTMENT has five (5) working days to inspect and approve the goods and services, unless the Agreement specifies otherwise. The DEPARTMENT has 20 days to deliver a request for payment (voucher) to the Department of Banking and Finance. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.
9. A Vendor Ombudsman has been established within the Department of Banking and Finance. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (904) 488-2924 or by calling the State Comptroller's Hotline, 1-800-848-3792.
10. 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 any consultant's or contractor's general accounting records and the project records, together with supporting documents and records, of any consultant or contractor and all sub-consultants or subcontractors performing work on the PROJECT, and all other records of the considered necessary by the DEPARTMENT for a proper audit of costs.
11. 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.
12. No funds received pursuant to this Agreement may be expended for lobbying the Legislature or a state agency.

III. GENERAL PROVISIONS

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

2. 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.
3. Unless otherwise specifically stated herein, this Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
4. 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.
5. The COUNTY shall allow public access to all documents, papers, letters or other material subject to the provisions of F. S. Chapter 119, 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.
6. 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 F.S. § 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
7. An entity or affiliate who has been placed on the discriminatory vendor list 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.

8. All notices under this Agreement and invoices from the COUNTY to the DEPARTMENT shall be directed to the following addresses:

TO DEPARTMENT:

William R. Jones, Project Manager
c/o Florida Department of Transportation
P.O. Box 1249
Bartow, FL 33831-1249

TO COUNTY:

Nicole Maxey, Project Manager
Lee County Department of Transportation
P.O. Box 398
Fort Myers, FL 33902-0398

IV. INDEMNITY

1. The DEPARTMENT shall not be obligated or liable hereunder to any party other than the COUNTY.
2. To the extent allowed by law, 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 or subcontractors 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. The parties agree that 1% of the total compensation to the COUNTY for performance of this Agreement is the specific consideration from the DEPARTMENT to the COUNTY for the COUNTY'S indemnity agreement.
3. The COUNTY agrees to include the following indemnification in all contracts with contractors/subcontractors and consultants/sub-consultants 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."
4. 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.

V. AUDITS

1. The administration of resources awarded by the Department to the LOCAL GOVERNMENT may be subject to audits and/or monitoring by the Department, as described in this section.

2. MONITORING

A. In addition to reviews of audits conducted in accordance with OMB Circular A-133 and §215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department staff to the LOCAL GOVERNMENT regarding such audit. The LOCAL GOVERNMENT further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

3. AUDITS

A. PART IV: REPORT SUBMISSION

(i) Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by PART I of this agreement shall be submitted, when required by §.320 (d), OMB Circular A-133, as revised, by or on behalf of the recipient directly to each of the following:

Florida Department of Transportation
Attn: Karen A. Miracola, District JPA/LFA Coordinator
2295 Victoria Avenue, Suite 292W
Fort Myers, Florida 33901

(ii) The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by §.320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

(iii) Other Federal agencies and pass-through entities in accordance with §.320 (e) and (f), OMB Circular A-133, as revised.

- (iv) In the event that a copy of the reporting package for an audit required by PART I of this agreement and conducted in accordance with OMB Circular A-133, as revised, is not required to be submitted to the Department for reasons pursuant to §.320 (e)(2), OMB Circular A-133, as revised, the recipient shall submit the required written notification pursuant to §.320 (e)(2) and a copy of the recipient's audited schedule of expenditures of Federal awards directly to the following:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

- (v) In addition, pursuant to §.320 (f), OMB Circular A-133, as revised, the recipient shall submit a copy of the reporting package described in §.320 (c), OMB Circular A-133, as revised, and any management letters issued by the auditor, to the Department at the following address:

Florida Department of Transportation
Attn: Karen A. Miracola, District JPA/LFA Coordinator
2295 Victoria Avenue, Suite 292W
Fort Myers, Florida 33901

- (vi) Copies of financial reporting packages required by PART II of this agreement shall be submitted by or on behalf of the recipient directly to the following:

Florida Department of Transportation
Attn: Karen A. Miracola, District JPA/LFA Coordinator
2295 Victoria Avenue, Suite 292W
Fort Myers, Florida 33902-1030

- (vii) The Auditor General's Office at the following address:

Auditor General's Office
Room 401, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

- (viii) Copies of reports or the management letter required by PART III of this agreement shall be submitted by or on behalf of the recipient directly to the Department at the following address:

Florida Department of Transportation
Attn: Karen A. Miracola, District JPA/LFA Coordinator
2295 Victoria Avenue, Suite 292W
Fort Myers, Florida 33902-1030

- (ix) Any reports, management letter, or other information required to be submitted to the Department pursuant to this agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
- (x) Recipients, when submitting financial reporting packages to the Department for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

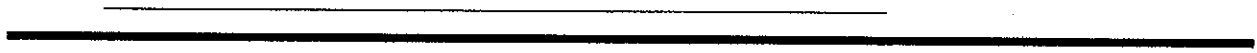
B. PART V: RECORD RETENTION

- (i) The recipient shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of at least five years from the date the audit report is issued, and shall allow the Department, or its designee, the state CFO or Auditor General access to such records upon request. The recipient shall ensure that the independent audit working papers are made available to the Department, or its designee, the state CFO, or Auditor General upon request for a period of at least five years from the date the audit report is issued, unless extended in writing by the Department.

VI. TERMINATION

1. The DEPARTMENT also reserves the right to seek termination or cancellation of this Agreement in the event the COUNTY shall be placed in either voluntary or involuntary bankruptcy. The DEPARTMENT further reserves the right to terminate or cancel this Agreement in the event an assignment is made for the benefit of creditors.
2. If the DEPARTMENT determines that the performance of the COUNTY is not satisfactory, the DEPARTMENT shall have the option of (i) immediately terminating the Agreement, or (ii) notifying the COUNTY of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or (iii) take whatever action is deemed appropriate by the DEPARTMENT.
3. If the DEPARTMENT requires termination of the Agreement for reasons other than unsatisfactory performance of the COUNTY, the DEPARTMENT shall notify the COUNTY of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
4. If the Agreement is terminated before performance is completed, the COUNTY shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress will become the property of the DEPARTMENT and will be turned over promptly by the COUNTY.

IN WITNESS WHEREOF, LEE COUNTY has caused this Agreement to be executed in its behalf, by the Chairman of the Board of County Commission or its 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. This Agreement shall become effective on:



LEE COUNTY, FLORIDA

ATTEST

CLERK (SEAL)

CHAIRMAN OR DESIGNEE

DATE

PRINT NAME DATE

LEE COUNTY LEGAL REVIEW AS TO FORM & SUFFICIENCY:

BY: _____
DATE

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

ATTEST

EXECUTIVE SECRETARY (SEAL)

BY: _____

DISTRICT SECRETARY OR DESIGNEE
DISTRICT ONE

PRINT NAME DATE

PRINT NAME DATE

FLA. DEPT. OF TRANS. LEGAL REVIEW:

BY: _____
DATE