

**LOCALLY FUNDED AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
LEE COUNTY**

This is an Agreement between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter, "DEPARTMENT") and LEE COUNTY, a political subdivision of the State of Florida, (hereinafter, "AGENCY") for the AGENCY to provide an estimated deposit amount to the DEPARTMENT to support the development of 60% plans and the Design Build RFP advertisement package for Burnt Store Road, a Lee County facility. Lee County will advertise with the design build RFP package provided by FDOT.

W I T N E S S E T H

A. WHEREAS, the DEPARTMENT has included in its Five-Year Work Program in Fiscal Year 2023/2024; and

B. WHEREAS the AGENCY requested the DEPARTMENT to:

The development of 60% plans and the Design Build RFP advertisement package for Burnt Store Road, a Lee County facility. Lee County will advertise with the design build RFP package provided by FDOT.

C. WHEREAS the DEPARTMENT and AGENCY desire to enter into this Locally Funded Agreement to set forth the terms and conditions upon which AGENCY shall provide funding (See **Exhibit "B", Estimated Schedule of Funding**, attached and incorporated by reference) for the PROJECT; and

D. WHEREAS, the AGENCY, by Resolution dated the 9 day of April, 2024, a copy of which is attached hereto and made a part hereof as **Exhibit "A"**, has authorized the Chairperson 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:

1. The foregoing recitals are true and correct and are hereby adopted incorporated into and made a part of this Agreement by reference, as if fully set forth herein.
2. The AGENCY agrees that it will, at least fourteen (14) calendar days after the execution of this agreement, furnish the DEPARTMENT an advance deposit in the amount of **Two Million Five Hundred Thousand Dollars, \$2,500,000.00** for payment of the estimated project cost for locally funded **project number #436928-2-32-01**. The Department will utilize this deposit for payment of the costs of the PROJECT.
3. If the accepted bid amount is in excess of the advance deposit amount, the AGENCY will provide an additional deposit within fourteen (14) calendar days of notification from the DEPARTMENT or prior to posting the accepted bids, whichever is earlier, so that the total deposit is equal to the bid amount. The DEPARTMENT will notify the AGENCY as soon as

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it becomes apparent the accepted bid amount is in excess of the advance deposit amount; however, failure of the DEPARTMENT to so notify the AGENCY shall not relieve the AGENCY from its obligation to pay for its full participation. If the AGENCY cannot provide the additional deposit with fourteen (14) calendar days, a letter must be submitted to and approved by the DEPARTMENT's project manager indicating when the deposit will be made. The AGENCY understands the request and approval of the additional time could delay the project, and additional cost may be incurred due to a delay of the project.

4. Should project modifications occur that increase the AGENCY's share of the project cost being performed, the AGENCY will be notified by the DEPARTMENT accordingly. The AGENCY agrees to provide, without delay, in advance of the additional work being performed, adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund its share of the project. The DEPARTMENT shall notify the AGENCY as soon as it becomes apparent the actual costs will overrun the award amount; however, failure of the Department to so notify the AGENCY shall not relieve the AGENCY from its obligation to pay for its full participation. Funds due from the date of the invoice are subject to an interest charge at the rate established pursuant to Section 55.03, Florida Statutes (F.S.).
5. In the event the final PROJECT cost is less than the advance deposit, the DEPARTMENT will refund the excess amount to the AGENCY and the DEPARTMENT will direct the Escrow Agent to release the excess funds to the Agency.

6. All deposits shall be made payable to the Florida Department of Transportation:

Florida Department of Transportation
OOC-GAO, LFA Section
605 Suwannee Street, MS 42B
Tallahassee, FL 3239

7. All notices under the Agreement shall be directed to the following contact persons:

TO DEPARTMENT:
Aileen Keating
Local Program Coordinator
Florida Department of Transportation
10041 Daniels Parkway
Fort Myers, Fl, 33913
(239) 225-1958
Aileen.Keating@dot.state.fl.us

TO AGENCY:
Rob L. Price, PE
Deputy Director
Lee County Department of Transportation
1500 Monroe Street, 3rd Floor
Fort Myers, Fl, 33901
(239) 533-8592
rprice@leegov.com

8. Failure of the AGENCY to deposit said amount shall be grounds for termination of this Agreement.
9. This Agreement shall continue in effect and be binding on the parties until the PROJECT is

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completed.

10. 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.
11. The DEPARTMENT shall not be obligated or liable hereunder to any party other than the AGENCY. The AGENCY shall not be obligated or liable hereunder to any party other than the DEPARTMENT.
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. 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 and executed by both parties.
14. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

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IN WITNESS WHEREOF, the AGENCY has caused this Agreement to be executed in its behalf through its Chairperson or its designee, as authorized by Resolution Number 24-04-06, 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: 04/11/2024

Department to enter date.

LOCAL AGENCY

LEE COUNTY



[Signature]
By: ~~CHAIRPERSON OR DESIGNEE~~

By: Mike Greenwell

Date: 4/8/24

Kevin Karnes
Lee County Clerk of Courts

ATTEST:

By:

[Signature]
04/09/24
Date

DEPUTY CLERK

Approved as to Form for the
Reliance of Lee County Only

By:

[Signature]
Office of the County Attorney

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

ATTEST

DocuSigned by:

[Signature]
4E01213FB85B470...

EXECUTIVE SECRETARY

(SEAL)

DocuSigned by:

BY:

[Signature]
E4FD33AAA641427...

DISTRICT SECRETARY OR DESIGNEE
DISTRICT ONE

Jerri McCants

04/11/2024 | 3:47 PM | Nicole E Mills

04/11/2024 | 3:30

PRINT NAME

DATE

PRINT NAME

DATE

FLA. DEPT. OF TRANS. LEGAL REVIEW:

BY:

[Signature]
937D1D5420A84D9...

04/10/2024 | 9:58 AM EDT

DATE

EXHIBIT "B"

ESTIMATED SCHEDULE OF FUNDING

**Financial Management Number:
436928-2-32-01**

Burnt Store Road from Van Buren Parkway to Charlotte County line

Design	
Phase:	Amount:
32	\$ 2,500,000.00
Total Contribution (Local Agency):	\$ 2,500,000.00

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AGENDA ITEM REPORT

DATE: April 2, 2024
DEPARTMENT: Transportation
REQUESTER: Randy Cerchie
TITLE: Approve FDOT Funding Agreement for Burnt Store Road North

I. MOTION REQUESTED

- A) Approve and authorize the Chair to execute the attached Agreement and Resolution with the Florida Department of Transportation for funding of Burnt Store Road North in the amount of \$2,500,000.
- B) Approve the creation of CIP Project #200802, approve Transfer of Funds from Project #204088 in Fund #30721 in the amount of \$3,500,000 and amend the FY 2023/24 CIP accordingly.

II. ITEM SUMMARY

Execute an agreement with the Florida Department of Transportation (FDOT) in which the County will contribute \$2,500,000 to the design phase of Burnt Store Road North. The Project Development & Environmental Study to include design up to 30% is being funded and managed by FDOT. FDOT has agreed to continue the design to 60% with creation of a design/build criteria package if the County will contribute \$2,500,000 to the project. The County will be responsible for acquisition of right-of-way for the project and this action includes establishing a \$1,000,000 budget to begin the ROW phase. Funding for this is available in County's Burnt Store widening project and will be transferred to the newly create project for Burnt Store North.

III. BACKGROUND AND IMPLICATIONS OF ACTION

A) Board Action and Other History

The Florida Department of Transportation began a Project Development and Environment (PD&E) Study in January 2020 along approximately 5.7 of Burnt Store Road from Van Buren Parkway to just north of the Charlotte County Line. The study is evaluating alternatives to widen this segment of Burnt Store Road from a two-lane undivided roadway to a four-lane divided roadway and expandable to six lanes in the future when need arises. FDOT has agreed to modify the PD&E contract to include advancing design plans to 60% and development of a design-build criteria package that can be provided to the County for completion of the project.

This action will approve County funding for the next phase of design to 60% in the amount of \$2,500,000. Also included in this action is funding of \$1,00,000 to begin right-of-way purchases that will be handled by the County.

B) Policy Issues

C) BoCC Goals

D) Analysis

Funding for construction has not been identified yet. The County and State will partner to apply for Federal and State grant opportunities.

E) Options

IV. FINANCIAL INFORMATION

A)	Current year dollar amount of item:	\$3,500,000
B)	Is this item approved in the current budget?	Yes
C)	Is this a revenue or expense item?	Expense
D)	Is this Discretionary or Mandatory?	Discretionary

E)	Will this item impact future budgets? If yes, please include reasons in III(D) above.	Yes
F)	Fund: Surplus Cape Coral Program: Capital Projects Project: Burnt Store North Account Strings: 20080230721	
G)	Fund Type?	Enterprise
H)	Comments:	

V. RECOMMENDATION

Approve

VI. TIMING/IMPLEMENTATION

VII. FOLLOW UP

ATTACHMENTS:

Description	Upload Date	Type
436928-2 Locally Funded Agreement Between FDOT and Lee County	3/18/2024	Agreement
436928-2 Three Party Escrow Agreement	3/18/2024	Agreement
Resolution	3/18/2024	Resolution
Budget Transfer	3/22/2024	Transfer of Funds

REVIEWERS:

Department	Reviewer	Action	Date
Transportation	Cerchie, Randy	Approved	3/22/2024 - 10:45 AM
Budget Services	Guttery, Angela	Approved	3/22/2024 - 12:04 PM
Budget Services	Winton, Peter	Approved	3/22/2024 - 1:16 PM
County Attorney	Adams, Joseph	Approved	3/25/2024 - 9:37 AM
County Manager	Hamer, David	Approved	3/25/2024 - 3:24 PM