

RESOLUTION R-03-84

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS,
MANATEE COUNTY, FLORIDA, AUTHORIZING ADVANCE OF
CONSTRUCTION FUNDS TO THE FLORIDA DEPARTMENT OF
TRANSPORTATION**

WHEREAS, it is necessary that advance construction financing be provided by Manatee County to the Florida Department of Transportation for construction of State Road 70 from Lakewood Ranch Boulevard to Lorraine Road.

WHEREAS, Florida Statutes and generally accepted accounting principles permit the Manatee County, Florida, Board of County Commissioners (the "County") to advance monies for these purposes; and

WHEREAS, the County desires to meet this need by advancing monies from the Transportation Impact Fee Fund 135, District D Special Revenues Fund, Impact Fee Fund 335, District D Capital Projects Fund, the Local Option Gas Tax Fund 307, and the Local Option Gas Tax Fund 319 to the Florida Department of Transportation.

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

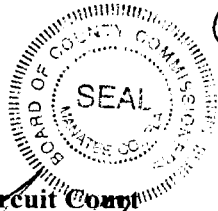
SECTION 1: The Board of County Commissioners hereby authorizes the advance of an amount not to exceed \$7,423,000 from the Transportation Impact Fee Fund 135, District D Special Revenues Fund Balance, Impact Fund 335, District D Capital Projects Fund Balance, the Local Option Gas Tax Fund 307 Fund Balance, and the Local Option Gas Tax Fund 319 Fund Balance to the Florida Department of Transportation for construction of State Road 70 from Lakewood Ranch Boulevard to Lorraine Road.

SECTION 2: The Impact Fee Funds and Gas Tax Funds are to be reimbursed according to a Locally Funded Agreement and Memorandum of Agreement between Manatee County and the Florida Department of Transportation, which is attached hereto as Exhibit "A".

PASSED AND DULY ADOPTED with a quorum present and voting this the 25th day of March, 2003.

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

By: *David W. Schuman*
VICE - Chairman



ATTEST: R. B. SHORE
Clerk of the Circuit Court

By: *Susan Krome D.C.*

EXHIBIT "A"

FM NO : 404323 2 32/52/62 01
COUNTY : MANATEE

LOCALLY FUNDED AGREEMENT
BETWEEN THE
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
MANATEE COUNTY
FOR DESIGN AND CONSTRUCTION OF IMPROVEMENTS TO SR 70

This is a Locally Funded Agreement (hereinafter the "Agreement") between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT" and MANATEE COUNTY, hereinafter referred to as the "COUNTY"

WITNESSETH

WHEREAS, the COUNTY desires to have the DEPARTMENT conduct a six-lane roadway design, construction and construction engineering and inspection for S.R. 70 from Lakewood Ranch Boulevard to Lorraine Road (hereinafter referred to as the "PROJECT"); and

WHEREAS, the PROJECT is not presently in the DEPARTMENT'S Five Year Work Program but is contemplated within the DEPARTMENT'S Florida Transportation Plan and is of high priority based on the prevailing principles of preserving the existing transportation infrastructure, enhancing Florida's economic growth and competitiveness, and improving travel choices to ensure mobility; and

WHEREAS, the DEPARTMENT is willing to design and construct the PROJECT under FM No. 404323-2-32/52/62-01 and the COUNTY is willing to advance the required funds for the PROJECT in accordance with Section 339.12(4)(a), Florida Statutes; and

WHEREAS, the DEPARTMENT agrees to reimburse the COUNTY for a designated portion of the cost of the PROJECT in accordance with Section 339.12(4)(a), Florida Statutes. The agreement to reimburse the COUNTY is expressly subject to legislative approval and appropriation of funds necessary to make the reimbursement. Subject to legislative approval and appropriation, reimbursement shall be made beginning in the DEPARTMENT'S fiscal year 2008/2009, with reimbursement to be made to the COUNTY in ten (10) equal quarterly payments.

WHEREAS, the COUNTY, by Resolution dated the ___ day of _____, 200___, 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.

WHEREAS, the PROJECT is on the State Highway System and is not revenue producing.

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

1. The total estimated cost of the PROJECT, as described in paragraph 1 above, is TEN MILLION FOUR HUNDRED TWENTY-THREE THOUSAND AND 00/100 DOLLARS (\$10,423,000.00). Of the total estimated cost of the PROJECT, THREE MILLION DOLLARS (\$3,000,000.00) is to be provided as part of the Transportation Outreach Program ("TOP") pursuant

to Section 339.137, Florida Statutes. The COUNTY agrees to advance funds to the DEPARTMENT in the amount of SEVEN MILLION FOUR HUNDRED TWENTY-THREE THOUSAND AND 00/100 DOLLARS (\$7,423,000.00) for the COUNTY'S portion of the estimated cost of the PROJECT. The aforesaid \$7,423,000.00 shall be deposited by the COUNTY in an interest bearing escrow account in the name of the Florida Department of Transportation with the Department of Financial Services, 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 Financial Services and by this reference made a part of this Agreement as though fully set forth herein. The aforesaid amount of \$7,423,000.00 shall be deposited by the COUNTY no less than thirty (30) days prior to the date on which the DEPARTMENT advertises for proposals for the design/build contract for the PROJECT. Interest from the account into which funds are deposited shall be left in the account and applied to pay any future additional amounts for the PROJECT which exceed the estimated PROJECT cost. All deposits shall be made to the Department of Financial Services, 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, Suite B
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 confirmation of receipt of the funds from the COUNTY in accordance with paragraphs 1 above, will begin the design and construction of the PROJECT by means of a design/build contractor. The DEPARTMENT shall be authorized to withdraw from the deposited funds the amounts necessary to fund the design/build of the PROJECT.

3. The DEPARTMENT agrees to reimburse the COUNTY in accordance with Section 339.12(4)(a), Florida Statutes for the amounts deposited by the COUNTY pursuant to paragraph 1 above together with any additional amounts paid by the COUNTY pursuant to paragraph 4 below. The DEPARTMENT'S obligation to reimburse the COUNTY is subject to legislative approval and appropriation of funds. In any event, reimbursement by the DEPARTMENT will not begin before the DEPARTMENT'S fiscal year 2008/2009 and reimbursement to the COUNTY shall be made in ten (10) equal quarterly payments.

4. The DEPARTMENT and the COUNTY recognize that the exact cost of the design and construction of 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 further agrees to advance reasonable additional funds, as requested by the DEPARTMENT, to provide the necessary funding with which to complete the PROJECT. Said request from the DEPARTMENT for additional funds shall be in writing and the additional costs shall be

substantiated by the DEPARTMENT. If the DEPARTMENT requests such additional amounts to complete the PROJECT, the COUNTY shall provide said funds at the later of the date specified by the DEPARTMENT or thirty (30 days) from final execution of an amendment to this Agreement.

5. Upon final payment to the design-build contractor, the DEPARTMENT shall, within three hundred sixty (360) days, furnish the COUNTY with a copy of its final and complete billing of all costs 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 pay 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:

Terry Muse, P.E.
Resident Construction Engineer
Sarasota Construction
Florida Department of Transportation
1838 61st Street
Sarasota, Florida 34243

TO COUNTY:

Janet McAfee, Director
Project Management
Manatee County
1026 26th Avenue East
Bradenton, Florida 34208

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.

16. This Agreement is expressly contingent upon the DEPARTMENT obtaining from Schroeder-Manatee Ranch, Inc., the owner of the land adjoining the PROJECT, donation to the DEPARTMENT of land necessary for storm water drainage ponds/facilities and for required right-of-way for the mainline highway portion of the PROJECT. If the DEPARTMENT does not obtain donation of this land as required for the PROJECT, then this Agreement shall, at the DEPARTMENT'S option, be null and void.

17. 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.

18. 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 _____, 200____, 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 _____, 200____, and the DEPARTMENT has executed this Locally Funded Agreement through its District Secretary for District One, Florida Department of Transportation, this ____ day of _____, 200____.

MANATEE 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: _____

FDOT Legal Review:

MEMORANDUM OF AGREEMENT

THIS AGREEMENT, made and entered into this _____, day of _____, 200__, by and between the State of Florida, Department of Transportation, hereinafter referred to as "FDOT" and the State of Florida, Department of Financial Services, Division of Treasury and Manatee County hereinafter referred to as the "Participant".

WITNESSETH

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

Financial Project Number:404323 2 52 01
County: Manatee
S.R. 70 from Lakewood Ranch Boulevard to Lorraine Road

hereinafter referred to as the "Project".

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

WHEREAS, the parties to this AGREEMENT mutually agreed that it would be in the best interest of the FDOT and the Participant to establish an interest bearing escrow account to provide funds for the work performed on the Project on behalf of the Participant 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 Seven Million Four Hundred Twenty Three Thousand and 00/100 Dollars (\$7,423,000.00) will be made by the Participant into an interest bearing escrow account established by the FDOT for the purposes of the project. Said escrow account will be opened with the Department of Financial Services, 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 Participant as necessary to cover the cost of additional work prior to the execution of any Supplemental Agreements.

3. All deposits shall be made payable to the Department of Financial Services, 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, Suite B
Mail Station 24
Tallahassee, Florida 32311
ATTN: LFA Section

A copy of this Agreement should accompany any deposits. When the check is mailed to Tallahassee, the District Office should instruct the Participant to mail the District Office a copy of the check.

4. The FDOT's Comptroller and/or her designees shall be the sole signatories on the escrow account with the Department of Financial Services 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 Department of Financial Services agrees to provide written confirmation of receipt of funds to the FDOT.

7. The Department of Financial Services further agrees to provide periodic reports to the FDOT.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
COMPTROLLER

STATE OF FLORIDA
DEPARTMENT OF FINANCIAL SERVICES
DIVISION OF TREASURY

PARTICIPANT SIGNATURE

PARTICIPANT NAME & TITLE

PARTICIPANT ADDRESS

FEDERAL EMPLOYER I.D. NUMBER