

RESOLUTION NO. 03- 41

A RESOLUTION TO AUTHORIZE THE CHAIRMAN OF THE MARCO ISLAND CITY COUNCIL TO EXECUTE A STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION JOINT PROJECT AGREEMENT FOR CONSTRUCTION IMPROVEMENTS TO S.R. 951, BETWEEN SAN MARCO ROAD AND BUTTONWOOD COURT.

WHEREAS, the City of Marco Island and the State of Florida Department of Transportation desire to undertake improvements to S.R. 951 between San Marco Road and Buttonwood Court within the corporate limits of Marco Island; and

WHEREAS, the State of Florida Department of Transportation will compensate the City for costs directly related to the construction and inspection of improvements, which are presently under design by the City; and

WHEREAS, the City is willing to undertake the construction and inspection of the project with its own forces and/or through a contractor in accordance with Florida Department of Transportation standards, specifications and permit requirements; and

WHEREAS, the Florida Department of Transportation, after acceptance of all construction work for the project, agrees to pay the City a lump sum amount not to exceed Two Million Eight Hundred Seventy Thousand Ninety-one Dollars (\$2,870,091).

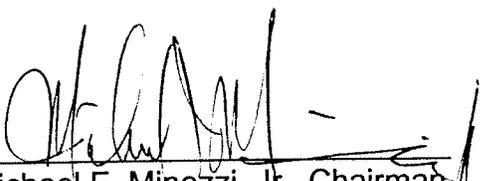
NOW, THEREFORE, BE IT RESOLVED by the City Council of Marco Island, Florida, in Council duly assembled, that the Chairman of the Marco Island City Council is authorized to execute the attached State of Florida Department of Transportation Joint Project Agreement for construction improvements to S.R. 951 between San Marco Road and Buttonwood Court.

Passed in open and regular session of the City Council of the City of Marco Island, Florida, this 21st day of July 2003.

Attest:



Laura Litzan, City Clerk



Michael F. Minozzi, Jr., Chairman

FM#: 195428-2-58/68-01
CITY: MARCO ISLAND

**JOINT PROJECT AGREEMENT
BETWEEN THE
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
CITY OF MARCO ISLAND
FOR CONSTRUCTION OF IMPROVEMENTS
TO SR951 FROM CR 92 TO BUTTONWOOD COURT**

This is an Agreement by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT" and CITY OF MARCO ISLAND, FLORIDA, hereinafter referred to as the "CITY".

WITNESSETH

WHEREAS, the DEPARTMENT is prepared, in accordance with its Five Year Work Program to fund improvements to SR951 (N. Collier Blvd.) in fiscal year 2004/2005, under FM Number 195428-2-58/68-01, hereinafter referred to as the "PROJECT"; and

WHEREAS, said PROJECT is on the State Highway System, is not revenue producing and is contained in the tentative Five Year Transportation Plan; and

WHEREAS, the CITY is willing to undertake the PROJECT and the DEPARTMENT is willing to compensate the CITY for costs directly related to the construction of the PROJECT; and

WHEREAS, the DEPARTMENT is willing to compensate the CITY for costs directly related to the construction and construction inspection services (CEI) for the PROJECT; and

WHEREAS, the CITY by Resolution, dated the 21 day of July, 2003, a copy of which is attached hereto and made a part hereof, has authorized the Chairperson of the City Council 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 CITY agrees to undertake the construction and CEI services for the PROJECT and the DEPARTMENT agrees to pay for said services, as stated in paragraph 5 herein, provided they are performed in accordance with the DEPARTMENT's specifications and the terms and conditions in this Agreement.

2. The PROJECT consists of the construction and CEI services for improvements to SR951 (N. Collier Blvd.) from CR 92 to Buttonwood Court in the City of Marco Island, Florida. Said

construction to be completed on or before February 28, 2007.

3. The DEPARTMENT shall provide to the CITY a completed set of PROJECT design plans.

4. The CITY will begin construction of the PROJECT when notified by the DEPARTMENT, with construction planned to commence on June 1, 2005.

5. The DEPARTMENT agrees to a maximum participation, including contingencies, in the PROJECT in the amount of TWO MILLION EIGHT HUNDRED SEVENTY THOUSAND NINETY-ONE AND NO/100 DOLLARS (\$2,870,091.00).

6. The DEPARTMENT agrees to pay the CITY in accordance with Section 339.12, Florida Statutes, and totally subject to legislative approval and appropriation, in accordance with paragraph 5 herein. Said payback will be made after receipt of an invoice from the CITY once the PROJECT has been final accepted by the DEPARTMENT. The invoice and supporting documentation is to be sent to the Project Manager for approval and processing. In the event the CITY proceeds with construction of the PROJECT with its own forces, the CITY will only be reimbursed for direct costs (this excludes general and administrative overhead).

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

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

TO DEPARTMENT:

Jason Sipes, P.E.
Project Manager
Florida Department of Transportation
Post Office Box 1249
Bartow, Florida 33831-1249

TO CITY:

Vladimir A. Ryziw, P.E.
Public Works Director
City of Marco Island
50 Bald Eagle Dr.
Marco Island, Florida 34145

9. (a) Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

(b) Bills for travel expenses specifically authorized in this Agreement shall be submitted and paid in accordance with Section 112.061, Florida Statutes.

(c) The CITY 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 CITY in conjunction with this Agreement. Failure by the CITY to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the DEPARTMENT.

(d) The DEPARTMENT agrees to pay the CITY for the herein described services at a compensation as detailed in this Agreement.

(e) Vendors (in this document identified as CITY) 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 Financial Services. 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.

(f) If a payment is not available within 40 days, a separate interest penalty at the rate established pursuant to Section 55.03(1), Florida Statutes, 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.

(g) A Vendor Ombudsman has been established within the Department of Financial Services. 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.

(h) 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 Consultant's general accounting records and the project records, together with supporting documents and records, of the Consultant and all subconsultants performing work on the project, and all other records of the Consultant and subconsultants considered necessary by the DEPARTMENT for a proper audit of costs.

(i) 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.

(j) No funds received pursuant to this Agreement may be expended for lobbying the Legislature or a state agency.

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

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

(m) In no event shall the making by the DEPARTMENT of any payment to the CITY 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 CITY, 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.

(n) 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.

(o) 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.

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

(q) 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.

10. a) The DEPARTMENT also reserves the right to seek termination or cancellation of this Agreement in the event the CITY 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 be made for the benefit of creditors.

- b) If the DEPARTMENT determines that the performance of the CITY is not satisfactory, the DEPARTMENT shall have the option of (i) immediately terminating the Agreement, or (ii) notifying the CITY 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.
- c) If the DEPARTMENT requires termination of the Agreement for reasons other than unsatisfactory performance of the CITY, the DEPARTMENT shall notify the CITY 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.
- d) If the Agreement is terminated before performance is completed, the CITY 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 CITY.

11. 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.

12. a) To the extent allowed by Section 768.28, Florida Statutes, the CITY 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 CITY, its officers, agents, employees or subcontractors or due to any negligent act or occurrence of omission or commission of the CITY, its officers, agents, employees or subcontractors. Neither CITY 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 CITY for performance of this Agreement is the specific consideration from the DEPARTMENT to the CITY for the CITY's indemnity agreement.

b) The CITY 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."

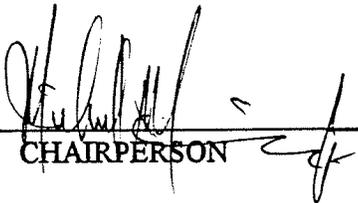
13. This Agreement shall continue in effect and be binding on the parties until the PROJECT is completed, final costs are known and legislatively appropriated reimbursements, if approved, are made by the DEPARTMENT.

14. 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 CITY has caused this Agreement to be executed in its behalf this ___ day of _____, 2003, by the Chairperson of the City Council, authorized to enter into and execute same by Resolution Number _____ of the Board on the ___ day of _____, 2003, and the DEPARTMENT has executed this Agreement through its District Secretary for District One, Florida Department of Transportation, this ___ day of _____, 2003.

CITY COUNCIL
CITY OF MARCO ISLAND, FLORIDA

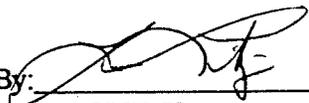
STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By:  _____
CHAIRPERSON

By: _____
DISTRICT SECRETARY

ATTEST:

ATTEST:

By:  _____ (Seal)
CLERK

By: _____ (Seal)
EXECUTIVE SECRETARY

Legal Review:

By: _____
DISTRICT LEGAL COUNSEL