

Agenda Item Summary

1. ACTION REQUESTED/PURPOSE: Approve the Interlocal Agreement between Lee County ("County") and the City of Sanibel ("City") for the County's financial participation in the construction costs of the City's Recreational Complex. Authorize Chairwoman's signature on the Interlocal Agreement.

2. WHAT ACTION ACCOMPLISHES: Finalizes the Interlocal Agreement for funding with the City of Sanibel.

3. MANAGEMENT RECOMMENDATION: County staff recommends approval.

4. Departmental Category: CA **CIC** **5. Meeting Date:** **05-02-2006**

6. Agenda: <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	7. Requirement/Purpose: (specify)		8. Request Initiated: Commissioner Department County Manager/ County Attorney Division By: Pete Winton Assistant County Manager
	<input type="checkbox"/> Statute	<input type="checkbox"/> Ordinance	
	<input type="checkbox"/> Admin. Code	<input type="checkbox"/> Interlocal Agreement	
	<input checked="" type="checkbox"/> Other		

9. Background:

On October 25, 2005, the Board of County Commissioners approved funding a portion of the construction costs for the City of Sanibel's Recreational Complex. Funds were transferred from Reserves to 20341130100.508150 for such purpose.

An Interlocal Agreement setting forth the following terms and conditions was negotiated by County Administration and subsequently approved by the Sanibel City Council:

- (1) The County will contribute funds on a reimbursable basis for the Recreational Complex, in the amount not to exceed \$3,200,000.00 or 28% of the Total Construction Costs, whichever is less;
- (2) The funds will be used only for construction;
- (3) The County's funding obligations under the agreement will be concluded once such funds have been expended;
- (4) The County will have no obligations post-completion, such as maintenance, repair, etc.; and
- (5) Residents and non-residents will be allowed to use the Recreational Complex and any usage fees charged will be applied equally and in a non-discriminatory manner.

In order to finalize the Interlocal Agreement, Board of County Commissioners' approval is required.

Attachments: (3) Interlocal Agreements

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

CO. ATTY. FORWARDED TO CO. ADMIN.
4-19-06 1:15 PM

RECEIVED BY COUNTY ADMIN:
4-19-06
COUNTY ADMIN FORWARDED TO:
4-19-06
SISJ



City of Sanibel

800 Dunlop Road
Sanibel, Florida 33957-4096

www.mysanibel.com

AREA CODE - 239

CITY COUNCIL	472-4135
ADMINISTRATIVE	472-3700
BUILDING	472-4555
EMERGENCY MANAGEMENT	472-3111
FINANCE	472-9615
LEGAL	472-4359
PARKS & RECREATION	472-9075
PLANNING	472-4136
POLICE	472-3111
PUBLIC WORKS	472-6397
UTILITIES	472-1008

April 18, 2006

Via Fed Ex

Kristie L. Kroslack, Esq.
Assistant County Attorney
Lee County Attorney's Office
2115 Second Street, 6th Floor
Fort Myers, FL 33901

2006 APR 19 AM 8:46
RECEIVED BY
LEE CO. ATTORNEY

**RE: Interlocal Agreement Between Lee County and the City of Sanibel
for the Sanibel Recreational Complex**

Dear Kristie:

Enclosed please find three (3) originals of the above-referenced Interlocal Agreement that was approved by the Sanibel City Council on this date. It is my understanding that this will be on the May 2, 2006 Agenda for consideration by the Lee County Board of County Commissioners.

Sincerely,

Julia Guernsey
Paralegal

Enclosures

**INTERLOCAL AGREEMENT BETWEEN
LEE COUNTY AND THE CITY OF SANIBEL FOR THE
SANIBEL RECREATIONAL COMPLEX**

THIS INTERLOCAL AGREEMENT is made and entered into this 18th day of April, 2006, by and between Lee County, a political subdivision and charter county of the State of Florida, acting by and through its Board of County Commissioners, the governing body thereof, hereinafter referred to as "County", and the City of Sanibel, a municipal corporation, acting by and through its City Council, the governing body thereof, hereinafter referred to as "City". The County and City may be referred to collectively as "Parties."

RECITALS:

WHEREAS, the City has planned and will construct a recreational capital project (the "Recreational Complex") to serve the recreational needs of the citizens of Sanibel and the citizens of unincorporated Lee County, non-resident visitors and tourists who wish to use the Recreational Complex; and

WHEREAS, the City has formed a cooperative relationship with the Lee County School Board in order to construct such Recreational Complex at the Sanibel School Site and to cooperate with the Lee County School Board with regard to the joint use of such Recreational Complex; and

WHEREAS, the County finds that it is appropriate, equitable and that it serves a proper public purpose for the County to participate in the financing of the capital costs of the Recreational Complex based upon a percentage generally equivalent to the historical and foreseeable future use of the Recreational Complex by unincorporated Lee County users of the Recreational Complex; and

WHEREAS, both the County and the City are duly empowered pursuant to Florida Statutes, in particular Section 163.01, to enter into Interlocal Agreements for the sharing of certain governmental powers and obligations, including financial participation and cooperation in projects such as the Recreational Complex;

NOW, THEREFORE, in consideration of the foregoing, and of the mutual covenants and conditions hereinafter set forth, acknowledged by the parties to be good and sufficient consideration, the City and the County, intending to be legally bound, hereby agree as follows:

I. INCORPORATION OF RECITALS

The above recitals are acknowledged by the parties to be true and correct and are hereby incorporated into the terms of this Agreement as if set out herein at length.

II. PURPOSE

It is the purpose and intent of this Agreement to set forth the terms and conditions for the County's financial participation in the planning, design, permitting and construction costs of the City's Recreational Complex to be located at the Sanibel School site. All terms and conditions of this Agreement will be interpreted in a manner consistent with and in furtherance of the purposes set forth in this section.

III. OBLIGATIONS OF THE CITY

The City planned and designed, and will construct, operate and maintain a multi-facility Recreational Complex with facilities that are planned to include, but which are not necessarily bound to or limited to, multipurpose pool areas, air-conditioned gymnasium, weight room and exercise room, restrooms and locker rooms, and handicapped accessible facilities. The Recreational Complex will be located upon School Board real property pursuant to an Interlocal Agreement between the School Board and the City, which Interlocal Agreement also provides for the proposed joint use of such Recreational Complex. The planning, design, permitting, bidding, construction, operation and maintenance of the Recreational Complex shall be at the sole discretion of, and at the sole obligation of, the City, and the County shall have no responsibility or obligation with respect to such requirements and obligations of the City. The County, however, shall upon request, be entitled to review any and all documentation, plans, specifications, requests for bids, permits, construction documents or other documentation applicable to or related to the construction of the Recreational Complex. The City shall provide to the County a twenty (20) day period after delivery of any requested documentation in order for the County to provide comments or requests, should the County desire to do so.

IV. OBLIGATIONS OF THE COUNTY

1. The County shall participate financially in the planning, design, permitting and construction costs of the Recreational Complex in accordance with the terms and conditions of this Agreement. The current projected cost of the planning, design, demolition, bidding, permitting and construction (the "Total Construction Costs") of the Recreational Complex is \$14,219,175.00. The County hereby agrees to pay to the City either \$3,200,000.00 or 28% of the Total Construction Costs for the Recreational Complex, whichever is less. It is understood by the City and County that the current estimated Total Construction Costs of the Recreational Complex is only a projected estimate and the final Total Construction Costs may be more or less than the projected costs.

2. The County shall establish an account and appropriate funds in the amount of \$3,200,000.00 upon, or within 15 days of, approval by the County of this Agreement.
3. The County acknowledges that the appropriated amount herein committed by the County shall be established prior to the City's financing (projected to be through bonding) and that the construction funds to be established by the County will be relied upon and integrated within the comprehensive financing for the Recreational Complex as structured by the City and its financial consultants and bond counsel. It is intended that the financial commitment of the County as set forth in this Agreement and as established in the County budgetary procedure shall be of such a certainty and reliability with respect to amount and timing that such financial commitment of the County can be legally relied upon in conjunction with the City's financing for the Recreational Complex project. The County agrees to provide such financial and budgetary documentation and opinions with respect to its financial commitment as may be necessary for reliance by City's bond counsel and financial consultants.
4. The County is willing to contribute funds on a reimbursable basis for the City's Project, in the amount not to exceed \$3,200,000.00 or 28% of the Total Construction Costs, whichever is less. The City will use the County's funds solely for construction. The City may request that County funds be disbursed after the City has already expended City funds totaling \$1,000,000.00. Once the County's total funding obligations under this Agreement have been reached, the County's funding obligations will be concluded with respect to this Interlocal Agreement and the County shall have no further funding obligations hereunder. The costs expended by the City shall be certified by the City's architect and the documentation submitted to the County shall be in sufficient detail to confirm the extent of work completed and the amount of funds expended by the City. The County shall have fifteen (15) calendar days within which to review, audit and confirm such documentation and, within ten (10) calendar days thereafter, shall pay to the City (by wire transfer) the requested reimbursement.
5. At the conclusion of the Project, the City will certify to the County the Total Construction Costs. The City shall repay to the County any overpayments made by the County where the \$3,200,000.00 paid by the County was more than the 28% of the Total Construction Costs.

V. NON-DISCRIMINATORY USAGE

Although it is understood that the City shall operate the Recreational Complex in accordance with reasonable rules and regulations established by the City, the City herein covenants to establish, assess and collect any usage fees for the Recreational Complex so that such fees apply equally and in a non-discriminatory manner with respect to City residents and unincorporated Lee County residents who wish to use the Recreational Complex.

VI. NO COUNTY OBLIGATIONS POST-COMPLETION

The County shall have no obligation with respect to post-completion Recreational Complex costs including, but not limited to, maintenance, repair, or mandated capital expenditures with respect to the Recreational Complex.

VII. MATTER NOT ADDRESSED

Any matter, subject, item or issue related to the Recreational Complex not specifically addressed by this Agreement shall be at the sole discretion of the City including, but not limited to, maintenance, repair, hours of operation, names or descriptions of facilities, rules and regulations and the enforcement thereof.

VIII. AUTHORIZED REPRESENTATIVES

The County Manager, or his designee, shall be the County's contact person with the City and the City Manager, or her designee, shall be the City's contact person with the County for purposes of this Agreement.

IX. TERM AND TERMINATION

A. The City agrees to construct the Project within three (3) years of execution of this Agreement provided, however, that such time period shall be reasonably extended to account for any delays resulting from Acts of God or natural disasters including, but not limited to, hurricanes. In the event that construction has not been completed within such time period, the County's funding obligations under this Agreement shall automatically terminate.

B. It is understood that Lee County residents will use the Recreational Complex constructed by the City on the School Board's Property, and the City will ensure that the School Board does not otherwise interfere with the primary use of the facility as a public recreational complex. Should the City fail to operate the facility as a public recreational facility (other than for reasons of an act of God or natural disaster including, but not limited to, hurricanes), the City shall reimburse the County the

depreciated dollar amount expended by the County for the Project on the following basis: The County's funding contribution percentage of the Total Construction Costs multiplied by the fair market value of the Recreational Complex established as of the date the City implements its decision to no longer operate the Recreational Complex as a public recreational facility.

X. LIABILITY

1. The City shall insure the Recreational Complex under the City's existing property insurance policies.
2. Subject to the limitations as set forth in Section 768.28, Florida Statutes, the City shall defend, hold harmless and indemnify the County from and against any and all claims, actions, damages, liability, cost and expense, including those arising from bodily injury, death and/or property damage or any other lawful expense, including but not limited to, attorney's fees and courts costs, brought by third parties arising from the acts or omissions of the City, its agents, employees, or contractors during the City's construction and operation of the Recreational Complex. The provisions of this paragraph are not intended to abrogate the sovereign immunity of the City or County beyond that set forth in Section 768.28, Florida Statutes.

XI. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the City and County, any verbal understanding, statements or prior writings or agreements to the contrary notwithstanding.

XII. CHANGE OR MODIFICATION

No change or modification to this Agreement shall be effective unless the same is in writing and signed by both parties.

XIII. ASSIGNMENT; BENEFITS

No assignment, delegation, transfer, or novation of this Interlocal Agreement, or part hereof, shall be made by either Party unless approved by both the County and the City. This Agreement is intended for the use and benefit of the parties hereto only, and shall not be construed to provide third party benefits to any other party or entity.

XIV. CONSTRUCTION AND INTERPRETATION

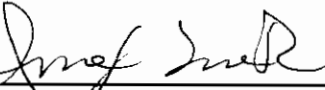
This Agreement shall be construed and interpreted in accordance with the laws of the State of Florida.

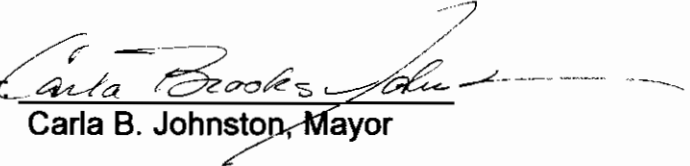
XV. RECORDATION OF AGREEMENT

This Interlocal Agreement shall be recorded in the Public Records of Lee County, Florida.

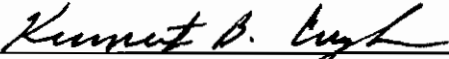
ATTEST:

CITY OF SANIBEL, FLORIDA

By: 
Pamela Smith, City Clerk

By: 
Carla B. Johnston, Mayor

APPROVED AS TO LEGAL FORM

By: 
Kenneth B. Cuyler, City Attorney

ATTEST:

LEE COUNTY, FLORIDA

By: _____
Charlie Green, County Clerk

By: _____
Tamara Hall, Chairwoman

APPROVED AS TO LEGAL FORM
LEE COUNTY ATTORNEY'S OFFICE

By: _____
Assistant County Attorney