

**Lee County Board Of County Commissioners  
Agenda Item Summary**

Blue Sheet No. 20060764

**1. ACTION REQUESTED/PURPOSE:** Approve and execute agreement with the South Florida Water Management District and Lee County for the construction of the Six Mile Cypress Interpretive Center. Approve Budget Amendment Resolution in the amount of \$200,000 amend the FY 05/06 CIP accordingly.

**2. WHAT ACTION ACCOMPLISHES:** Establishes budget authority for receipt of the funds.

**3. MANAGEMENT RECOMMENDATION:** Approve and execute agreement and Budget Amendment Resolution.

<b>4. Departmental Category:</b> <u>11</u> <b>CIC</b>		<b>5. Meeting Date:</b> <u>06-20-2006</u>
<b>6. Agenda:</b> <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	<b>7. Requirement/Purpose: (specify)</b>	
	<input type="checkbox"/> Statute	
	<input type="checkbox"/> Ordinance	
	<input type="checkbox"/> Admin. Code	
	<input checked="" type="checkbox"/> Other	
		<b>8. Request Initiated:</b> Commissioner _____ Department <u>Parks and Recreation</u> Division _____ By: <u>John Yarbrough</u> <i>John Yarbrough by com</i>

**9. Background:**  
The Friends of the Six Mile Cypress Slough Preserve was formed to preserve, promote, and protect the Slough. They are actively soliciting contributions to assist the County in an effort to build the Interpretive facility. Through their continued efforts they have been able to secure a \$200,000 contribution from the South Florida Water Management District to help towards the costs of constructing the Interpretive facility. The scope of services includes a new facility to be used for staff offices, open area for displays, and outside teaching deck.

Funding will be made available in account: 20185430100.506540

**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.	
<i>JY bu ecm</i>				<i>[Signature]</i> 6/7/06	<i>[Signature]</i> 6/7/06	<i>[Signature]</i> 6/7/06	<i>[Signature]</i> 6/7/06	<i>[Signature]</i> 6/7/06	<i>[Signature]</i>

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

RECEIVED BY COUNTY ADMIN: *[Signature]*  
6/7/06 1:15 PM  
COUNTY ADMIN FORWARDED TO: *[Signature]*  
6/8/06  
3pm

Rec. by CoAtty  
Date: *6/7/06*  
Time: *9:50 AM*  
Forwarded To: *11:30 AM*  
*6/7/06*

# RESOLUTION #

Amending the Budget of Capital Improvements-Fund 30100 to incorporate the unanticipated receipts into Estimated Revenues and Appropriations for the fiscal year 2005-2006.

**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 Capital Improvements-Fund 30100 budget for \$200,000 of the unanticipated revenue from SFWMD Grant and an appropriation of a like amount for construction costs and;

**WHEREAS**, the Capital Improvements-Fund 30100 budget shall be amended to include the following amounts which were previously not included.

## ESTIMATED REVENUES

Prior Total:		\$142,042,117
Additions		
20185430100.337300.9006	SFWMD Grant	200,000
Amended Total Estimated Revenues		\$142,242,117

## APPROPRIATIONS

Prior Total:		\$142,042,117
Additions		
20185430100.506540	Construction Improvements	200,000
Amended Total Appropriations		\$142,242,117

**NOW, THEREFORE, BE IT RESOLVED** by the Board of County Commissioners of Lee County, Florida, that the Capital Improvements-Fund 30100 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



ORIGINAL

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
LOCAL GOVERNMENTAL AGREEMENT**

**AGREEMENT NO. OT061104**

**BETWEEN THE**

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

**AND**

**LEE COUNTY**

**THIS AGREEMENT** is entered into as of \_\_\_\_\_ by and between the South Florida Water Management District (**DISTRICT**) and Lee County (**COUNTY**).

**WHEREAS**, the **DISTRICT** is a public corporation of the State of Florida, created by the Florida Legislature and given those powers and responsibilities enumerated in Chapter 373, Florida Statutes, to include entering into contracts with public agencies, private corporations or other persons; and

**WHEREAS**, the **DISTRICT** desires to provide financial assistance to the **COUNTY** for the Lee County Six Mile Cypress Slough Preserve Interpretive Center; and

**WHEREAS**, the **COUNTY** warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms and conditions of this **AGREEMENT**; and

**NOW, THEREFORE**, in consideration of the covenants and representations set forth herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. The **DISTRICT** agrees to contribute funds and the **COUNTY** agrees to perform the work set forth in Exhibit "A" attached hereto and made a part hereof, subject to availability of funds and in accordance with their respective authorities for the Six Mile Cypress Interpretive Center.
2. The period of performance of this **AGREEMENT** shall commence on the date of execution of this **AGREEMENT** and shall continue for a period of eighteen (18) months.
3. The total **DISTRICT** contribution shall not exceed the amount of Two Hundred Thousand Dollars and No Cents (\$200,000.00). The **DISTRICT** will provide the full amount based on the Payment and Deliverable Schedule set forth in Exhibit "B", which is attached hereto and made a part of this **AGREEMENT**. The **DISTRICT's** contribution is subject to adequate documentation to support actual expenditures within the not-to-exceed **AGREEMENT** funding limitation of \$200,000.00. In no event shall the **DISTRICT** be liable for any contribution hereunder in excess of this amount. If the total consideration for this **AGREEMENT** is subject to multi-year funding allocations, funding for each applicable fiscal year of this **AGREEMENT** will be subject to Governing Board budgetary appropriation. In the event the **DISTRICT** does not approve funding for any subsequent fiscal year, this **AGREEMENT** shall terminate upon expenditure of the current funding, notwithstanding other provisions in this **AGREEMENT** to the contrary. The **DISTRICT** will notify the **COUNTY** in writing after the adoption of the final **DISTRICT** budget for each subsequent fiscal year if funding is not approved for this **AGREEMENT**.

4. The **COUNTY** shall submit quarterly financial reports to the **DISTRICT** providing a detailed accounting of all expenditures incurred hereunder throughout the term of this **AGREEMENT**. The **COUNTY** shall report and document the amount of funds expended per month during the quarterly reporting period and the **AGREEMENT** expenditures to date within the maximum not-to-exceed **AGREEMENT** funding limitation.
5. The **COUNTY** is responsible for any additional funds either through local revenues, grants, other appropriations, and/or other funding sources in conformity with the laws and regulations governing the **COUNTY**.
6. All work to be performed under this **AGREEMENT** is set forth in Exhibit "A", Statement of Work, which is attached hereto and made a part of this **AGREEMENT**. The **COUNTY** shall submit quarterly progress reports detailing the status of work to date for each task. The work specified in Exhibit "A" shall be under the direction of the **COUNTY** but shall be open to periodic review and inspection by either party. No work set forth in Exhibit "A" shall be performed beyond the expiration date, unless authorized through execution of an amendment to cover succeeding periods.
7. The **COUNTY** is hereby authorized to contract with third parties (subcontracts) for services awarded through a competitive process required by Florida Statutes. The **COUNTY** shall not subcontract, assign or transfer any other work under this **AGREEMENT** without the prior written consent of the **DISTRICT's** Project Manager. The **COUNTY** agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the **COUNTY** that the **DISTRICT** shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract(s).
8. Both the **DISTRICT** and the **COUNTY** shall have joint ownership rights to all work items, including but not limited to, all documents, technical reports, research notes, scientific data, computer programs, including the source and object code, which are developed, created or otherwise originated hereunder by the other party, its subcontractor(s), assign(s), agent(s) and/or successor(s) as required by the Exhibit "A", Statement of Work. Both parties' rights to deliverables received under this **AGREEMENT** shall include the unrestricted and perpetual right to use, reproduce, modify and distribute such deliverables at no additional cost to the other party. Notwithstanding the foregoing, ownership of all equipment and hardware purchased by the **COUNTY** under this **AGREEMENT** shall be deemed to be the property of the **COUNTY** upon completion of this **AGREEMENT**. The **COUNTY** shall retain all ownership to tangible property.
9. The **COUNTY**, to the extent permitted by law, assumes any and all risks of personal injury, bodily injury and property damage attributable to negligent acts or omissions of the **COUNTY** and the officers, employees, servants and agents thereof. The **COUNTY** represents that it is self-funded for Worker's Compensation and liability insurance, covering bodily injury, personal injury and property damage, with such protection being applicable to the **COUNTY**, its officers and employees while acting within the scope of their employment during performance of under this **AGREEMENT**. In the event that the **COUNTY** subcontracts any part or all of the work hereunder to any third party, the **COUNTY** shall require each and every subcontractor to identify the **DISTRICT** as an additional insured on all insurance policies as required by the **COUNTY**. Any contract awarded by the **COUNTY** shall include a provision whereby the **COUNTY's** subcontractor agrees to indemnify, pay on behalf, and hold the **DISTRICT** harmless from all damages arising in connection with the **COUNTY's** subcontract.
10. The **COUNTY** and the **DISTRICT** further agree that nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its agents and agencies to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.
11. The parties to this **AGREEMENT** are independent entities and are not employees or agents of the other parties. Nothing in this **AGREEMENT** shall be interpreted to establish any relationship other than that of independent entities, between the **DISTRICT**, the **COUNTY**, their employees, agents, subcontractors or assigns, during or after the term of this **AGREEMENT**. The parties to this **AGREEMENT** shall not assign, delegate or otherwise transfer their rights and obligations as set forth in this **AGREEMENT**

without the prior written consent of the other parties. Any attempted assignment in violation of this provision shall be void.

12. The parties to this **AGREEMENT** assure that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age or sex, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under this **AGREEMENT**.
13. The **COUNTY**, its employees, subcontractors or assigns, shall comply with all applicable federal, state and local laws and regulations relating to the performance of this **AGREEMENT**. The **DISTRICT** undertakes no duty to ensure such compliance, but will attempt to advise the **COUNTY**, upon request, as to any such laws of which it has present knowledge.
14. Either party may terminate this **AGREEMENT** at any time for convenience upon thirty (30) calendar days prior written notice to the other party. In the event of termination, all funds not expended by the **COUNTY** for authorized work performed through the termination date shall be returned to the **DISTRICT** within sixty (60) days of termination.
15. The **COUNTY** shall allow public access to all project documents and materials in accordance with the provisions of Chapter 119, Florida Statutes. Should the **COUNTY** assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the **COUNTY**.
16. The **COUNTY** shall maintain records and the **DISTRICT** shall have inspection and audit rights below. The **COUNTY** shall similarly require each subcontractor to maintain and allow access to such records for audit purposes:
  - A. Maintenance of Records: The **COUNTY** shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this **AGREEMENT** including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of five (5) years from the expiration date of this **AGREEMENT**.
  - B. Examination of Records: The **DISTRICT** or designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this **AGREEMENT**. Such examination may be made only within five (5) years from the expiration date of this **AGREEMENT**.
  - C. Extended Availability of Records for Legal Disputes: In the event that the **DISTRICT** should become involved in a legal dispute with a third party arising from performance under this **AGREEMENT**, the **COUNTY** shall extend the period of maintenance for all records relating to the **AGREEMENT** until the final disposition of the legal dispute. All such records shall be made readily available to the **DISTRICT**.
17. Whenever the **DISTRICT's** contribution includes state or federal appropriated funds, the **COUNTY** shall, in addition to the inspection and audit rights set forth in paragraph #16 above, maintain records and similarly require each subcontractor to maintain and allow access to such records in compliance with the requirements of the Florida State Single Audit Act and the Federal Single Audit Act, as follows:
  - A. Maintenance of Records: The **DISTRICT** shall provide the necessary information to the **COUNTY** as set forth in Exhibit "C". The **COUNTY** shall maintain all financial/non-financial records through:
    - (1) Identification of the state or federal awarding agency, as applicable
    - (2) Project identification information included in the Catalog of State Financial Assistance (CSFA) or the Catalog of Federal Financial Assistance (CFDA), as applicable
    - (3) Audit and accountability requirements for state projects as stated in the Single Audit Act and applicable rules of the Executive Office of Governor, rules of the Chief Financial Officer and rules of the Auditor General and the State Projects Compliance Supplement
    - (4) Audit/accountability requirements for federal projects as imposed by federal laws and regulations
    - (5) Submission of the applicable single audit report to the **DISTRICT**, as completed per fiscal year
  - B. Examination of Records: The **DISTRICT** or designated agent, the state awarding agency, the state's

Chief Financial Officer and the state's Auditor General and/or federal awarding agency shall have the right to examine the COUNTY's financial and non-financial records to the extent necessary to monitor the COUNTY's use of state or federal financial assistance and to determine whether timely and appropriate corrective actions have been taken with respect to audit findings and recommendations which may include onsite visits and limited scope audits.

18. All notices or other communication regarding this **AGREEMENT** shall be in writing and forwarded to the attention of the following individuals:

**South Florida Water Management District**

**Lee County**

Attn: Sarah Mc Pherson, Project Manager  
Telephone No. (239) 338-2929 ext. 7783

Attn: John Yarbrough, Dept. Director  
Telephone No. (239) 461-7410

Attn: Patrick Wiener, Contract Specialist  
Telephone No. (561) 682-6220

Address:  
P.O. Box 398  
Ft Myers, FL 33902-0398

Address:

P.O. Box 24680  
3301 Gun Club Road  
West Palm Beach, FL 33416-4680

19. COUNTY recognizes that any representations, statements or negotiations made by DISTRICT staff do not suffice to legally bind DISTRICT in a contractual relationship unless they have been reduced to writing and signed by an authorized DISTRICT representative. This AGREEMENT shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.
20. This AGREEMENT may be amended, extended or renewed only with the written approval of the parties. The DISTRICT shall be responsible for initiating any amendments to this AGREEMENT, if required.
21. This AGREEMENT, and any work performed hereunder, is subject to the Laws of the State of Florida. Nothing in this AGREEMENT will bind any of the parties to perform beyond their respective authority, nor does this AGREEMENT alter the legal rights and remedies which the respective parties would otherwise have, under law or at equity.
22. Should any term or provision of this AGREEMENT be held, to any extent, invalid or unenforceable, as against any person, COUNTY or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this AGREEMENT, to the extent that the AGREEMENT shall remain operable, enforceable and in full force and effect to the extent permitted by law.
23. Failures or waivers to insist on strict performance of any covenant, condition, or provision of this AGREEMENT by the parties shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this AGREEMENT. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this AGREEMENT specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.
24. Any dispute arising under this AGREEMENT which cannot be readily resolved shall be submitted jointly to the signatories of this AGREEMENT with each party agreeing to seek in good faith to resolve the issue through negotiation or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. A joint decision of the signatories, or their designees, shall be the disposition of such dispute.
25. This AGREEMENT states the entire understanding and agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or agreements previously existing between the parties with respect to the subject matter of this AGREEMENT.

26. Any inconsistency in this **AGREEMENT** shall be resolved by giving precedence in the following order:
- (a) Terms and Conditions outlined in preceding paragraphs 1 – 24
  - (b) Exhibit "A" Statement of Work
  - (c) all other exhibits, attachments and documents specifically incorporated herein by reference

IN WITNESS WHEREOF, the parties or their duly authorized representatives hereby execute this **AGREEMENT** on the date first written above.

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

By: \_\_\_\_\_

Carrie Hill, Interim Procurement Director

**SFWMD Procurement Approved**

Rv: Patrick Henner

Date: 5-16-06

**LEE COUNTY**

By: \_\_\_\_\_

Title \_\_\_\_\_

**Exhibit "A"**  
**SIX MILE CYPRESS SLOUGH PRESERVE INTERPRETIVE CENTER**  
**Statement of Work**

## **1.0 Introduction**

The South Florida Water Management District (District) is part owner of the land making up the Six Mile Cypress Slough Preserve (SMCSP). The preserve is managed by Lee County Parks and Recreation. The Mission of the District is to manage and protect water resources of the region by balancing and improving water quality, flood control, natural systems and water supply. SMCSP is a critical wetland system having positive value in inspiring and educating visitors about wetlands and their roles in preserving the environment and quality of life. The county, with financial support from community, is in the design phase for building an interpretive center and offices on uplands adjacent to the current parking facility and the entrance to the boardwalk at SMCSP. Construction is scheduled to begin in Summer 2006.

Lee County Parks and Recreation Department will be responsible for the construction, operation and maintenance of the interpretive center. The Center will contain space for exhibits, administration, education and interpretation to orient and educate visitors. Window viewing areas of a pond will connect visitors to the wonders of the Slough, and an outdoor teaching deck will enhance educational opportunities and aid in the visitors' transition to the boardwalk trails. The current boardwalk is used by 120,000 visitors per year.

All Lee County public school students benefit from a field trip to SMCSP based on a Lee County wetlands curriculum funded by the District.

## **2.0 Objective**

Several compelling community and regional concerns propel the Project. But most importantly, the Interpretive Center will introduce and promote environmental issues in an exciting format—emphasizing southwest Florida and regional water supplies. District participation in the Six Interpretive Center provides an opportunity to promote and explain the District's mission of land stewardship, water conservation and pollution prevention as well as ecosystem restoration.

Anticipated Benefits of the Interpretive Center.

- Provide visitors with personal contact, orientation and answers to questions through an information desk.
- Increase quality and variety of educational programs.
- House resource materials, artifacts, event and program items, displays, exhibits and other teaching supplies.
- Provide on-site offices for SMCSP staff and volunteers; enhance volunteer support.
- Improve security with staff on the premises.
- Increase visitor satisfaction through meeting their comfort and convenience needs as well as their expectations.



### **3.0 Scope of Work**

The District and Lee County are entering into this agreement to document how each entity can support the other in attaining mutual goals; and, to lay out the responsibilities of each party. Lee County will offer a naming opportunity and signage to visually promote the District's mission to educate the public about the natural system and the benefits derived from the Six Mile Cypress Slough ecosystem.

### **4.0 Work Breakdown Structure**

The estimated total cost of the facility is \$2,000,000.

The District will contribute funds in the amount not to exceed \$200,000 toward the construction of the Interpretive Center. Lee County and various local sponsors will contribute the remaining funds.

The County will be responsible for the design and construction of the Interpretive Center and all related structures, decks and boardwalks.

The Interpretive Center will include an educational room, hands-on displays, informational exhibits and house artifacts. In recognition of the funding given by the District, the County will provide prominent name recognition of the District.

#### **District Recognition**

The SMCSP Interpretive Center will provide the District with recognition as a leading source for interpretive and natural resource management. Throughout the development of the SMCSP Interpretive Center Project, Lee County will continue to provide prominent name recognition of the District.

To Increase District Recognition, Lee County Will:

- Once construction is completed, identify the District as a community sponsor in the development of the Six Mile Cypress Slough Interpretive Center on prominent signage that can be seen by all visitors.
- Identify the District on prominent signage that can be seen by all visitors at special events.
- Distribute press releases announcing District's financial contribution as a community sponsor and the connection to the District's mission and goals for public involvement.
- Identify the District as a major sponsor in the SMCSP Annual Reports.
- Provide an opportunity for the District to have a display booth at least once a year during SMCSP special events.

**EXHIBIT "B"**

**PAYMENT AND DELIVERABLE SCHEDULE**

The District will provide sponsorship funding payments not to exceed \$200,000.

All invoices will be accompanied by adequate documentation to support tasks defined per agreement by the District and Lee County. Payment by the District is further subject to receipt of documentation to demonstrate completion of all deliverables for each project task in accordance with Statement of Work requirements.

Task 1:	Deliverable	Completion Date	District not-to-exceed payment
Project Design Completion	Completion of final design	July 1, 2006	\$100,000

Task 2:	Deliverable	Completion Date	District not-to-exceed payment
Issuance of notice to proceed	Copy of notice to proceed	September 1, 2006	\$95,000
District Recognition: Prepare press release announcing opening of the Interpretive center	Copy of press release publicizing the Districts participation in the interpretive center.	Before 9/30/07	\$5,000