

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

Blue Sheet No. 20060977

1. ACTION REQUESTED/PURPOSE:

Approve interlocal agreement between Lee County and the City of Sanibel for the construction of restrooms at the Sanibel Historic Village. Authorize the Chairman's signature on the interlocal agreement. Approve budget amendment resolution and transfer in the amount of \$45,000 and amend the CIP accordingly. Transfer is from TDC debt service fund reserves.

2. WHAT ACTION ACCOMPLISHES:

Finalizes the Interlocal Agreement with the City of Sanibel and allocates funds accordingly.

3. MANAGEMENT RECOMMENDATION:

Recommend Approval.

4. Departmental Category: 1. <u>CIC</u>		5. Meeting Date: <u>08-15-2006</u>
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)	
	<input type="checkbox"/> Statute	
	<input type="checkbox"/> Ordinance	
	<input type="checkbox"/> Admin. Code	
	<input type="checkbox"/> Other	
		8. Request Initiated: Commissioner _____ Department <u>VCB</u> Division <u>DIA</u> By: <u>D.T. Minich, Director</u>

9. Background:

On March 3, 2006, the Lee County Tourist Development Council approved funding for the construction of restrooms at the Sanibel Historical Village and Museum. Funding was approved in the amount of up to \$45,000.

Funds will be made available in 40190000100.508150, Sanibel Historic Village Improvements.

Attachments: Interlocal Agreement (3 originals)
 Budget Amendment Resolution
 Request for Transfer of Funds

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.	
<u>DAM</u>	<u>[Signature]</u>			<u>[Signature]</u>	<u>[Signature]</u>	<u>[Signature]</u>	<u>7/31/06</u>	<u>7/31/06</u>	<u>[Signature]</u>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY
 COUNTY ADMIN: [Signature]

7-28-06 MP845

COUNTY ADMIN
 FORWARDED TO: [Signature]

5/3/06

16

Reviewed by CoAtty

Date: 7/28/06

Time: 11:00 AM

Forwarded To: [Signature]

RESOLUTION

Amending the Budget of General Fund 00100 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 General Fund 00100 budget for \$45,000 of the unanticipated revenue from the TDC Debt Service Fund and an appropriation of a like amount for construction costs and;

WHEREAS, the General Fund 00100 budget shall be amended to include the following amounts which were previously not included.

ESTIMATED REVENUES		
Prior Total:		\$538,998,292
Additions		
GC5810100100.381000.922650	Transfer from Fund 22650	45,000
Amended Total Estimated Revenues		\$539,043,292

APPROPRIATIONS		
Prior Total:		\$538,998,292
Additions		
40190000100.508150	Grants & Aid to Local Governments	45,000
Amended Total Appropriations		\$539,043,292

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Lee County, Florida, that the General Fund 00100 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

**INTERLOCAL AGREEMENT BETWEEN LEE COUNTY, FLORIDA
AND THE CITY OF SANIBEL, FLORIDA
FOR HISTORICAL VILLAGE RESTROOMS**

THIS INTERLOCAL AGREEMENT is made and entered into as of the _____ day of _____, 2006, by and between **LEE COUNTY**, a Charter County and a political subdivision of the State of Florida herein referred to as "County", and the **CITY OF SANIBEL, FLORIDA**, a Florida Charter municipality, herein referred to as "City", collectively, "the Parties", hereto.

WITNESSETH:

WHEREAS, the City finds it in the public's interest to add restrooms to the Sanibel Historical Village located in the City; and,

WHEREAS, the City has approved a plan to construct period authentic restrooms at the Sanibel Historic Village, hereafter called the "Project"; and,

WHEREAS, it serves a public purpose and is in the public interest of the citizens of Lee County for the County to provide certain reimbursable grant monies to assist the City with the Project for the benefit of Lee County residents and tourists; and,

WHEREAS, the County, subject to the provisions of this funding interlocal, is willing to contribute funds on a reimbursable basis for the City's Project, in the amount of up to and not exceeding \$45,000.00; and,

WHEREAS, Chapters 125, 163, and 166, Laws of Florida, and other applicable laws authorize the County and City to enter into this joint funding and county grant interlocal in order for the Parties to provide for and improve museums and cultural facilities for the benefit of its citizens.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable considerations given and received, the Parties hereto agree as follows:

SECTION ONE: RECITALS

- (A) The provisions and findings of the “Whereas” clauses above are incorporated herein as if set out further at length.
- (B) This agreement is entered into pursuant to the Lee County Charter, Chapters 125, 163, and 166, Laws of Florida and other applicable law.

SECTION TWO: PURPOSE

The purpose of this Interlocal Agreement is for the County to provide to the City on a reimbursable basis, up to and not exceeding \$45,000.00 of county funds during fiscal year 2006 to assist in the funding of the Project as described in Section Three hereof. The County’s funding obligation to the City will be subject to the provisions and conditions as further set forth in this agreement. The City will use the County’s reimbursable grant funds as provided herein solely for expenses related to the construction of the restrooms. The County’s funding assistance is to be provided as a reimbursement of expenses for the City’s expenditure for these costs.

SECTION THREE: THE PROJECT

The Project shall be the City’s initiation and prosecution to completion of the construction of the restrooms, as described in “Exhibit A” hereto and herein called the “Project”. The City will construct the Project in accordance with all applicable State and Federal laws and regulations.

SECTION FOUR: THE TERM

The term of this agreement shall commence from the date of execution of the agreement by the County and shall continue until completion of the Project and City's compliance with Section 8(F) hereof or until the time said County funds as specifically authorized in this agreement have been actually paid by the County to the City, should a previously authorized funding be disbursed to City beyond the Project completion date, which is anticipated to be approximately March 1, 2008. In no event shall County authorize additional County funds not provided for in Section Five below, after October 1, 2008. The term of this agreement is subject to the cancellation and termination provisions hereafter provided.

SECTION FIVE: COUNTY PAYMENTS

The County will pay to the City on a reimbursable basis, a total amount not to exceed \$45,000.00 during the term of this agreement as needed by the City in order for the City to pay for construction of the Project. The County's obligation hereunder, subject to Section Seven hereof, shall be to pay City up to \$45,000.00 during fiscal year 2006. If, however, pursuant to "Exhibit B" hereof, the City does not request a total expenditure of \$45,000.00 in fiscal year 2006, and the City is still proceeding to timely complete the Project, the County will carry-over any such unexpended portion of this allocation for the City's Project use in the next fiscal year.

Once the County's total obligation of not exceeding \$45,000.00 has been reached, the County's funding obligations pursuant to this agreement will be concluded and the City will not request any additional County funds from the County to improve and/or operate the Project and related facilities. This agreement in no way binds County to provide future

funding for the Project, except as specifically authorized, budgeted, and appropriated pursuant to the provisions herein. Likewise, once the Project is satisfactorily completed and all required payments made to the City contractor(s) for the Project, and County has made its match reimbursement payments hereunder up to that date, County will not be responsible for any further payments hereunder, even if County grant funds are available.

The County's payment process will be as set forth in "Exhibit B" hereto and will entail the County's paying the City on a documented request basis from the City for reimbursement of paid monies for authorized work by City on the Project.

The County funds will be used by the City to pay solely for necessary Project acquisition and restorations. By way of example only, the County will not be asked to, nor will City use, said County funds for such costs as building relocation, construction planning, architectural/engineering work and/or feasibility studies, and related matters.

SECTION SIX: CITY EXPENDITURES

The City will proceed in good faith and due diligence to satisfactorily complete the Project as outlined in "Exhibit A" hereto. The City will enter into all required contracts in order for the City to timely make the required acquisition, relocation and restoration. It is hereby made expressly a part of this agreement that the City will make all payments to third parties retained by the City for the satisfactory completion of the work. Accordingly, the City represents that as a condition of County's funding obligation and the reimbursement to the City for the Project work done and submitted hereunder, the City will duly budget and appropriate as necessary sufficient City funds necessary to complete this project in excess of the \$45,000.00 allocated by the County. The City will keep all such records and will document to the County as requested by the County, the City's fulfillment

of the City expenditures in order for the County to determine that the County funds are being utilized properly.

SECTION SEVEN: OBLIGATIONS OF THE CITY

In addition to the requirements and obligations of the City as provided above, the City shall:

- (A) Obtain financing for the Project to cover the total cost of the Project, minus the total contribution of \$45,000.00 by the County pursuant to the agreement.
- (B) Prepare general specifications outlining the preservation plans, time-lines, and method of accomplishing completion of work with on-going status updates on the Project, the use of County funds, and coordinate same with the Executive Director of the Visitor & Convention Bureau or his designee by periodic updates. Such updates will include any material changes in the Project, Project costs, Project time-lines, use of Project funds or sources of funding for the Project.
- (C) If, and as required by Florida Law, secure competitive bids or proposals for all work to be performed by third party contractors. The City shall be in privity of contract with all contractors for whom City is requesting reimbursement to the City for such work.
- (D) Be responsible to pay all costs of the Project and shall be solely responsible to resolve and discharge any and all liens, claims, demands, and judgments associated with Project work. The City shall be solely responsible to resolve all Project construction contract disputes, claims, and demands, and the

payment of any additional monies required thereby.

- (E) Keep books, records, documents, and other evidence pertaining to costs and expenses incurred for the construction to the extent and in such detail as will properly reflect an accurate total Project cost and accounting for all funding of the Project, to include the use of the County's grant funds hereunder and administration of this agreement. The City shall make available at their offices at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized County representatives for a minimum of three (3) years after completion of construction of the Project or as otherwise longer required by Generally Accepted Accounting Practices (GAAP).
- (F) Notify the County in writing of the satisfactory completion of the Project. The City shall provide a certification of final Project costs, sources of funds received for the Project and use of Project funds.
- (G) At its own expense and pursuant to Law, hold harmless and defend any and all claims, actions, suits, or proceedings that may be brought against the County and its employees by third parties in connection with this agreement or the City's construction, operation or maintenance of this Project, and to further satisfy, pay, and discharge any and all judgments that may be entered against the County and its employee in any such action or proceeding.

SECTION EIGHT: INDEPENDENCE OF CITY ON PROJECT

It is understood and agreed by the Parties hereto that the County, its officials, and employees are neither agents, employees or representatives of the City on the Project for any purpose whatsoever. Likewise, the City, its officials and employees are not agents, employees or representatives of the County for any purpose whatsoever relating to the City Project. The County's sole responsibility under this agreement is to provide the City, county funds for the Project, pursuant to the terms of this agreement. The City, its officials and employees shall remain independent with respect to all services performed and responsibilities incurred by the City on the Project. It is not intended that the County, its officers or employees shall in any respect be in privity of contract with, or have any financial responsibility to, the City's contractors or suppliers on the Project. This is an exclusive Interlocal Agreement by and between County and City for reimbursable funding between the two local government entities, and no third party may rely hereon and/or have or maintain any claim(s) under the terms or conditions herein.

SECTION NINE: CANCELLATION

This agreement and the County's obligation to provide any future funding or payments to the City per Section Five and "Exhibit B" hereof are subject to cancellation by the County upon the County providing 30-days prior written notice of the violation to the City, with the City having the opportunity to cure the articulated violation within 30 days from the receipt of the County's written notice, for the following reasons:

- (A) City's failure to issue a notice to proceed to initiate the Project within 120 days of City award of said construction contract for work for which the County is to reimburse the City.

- (B) City's failure to timely complete the work for the Project funded hereunder per the time lines provided in "Exhibit A" hereto, Schedule of Completion.
- (C) City's failure to timely provide for any additional City funding to complete the Project should the actual cost to complete the Project exceed the estimates as provided in "Exhibit A" hereto.

County's exercise of its cancellation rights in this section will not waive or preclude County from exercising its termination rights as provided in Section Seventeen, and the County retains the sole right and option of electing which remedy it wishes to pursue, as so deemed appropriate.

SECTION TEN: TERMINATION OF AGREEMENT

- (A) (i) Failure of City to materially comply with any of the provisions of this agreement shall be considered a breach of the agreement and shall be cause for immediate termination of the agreement at the discretion of the County. Such termination by County will not cancel or terminate the obligation of the City to repay to County the sum of any County funds as County may have previously disbursed on a reimbursable basis by the County to the City per Section Five and "Exhibit B" hereof.
- (ii) Any breach of this agreement will be provided in writing to the City by the County via certified mail.
- (B) Upon said County termination as provided for in this Section, City shall be responsible for and shall repay to the County all County funds that have been disbursed to the City per Section Five and "Exhibit B" hereof to include any fees and costs incurred by County in collecting the payment of said

funds due and owing by the City hereunder.

- (C) Either City or County may terminate or cancel this agreement without cause by providing ninety (90) days prior written notice to the other Party. Under no circumstances may City terminate or cancel this agreement prior to the successful completion of the Project without a refund or repayment to Lee County of the county funds as provided and paid by the County to the City hereunder, per Section Five and "Exhibit B".
- (D) Per Section Seven hereof, the County in its annual Budget Hearing and appropriation process exercises its sole legislative discretion not to budget and appropriate to the City and this Interlocal Agreement any County funds for Fiscal Year 04-05. The City will not have the opportunity to cure County cancellation based upon this section, as same is not deemed a breach of the agreement.

SECTION ELEVEN: CONFORMITY TO THE LAW

The City shall comply with all federal, state, and applicable local laws and any rules or regulations adopted thereunder, in its performance under this agreement.

SECTION TWELVE: WAIVER OR MODIFICATION

There shall be no waiver or modification of this agreement or of any covenant, condition, or limitation herein contained unless mutually agreed upon by the County and the City and reduced to written amendments to this agreement.

SECTION THIRTEEN: INDEMNIFICATION

The City agrees to be fully responsible for its acts of negligence, or its agents' acts of negligence when acting within the scope of their employment or agency, and agrees to

be liable for any damages to the County resulting from any such negligence pursuant to Law. Nothing herein is intended to serve as a waiver of sovereign immunity by any entity to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract. This is an exclusive agreement by and between the County and the City; no third parties shall have or maintain any claims under the terms or conditions hereunder.

SECTION FOURTEEN: SEVERABILITY

If any provision, or any portion thereof contained in this agreement is held unconstitutional, invalid or unenforceable by a court of competent jurisdiction, the remainder of this agreement, or portion(s) thereof, shall be deemed severable, and shall not be affected by such determination and shall remain in full force and effect.

SECTION FIFTEEN: AGREEMENT COVERED BY FLORIDA LAW

This agreement and performance hereunder and all suits and proceedings hereunder shall be construed in accordance with the laws of the State of Florida.

SECTION SIXTEEN: AGREEMENT MANAGEMENT

Lee County hereby designates the following person as the liaison between the County and the City for purposes of administration of this agreement and any notices and/or filings shall be forwarded, in writing to:

IF TO LEE COUNTY:

Lee County Attorney
P.O. Box 398
Fort Myers, FL
(239) 335-2236

IF TO CITY OF SANIBEL:

Helene Phillips
Recreation Director
800 Dunlop Road
Sanibel, FL 33957
(239) 472-6477

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the day and year first above written.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

Date: _____

ATTEST:

CITY OF SANIBEL

By: [Signature]

By: [Signature]

Title: Mayer

Date: 07/18/06

APPROVED AS TO FORM:
LEE COUNTY ATTORNEY'S OFFICE

APPROVED AS TO FORM:
COUNSEL TO CITY OF SANIBEL

By: _____
Lee County Attorney

By: _____
Name
Title

FINANCIAL SUFFICIENCY APPROVED
[Signature]
Renee M. Lynch, FINANCE DIRECTOR

APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY

“Exhibit A”

Historical Village Restrooms Project

I. **PROJECT DESCRIPTION:**

The Historical Village and Museum located at 950 Dunlop Road on Sanibel is dedicated to the pioneer families of Lee County. The most recent addition at the village is the Old Schoolhouse. Built in 1984, the Old Schoolhouse is the oldest building in the village. The City desires to reconstruct the Old Schoolhouse as close as possible to the way it existed in its early years of existence. The original schoolhouse had two outhouses that were used for rest rooms. The construction of the two outhouse replica restrooms will complete the Old Schoolhouse project. Funding from the Tourist Development Council grant will be used to fund the construction, install plumbing fixtures and make the appropriate sewer connections.

II. **SCHEDULE OF COMPLETION:**

COMPLETION STEPS	ESTIMATED DATE
• City Council Approval of Project Interlocal	July 2006
• Lee County Approval of Project Interlocal	September 2006
• Budget Amendment	September 2006
• Plans and Specifications	April 2007
• Advertise	May 2007
• Bid Opening	June 2007
• Contract Award	July 2007
• Notice to Proceed	August 2007
• Construction Completed	November 2007
• All Invoices in for Reimbursement	January 2008

III. **ESTIMATED COSTS TO COMPLETE:**

• Plans and Specifications	\$5,000
• Outhouse Replica Construction/fixtures	\$30,000
• Sewer Connection	\$10,000

“Exhibit B”

Project Payment Process

- A. Prior to submittal to County, for County’s Reimbursement of City for eligible Project Costs, the City contractors Request for Payment to the City will be first reviewed by City, to include City Attorney’s Office when appropriate, for a determination and action that:
- i. The Request for Payment is consistent and in conformity with City’s approved construction contract.
 - ii. The work subject to the Request for Payment has been successfully completed per the City’s contract terms.
 - iii. The Request for Payment amount was due and owing at the time submitted to the City.
 - iv. The City’s payment of same was a proper legal expenditure of City’s funds per the City’s contract.
 - v. The City has duly paid same to the City contractor and requests reimbursement for eligible costs from the County per the Interlocal Agreement.
- B. The City’s Request for County reimbursement will be forwarded to the Lee County Visitor & Convention Bureau, 12800 University Drive, Suite 550, Fort Myers FL 33907, in writing with a City cover letter requesting the amount of corresponding reimbursement to be paid to the City, including a certification that the above determinations and actions have been duly made by the City and further submitting the corresponding payment request documentation to support the City request of County fund reimbursements. The City requests for County reimbursements herein will be subject to a payment request schedule as mutually agreed upon and coordinated by the parties respective contract representatives.
- C. Based upon the City’s Certification Request and supporting documentation, the County will proceed to timely issue a County warrant in the appropriate amount payable to the City of Sanibel and delivered to Renee Lynch, Finance Director. The County’s delivery of said County warrant to the City of Sanibel Finance Director shall be deemed as payment to the City.
- D. The County’s payment to the City of the requested reimbursement amount as provided above will be made within a reasonable time, but should not exceed 30 days, unless additional information and/or documentation is needed by the County in order to prepare the County warrant.

- E. The Parties agree to coordinate said payment requests. The Parties agree to proceed in good faith and with due diligence to timely resolve any payment issues or disputes between the Parties.
- F. The County will not be involved in, or be responsible for resolving, any payment disputes, claims and/or issues between the City and the City Contractor on the payment requests and/or related construction work or contract compliance issues between City and its Contractor.