

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Agreement with the City of Sanford for Boating Improvement Program Funds

DEPARTMENT: Library & Leisure Services **DIVISION:** Parks & Recreation

AUTHORIZED BY: *J. Suzy Goldman* **CONTACT:** J. Suzy Goldman **EXT:** 1605

Agenda Date: <u>1/10/06</u>	Regular <input type="checkbox"/>	Consent <input checked="" type="checkbox"/>	Work Session <input type="checkbox"/>	Briefing <input type="checkbox"/>
	Public Hearing – 1:30 <input type="checkbox"/>	Public Hearing – 7:00 <input type="checkbox"/>		

MOTION/RECOMMENDATION:

Approve and authorize Chairman to execute agreement with the City of Sanford for Boating Improvement Program (Fiscal Year 05/06).

BACKGROUND:

On November 10, 1998 the Board approved the resolution establishing the rules for County administration of the Florida Boating Improvement Program. This included a 50-50 split of funds between County and City projects, an open application period for all cities in the County, and review and ranking of proposed projects by the Seminole County Parks & Recreation Advisory Board, with final award being made by the Board as part of the budget process.

The Board approved \$53,463 for improvements to the Sanford Marina during the Fiscal Year 2005/2006 budget approval process. The agreement has an expiration date of December 31, 2006. Funds will be used for costs related to design, engineering and construction of Phase 1 of the Marina Isle Beachfront and Jetty project.

Reviewed by:	<u><i>[Signature]</i></u>
Co Atty:	<u><i>[Signature]</i></u>
DFS:	_____
Other:	_____
DCM:	<u><i>[Signature]</i></u>
CM:	<u><i>[Signature]</i></u>
File No.	<u>CLLP01</u>

**AGREEMENT BETWEEN SEMINOLE COUNTY AND THE CITY OF SANFORD
RELATING TO CONTRIBUTION OF BOATING IMPROVEMENT FUNDS
FOR BOATING RELATED FACILITIES (FY 05-06)
MARINE ISLE BEACHFRONT AND JETTY PROJECT**

THIS AGREEMENT is entered into this _____ day of _____, 20____, by and between **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is 1101 E. First Street, Sanford, Florida 32771, hereinafter referred to as the "COUNTY" and the **CITY OF SANFORD**, a Florida municipal corporation, whose address is 300 N. Park Avenue, Sanford, Florida 32771, hereinafter referred to as the "CITY" in pursuance of a project approved under the Seminole County Boating Improvement Program ("Program").

W I T N E S S E T H:

WHEREAS, Chapter 327, Florida Statutes, subsection 327.25 provides that a portion of the funds received from boat license fees be returned to county government to provide recreation channel markings and public launching facilities and other boating related activities; and

WHEREAS, by Seminole County Resolution Number 98-R-244, the COUNTY established the Seminole County Boating Improvement Program; and

WHEREAS, Chapter 163, Florida Statutes, Section 163.01, Florida Interlocal Cooperation Act of 1969, subsection 163.01(4), provides that public agencies of the State of Florida may exercise jointly with any other public agency of the State of Florida any power, privilege, or authority which such agencies share in common and which each might exercise separately; and

WHEREAS, Chapter 163, Florida Statutes, subsection 163.01(5), provides that a joint exercise of power by such public agencies shall be made by contract in the form of an interlocal agreement; and

WHEREAS, both COUNTY and CITY are "public agencies" within the meaning of Chapter 163, Florida Statutes, Section 163.01; and

WHEREAS, the CITY is planning to make Marina Isle Beachfront and Jetty improvements, hereinafter referred to as the "Project," and has requested funds held by the COUNTY under the Program; and

WHEREAS, COUNTY is desirous of providing for this boating related activity for citizens living throughout Seminole County and finds that the public health, safety, and welfare will be served through the construction of the Project by CITY; and

WHEREAS, COUNTY and CITY previously executed Agreements whereby COUNTY awarded Boating Improvement Funds to CITY, and COUNTY and CITY desire to execute another Agreement relative to the provision of an additional FIFTY-THREE THOUSAND FOUR HUNDRED SIXTY-THREE AND NO/100 DOLLARS (\$53,463.00) of FY 2005-2006 Boating Improvement Funds to CITY,

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Section 1. Recitals. The above recitals are true and correct and form a material part of the agreement upon which the parties have relied. It is understood and expressly agreed that the policies, procedures, terms, and conditions provided under the Program

established by Seminole County Resolution Number 98-R-244 are incorporated herein and attached hereto as Exhibit "A".

Section 2. Obligations of COUNTY and CITY. The CITY agrees to construct the Project in accordance with the plans and specifications prepared by or under the supervision and review of a registered professional architect, engineer, or other appropriate professional. The elements of the Project are identified as design, engineering and permitting of the Marina Isle Beachfront and Jetty Project.

COUNTY agrees to obligate and make available to the CITY the approved Project amount of FIFTY-THREE THOUSAND FOUR HUNDRED SIXTY-THREE AND NO/100 DOLLARS (\$53,463.00) for the Project authorized by this Agreement, subject to the terms of the Program. It is understood and expressly agreed that said funds shall be used exclusively by CITY for only those boating related facilities described in the Project. It is understood and expressly agreed that funding payments made to CITY by COUNTY shall be subject to the policies, procedures, terms, and conditions provided under the Project. It is understood and expressly agreed that the policies, procedures, terms, and conditions set forth in the Project are made a part of this Agreement. The CITY understands that there shall be no reimbursement of funds by the COUNTY for any expenditure made prior to the execution of the Agreement.

Section 3. Statement of Work.

(a) The CITY, in a manner satisfactory to the COUNTY, shall perform or cause to be performed all work in the Project. Such work shall be performed except as otherwise specifically stated herein by

persons or instrumentalities solely under the domain and control of the CITY.

Section 4. Term. The COUNTY shall reimburse the CITY for the work performed or caused to be performed by the CITY as part of the Project prior to December 31, 2006, subject to the terms of the Project. All such work shall be performed in accordance with applicable requirements of this Agreement and the Program. Reimbursement or payment of funds to the CITY shall be contingent thereupon. The CITY shall complete all work on or before December 31, 2006, unless this Agreement is otherwise amended or extended by written agreement of the parties. This Agreement shall be effective upon execution by both parties.

Section 5. Consideration and Limitations of Costs/Funds. The CITY shall be reimbursed by the COUNTY for costs in accordance with the Program and applicable laws, rules, and regulations in an amount not to exceed FIFTY-THREE THOUSAND FOUR HUNDRED SIXTY-THREE AND NO/100 DOLLARS (\$53,463.00) for the work described in the Project.

Section 6. Payments.

(a) Payments to the CITY shall be on an invoice basis and limited to the work for the Project. Reimbursement for the Project shall be requested on Project Reimbursement forms.

(b) Upon receipt of the above enumerated documentation, the COUNTY shall initiate the payment process. Reimbursement to the CITY shall be as soon as practicable in accordance with the terms of the Project. The Parks and Recreation Manager, designated as the COUNTY's Project Manager for the purpose of this Agreement, shall be

responsible for ensuring performance of its terms and conditions and shall approve the payment request prior to the payment. Photographs shall be submitted when appropriate to reflect work accomplished.

(c) All disbursements by the CITY must be fully documented to the COUNTY so as to be available upon request for inspection or audit in accordance with the provisions of this Agreement, Project, and Florida law, or as otherwise may be reasonably required by the COUNTY.

Section 7. Compliance with Local and State Laws. The CITY shall comply with applicable State and local laws, regulations, and ordinances, which by reference are incorporated as if fully set forth herein, including but not limited to the following:

(a) Chapter 112, Florida Statutes - concerning conflicts of interest; and

(b) any and all laws, rules and regulations relating to the matters set forth or implied in this Agreement.

Section 8. Project Publicity. Any news release, project sign, or other type of publicity pertaining to the Project as stated herein shall recognize the Seminole County Boating Improvement Program and the Seminole County Board of County Commissioners as the source of funding for the Project.

Section 9. Maintenance of Records.

(a) The CITY shall, at a minimum, maintain all records required by Federal, State, and local laws, rules, regulations, and procedures.

(b) The CITY shall maintain such records, accounts, property and personnel records as deemed necessary by Florida law and the COUNTY or otherwise typical in sound business practices to assure

proper accounting of Project funds and compliance with this Agreement, and the Program.

(c) All records and contracts of whatsoever type or nature required by this Agreement and the Program shall be available for audit, inspection, and copying at any time during normal business hours and as often as the COUNTY or other Federal or State agency may deem necessary. The COUNTY shall have the right to obtain and inspect any audit pertaining to the performance of this Agreement made by any Federal, State, or local agency. The CITY shall retain all records and supporting documentation applicable to this Agreement for a minimum of five (5) years after resolution of the final audit and in accordance with Florida law.

Section 10. Liability. Except for reimbursement as specifically set forth herein, the COUNTY shall not be liable to any person, firm, entity, or corporation who contracts with or who provides goods or services to the CITY in connection with the services hereunder, or for debts or claims accruing to such parties against the CITY. The Agreement shall not create a contractual relationship, either express or implied, between COUNTY and any other person, firm, entity, or corporation supplying any work, labor, services, goods, or materials to the CITY as a result of this Agreement.

Section 11. Subcontracts. All contracts made by the CITY to perform activities described in the Project shall comply with applicable laws, rules, and regulations set forth in this Agreement and the Program. Any additional work or services subcontracted

hereunder by the CITY shall be specified by written agreement and subject to this Agreement and the Program.

Section 12. Indemnification.

(a) To the extent permitted by law, the CITY shall defend, hold harmless, and indemnify the COUNTY from and against any and all liability, loss, claims, damages, costs, attorney's fees, and expenses of whatsoever kind, type, or nature which the COUNTY may sustain, suffer, or incur, or be required to pay by reason of the loss of any monies paid to the CITY or whomsoever resulting out of fraud, defalcation, dishonesty, or failure of the CITY to comply with applicable laws, rules, or regulations; or by reason or as a result of any act or omission of the CITY in the performance of this Agreement or any part thereof; or by reason of a judgment over and above the limits provided by the insurance required hereunder; or by any defect in the construction of the Project; or as may otherwise result in any way or instance whatsoever.

(b) In the event that any action, suit, or proceeding is brought against COUNTY upon any alleged liability arising out of this Agreement, or any other matter relating to this Agreement, the COUNTY shall provide notice in writing thereof to the CITY by registered or certified mail addressed to the CITY at its address herein provided. Upon receiving notice, the CITY, at its own expense, shall diligently defend against the action, suit, or proceeding and take all action necessary or proper therein to prevent the obtaining of a judgment against the COUNTY.

Section 13. Insurance. The CITY shall carry and maintain in full force and effect throughout the term of this Agreement, either liability insurance or a liability self-insurance program to, at a minimum, the limit of liability set forth in Section 768.28, Florida Statutes, as may from time to time be amended.

Section 14. Assignments. Neither party shall assign this Agreement, nor any interest herein, without the prior written consent of the other party.

Section 15. Headings. All articles and descriptive headings of paragraphs in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

Section 16. Termination. This Agreement may be terminated in accordance with the terms and conditions set forth under the Program.

Section 17. Notice. Whenever either party desires to give notice unto the other, notice may be sent to:

For COUNTY:

Director of Library and Leisure Services
264 W. North St.
Altamonte Springs, FL 32714

For CITY:

Mayor
City of Sanford
300 N. Park Ave.
Sanford, FL 32771

Section 18. Severability. If any one or more of the covenants or provisions of this Agreement shall be held to be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants or

provisions shall be null and void; shall be deemed separable from the remaining covenants or provisions of this Agreement; and shall in no way affect the validity of the remaining covenants or provisions of this Agreement.

Section 19. Conflict of Interest.

(a) The CITY agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the COUNTY or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government.

(b) The CITY hereby certifies that no officer, agent, or employee of the COUNTY has any material interest (as defined in Section 112.312(15), Florida Statutes, as over 5%) either directly or indirectly, in the business of the CITY to be conducted here and that no such person shall have any such interest at any time during the term of this Agreement.

(c) Pursuant to Section 216.347, Florida Statutes, the CITY hereby agrees that monies received from the COUNTY pursuant to this Agreement will not be used for the purpose of lobbying the Legislature or any other State or Federal agency.

Section 20. Entire Agreement: Effect on Prior Agreement. This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, and agreements, if any, between the parties relating to the subject matter of this Agreement. Amendments to and waivers of the provisions herein shall be made by the parties in writing by formal amendment hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day hereinabove first written.

ATTEST:

CITY OF SANFORD

Janet R. Dougherty
JANET R. DOUGHERTY, City Clerk

By: Linda Kuhn
LINDA KUHN, Mayor

Date: December 12, 2005

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
CARLTON HENLEY, Chairman

Date: _____

For the use and reliance
of Seminole County only.

As authorized for execution
by the Board of County Commissioners
at their _____, 20____
regular meeting.

Approved as to form and
legal sufficiency.

[Signature]
County Attorney

AC/lpk
11/7/05
boating improvement funds w Sanford

Attachment:
Exhibit "A" - Resolution 98-R-244

RESOLUTION NO. 98-R- 244

SEMINOLE COUNTY, FLORIDA

THE FOLLOWING RESOLUTION WAS ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA, AT THEIR REGULARLY SCHEDULED MEETING OF NOVEMBER 10, 1998.

WHEREAS, in accordance with Section 327.25, Florida Statutes, the State of Florida collects vessel registration fees for those vessels required by law to be registered in the State of Florida; and

WHEREAS, said vessel registration fees have historically been deposited in the Motorboat Revolving Trust Fund and have been appropriated to the Florida Department of Environmental Protection ("FDEP") for grant funding to be provided to county governments; and

WHEREAS, the FDEP created the Florida Boating Improvement Program to implement the allocation of said grant funds to county governments; and

WHEREAS, in accordance with Section 327.25(16), Florida Statutes, said grant funds are to be used for the sole purposes of providing recreational channel marking and public launching facilities and other boating related activities, for removal of vessels and floating structures deemed hazards to public safety and health for failure to comply with Section 327.53, Florida Statutes, and for manatee and marine mammal protection and recovery; and

WHEREAS, the Florida Legislature has recently amended Section 327.25(16), Florida Statutes, to provide for the deposit of vessel registration fees into the Marine Resources Conservation Trust

Fund and to provide that said fees be directly distributed to county governments without prior appropriation to the FDEP; and

WHEREAS, it is necessary that the Board of County Commissioners adopt the Seminole County Boating Improvement Program to establish policies and procedures for the lawful distribution of said vessel registration fees received from the Marine Resources Conservation Trust Fund,

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

Section 1. Establishment of the Seminole County Boating Improvement Program

The Board of County Commissioners of Seminole County ("Board") hereby establishes the Seminole County Boating Improvement Program ("BIP").

Section 2. Vessel Registration Fees

(a) In accordance with Section 327.25(16), Florida Statutes, vessel registration fees are collected by the Florida Department of Highway Safety and Motor Vehicles ("FDHSMV") and deposited in the Marine Resources Conservation Trust Fund for distribution to counties.

(b) Seminole County ("County") shall receive vessel registration fees from all vessels registered in Seminole County. Vessel registration fees collected during the preceding fiscal year shall be forwarded to the County by FDHSMV each July. The County shall deposit said fees into an account designated for the BIP which shall be monitored by the County's Department of Library and Leisure Services ("Department").

Section 3. Administration of the BIP

(a) The Board may utilize BIP funds for eligible County projects or, at its sole discretion, may authorize the use of BIP funds by municipal governments within the County for eligible municipal projects. The authorization for the use of BIP funds by municipal governments within the County shall not exceed one-half of the County's annual allocation with at least one-half being reserved for County projects. If there are no applications submitted that meet the requirements of the BIP, funds will revert back for use on County projects. The BIP shall be administered by the Board, through the Department, with review and recommendations by the County's Parks and Recreation Advisory Board ("Advisory Board"). The Department is authorized to develop procedures and forms as may be required to implement the program. Projects will be prioritized and recommended to the Board by the Advisory Board.

(b) In order to allocate project funding for County or municipal projects, the Department shall include in its annual budget request said projects and shall submit same for approval by the Board. For Board approved County projects requiring additional funding or a change in scope, the Department shall prepare the necessary documentation including the proposed changes for approval by the Board.

(c) BIP funds may be used as the local cash matching requirement for the Florida Recreation Development Assistance Program, the Land and Water Conservation Fund Program, the Florida Inland Navigation District Waterways Assistance Program, or such other grant programs requiring a local cash match, provided that

the BIP funds are used for eligible project elements.

(d) Project Design and Construction.

(1) All projects shall be designed and constructed in accordance with applicable Federal, State and local laws, rules, regulations, and codes.

(2) The design or construction of any boat launching facility shall not be located so as to pose a threat to other boating or recreational activities on the water body it serves.

(3) All Federal, State and local permits, easements, consents, or other similar authorizations for a project shall be obtained prior to commencement of design and construction of the project.

(4) Project construction expenses eligible for BIP funding include payments to vendors for purchase of materials, equipment, rental of equipment, services, or lump sum labor contracts.

(e) The Board may approve a project with an estimated cost exceeding the amount of available BIP funds. In such cases, the amount of the project cost exceeding available BIP funds may be eligible for reimbursement from the allocation for the next fiscal year. However, any project so approved shall be subject to the continued funding in accordance with Section 327.25(16), Florida Statutes. The Board does not guarantee or pledge payment of the balance in such cases and is not liable for any future reimbursement or pledge should funds not become available.

(f) Any unspent BIP funds allocated to a specific project shall be returned to the appropriate account for future use on

County projects. Further, BIP funds not allocated in any fiscal year shall be carried forward for use in subsequent years.

(g) The County shall maintain and keep records of all projects receiving BIP funds. Completed projects shall be included in the County's single audit report which shall be forwarded annually, if required, to the FDEP. Upon completion of a project, a municipality must submit a project completion statement to the Department on a form approved by the Department. Upon completion of a County project the Department shall file a project completion statement in the project file. For municipal projects, the municipality shall provide required materials as delineated in the required project close out documentation form.

(h) Any project developed with assistance from BIP funding shall be for the use and benefit of the general public. Upon completion of a project, the County or a municipality shall dedicate said project for public recreational use in perpetuity by recording a Notice of Limitation of Use including said dedication in the Public Records of Seminole County. The County and the municipalities utilizing BIP funds for design or construction of an eligible project shall be responsible for ensuring the operation and maintenance of said project for a period of 25 years from the date of completion of the project.

(i) Projects funded in whole or in part by BIP funds shall be administered and made available to the general public on a non-discriminatory basis regardless of residency, race, color, religion, sex, national origin, age, handicap, or marital status. If a fee is charged, it must be the same for all users.

(j) A permanent identification sign or plaque which credits the BIP as a source of project funding is required to be erected at all completed projects where sign placement is feasible.

Section 4. BIP Funding for Municipal Projects

(a) Any County municipality may submit applications for eligible projects meeting the requirements of the program. The municipality must have resources available and accept the maintenance of the project. A municipality requesting BIP funds must submit a project application to the Department. All project applications shall be reviewed and evaluated by the Department with regard to eligibility of the proposed project, completeness of the application, funding availability, the municipality's compliance with previous project agreements, and County and/or Department priorities.

(b) Subsequent to review and comment by the Department, said municipality may request that a project application be submitted to the Advisory Board for prioritization and recommendation to the Board for consideration. If a project application is approved by the Board, the County Attorney's Office shall prepare a project agreement for execution by the parties.

(c) A project agreement is the required funding mechanism to allocate BIP funding to a municipality for an eligible project.

(d) Unless otherwise specified in a project agreement, project funding shall be only for those costs incurred subsequent to the execution of the project agreement by the Board.

(e) The County shall disburse BIP funding to a municipality only on a reimbursement basis and shall require completion of the

project in accordance with the terms and conditions as set forth in the project agreement. No funds will be paid in advance. Reimbursement for municipal projects shall be requested on Project Reimbursement forms as applicable.

(f) A quarterly status report for each project shall be submitted by the municipality on a project status report form provided by the Department.

(g) Should a municipality desire to propose any changes to a project agreement including, but not limited to, changes in scope or funding of a project, said proposed changes must be submitted in writing to the Department along with a statement of justification for same. All changes to a project agreement shall be made by means of a written amendment to a project agreement approved in the same manner as the underlying project agreement.

(h) The Department shall have the right to terminate a project agreement and demand refund of BIP funds (plus interest at the maximum rate authorized in the Florida Statutes) for non-compliance with the terms of this Resolution or the project agreement. Failure of a municipality to comply with the provisions of this Resolution or a project agreement may result in the Board declaring the municipality ineligible for participation in the BIP until a time certain and/or under certain conditions as designated.

(i) A municipality desiring to terminate a project agreement shall refund to the County all BIP funds plus interest accrued thereupon prior to County executing said termination.

Section 5. Projects Eligible for BIP Funding

(a) BIP funds shall be used for those projects which improve recreational boating for the public in accordance with Section 327.25(16), Florida Statutes, for the purpose of providing recreational channel marking and public launching facilities and other boating-related activities, for removal of vessels and floating structures deemed a hazard to public safety and health for failure to comply with Section 327.53, Florida Statutes, and for manatee and marine mammal protection and recovery.

(b) BIP funds may be used for those costs associated with acquisition, design, construction, and completion of an eligible project including, but not limited to, the expansion, renovation, repair or installation of the following:

- (1) Launching facilities;
- (2) Recreational channel lights and markers;
- (3) Waterway and related signs and buoys for safety, regulation or information;
- (4) Docking and mooring facilities;
- (5) Access roads and parking for boating facilities;
- (6) Channel dredging;
- (7) Boating related support facilities and utilities such as restrooms, lighting, picnic pavilions, landscaping, water, sewer, and electrical;
- (8) Artificial fishing reefs in State waters (design, construction, transportation, installation, marking, research, and monitoring); and
- (9) Bulk head, rip-rap, and seawall construction.

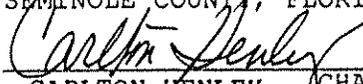
(c) Expenses that are ineligible for BIP funding include tools, equipment, boats, motors, office furniture and supplies, law enforcement and safety equipment, and contract labor and materials not used exclusively for a project.

ADOPTED this 10 day of November, 1998.

ATTEST:


MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida
10/28/98
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BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

By: 

CARLTON HENLEY, CHAIRMAN