

**9. CONSENT AGENDA**

- c. RESOLUTION 08-013 APPROVING AN AGREEMENT WITH THE LEE COUNTY TAX COLLECTOR FOR THE COLLECTION OF THE CITY OF SANIBEL, SANIBEL SEWER SYSTEM PHASE 5 EXPANSION PROJECT NON AD VALOREM SPECIAL ASSESSMENT PURSUANT TO SECTION 197.3632, FLORIDA STATUTES; PROVIDING FOR REIMBURSEMENT TO THE TAX COLLECTOR FOR THE ADMINISTRATIVE COSTS ASSOCIATED WITH THE ASSESSMENT AND COLLECTION OF SANIBEL SEWER SYSTEM PHASE 5 EXPANSION PROJECT NON AD VALOREM SPECIAL ASSESSMENTS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE**



**CITY OF SANIBEL**

**RESOLUTION NO. 08-013**

**A RESOLUTION APPROVING AN AGREEMENT WITH THE LEE COUNTY TAX COLLECTOR FOR THE COLLECTION OF THE CITY OF SANIBEL, SANIBEL SEWER SYSTEM PHASE 5 EXPANSION PROJECT NON AD VALOREM SPECIAL ASSESSMENT PURSUANT TO SECTION 197.3632, FLORIDA STATUTES; PROVIDING FOR REIMBURSEMENT TO THE TAX COLLECTOR FOR THE ADMINISTRATIVE COSTS ASSOCIATED WITH THE ASSESSMENT AND COLLECTION OF THE SANIBEL SEWER SYSTEM PHASE 5 EXPANSION PROJECT NON AD VALOREM SPECIAL ASSESSMENTS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Sanibel intends to establish the Sanibel Sewer System Phase 5 Expansion Project Non-Ad Valorem Special Assessment District to provide for the funding of such Special Assessment; and

**WHEREAS**, the City Council of the City of Sanibel, at its February 19, 2009 regularly scheduled meeting, will consider adoption of a Resolution expressing its intent to utilize the uniform (i.e. property tax bill) collection method for collecting non-ad valorem special assessments of the Sanibel Sewer System Phase 5 Expansion Project; and

**WHEREAS**, it is required by law that the City enter into an agreement with the County Tax Collector for the reimbursement of Administrative Costs of the Tax Collector for collection services and related services pursuant to Section 197.3632, Florida Statutes;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Sanibel, Florida:

Section 1. The City Council of the City of Sanibel hereby approves an Agreement with the Lee County Tax Collector for the collection of the City of Sanibel, Sanibel Sewer System Phase 5 Expansion Project Non Ad Valorem Special Assessments and for

the reimbursement of Administrative Costs for such Uniform Collection and Enforcement pursuant to Section 197.3632, Florida Statutes. A copy of such Agreement is attached hereto as Exhibit "A" and the City Manager is hereby authorized to execute same on behalf of the City of Sanibel.

Section 2. Effective Date. This resolution shall take effect immediately upon adoption.

**DULY PASSED AND ENACTED** by the Council of the City of Sanibel, Florida, this 5th day of February, 2008.

AUTHENTICATION:

\_\_\_\_\_  
Mick Denham, Mayor

\_\_\_\_\_  
Pamela Smith, City Clerk

APPROVED AS TO FORM:

Kenneth B. Cuyler      1/28/08  
Kenneth B. Cuyler, City Attorney      Date

Vote of Council Members:

Denham      \_\_\_\_\_  
Johnston      \_\_\_\_\_  
Jennings      \_\_\_\_\_  
Pappas      \_\_\_\_\_  
Ruane      \_\_\_\_\_

Date Filed with City Clerk: \_\_\_\_\_

## UNIFORM COLLECTION AGREEMENT

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THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_, 2008, by and between City of Sanibel, a municipal corporation, ("City"), whose address is 800 Dunlop Road, Sanibel, Florida 33957, and the Office of the Lee County Tax Collector, by and through the Honorable Cathy Curtis, Lee County Tax Collector, whose address is Lee County Tax Collector's Office, 2480 Thompson Street, Fort Myers, Florida 33901 ("Tax Collector").

### SECTION I

#### Findings and Determinations

The parties find and determine:

1. City is authorized to impose and levy, and by appropriate Resolution will express its intent to use the statutory uniform methodology of collection for certain non-ad valorem special assessments for the Sanibel Sewer System Phase 5 Expansion Project ("Assessments"), as authorized by constitutional and statutory municipal home rule and by Section 197.3632, Florida Statutes (2002 Supp.), and Rule 12D-18, Florida Administrative Code, as amended; and
2. The term "Assessments" means those certain levies by City which purport to constitute non-ad valorem special assessments for the Sanibel Sewer System Phase 5 Expansion Project. A non-ad valorem special assessment is lienable under Section 4, Article X, Florida Constitution, if it results in a special benefit peculiar to the parcels of property involved, over and above general community benefit, as a result of a logical connection to the property involved from the system, facility and service provided by City and if it is apportioned to the property fairly and reasonably; and
3. The uniform statutory collection methodology is provided in Section 197.3632, Florida Statutes, and Rule 12D-18, Florida Administrative Code ("uniform methodology"), with its enforcement provisions, including the use of tax certificates and tax deeds for enforcing against any delinquencies; and
4. The uniform methodology is more fair to the delinquent property owner than traditional lien foreclosure methodology; and
5. The uniform methodology provides for more efficiency of collection by virtue of the "Assessment" being on the official tax notice issued by the Tax Collector which will produce positive economic benefits to City and its citizens and taxpayers; and

6. The uniform methodology, through use of the official tax notice, will tend to eliminate confusion and promote local government accountability; and
7. The Tax Collector, as the State Constitutional Officer for the Lee County Political Subdivision, is charged by general law in Chapter 197, Florida Statutes, and related rules and regulations, to function as the agent of the Florida Department of Revenue for purposes of the uniform methodology for the “Assessments”; and
8. The sole and exclusive responsibility to determine, impose and levy the “Assessments” and to determine that it is a legal, constitutional and lienable non-ad valorem special assessment for the Sanibel Sewer System Phase 5 Expansion Project and related systems, facilities and services is that of City and no other person, entity or officer.

## **SECTION II**

### **Authority**

1. Section 2, Article VIII, Florida Constitution; Section 166.021, Florida Statutes; Sections 197.3631, 3632 and 3635, Florida Statutes; Rule 12D-18, Florida Administrative Code, and all other applicable provisions of constitutional and statutory law govern the exercise by City of its local self-government power to render and pay for municipal services.
2. Section 1(d), Article VIII, Florida Constitution; Chapter 197, Florida Statutes; Rule 12D-13, Florida Administrative Code; Rule 12D-18, Florida Administrative Code, and other applicable provisions of constitutional and statutory law apply to Tax Collector in her capacity as a state constitutional county officer and agent of the Florida Department of Revenue for the purpose of collecting and enforcing the collection of non-ad valorem special assessments levied by City, a government of the Lee County Political Subdivision.
3. Section 197.3631, Florida Statutes, constitutes supplemental authority for City to levy non-ad valorem assessments including such non-ad valorem special assessments as the “Assessments” for the Sanibel Sewer System Phase 5 Expansion Project and related systems, facilities and services.
4. Section 197.3632, Florida Statutes, and Rule 12D-18, Florida Administrative Code, have provisions that apply both to City and to Tax Collector in and for Lee County, as well as the Department of Revenue.

## SECTION III

### Purpose

The purpose of this Agreement under Rule 12D-18, Florida Administrative Code, is to establish the terms and conditions under which the Tax Collector shall collect and enforce the collection of those certain non-ad valorem special assessments, the "Assessments", levied by City to include compensation by City to the Tax Collector for actual costs of collection pursuant to Section 197.3632(8)(c), Florida Statutes; payment by City of any costs involved in separate mailings because of non merger of any non-ad valorem special assessment roll as certified by City or his or her designee, pursuant to Section 197.3632(7), Florida Statutes, and reimbursement by City for necessary administrative costs, including, but not limited to, those costs associated with personnel, forms, supplies, data processing, computer equipment, postage and programming which attend all of the collection and enforcement duties imposed upon the Tax Collector by the uniform methodology, as provided in Section 197.3632(2), Florida Statutes.

## SECTION IV

### Term

The term of this Agreement shall commence upon execution, effective for the 2008 tax notice purposes, and shall continue and extend uninterrupted from year to year, automatically renewed for successive periods not to exceed one (1) year each, unless City shall inform the Tax Collector, as well as the Property Appraiser and the Department of Revenue by January 10 of each calendar year, if City intends to discontinue to use the uniform methodology for such "Assessments" pursuant to Section 197.3632(6), Florida Statutes (2002 Supp.), and Rule 12D-18.006(3), Florida Administrative Code, using Form DR-412 promulgated by the Florida Department of Revenue.

## SECTION V

### Duties and Responsibilities of City

City agrees, covenants and contracts to:

1. Compensate the Tax Collector for actual collection costs incurred pursuant to Section 197.3632(8)(c), Florida Statutes, and 12D-18.004(2), Florida Administrative Code.
2. Reimburse Tax Collector for necessary administrative costs for the collection and enforcement of the "Assessments" by the Tax Collector under the uniform methodology, pursuant to Section 197.3632(2), Florida Statutes, and Rule 12D-18.004(2), Florida Administrative Code, to include, but not be limited to, those costs associated with personnel, forms, supplies, data processing, computer equipment, postage and programming.

3. To pay for or alternatively to reimburse the Tax Collector for any separate tax notice necessitated by the inability of the Tax Collector to merge the non-ad valorem special assessment roll certified by City pursuant to Section 197.3632(7), Florida Statutes, and Rule 12D-18.004(2), Florida Administrative Code.
4. The Tax Collector shall collect from City all costs associated with the collection of the non-ad valorem special assessments for each year. Current estimated annual collection cost is \$1.50 per parcel and is subject to change based upon actual expenditures.
5. City shall be directly responsible for any requirements and costs associated with advertising relating to implementation of the uniform non-ad valorem special assessment law pursuant to Sections 197.3632 and 197.3635, Florida Statutes, and Rule 12D-18.004(2), Florida Administrative Code.
6. City has elected to engage the services of the Property Appraiser to serve as agent of City to specifically list, extend, prepare and submit the non-ad valorem assessment rolls of City to the Tax Collector on an annual basis at the same time that the regular ad valorem roll is certified to the Tax Collector on compatible electronic medium as defined in Section 197.3632(1)(f), Florida Statutes; designated by the property identification number, the Phase 5 sewer expansion area, non-ad valorem special assessment rolls.
7. City agrees to abide by and implement its duties under the uniform law pursuant to all the provisions of Sections 197.3632 and 197.3635, Florida Statutes, or its successor of statutory provisions and all applicable rules promulgated by the Department of Revenue and their successor rules.
8. City acknowledges that the Tax Collector has no duty, authority or responsibility in the imposition and levy of any non-ad valorem special assessments, including City's "Assessments" and that it is the sole responsibility and duty of City to follow all procedural and substantive requirements for the levy and imposition of constitutionally lienable non-ad valorem special assessments, including the "Assessments".
9. To the extent permitted by law (Section 768.28, Florida Statutes), City shall indemnify and hold harmless Tax Collector to the extent of any legal action which may be filed in local, state or federal courts against Tax Collector regarding the imposition, levy, roll preparation and certification of the "Assessments"; City shall pay for or reimburse Tax Collector for fees for legal services rendered to Tax Collector with regard to any such legal action.

## SECTION VI

### Duties of the Tax Collector

1. The Tax Collector shall include the non-ad valorem special assessments on the combined notice of taxes, prepare a collection roll and prepare a combined notice (the tax notice) for both ad valorem taxes and non-ad valorem special assessments for all levying authorities (all the local governments) within the Lee County Political Subdivision, pursuant to Sections 197.3632 and 197.3635, Florida Statutes, and its successor provisions and any applicable rules, and their successor rules, promulgated by the Department of Revenue, and in accordance with any specific ordinances or resolutions adopted by City, so long as said ordinances and resolutions shall themselves each and every one clearly state intent to use the uniform method for collecting such assessments and so long as they are further not inconsistent with, or contrary to, the provisions of Sections 197.3632 and 197.3635, Florida Statutes, and their successor provisions, and any applicable rules.
2. Tax Collector shall collect the "Assessments" of City as certified by the duly authorized City representative, to the Property Appraiser no later than September 15 of each calendar year on compatible electronic medium, tied to the property identification number for each parcel, and in the format used in July by the Property Appraiser for the ad valorem rolls submitted to the Department of Revenue, using DR Form 408, and free of errors and omissions.
3. The Tax Collector shall disburse funds due to City hereunder in accordance with the provisions of F.S. 197.383, as amended from time to time. All costs associated with the collection of the non-ad valorem special assessments shall be deducted from the second and third distributions prior to remittance of the proceeds to City.
4. The Tax Collector agrees to cooperate with City in implementation of the uniform methodology for collecting "Assessments" pursuant to Sections 197.3632 and 197.3635, Florida Statutes, and any successor provisions and applicable rules. The Tax Collector shall not accept any non-ad valorem special assessment roll for the "Assessments" of City that is not officially, timely and legally certified to the Tax Collector pursuant to Chapter 197, Florida Statutes, and Rule 12D-18, Florida Administrative Code.
5. If the Tax Collector discovers errors or omissions on such roll, the Tax Collector may request City to file a corrected roll or a correction of the amount of any assessment and City shall bear the cost of any such error or omission.
6. If Tax Collector determines that a separate mailing is authorized pursuant to Section 197.3632(7), Florida Statutes, and any applicable rules promulgated by the Department of Revenue, and any successor provision to said law or rules, the Tax Collector shall either mail a separate notice of the particular non-ad valorem special assessment ("Assessment") or shall direct City to mail such a separate notice. In

making this decision, the Tax Collector shall consider all costs to City and to the taxpayers of such a separate mailing as well as the adverse effect to the taxpayers of delay in multiple notices. Tax Collector shall have sole discretion in making such decision. If such a separate mailing is affected, City shall bear all costs associated with the separate notice for the non-ad valorem special assessment that could not be merged, and all such costs shall be deducted from the second and third distributions prior to remittance of the proceeds to City.

## SECTION VII

### **Good Faith, Severability, Governing Law and Notice**

1. The parties shall perform all their obligations under this Agreement in accordance with good faith and prudent practice.
2. This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein and may not be amended, modified or rescinded unless otherwise provided in this Agreement, except in writing and signed by all the parties hereto. Should any provision of this Agreement be declared to be invalid, the remaining provisions of this Agreement shall remain in full force and effect, unless such provision is found to be invalid, altering substantially the benefits of the Agreement for either of the parties or rendering the statutory and regulatory obligations unperformable.
3. This Agreement shall be governed by the laws of the State of Florida.
4. Written notice shall be given to the parties at the following addresses or such other place or person as each of the parties shall designate by similar notice:

- a. As to Tax Collector:

Cathy Curtis  
Lee County Tax Collector  
2480 Thompson Street  
Fort Myers, FL 33901

- b. As to City:

Judith A. Zimomra  
Sanibel City Manager  
800 Dunlop Road  
Sanibel, FL 33957

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and such of them as are corporations have caused these presents to be signed by their duly authorized officers.

ATTEST

LEE COUNTY TAX COLLECTOR

\_\_\_\_\_

By: \_\_\_\_\_  
Catherine M. Curtis

Date: \_\_\_\_\_

ATTEST

CITY OF SANIBEL

\_\_\_\_\_  
Pamela Smith, City Clerk

By: \_\_\_\_\_  
Mick Denham, Mayor

Date: \_\_\_\_\_

APPROVED AS TO FORM AS TO THE  
CITY

\_\_\_\_\_  
Kenneth B. Cuyler, City Attorney