

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

Blue Sheet No. 20040803

1. REQUESTED MOTION:

ACTION REQUESTED: Approve interlocal agreement between Lee County and the City of Cape Coral for Major Park/Yellow Fever Creek Preserve land stewardship plan and master plan.

WHY ACTION IS NECESSARY: Board approval is necessary for Lee County Parks and Recreation to collaborate and cost share with the City of Cape Coral Parks and Recreation on the development of a land stewardship plan and master site plan for public use facilities on the park-preserve complex known as Major Park/Yellow Fever Creek Preserve.

WHAT ACTION ACCOMPLISHES: The result of the agreement will be a land stewardship plan and master site plan for public use facilities on the park-preserve complex known as Major Park/Yellow Fever Creek Preserve.

**2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT # 4**

C11B

3. MEETING DATE:

06-29-2004

4. AGENDA:

- CONSENT ADMINISTRATIVE APPEALS
- PUBLIC WALK ON
- TIME REQUIRED:

**5. REQUIREMENT/PURPOSE:
(Specify)**

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT Parks and Recreation
- C. DIVISION

BY: John Yarbrough

John Yarbrough

7. BACKGROUND: Lee County has acquired, via the Conservation 20/20 (C20/20) Program, two parcels known as the Yellow Fever Creek Preserve, which are adjacent to the south to the City of Cape Coral owned Major Park. Both Parks and Recreation Departments from the City and the County would like to work together via this agreement to produce a land stewardship plan and a master plan for the development of public use facilities on City and County property. The City's parcel will have active recreational uses, while the C20/20 parcels will remain in their natural state and provide hiking opportunities. The facilities at the Major Park will act as the main infrastructure to the park-preserve complex with parking, restrooms, trailhead, possible environmental center and opportunity for other active uses. The funds utilized to cost share on developing the two plans will come from the C20/20 management funds and the entire cost of the project will be split 50-50 between the City and the County.

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

cam

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services			G County Manager
<i>24 6/15/04</i>	<i>[Signature]</i>	<i>N/A</i>		<i>[Signature]</i> <i>6/18/04</i>	<i>OA</i> <i>6/18/04</i>	<i>OM</i> <i>6/18/04</i>	<i>Risk</i> <i>6/18/04</i>	<i>[Signature]</i> <i>6/18/04</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
Date: *6/18/04*
Time: *4:45*
Forwarded To:
[Signature]
6/18/04

RECEIVED BY
COUNTY ADMIN:
6/18/04
9:45 am SLT
COUNTY ADMIN
FORWARDED TO: *PR*
6/18/04
9:45

**INTERLOCAL AGREEMENT BETWEEN LEE COUNTY AND THE CITY OF CAPE
CORAL FOR MAJOR PARK/YELLOW FEVER CREEK PRESERVE
LAND STEWARDSHIP PLAN AND MASTER PLAN**

THIS INTERLOCAL AGREEMENT is made and entered into this 24th day of May, 2004, by and between the **CITY OF CAPE CORAL**, a municipal corporation of the State of Florida, acting by and through its City Council, the governing body thereof, "City", and **LEE COUNTY**, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, the governing body thereof, "County", and collectively, "the Parties" hereto.

RECITALS

WHEREAS, the City Council is the governing body in and for the City of Cape Coral; and the Board of County Commissioners is the governing body in and for Lee County; and

WHEREAS, both the County and the City are duly empowered pursuant to Florida Statutes, in particular Section 163.01, Florida Statutes, to enter into Interlocal Agreements for the sharing of certain governmental powers and obligations; and

WHEREAS, the City and the County desire to jointly develop and manage the property referred to as Major Park/Yellow Fever Creek Preserve, the parcel identified in Exhibit "A", attached hereto and incorporated herein, for public recreation; and

WHEREAS, Major Park/Yellow Fever Creek Preserve includes 350 acres owned by Lee County through its Conservation 20/20 program and 170 acres owned by the City; and

WHEREAS, the County has authority to utilize and manage the Conservation 20/20 property located within Major Park/Yellow Fever Creek Preserve in accordance with Conservation 20/20 guidelines; and

WHEREAS, the Parties hereto find that entering into this Interlocal Agreement serves a public purpose and is to the public's benefit.

NOW, THEREFORE, the Parties agree to the following terms and conditions hereinafter set forth, the City and the County, intending to be legally bound, hereby agree as follows:

SECTION 1 PURPOSE, AUTHORITY AND SCOPE

- A. The purpose and intent of this Agreement is to define the terms and conditions for the development of a Land Stewardship Plan and a Master Plan regarding the property known as Major Park/Yellow Fever Creek Preserve. All terms and conditions of this agreement will be interpreted in a manner consistent with and in furtherance of the proposed as set forth in this Section.
- B. The Recitals set forth above are incorporated into the terms of this Agreement.

SECTION 2 AUTHORITY FOR AGREEMENT

The City represents to the County that the execution and delivery of this Agreement has been duly authorized by all appropriate actions of the Governing Body of the City, has been executed and delivered by an authorized officer of the City, and constitutes a legal, valid and binding obligation of the City. The County represents to the City that the execution and delivery of this Agreement has been duly authorized by all appropriate actions of the Governing Body of the County, has been executed and delivered by an authorized officer of the County, and constitutes a legal, valid and binding obligation of the County.

SECTION 3 OBLIGATION OF THE CITY

- A. The City shall participate in this joint project in good faith and in a timely manner.
- B. The City will allow reasonable and continued access to the Major Park/Yellow Fever Creek Preserve property for the purpose of completing a Land Stewardship Plan and a Master Plan and for any future maintenance of the site.
- C. The City will provide copies of all relevant documents and current studies which may apply to the development of the Land Stewardship Plan and Master Plan for Major Park/Yellow Fever Creek Preserve.

- D. The City will contract with a reputable engineering firm to develop a Master Plan and a Land Stewardship Plan for Major Park/Yellow Fever Creek Preserve and to conduct a study for possible extension of N.E. 24th Avenue or alternative options as further described in the "Scope of Services", attached as Exhibit "B".
- E. The City will review all plans, specifications, and documents submitted for review in a timely manner and provide requested feedback.
- F. The City shall pay for the City's percentage and amounts of project costs as included in the Compensation Section of this Agreement.
- G. The City will act as the Project Manager for the development of the Land Stewardship Plan and the Master Plan.
- H. The City will conduct monthly project status meetings with Lee County for the development and completion of a Land Stewardship Plan and Master Plan and will notify the County's point of contact for this project of such meeting within a reasonable time frame. The requirement of a monthly status meeting can be waived by Lee County if a meeting is determined to be unnecessary for a particular month.
- I. Establish a Project account for the receipt and disbursement of all Project funding pursuant to this Agreement.
- J. Keep books, records, reports, documents, and other evidence pertaining to costs and expenses incurred for the Project and make available for inspection upon reasonable request for the City or the County.
- K. Notify the County of Project completion, providing final copies of all work products of the Project.

SECTION 4 OBLIGATIONS OF THE COUNTY

- A. The County shall participate in this joint project in good faith and in a timely manner.
- B. The County will allow reasonable access to the Major Park/Yellow Fever Creek Preserve property for the purpose of completing a Land Stewardship

Plan and a Master Plan.

- C. The County will provide copies of all relevant documents and current studies which may apply to the development of the Land Stewardship Plan and Master Plan for Major Park/Yellow Fever Creek Preserve.
- D. The County will review all plans, specifications, and documents submitted for review in a timely manner and provide requested feedback.
- E. The County shall reimburse the City for the County's proportionate share of project costs as included in the Compensation Section of this Agreement within 45 days from the receipt of an invoice from the City specifying the amount due.

SECTION 5 REPRESENTATIVES

- A. The representative for the City shall be the Director of Parks and Recreation or designee.
- B. The representative for the County shall be Anik Smith, Conservation 20/20 Land Stewardship Supervisor or designee.
- C. Either Party may assign their status as formal representative by written notification to the other Party.

SECTION 6 TIME OF PERFORMANCE

This agreement is for a term of one (1) year and may be renewed or extended for an additional one (1) year term upon written agreement of both parties. Portions of this Agreement may be cancelled or modified without affecting any other portions of this agreement.

SECTION 7 COMPENSATION AND METHOD OF PAYMENT

- A. Project Costs will be based on the total Project Costs, which will include final costs at completion.
- B. Cost shares are identified as City, 50% and County, 50%, [not to include costs of land contributions and with the understanding values of land

contributed to this project are not equal].

- C. Reimbursement for Project Costs to the City by the County will be on a monthly basis and all requests for reimbursement will include reasonable supporting documentation.
- D. The City shall inform the County in writing of any change in the Project costs that exceed 10% of the estimated costs of Project, sources of funding for the Project and use of Project funds during work on the Project. If at any time during the term of this Agreement the City determines that additional funds will be needed from the County to cover the County's share, the City shall notify the County in writing of the additional funds required together with an explanation of why additional funds are required.

SECTION 8 ASSIGNMENTS

No assignment, delegation, transfer, or novation of this Interlocal Agreement, in whole or in part, shall be made by either Party unless approved by both the City and the County in writing.

SECTION 9 RELATIONSHIP OF PARTIES

- A. In the exercise of their respective rights and obligations under this Agreement, the County and the City each act in an independent capacity, and neither is to be considered the agent of the other.
- B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

SECTION 10 NOTICES

Any notices or other documents permitted or required to be delivered pursuant to this Interlocal Agreement, shall be delivered to the County at the Office of the County

Manager and to the City, at the Office of the City Manager.

SECTION 11 CONSTRUCTION

This Interlocal Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

SECTION 12 DEFAULT

If the City or the County shall fail to perform or observe any of the material terms or conditions of this Interlocal Agreement applicable to it for a period of thirty (30) days after receipt of written notice of such default from the other Party, the Party giving the notice of default may be entitled to terminate this Interlocal Agreement. Failure of any Party to exercise its rights in the event of any breach by another Party shall not constitute a waiver of such rights. No Party shall be deemed to have waived any failure to perform by another Party unless such waiver is in writing and signed by the waiving Party. Such waiver shall be limited to the terms specifically contained therein.

SECTION 13 TERMINATION

- A. Either party may elect to terminate this Agreement with sixty (60) days written notice to other party pursuant to this Article. Both parties shall conclude their existing activities relating to the Project and proceed to a final accounting.

If an election to terminate is made, both parties shall be entitled to copies of any work product or data created by the other party during the development of the Land Stewardship and Master Plan.

- B. Any termination of this Agreement or suspension of future performance under this Agreement shall not relieve the parties of liability for any obligation previously incurred.

SECTION 14 AMENDMENTS

This Interlocal Agreement contains the entire agreement between the City and the

County, any verbal understanding, statement, or prior writings or agreements to the contrary notwithstanding. This Agreement may only be amended in writing and duly executed by the City and County with the same formalities as this Agreement.

SECTION 15 LIABILITY

- A. To only the extent as permitted by Florida Law, in particular, § 768.28, Florida Statutes, the County shall hold the City harmless from and against any and all liability, actions, claims and damages arising after the commencement of the term of this Interlocal Agreement which may be imposed upon or asserted against the City by reason of the claim of any person for damage(s) to persons or property occurring as the direct result of the County's negligent acts or omissions as outlined in this Interlocal Agreement. The County shall have the right to contest the validity of any and all such claims and to defend, settle and compromise such claims of any kind or character in the name of the City, and as the County may deem appropriate, provided that the expense thereof shall be paid by the County. Notwithstanding the above, the County shall not be liable to in any manner, nor be required to hold the City harmless, for any of the City's own negligent acts or omissions.

- B. To only the extent as permitted by Florida Law, in particular, § 768.28, Florida Statutes, the City shall hold the County harmless from and against any and all liability, actions, claims and damages arising after the commencement of the term of this Interlocal Agreement which may be imposed upon or asserted against the County by reason of the claim of any person for damage(s) to persons or property occurring as the direct result of the City's negligent acts or omissions as outlined in this Interlocal Agreement. The City shall have the right to contest the validity of any and all such claims and to defend, settle and compromise such claims of any kind or character in the name of the County, and as the City may deem appropriate, provided that the expense thereof shall be paid by the City.

Notwithstanding the above, the City shall not be liable to in any manner, nor be required to hold the County harmless, for any of the County's own negligent acts or omissions.

- C. The Parties further agree that by execution of this Interlocal Agreement, no Party will be deemed to have waived its statutory defense of sovereign immunity, or increased its limits of liability as provided for in § 768.28, Florida Statutes.

SECTION 16 DISPUTE RESOLUTION

As a condition precedent to a Party bringing any suit for breach of this Agreement, that Party must first notify the other Party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the Parties cannot solve the dispute through negotiations, they may agree to a mutually acceptable method of non-binding arbitration dispute resolution with a qualified third Party acceptable to both Parties. The Parties shall each pay 50 percent of any costs for the services provided by such a third Party as such costs are incurred. The existence of a dispute shall not excuse the Parties from performance pursuant to this Agreement. This remedy is supplemental to any other remedies available at law.

SECTION 17 FILING

This Interlocal Agreement and any subsequent amendments hereto shall be filed with the Lee County Clerk of the Circuit Court, Minutes Department, and the Clerk of the City.

IN WITNESS WHEREOF, the City and the County have executed this Interlocal Agreement on the day, month and year first written above.

ATTEST

CITY OF CAPE CORAL

By: Bonnie J. Hunt
City Clerk

By: [Signature]
Mayor

APPROVED AS TO FORM

By: William Bufrey for 05/27/04
City Attorney

ATTEST

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

CHARLIE GREEN, CLERK

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM

By: _____
Office of the County Attorney