

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

Blue Sheet No. 20040073

1. REQUESTED MOTION:

ACTION REQUESTED: Request approval and authorize Chairman to execute attached Water and Wastewater Interlocal Agreement between Charlotte County and Lee County authorizing Charlotte County Utilities to provide water, wastewater and reuse services for residents of Lee County.

WHY ACTION IS NECESSARY: Board of County Commissioners' approval is required for Interlocal Agreements.

WHAT ACTION ACCOMPLISHES: Agreement bounds both Charlotte County and Lee County into the terms of the Interlocal Agreement providing Lee County consumers water and wastewater services with Charlotte County Utilities.

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

C12A

3. MEETING DATE: *02-03-2004*

- 4. AGENDA:**
- CONSENT
 - ADMINISTRATIVE
 - APPEALS
 - PUBLIC
 - WALK ON
 - TIME REQUIRED:

- 5. REQUIREMENT/PURPOSE:
(Specify)**
- STATUTE
 - ORDINANCE
 - ADMIN. CODE
 - OTHER
 - Interlocal Agreement

6. REQUESTOR OF INFORMATION:

A. COMMISSIONER _____

B. DEPARTMENT County Attorney

C. DIVISION General Services

BY: *Scott S. Covert*

Scott S. Covert
Assistant County Attorney

7. BACKGROUND:

Florida Water Service Corporation ("FWS") was the previous owner and operator of the water, wastewater and reuse systems ("Utility System") located in the Burnt Store Marina area of Lee County pursuant to certificates of authorization issued by the Florida Public Service Commission. On December 12, 2003, Charlotte County purchased from FWS the Utility System and now owns and operates the system in Charlotte County and in Lee County. The Utility System provides service to approximately 900 to 1000 consumers in Lee County.

Charlotte County agrees that the rates and fees charged for the water and wastewater services of the Utility System will be uniform for consumers of the Charlotte and Lee portions of the Service Territory.

ATTACHMENTS: Two (2) original Interlocal Agreements with Exhibit "A".

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<i>J. J. Jumper</i> 1-20-04	N/A	N/A	<i>[Signature]</i> 1/20/04	<i>[Signature]</i> 1/20/04	OA <i>[Signature]</i> 1/21/04	OM <i>[Signature]</i> 1/21/04	RISK <i>[Signature]</i> 1/21/04	GC <i>[Signature]</i> 1/21/04	<i>J. J. Jumper</i> 1-20-04

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

RECEIVED BY
CO. ATTY.
1/20/04
3:40 PM
CO. ATTY.
FORWARDED TO:
1/20/04
3:45 PM

RECEIVED BY
COUNTY ADMIN: *[Signature]*
4:50
1/20/04
COUNTY ADMIN
FORWARDED TO: *[Signature]*
1-22-04
11 AM

**WATER AND WASTEWATER INTERLOCAL AGREEMENT BETWEEN
CHARLOTTE COUNTY AND LEE COUNTY**

This Water and Wastewater Interlocal Agreement ("Agreement") is made and entered into this _____ day of _____, 2004, by and between Charlotte County ("Charlotte"), a political subdivision of the State of Florida, and Lee County ("Lee"), a political subdivision of the State of Florida.

RECITALS

1. Charlotte County Utilities ("CCU"), owned and operated by Charlotte, is authorized to provide water, wastewater, and reuse services within Charlotte County pursuant to authority granted by the State of Florida.

2. Lee is authorized to provide water, wastewater, and reuse services within Lee pursuant to authority granted by the State of Florida.

3. Florida Water Services Corporation ("FWS") recently owned and operated water, wastewater, and reuse systems located within Lee pursuant to certificates of authorization ("Utility System") issued by the Florida Public Service Commission. FWS was authorized to provide water and wastewater services from the Utility System within the service area set forth in Exhibit "A," attached hereto and incorporated herein by reference ("Service Territory").

4. On December 12, 2003, Charlotte purchased the Utility System and now owns and operates the Utility System within the Service Territory.

5. It is Charlotte's objective to assure that water and wastewater services within Lee are provided in an orderly fashion and to promote cooperation and coordination with Lee. Charlotte and Lee have agreed to enter into this Interlocal

Agreement to allow CCU to provide and extend water and wastewater services within the Service Territory. Lee agrees that CCU may provide water and wastewater services within the Service Territory as more specifically set forth in this Agreement. Charlotte and Lee both acknowledge the desirability and the need to provide water and wastewater services within the Service Territory in a manner which is both economical and consistent with the water conservation and management policies of the State of Florida.

6. By entering into this Agreement, it is the intent of Charlotte and Lee to avoid and eliminate circumstances which may give rise to uneconomical and expensive duplication of wastewater and water service facilities.

7. In all decisions made and actions taken pursuant to this Agreement, the parties shall adopt the least restrictive means available for consumers to obtain safe, efficient, economical, and sufficient water and wastewater services. Nothing contained herein is intended to prohibit persons, corporations, or governments other than the parties hereto from lawfully providing water and wastewater services within Lee subject to applicable state law and County ordinances. The parties do not intend, and are not by entering into this Agreement placing undue or unreasonable restrictions upon free competition, or unreasonably limiting the availability of water and wastewater service capacity.

ACCORDINGLY, in consideration of the recitals, agreements, and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties hereto agree as follows:

SECTION 1. RECITALS. The above recitals are true and correct, and form a material part of this Agreement.

SECTION 2. LEE CONSENT TO CCU SERVICES.

Lee agrees that CCU may provide retail and wholesale water and wastewater services within the Service Territory during the term of this Agreement. CCU shall not hereafter serve or offer to serve any other retail or wholesale customer located on lands within Lee, Florida, which lie outside of the Service Territory unless Lee and Charlotte agree in writing for CCU to do so. The decision by Lee to permit or deny such extension shall be based upon the public interest. Nothing contained in this Agreement shall be construed to prevent CCU from providing wastewater or water service within Charlotte County or other counties in the State of Florida, nor shall anything contained herein be construed to prevent Lee from providing or authorizing others to provide such services outside of the Service Territory in Lee, Florida.

SECTION 3. UTILITY SYSTEM RATES; OPERATING STANDARDS.

Charlotte agrees that the following shall apply to its ownership and ongoing operation of the Utility System:

A. No Discrimination in Rates or Level of Service. Charlotte agrees that the rates and fees charged for water and wastewater services of the Utility System shall be uniform for the Charlotte and Lee portions of the Service Territory. CCU agrees to invest its best efforts to provide uniform, high-quality service to both the Charlotte and Lee portions of the Service Territory. Charlotte agrees to provide services to existing and future customers in the Service Territory according to CCU's uniform service

availability policies and the terms and conditions of applicable permits to governmental requirements.

B. Standards. Charlotte agrees that its goal is to operate, maintain, and construct the Utility System in accordance with standards equal to or greater than those established by CCU for the portions of CCU's utility system lying outside of Lee. CCU agrees that it shall comply with any and all standards for utility service or utility facilities as may subsequently be adopted by Lee.

C. Balancing of Water Supply and Reuse. CCU shall operate the Utility System, to the extent reasonably possible, in the manner which is intended to minimize potable water use and maximize water reclamation and reuse. Both parties will cooperate in implementing programs to achieve this goal, and Lee agrees to actively and visibly support CCU's efforts to expand water reuse and promote water conservation within the Service Territory.

D. Abandonment of Portions of the Utility System. CCU shall provide written notice of any plan to return or abandon any portion of the Utility System which could potentially have an adverse impact on water or wastewater customers within the Service Territory or the ability of Lee to provide water and/or wastewater services to such customers in the future. In such event, both parties agree to meet and work towards a mutually agreeable solution.

E. Approval of Developer Agreements. Any proposed developer agreements for the provision of water or wastewater services within the Service Territory shall be presented by CCU to Lee for review and comment. If Lee has any objections based on conflict with this Agreement or Lee ordinances, Lee shall promptly notify CCU, and the

parties will resolve the objections. Upon approval of the final developer agreement by Lee, CCU may enter into such developer agreement.

F. Coordination. CCU agrees that it shall provide water and wastewater services only to those areas within the Service Territory approved for construction by the appropriate Lee planning and development agencies. CCU will coordinate its activities within the right-of-way according to applicable Lee procedures and shall execute such authorizations as required by Lee for right-of-way utilization.

SECTION 4. TERM OF AGREEMENT. The term of this Agreement shall be from the day when the last of the parties receives the approval of its respective governing board and executes the Agreement and shall continue in effect until terminated by mutual agreement of the parties.

SECTION 5. DISCLAIMER OF THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the parties hereto, and no right or cause of action shall accrue upon or by reason of, to, or for the benefit of any third party not a party hereto.

SECTION 6. ASSIGNMENT. Neither party shall have the right to assign or transfer this Agreement, in whole or in part, without the prior written agreement of the other party.

SECTION 7. NOTICE; PROPER FORM. Any notices hereunder to the parties shall be given by certified mail, return receipt requested, at the respective addresses shown below, or such other addresses the parties shall specify by written notice to the other delivered in accordance herewith, postage prepaid:

Charlotte County: Director, Charlotte County Utilities
25550 Harbor View Road, Unit 1
Port Charlotte, Florida 33980

Lee County: Director, Lee County Utilities
2115 2nd Street
Fort Myers, Florida 33901

SECTION 8. APPLICABLE LAW. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida and venue shall lie in the courts of Charlotte County, Florida.

SECTION 9. SEVERABILITY. In the event any covenant, condition, term, or provision contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, in whole or in part, by judgment, order, or decree of any court or other judicial tribunal of competent jurisdiction, the validity of the remaining covenants, conditions, terms, and provisions contained in this Agreement, and the validity of the remaining part of any term of provision held to be partially invalid, illegal, or unenforceable, shall in no way be affected, prejudiced, or disturbed thereby.

SECTION 10. MODIFICATIONS IN WRITING. No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by both parties.

SECTION 11. EFFECTIVE DATE. The effective date of this Agreement shall be the date of execution by the last party to sign this Agreement.

SECTION 12. ENTIRE AGREEMENT. This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, and agreements.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first set forth above.

BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA

By: Matthew D. DeBoer
Matthew D. DeBoer, Chairman

ATTEST:
Barbara T. Scott, Clerk of Circuit
Court and Ex-Officio Clerk to the
Board of County Commissioners

By: Barbara T. Scott
Deputy Clerk 1/2/04

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Renée Francis Lee
Renée Francis Lee MB
Charlotte County Attorney

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
John E. Albion, Chairman

ATTEST:
Charlie Green, Clerk of Circuit Court
and Ex-Officio Clerk to the
Board of County Commissioners

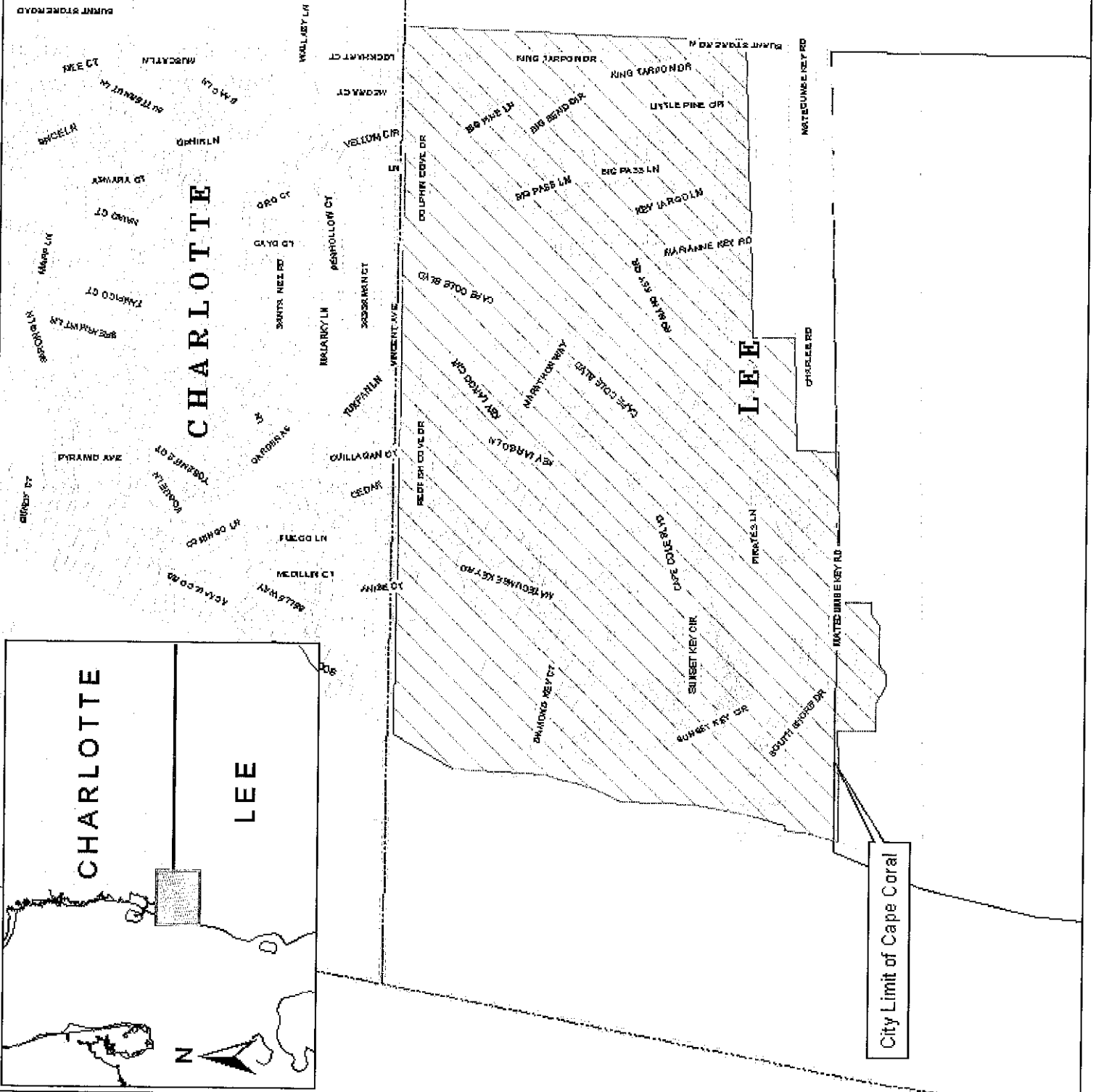
By: _____
Deputy Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

Office of the Lee County Attorney

Burnt Store Marina

Burnt Store Marina



CHARLOTTE

LEE

City Limit of Cape Coral

EXHIBIT "A"