

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

Blue Sheet No. 20041381

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Approve Park & Recreation Facility Usage Agreement with the Lee County YMCA, a non-profit corporation.

**WHY ACTION IS NECESSARY:** Approval of this agreement with the YMCA and Lee County Parks & Recreation allows for the YMCA to provide their service, which are not in direct conflict with our programs. Also allows the department to discontinue having to provide individual permits for the different Parks & Recreation sites.

**WHAT ACTION ACCOMPLISHES:** The YMCA will have scheduled use of the pools and fields at Villas, Brooks, Tanglewood, Estero, Three Oaks, Cape Coral High School Pool and Cypress Lake High School Pool through an Interlocal Agreement with Lee County. This will in turn save the department the cost of having to run the programs and also enhances a joint/private venture.

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

**C11A**

**3. MEETING DATE:**

**11-30-2004**

**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 & Recreation
- C. DIVISION

BY: John Yarbrough, Director

**7. BACKGROUND:**

The Parks & Recreation Facility Usage Agreement was drafted with the Lee County YMCA so they could promote and provide their own aquatic and recreational programs and at the same time enable the Parks & Recreation department a cost savings in not having to provide these services. This agreement in no way jeopardizes any existing legal agreements with the Lee County School Board or the local youth swimming leagues.

No funding will be required. Please see attached agreement.

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL:**

*CCM*

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<i>[Signature]</i>	<i>N/A</i>	<i>N/A</i>		<i>[Signature]</i>	<i>OA</i>	<i>OM</i>	<i>Risk</i>	<i>GC</i>	<i>[Signature]</i>
					<i>11/17/04</i>	<i>11/18/04</i>	<i>11/17/04</i>	<i>11/17/04</i>	

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty  
Date: *11/17/04*  
Time: *2:10*  
Forwarded To:  
*Admin 11/17/04*

RECEIVED BY  
COUNTY ADMIN: *OA*  
*11/17/04*  
*4:30 pm*  
COUNTY ADMIN  
FORWARDED TO:  
*[Signature]*

# LICENSE AND USE AGREEMENT BETWEEN LEE COUNTY AND YMCA OF LEE COUNTY

This agreement is made and entered into this 10<sup>th</sup> day of October 2004, by and between LEE COUNTY, a political subdivision of the State of Florida and Charter County, (hereinafter referred to as "LICENSOR"), and the YMCA of Lee County, a 501(c)(3) not for profit Florida corporation herein referred to as the LICENSEE.

## WITNESSETH

LICENSOR and the LICENSEE, in consideration of the mutual promises contained herein, agree to the following:

Whereas, the LICENSOR manages the athletic fields for public programs and has the lawful authority to enter onto such property and use same for a public purpose at the following locations: Villas, Brooks, Tanglewood, Estero, Three Oaks; and manages Cape Coral High School Pool and Cypress Lake High School Pool through an Interlocal Agreement with the Lee County School District.

Whereas, the LICENSEE desires to use the above county managed fields and/or pools for certain recreational programs.

Whereas, the LICENSOR is vested with the lawful authority to license the use of the fields and pools as listed in paragraph 1, to the YMCA, a not-for-profit organization. However, the use of these fields and pools by YMCA shall be conditioned upon the County's determination of available space.

### SECTION I: USE OF FACILITIES

1. The LICENSEE may utilize the fields and pools for a period of ten (10) months, beginning on the date this license is executed by the Board of County Commissioners and ending ten (10) months from that date.
2. This agreement does not permit the LICENSEE to assume full usage and/or management of the fields and pools.

### SECTION II: OPTION TO RENEW/TERMINATION

1. This agreement may be renewed for one (1) additional 10-month period upon written agreement of the parties no less than sixty (60) days prior to expiration of the current term; unless the agreement is renewed, in writing, by the county, it will be deemed expired.
2. The LICENSOR may terminate this agreement, for any purpose, by giving the LICENSEE 60 day's written notice of its intent to do so.
3. Amendments or changes to this Agreement must be made upon written agreement of the parties adopted in a manner similar to this Agreement.
4. This agreement may be terminated by the LICENSEE upon ninety (90) days written notice to the county.

### **SECTION III: FINANCIAL RESPONSIBILITY**

The LICENSEE will assume full financial responsibility for its programs, including, but not limited to, salaries and benefits for employees, trash and garbage collection and disposal, equipment rental and maintenance, operating supplies, insurance and any other operating expenses.

### **SECTION IV: HOURS OF OPERATION**

The LICENSEE will provide fitness and/or education programs during normal business hours at the above referenced facilities. Additional operating hours will vary depending on the County's determination of available space. No after hours use of the facilities by the YMCA is permitted without express approval of the County.

### **SECTION V: INSURANCE**

Insurance shall be provided by the LICENSEE and be considered primary in the event of any claims resulting in any activities as outlined in this agreement. A certificate of insurance shall be provided in the following limits for the listed insurable matters: [See Attached Exhibit A] The LICENSEE will provide the County with a certificate of insurance evidencing coverage for as outlined on **Exhibit A**. Said coverage shall name "Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public" as Additional Insured and provide 30 days notice of cancellation to Lee County Risk Management.

### **SECTION VI: PROPERTY CONDITION, PROTECTION AND IMPROVEMENTS**

(a) During the LICENSEE's use of the facilities, the LICENSEE shall maintain and protect the buildings, fields and pools from damage, and, after use, shall surrender it in essentially the same condition (except for normal wear).

(b) The LICENSEE, accompanied by a representative of the Lee County Park's Department, may inspect the premises prior to beginning their use thereof, to ascertain if any damage or defects presently exist.

(c) The LICENSEE shall inspect each facility prior to scheduled use to insure that the facility is safe, i.e.: test the water chemistry for required chemical balance, field conditions for safety hazards.

(d) The LICENSEE may not make any capital improvements or modifications to the building(s).

### **SECTION VII: INSPECTION OF THE PREMISES**

The COUNTY, or its authorized designee, shall have the right to inspect the building(s) at any reasonable time during its use by the YMCA.

## **SECTION VIII: INDEMNIFICATION**

The LICENSEE shall, in addition to any other obligation to indemnify the LICENSOR and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the COUNTY, its elected officials, employees, agents, and volunteers from and against all claims, actions, liabilities, losses (including economic losses), costs, including attorneys fees and all costs of litigation, and judgments of every name and description arising out of or incidental to the performance of this contract or work performed under or related to this contract, unless caused by the sole negligence of the COUNTY, its elected officials, employees, agents, or volunteers. Any cost or expenses, including attorney's fees incurred by the COUNTY to enforce this agreement shall be borne by the YMCA. This Indemnification shall also cover all claims brought against the COUNTY, its elected officials, employees, agents, or volunteers by any employee of the YMCA, any Subcontractor, or anyone directly or indirectly employed by any of them. The YMCA's obligation under this Article shall not be limited in any way to the limit of or lack of sufficient insurance protection. Upon completion of all services, obligations and duties provided for in this contract, or in the event of termination of this contract for any reason, the terms and conditions of this Section shall survive indefinitely.

**Letter of Agreement**  
**YMCA OF LEE COUNTY and**  
**Lee County Parks and Recreation**

IN WITNESS WHEREOF, Lee County and the YMCA of Lee County have caused this agreement to be executed by their authorized officers.

ATTEST:  
CHARLIE GREEN  
COMMISSIONERS  
CLERK OF COURTS

BOARD OF COUNTY  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chairman

**YMCA OF LEE COUNTY**

By: Ashle Flayack  
Witness

By: Samuel A. ...  
President & CEO

By: Nancy Appers  
Witness

APPROVED AS TO LEGAL FORM

By: \_\_\_\_\_  
Lee County Attorney's Office

Exhibit A

1. Insurance Requirements:

a. Workers' Compensation - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Individual employees may be exempted per State Law. Employers' liability will have minimum limits of:

\$500,000 per accident  
\$500,000 disease limit  
\$500,000 disease limit per employee

b. Commercial General Liability - Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability, and broad form property damage exposures with minimum limits of:

\$1,000,000 bodily injury per person (BI)  
\$1,000,000 bodily injury per occurrence (BI)  
\$500,000 property damage (PD) or  
\$1,000,000 combined single limit (CSL) of BI and PD

c. Business Auto Liability - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$500,000 bodily injury per person (BI)  
\$1,000,000 bodily injury per occurrence (BI)  
\$100,000 property damage (PD) or  
\$1,000,000 combined single limit (CSL) of BI and PD

*\*The required limit of liability shown in Standard Contract: 1.a; 1.b; 1.c; may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."*

2. Special Requirements:

a. Ten (10) days prior to the commencement of any work under this contract a certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:

1. "Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials" will be named as an "Additional Insured" on the General Liability policy.

2. Lee County will be given thirty (30) days notice prior to cancellation or modification of any stipulated insurance. Such notification will be in writing by registered mail, return receipt requested and addressed to the Risk Manager (P.O. BOX 398 Ft. Myers, FL 33902).