

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

Blue Sheet No. 20031108

1. REQUESTED MOTION:

ACTION REQUESTED: Request Board approve and execute an amended interlocal agreement between the Town of Fort Myers Beach and the Lee County Board of County Commissioners regarding their respective duties and responsibilities relating to the operation, management, and programming of the Lee County Bay Oaks Recreation Center and Community Park.

WHY ACTION IS NECESSARY: Interlocal agreements require Board approval.

WHAT ACTION ACCOMPLISHES: Outlines the duties and responsibilities for both the Town and the County with regards to the operation, management, and programming of the Lee County Bay Oaks Recreation Center and Community Park.

2. DEPARTMENTAL CATEGORY:

COMMISSION DISTRICT #03

C11A

3. MEETING DATE:

09-30-2003

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 *Parks & Recreation*
- C. DIVISION

BY: *John Yarbrough*

J. Yarbrough by ecm

7. BACKGROUND:

On March 24, 1998, the Lee County Board of County Commissioners executed the first interlocal agreement with the Town of Fort Myers Beach for FY 98. A new interlocal agreement was executed for a five-year term beginning October 1, 1998 through September 30, 2003. Both agreements outlined the duties and responsibilities for the County owned Bay Oaks Recreation Center and Community Park located within the incorporated limits of the Town of Fort Myers Beach. The Town shared in the costs for the operation, management, and programming of the Bay Oaks Recreation Center and Community Park. By September 30, 2003, the Town will have paid \$1,008,213 to the County and the agreement will have expired.

The attached new interlocal agreement has been revised to include a one year term with automatic renewals for four additional one year periods. Beginning in FY 04, the Town will pay the County \$227,448 that will be incrementally increased annually per the agreement.

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

ecm

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<i>J. Yarbrough 9/16/03</i>				<i>[Signature]</i> <i>9/16/03</i>	<i>OA</i> <i>9/16/03</i>	<i>OM</i> <i>9/17/03</i>	<i>Risk</i> <i>9/16/03</i>	<i>GC</i> <i>9/16/03</i>	<i>[Signature]</i> <i>9/16/03</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
Date: *9/16/03*
Time: *8:30 am*

Forwarded To:
Co. Admin
9/16/03 8:30 am

RECEIVED BY
COUNTY ADMIN: *[Signature]*
9/17
10:40 am
COUNTY ADMIN
FORWARDED TO: *[Signature]*

**AMENDED INTERLOCAL AGREEMENT BETWEEN LEE COUNTY
AND TOWN OF FORT MYERS BEACH REGARDING
BAY OAKS RECREATION CENTER AND COMMUNITY PARK**

THIS AMENDED AND RESTATED INTERLOCAL AGREEMENT is made and entered into this _____ day of _____, 2003, by and between the **TOWN OF FORT MYERS BEACH**, a municipal corporation of the State of Florida, acting by and through its Town Council, the governing body thereof, "Town", 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 Town Council is the governing body in _____ wn of Fort Myers Beach; and the Board of County Commission _____ 1 and for Lee County; and,

WHEREAS, both the County and the Town are authorized by the Florida Statutes, in particular Section 163.01, Florida Statutes, to enter into agreements for the sharing of certain governmental powers and responsibilities;

WHEREAS, the County owns and operates the Bay Oaks Recreation Center and Community Park located within the Town of Fort Myers Beach;

WHEREAS, the Town receives a benefit from the use of the facilities and services provided by Lee County Parks and Recreation; and

WHEREAS, the Parties previously entered into an Interlocal Agreement for the operation, management and programming of the Bay Oaks Recreation Center and Community Park which expires on September 30, 2003; and

I executed originals forthcoming C. Mitchell

WHEREAS, the Town desires to continue having such recreational services provided for the citizens of Town of Fort Myers Beach, and the Town Council has determined it appropriate to compensate the County for providing such services on behalf of the Town; 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 Town and the County, intending to be legally bound, hereby agree as follows:

SECTION I **PURPOSE**

It is the purpose and intent of this Agreement to define the terms and conditions under which the County will provide to the Town, certain recreational, operational, management and programming services at the Bay Oaks Recreation Center and Community Park.

All terms and conditions of this Agreement shall be interpreted in a manner consistent with, and in furtherance of, the purpose as set forth above.

SECTION II **AUTHORITY FOR AGREEMENT**

The Town 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 Town, has been executed and delivered by an authorized officer of the Town, and constitutes a legal, valid and binding obligation of the Town. The County represents to the Town 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 III **SCOPE OF SERVICES**

- A. The County hereby agrees to provide and perform all services required and necessary to complete the services and work as set forth herein in Exhibit "A" and entitled "SCOPE OF SERVICES", a copy of which is attached hereto.
- B. Prior to executing this agreement, the Parties will walk-through the Park and Recreation Center and related outdoor facilities to document any major repairs which are needed and will have to be performed during the term of this agreement.

SECTION IV **TIME OF PERFORMANCE**

This Agreement shall begin on October 1, 2003 and end on September 30, 2004. This Agreement is for a period of one (1) year and will automatically renew at expiration for four (4) additional one (1) year periods, unless terminated by either party. Upon expiration, the Agreement will renew with an annual increase of the higher of four percent (4%) or the annual Consumer Price Index (CPI) not to exceed eight percent (8%).

SECTION V **COMPENSATION AND METHOD OF PAYMENT**

- 5.1 The Town agrees to pay the County the annual sum of \$ 227, 448.00, due in two (2) equal installments on April 1, 2004 and September 30, 2004, for and in consideration of the services described in Exhibit "A", as provided by the County between October 1, 2003 and September 30, 2004. Any CDBG or grant funding received by the Town for Bay Oaks and given to the County will be used to off set any amounts due and owing by the Town under this agreement. Late payments

shall be subject to a one percent (1%) administrative fee. The Town and the County agree to meet and negotiate for the renewal of this Agreement for any additional years no later than sixty (60) days prior to its expiration on its terms.

5.2 The Town agrees and acknowledges that any services provided by the County exceeding those delineated in the Scope of Services (Exhibit "A") may result in additional costs to the Town which shall be negotiated by the Parties and incorporated into the payment structure of this Agreement by addendum or amendment. Payment for such services is contingent upon written approval, by the Town, prior to provision of such service.

SECTION VI ASSIGNMENT

No assignment, delegation, transfer, or novation of this Interlocal Agreement or any part thereof shall be made, unless approved in writing by the Town and the County.

SECTION VII 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 Town, at the Office of the Town Manager.

SECTION VIII AMENDMENT

This Interlocal Agreement may only be amended in writing and duly executed by the Town and the County with the same formalities as this Agreement.

SECTION IX CONSTRUCTION

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

SECTION X DEFAULT

If the Town 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 XI TERMINATION

The Town may terminate this Agreement by submitting written notice to the County dated not less than sixty (60) calendar days prior to the termination date. Termination will be effective as of the date specified on the written notice. The County may terminate this Agreement by submitting written notice to the Town dated not less than sixty (60) calendar days prior to the termination date. Termination will be effective as of the date specified on the written notice.

SECTION XII LIABILITY

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

SECTION XIII FILING

This Amended 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 Town.

SECTION XIV ADVISORY COMMITTEE

The County agrees to appoint five (5) members to a ten (10) member Citizen Advisory Committee for community input with respect to the subsequent staff and programming for the Bay Oak Recreation Center and Community Park. Said appointments will be made by the Board of County Commissioners by Resolution with terms for two (2) years that expire in odd years. The Citizen Advisory Committee shall survive any expiration of this Interlocal Agreement.

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

ATTEST

TOWN OF FORT MYERS BEACH

By: _____
Town Clerk

By: _____
Mayor

APPROVED AS TO FORM

By: _____
Town Attorney

ATTEST
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM

By: _____
Office of the County Attorney

**SCOPE OF SERVICES
EXHIBIT 'A'**

1. Personnel will be provided during the hours of operation to assure that the Center and Park are open to the public and to assist with inquiries and other administrative responsibilities.

2. The County will provide staff to perform all contracted repairs or maintenance to the facilities. Non-contracted services, (which are not part of the County's contract with MARS) can be performed by either the County or the Town. Determination will be made based upon cost and other applicable factors.