

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

Blue Sheet No. 20061004

1. ACTION REQUESTED/PURPOSE: Authorize chairwoman to execute an interlocal agreement with the City of Cape Coral to provide fire protection to the Burnt Store Fire Protection M.S.T.U.

2. WHAT ACTION ACCOMPLISHES: To continue fire protection services for Burnt Store Fire Protection M.S.T.U. and other unincorporated areas of Lee County.

3. MANAGEMENT RECOMMENDATION: Staff recommends approval.

4. Departmental Category: 07

C7C

5. Meeting Date:

August 15, 2006

6. Agenda:

- Consent
- Administrative
- Appeals
- Public
- Walk-On

7. Requirement/Purpose: (specify)

- Statute
- Ordinance
- Admin. Code
- Other

8. Request Initiated:

Commissioner _____
Department Independent
Division Public Safety
By: John D. Wilson, Director *[Signature]*

9. Background:

In 1983, the Board of County Commissioners created Ordinance 83-89 which established The Burnt Store Fire Protection M.S.T.U. That ordinance made the Lee County Board of County Commissioners responsible for fire protection in the M.S.T.U. The service has been provided by the City of Cape Coral since November 1990.

The proposed interlocal provides fire suppression and related services, basic first response rescue, normal fire company level prevention services as assigned and fire inspection services to the Burnt Store Fire Protection M.S.T.U. and other unincorporated areas of Lee County to September 30, 2008.

Funds are available: GC5220110204.503490

Attachment 1: Interlocal Agreement

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services			County Manager/P.W. Director
<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>		<i>[Signature]</i>	Analyst	Risk	Grants	Mgr
					<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY COUNTY ADMIN: 8-1-06 11:21 <i>[Signature]</i>
COUNTY ADMIN FORWARDED TO: <i>[Signature]</i>
<i>[Signature]</i>
<i>[Signature]</i>

Rec. by CoAtty
Date: 8/1/06
Time: 4:05pm
Forwarded To: <i>[Signature]</i>

INTERLOCAL AGREEMENT

This Interlocal Agreement made and entered into this _____ day of _____, 2006, by and between the CITY OF CAPE CORAL, FLORIDA, a municipal corporation, hereinafter "CITY", and the BURNT STORE AREA FIRE SERVICE MUNICIPAL SERVICE TAXING UNIT, an M.S.T.U. established by Lee County pursuant to the authority of Section 125.01, Florida Statutes, hereinafter "UNIT".

WHEREAS, the UNIT was established by Lee County to provide fire protection to the residents of Burnt Store Marina Resort and other unincorporated areas of Lee County; and

WHEREAS, local units of government are authorized, pursuant to the Florida Constitution, Chapters 125, 166, and 163, Part I, Florida Statutes, to enter into interlocal agreements in order to make the most efficient use of their powers by cooperating with each other on a basis of mutual advantage and thereby provide services and facilities in a manner that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, the CITY is authorized and willing to provide fire protection service to the UNIT.

NOW, THEREFORE in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

SECTION 1. SCOPE OF SERVICES

CITY agrees to provide fire protection and prevention services, to the extent that it is physically and feasible to do so, within the area of the UNIT which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

SECTION 2. DEFINITIONS

UNIT shall mean the Burnt Store Area Fire M.S.T.U., a political subdivision of the State of Florida, its officials and employees.

CITY shall mean the City of Cape Coral, Florida, a municipal corporation, its officers and employees.

SERVICES shall mean all services, work, materials, and all related professional, technical, administrative and safety activities that are necessary to perform and complete the tasks required pursuant to the terms and provisions of this Agreement.

"Services" to be performed by the CITY pursuant to this agreement shall include fire suppression and related services, basic first response rescue, normal fire company level prevention services as assigned and fire inspection services.

SECTION 3. OBLIGATIONS OF CITY

The obligations of the CITY with respect to all services authorized pursuant to this agreement are as follows:

1. The CITY hereby warrants that the personnel who will perform services for the UNIT pursuant to this agreement are properly certified and qualified to perform said services. CITY further agrees that all services performed pursuant to this agreement will be in accordance with generally accepted standards of professional practice and in accordance with the laws, statutes, ordinances, codes, rules, regulations and requirements of all governmental agencies, which regulate or have jurisdiction over the services to be provided.

2. **LIABILITY.** CITY agrees to indemnify, defend and hold the UNIT harmless from any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees arising out of the CITY's errors, omissions, and/or negligence for services related to this agreement. CITY shall not be liable to, nor be required to indemnify the UNIT for any damages arising out of any error, omission, and/or negligence of the UNIT, its employees, agents or representatives. This Section shall not be interpreted to be a waiver of sovereign immunity.

3. **ADDITIONAL SERVICES.** Should the UNIT request the CITY to provide and perform professional services pursuant to this agreement which are not included in the definition of "Services" as provided herein, the CITY agrees to consider providing and performing such **ADDITIONAL SERVICES** as may be agreed to in writing by both parties to this Agreement.

Such **ADDITIONAL SERVICES** shall constitute a continuation of the professional services covered under this Agreement and shall be provided and performed in accordance with the covenants, terms and provisions set forth in this Agreement and any amendments thereto.

ADDITIONAL SERVICES shall be accomplished by one or more amendments to this Agreement. The CITY shall not provide or perform, nor shall the UNIT incur or accept any obligation to compensate the CITY for any ADDITIONAL SERVICES, unless a written Amendment is executed by the parties.

SECTION 4. METHOD OF PAYMENT

1. This Agreement shall supersede the previous Interlocal Agreement between the parties dated September 27, 1995.

2. ANNUAL FEE. For each year of time during which this agreement is in effect, a millage rate will be levied in the UNIT to pay the CITY for services rendered pursuant to this Agreement. The following formula shall be used to calculate the Annual Fee due to CITY from UNIT for services provided under this Agreement. The Annual Fee shall be based, in part, on the percentage of calls for service from CITY Fire Station Number 7 to property located within the MSTU as compared to the total number of calls for service for CITY Fire Station Number 7 for the preceding calendar year. The Annual Fee shall be based on the annual operating budget for Fire Stations Number 5 and 7. UNIT shall pay its proportionate share of said budget, with the exception of the cost for Fire Inspectors and a Clerk, which shall be paid by UNIT at Fifty percent (50%). For the fiscal year 2006, the total annual fee due to CITY from UNIT shall be Six Hundred Five Thousand Two Hundred Seventy-Seven Dollars and Fifty-Seven Cents (\$605,277.57). A detail showing the calculation of the annual fee for 2006 is attached hereto as Exhibit "B." All costs or fees for the Property Appraiser, the Tax Collector, and the County shall be paid by the UNIT in addition to the agreed upon amount. Payment shall be made each fiscal year on a quarterly basis. The annual fee for each subsequent year of this Agreement shall be adjusted based upon the budget approved by City Council for such year.

3. PAYMENT UPON TERMINATION OF AGREEMENT OR SUSPENSION OF SERVICES. In the event this agreement is terminated by UNIT prior to the expiration of the term hereof, or in the event the UNIT suspends the services being provided by CITY hereunder, UNIT shall compensate CITY through the date of any services rendered, including any termination notice period.

In the event this agreement is terminated by CITY prior to the expiration of the term hereof, or in the event the CITY suspends the services being provided, payment by UNIT will be made through the end of the month plus a prorated value of any refurbished apparatus based on the IRS discount depreciation schedule.

SECTION 5. EQUIPMENT AND FACILITIES

1. EQUIPMENT. All equipment used or purchased shall be owned by the CITY.
2. FACILITIES. CITY shall construct and maintain such facilities necessary to providing appropriate levels of service to the UNIT. CITY shall be responsible for all permits, engineering, design, site preparation and construction of any facilities.
3. NOTIFICATION OF CITY (911 EMERGENCY CALLS). The UNIT shall ensure that all 911 fire and rescue emergency calls originating within the UNIT are properly routed to the CITY.

SECTION 6. ASSIGNMENT AND SUB-CONTRACTS

CITY shall not assign or transfer any of its rights, benefits or obligations hereunder without the prior written consent of the UNIT. CITY shall not sub-contract any of its service obligations hereunder to third parties without prior written consent of the UNIT. CITY may, subject to the UNIT's prior written approval, employ other persons and/or firms to serve as sub-contractors to CITY in connection with the CITY performing services and work pursuant to the requirements of this Agreement.

SECTION 7. INSURANCE

CITY shall maintain insurance or shall be self-insured to protect itself and UNIT from claims for damages for personal injury, property damage, workers compensation claims, and other claims for damages which may arise out of the performance of this agreement by CITY. This agreement shall not be construed to constitute a waiver of sovereign immunity.

SECTION 8. APPLICABLE LAW

This Agreement shall be governed by the laws, rules and regulations of the State of Florida.

SECTION 9. TERM AND TERMINATION

This Interlocal Agreement shall be for a term of three (3) years, commencing on October 1, 2005 and terminating on September 30, 2008.

This Interlocal Agreement shall automatically renew on a yearly basis thereafter. Either Party may, upon written notice, terminate this Interlocal Agreement. Notice of termination must be given not less than three hundred sixty-five (365) days prior to the expiration of any term of this Interlocal Agreement. If this Interlocal Agreement is terminated, the UNIT'S financial obligations will cease from the date of termination.

SECTION 10. AMENDMENTS OR MODIFICATIONS

The terms and provisions contained in this Agreement may be amended or modified, in writing, by the agreement of both parties. In the event of any conflicts between the requirements, provisions and/or terms of the Agreement and any written amendments(s) or modifications(s), the requirements, provisions and/or terms of the latest executed amendment(s) or modification(s) shall take precedence.

SECTION 11. DUTIES AND OBLIGATIONS

The duties and obligations imposed upon the CITY by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.

SECTION 12. HEADINGS

The headings of the Articles, Sections, Exhibits, and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Section, Exhibits and Attachments.

SECTION 13. ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representatives of the parties in the space provided.

SECTION 15. FILING

This Agreement shall be filed with the Lee County Clerk of Court by the COUNTY.

IN WITNESS WHEREOF, the parties have executed this Interlocal Agreement effective the day and year first written above.

ATTEST:

LEE COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

By: _____

By: _____
Chairwoman

APPROVED AS TO FORM:

By: _____
County Attorney's Office

ATTEST:

CITY OF CAPE CORAL

By: _____
Bonnie J. Vent, City Clerk

By: _____
Eric P. Feichthaler, Mayor

APPROVED AS TO FORM:

MARILYN W. MILLER
Assistant City Attorney