

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

Blue Sheet No. 20030771

1. REQUESTED MOTION:

ACTION REQUESTED: Execute updated Interlocal Agreement between City of Cape Coral and Lee County for Matlacha Isles Dredging project. Funding is available in Project No. 203079, WCIND – Navigation Improvements FY03.

WHY ACTION IS NECESSARY: Reestablishes formal agreement between City of Cape Coral and Lee County for dredging work to be performed in the Matlacha Isles area. Defines project responsibilities of both parties.

WHAT ACTION ACCOMPLISHES: Allows work to commence in a timely fashion now that permits are in hand. The agreement also allows project to be completed at savings to both the County and the City.

2. DEPARTMENTAL CATEGORY: 8- *C8C*
COMMISSION DISTRICT #: 1 & 4

3. MEETING DATE: *07-08-2003*

4. AGENDA:

CONSENT
 ADMINISTRATIVE
 APPEALS
 PUBLIC
 WALK ON
 TIME REQUIRED:

5. REQUIREMENT/PURPOSE:
(Specify)

STATUTE
 ORDINANCE
 ADMIN. CODE
 OTHER *Interlocal*

6. REQUESTOR OF INFORMATION:

A. COMMISSIONER
 B. DEPARTMENT *Public Works*
 C. DIVISION *Natural Resources*
 BY: *Roland Ottolini*
[Signature]

7. BACKGROUND:

The City of Cape Coral and Lee County share the waterway in and around Matlacha Isles. Over the past several years, the County has documented shoaling in the waterway and the need to remove approximately 2,000 cubic yards of material to restore safe navigation. It is in the interest of both the City and the County to cooperate in the removal of the material through this Interlocal Agreement. The City of Cape Coral has proper staffing and equipment with which to complete the project, and Lee County has budgeted funding to cover the costs of the project through the West Coast Inland Navigation District Waterway Development Program. By cooperating, the project will not only be completed in a timely fashion, but the cost to the County, estimated at \$26,000, will be lower than if the project were to be sent out for contract bid.

A previous interlocal agreement executed on April 30, 2002 (Blue Sheet No. 20011371) expired prior to issuance of the required permits. This updated Interlocal Agreement defines the roles and responsibilities of each organization through completion of the project. The Agreement was approved by the City of Cape Coral at their regular meeting of Monday, June 16, 2003.

Funds are available in Project 203079, WCIND – Navigation Improvements FY03.

Attachments: 3 Originals

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
					OA	OM	Risk	GC	
<i>[Signature]</i> 6-25-03	<i>[Signature]</i> 6/25	<i>[Signature]</i>	<i>[Signature]</i> 6/25/03	<i>[Signature]</i> 6/26/03	<i>[Signature]</i> 6-26-03	<i>[Signature]</i> 6/26/03	<i>[Signature]</i> 6/26/03	<i>[Signature]</i> 6-26-03	<i>[Signature]</i> 6-25-03

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

REC'D.
by CO. ATTY.
[Signature]
CO. ATTY.
FORWARDED TO:
[Signature]
6-26-03
12:00

RECEIVED BY
COUNTY ADMIN. *[Signature]*
[Signature]
6/26/03
2:30 pm
[Signature]
6/26/03
4:30 pm

**INTERLOCAL AGREEMENT FOR
MATLACHA ISLES DREDGING PROJECT**

This Interlocal Agreement is made and entered into this ____ day of _____, 2003, by and between LEE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "County", and the CITY OF CAPE CORAL, a municipal corporation of the State of Florida, hereinafter referred to as the "City."

WITNESSETH:

WHEREAS, the County, and City share the Matlacha Isles access canal; and

WHEREAS, the City and the County have previously entered into an Interlocal Agreement for dredging Matlacha Isles that expired on January 8, 2003;

WHEREAS, there is a need to accomplish further dredging of Matlacha Isles under the same terms and conditions as were contained in the previous Interlocal Agreement; and

WHEREAS, it is in the interest of the public's health, safety and welfare, that the County and the City cooperate in the construction and completion of the Project; and

WHEREAS, the City has resources capable of completing the Project work; and

WHEREAS, the County has budgeted funding to cover the costs of construction through the West Coast Inland Navigation Waterway Development Program.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the County and the City agree as follows:

SECTION ONE: PURPOSE AND SCOPE

- A. The purpose of this Agreement is to define the obligations of the City and the County for completing the Project. All terms and conditions of this Agreement will be interpreted in a manner consistent with and in furtherance of the purpose as set forth in this Section.
- B. The Scope of Project will be the initiation and prosecution to completion of the

Project, consisting of the building of containment cells (Exhibit A) and the dredging of areas (as depicted in Exhibit B) in Matlacha; more particularly described as latitude: 26 degrees, 38 minutes and 4 seconds; longitude: 82 degrees, 3 minutes and 2 seconds, Section 13, Township 44 South, Range 22 East. The Project will be constructed in accordance with all local, state and federal permitting rules, regulations, approvals and permits.

SECTION TWO: OBLIGATIONS OF THE COUNTY

Under the terms of this Agreement, the County will:

- A. Prepare detailed plans, specifications and a general program outlining the order, rate of prosecution and method for accomplishing the Project.
- B. Apply for and obtain the necessary U.S. Corps of Army Engineers and Department of Environmental Protection permits to construct the Project, prior to construction.
- C. Where reasonably possible, provide all county permits as necessary for the construction of the Project after plans, applications, drawings or specifications are properly submitted and approved by the appropriate County officials.
- D. Provide funding for the project from the County Capital Improvement Program (CIP) budget, based on an allocation of costs in accordance with Section Four of this Agreement.

SECTION THREE: OBLIGATIONS OF THE CITY

Under the terms of this Agreement, the City will:

- A. Acquire any necessary interests in land, easements and rights-of-way as required by the use agreement for the completion of the Project. {Exhibit C}.
- B. Where reasonably possible, waive or obtain any necessary City permits for this Project which are necessary for the construction and completion of the Project.
- C. Inform the County in writing, of any changes in the Project costs, sources of funding for the project or use of Project funds during prosecution of work on the Project.
- D. The City will be responsible for the construction and operation of the two containment cells, and for the dredging of the area depicted in "Exhibit B."
- E. The City will keep books, records, documents and other evidence pertaining to costs and expenses incurred for the construction to the extent and in such detail as will properly reflect total Project costs. The City will make available at its office at reasonable times, such books, records, documents and other evidence for inspection and audit by authorized County representatives.
- F. Notify the County of the satisfactory completion of the Project. The City will provide a certification of final Project costs.

SECTION FOUR: COST ALLOCATION

- A. A. The City will be reimbursed by the County for City's expenses associated with the project, on a cost-reimbursement basis only. The County may be billed once a month less 10% retainage or upon completion of the project less 10% retainage. The County shall reimburse the City no later than 45 days after receipt of the invoice requesting same.

- B. The County agrees to reimburse the City at a rate of \$13.00 per cubic yard of material removed, which includes the cost of construction of the two containment cells, mobilization and demobilization and dredging. However, the total reimbursable yardage shall not exceed 2,000 cubic yards. Any modification to the funding shall be by formal amendment of this Agreement and subject to approval by both the Lee County Board of County Commissioners and the City Council of Cape Coral.

SECTION FIVE: LIABILITY

- A. To only the extent as permitted by Florida Law, in particular, §768.28, F.S., 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, 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, F.S., 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 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 SIX: NOTICES

Notices to the respective Parties will be forwarded, in writing, to the

following parties or their written designee(s):

Chairman, Board of County Commissioners
Lee County, Florida
P.O. Box 398
Fort Myers, FL 33902

Mayor, City of Cape Coral
P.O. Box 150027
Cape Coral, FL 33915

SECTION SEVEN: TERM

The term of this Agreement will be for one (1) year from the date of execution, subject to the cancellation provisions as hereinafter enumerated, or upon full performance by the Parties hereto with respect to the terms, conditions, requirements and mutual obligations herein, whichever first occurs. Provided, however, that this

Agreement may be extended thereafter in writing pursuant to terms and conditions mutually agreeable to the Parties.

SECTION EIGHT: AMENDMENTS

This Agreement may only be amended in writing duly executed by the City and the County.

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

ATTEST:
By: *Barbara J. Vent*
City Clerk

CITY OF CAPE CORAL
By: *[Signature]*
Mayor

APPROVED AS TO FORM:
By: *Maury W. Miller*
ASST. City Attorney

ATTEST
CHARLIE GREEN, CLERK

By: _____
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Chairman

APPROVED AS TO FORM
By: *[Signature]*