

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

Blue Sheet No. 20070761

- 1. ACTION REQUESTED/PURPOSE:** Request Board approve and execute Interlocal Agreement between Lee County and the City of Fort Myers for funding of Trailhead Park Improvements in the amount of \$500,000 on a reimbursable basis. Funding is available in the Ten Mile Linear Park project.
- 2. FUNDING SOURCE:** Fund - Capital Improvement Program - Regional Park Impact Fees; Program - Parks and Recreation; Project - Ten Mile Linear Park
- 3. WHAT ACTION ACCOMPLISHES:** Allows Lee County to provide funding for Trailhead Park Improvements.
- 4. MANAGEMENT RECOMMENDATION:** Approve

5. Departmental Category: CIIA			6. Meeting Date: 06/05/07		
7. Agenda:		8. Requirement/Purpose: (specify)		9. Request Initiated:	
<input checked="" type="checkbox"/>	Consent	<input type="checkbox"/>	Statute	Commissioner	
<input type="checkbox"/>	Administrative	<input type="checkbox"/>	Ordinance	Department:	Parks & Recreation
<input type="checkbox"/>	Appeals	<input type="checkbox"/>	Admin. Code	Division	
<input type="checkbox"/>	Public	<input checked="" type="checkbox"/>	Other	By: John Yarbrough, Director of Parks and Recreation	
<input type="checkbox"/>	Walk-On			<i>John Yarbrough</i>	

10. Background: At the April 16, 2007, City of Fort Myers Council Meeting, the Council approved an Interlocal Agreement between Lee County and the City of Fort Myers for funding for Trailhead Park Improvements. Trailhead Park will be used as the northern trailhead for Ten Mile Linear Park. The City of Fort Myers will manage the construction of this project as well as the ongoing operation and maintenance. This interlocal agreement will eliminate the need for Lee County to purchase property and construct a trailhead park. Lee County will contribute \$500,000 on a reimbursement basis to the City of Fort Myers for improvements including but not limited to playground, picnic, various trails, restrooms, and parking.

Funding will be made available in account: 20200118700.508150

11. Review for Scheduling:

<i>CCM</i>	Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/ P.W. Director
	<i>Jy 5-22-07</i>				<i>Wesley A. Baw...</i>	Analyst <i>5/23-07</i>	Risk <i>5/24/07</i>	Grants <i>5/23/07</i>	Mgr. <i>5/23/07</i>	

- 12. Commission Action:**
- Approved
 - Deferred
 - Denied
 - Other

RECEIVED BY COUNTY ADMIN:
<i>5/29 4:15</i>
COUNTY ADMIN FORWARDED TO:
<i>5/24/07</i>
<i>9AM</i>

Rec. by CoAtty
Date: <i>5/22/07</i>
Time: <i>3:25pm</i>
Forwarded To:
<i>CAD 4:11 pm</i>

**INTERLOCAL AGREEMENT BETWEEN LEE COUNTY
AND THE CITY OF FORT MYERS, FLORIDA
FOR FUNDING FOR TRAILHEAD PARK IMPROVEMENTS**

THIS INTERLOCAL AGREEMENT is made and entered into as of the 16th day of April, 2007, by and between **LEE COUNTY**, a Charter County and a political subdivision of the State of Florida, herein referred to as “County”, and the **CITY OF FORT MYERS, FLORIDA**, a municipal corporation of the State of Florida, herein referred to as “City”, collectively, “the Parties”, hereto.

WITNESSETH:

WHEREAS, the City finds it necessary and in the public's interest to make improvements to the Trailhead Park facility located in the City, herein referred to as the “Project”; and,

WHEREAS, the City has applied for federal grant money to assist in the improvements; and,

WHEREAS, the improvements to Trailhead Park will benefit the County’s Regional Ten Mile Linear Park; and,

WHEREAS, it serves a public purpose and is in the interests of the public health, safety, and welfare of the citizens of Lee County for Lee County to provide certain reimbursable grant monies to assist the City in its improvements for the benefit of Lee County residents and tourists; and,

WHEREAS, the County, subject to the provisions of this funding interlocal, is willing to contribute funds on a reimbursable basis for the City's Project, in a total amount not to exceed Five Hundred Thousand Dollars (\$500,000.00); and,

WHEREAS, Chapter 125, 163, and 166, Laws of Florida, and other applicable laws authorize the County and City to enter into this joint funding and county grant interlocal in order for the Parties to provide for and improve parks and recreational facilities for the benefit of its citizens.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable considerations given and received, the Parties hereto agree as follows:

SECTION ONE: RECITALS

- A. The provisions and findings of the “Whereas” clauses above are incorporated herein as if set out further at length.
- B. This agreement is entered into pursuant to the Lee County Charter, Chapters 125, 163, and 166, Laws of Florida and other applicable law.

SECTION TWO: PURPOSE

The purpose of this Interlocal Agreement is for the County to provide to the City on a reimbursable basis, in a total amount not to exceed Five Hundred Thousand Dollars (\$500,000.00) of county funds from regional park impact fees. Such funds will be used to assist in the funding of the cost of construction for Trailhead Park’s capital improvements, as described in Section Three hereof. The County's funding obligation to the City will be subject to the provisions and conditions as further set forth in this agreement. The City will be subject to the provisions and conditions as further set forth in this agreement. The City will use the County's reimbursable grant funds as provided herein solely for improvements to the Project.

SECTION THREE: THE PROJECT

The Project shall be the City's initiation and prosecution to completion of the improvements of Trailhead Park, as described in “Exhibit A” hereto and herein called the

“Project”. The Project as described in “Exhibit A” will generally describe the work to be accomplished, schedules for completion of the work, and estimated costs to completion. The City will construct the Project in accordance with all applicable State and Federal laws and regulation. The County has had a chance to review “Exhibit A” and agrees to all improvements listed therein.

SECTION FOUR: THE TERM

The term of this agreement shall commence from the date of execution of the agreement by the County and shall continue until completion of the Project and City's compliance with Section 8(J) hereof or until the time said County funds as specifically authorized in this agreement have been actually paid by the County to the City, should a previously authorized funding be disbursed to the City beyond the Project completion date, which is anticipated to be approximately April 30, 2009. In no event shall County authorize additional County funds not provided for in Section Five below, after May 31, 2009. The term of this agreement is subject to the cancellation and termination provisions hereafter provided.

SECTION FIVE: COUNTY PAYMENTS

The County will pay to the City on a reimbursable basis, a total amount not to exceed Five Hundred Thousand Dollars \$500,000.00 during the term of this agreement as needed by the City in order for the City to pay for identified improvements to complete the Project.

The County's payment process will entail the County's paying the City on a documented monthly (if applicable) request basis from the City for reimbursement of paid monies for authorized work by City on Project. The City will supply to the County on a monthly basis, if applicable an invoice on City letterhead, and backup documentation including but not limited to purchase orders, contracts, and invoices depicting the amount requested. The County will

process the payment and the City will receive payment within forty-five (45) days pursuant to Florida Statutes. The County funds will be used by the City to pay solely for the construction necessary to complete the Project improvements. By way of example only, the County will not be asked to, nor will City use, said County funds for such costs as construction planning, architectural/engineering work and/or feasibility studies, and related matters.

County funding is contingent upon the City obtaining necessary funding for all but Five Hundred Thousand Dollars (\$500,000.00) of the total project cost.

SECTION SIX: CITY EXPENDITURES

The City will proceed in good faith and due diligence to satisfactorily complete the Project as outlined in "Exhibit A". The City will enter into all required contracts in order for the City to timely make the required capital improvements and restoration. It is hereby made expressly a part of this agreement that the City will make all payments to third parties retained by the City for the satisfactory completion of the work. The City will not request the County to make its payments per Section Five hereof, until City has paid at least an equivalent amount from City fund sources as referenced herein for eligible Project improvements. The County grant funds shall be utilized proportionately and in conjunction with other funds provided for the Project as it progresses. The City will keep all such records necessary to show its fulfillment of obligations and expenditures and will document to the County as requested by the County.

SECTION SEVEN: COUNTY BUDGETING – COUNTY CONDITION ON PAYMENT OBLIGATIONS

Per Section Five hereof, the County's intent to provide funding to the City for the Project, from the County's regional park impact fees fund, involves County funding in future fiscal years. Accordingly, all other terms, provisions, and obligations of this agreement notwithstanding, the

County reserves the sole right and discretion in any future fiscal years not to budget and appropriate the total amount not to exceed Five Hundred Thousand Dollars (\$500,000.00). The County's obligations hereunder to pay to the City the total amount not to exceed Five Hundred Thousand Dollars (\$500,000.00) is thus expressly subject to and conditioned upon the County specifically budgeting and appropriating said County funds for the Project, from the County's regional park impact fees fund, through the budget appropriation and public hearing process. While the County agrees it will proceed to consider said City funding in future years' budget and hearing process, the County is under no obligation, legal or otherwise, to so budget and appropriate County funds for the Project in future fiscal years. Should the County, for any reason, determine not to budget and appropriate any County fund amounts for City's Project, City agrees that such County action will not constitute a breach of any provision of this agreement and that City will have no legal recourse or claims thereto.

SECTION EIGHT: OBLIGATIONS OF THE CITY

In addition to the requirements and obligations of the City as provided above, the City shall:

- A. Obtain financing for the Project to cover the total cost of the Project, minus the total contribution not to exceed Five Hundred Thousand Dollars (\$500,000.00) by the County pursuant to the agreement, should said amounts be budgeted and appropriated by the County pursuant to Section Seven hereof.
- B. Prior to any County funding hereunder, provide to the County the name of the entity that will manage the present construction of the Project.
- C. Prior to County funding hereunder, provide to the County a written Management/Financial Plan outlining how the City will proceed to use the

County funds as provided for herein, how the Project will be successfully completed and that the City will have sufficient revenues to properly operate and maintain said facilities in the future, with assurances said Project will remain open to the general public.

- D. Provide to the County assurances, acceptable to the County, that future Project admission or parking fees, if any, will be the same for both City and County residents.
- E. Proceed in good faith and with due diligence to secure all other available additional grant funds from whatever source to make the improvements to the Project as provided herein. To the extent City receives improvement grants for the Project in addition to the County contributions, excluding any grants that the City has already applied for prior to the execution of this Agreement, the County shall be entitled to a refund of its monies as so provided herein in proportion to the County share of the Project cost, and said refund shall be allocated from any excess funds remaining upon completion of the Project due to the City's receipt of additional grant funds. The County shall be entitled to its percentage of refund for additional grant funds received by the City for the Project hereunder, even though said funds may not actually be received by the City until after the term of this agreement has expired pursuant to Section Four herein. The County will only be entitled to a percentage refund to the extent that such refund does not violate the terms of any grant agreement or grant funding.
- F. Prepare general programs outlining the improvement plans, time-lines, and method of accomplishing completion of work with on-going status updates on the

Project, the use of County's funds, and coordinate same with the County Manager or his designee by periodic updates. Such updates will include any material changes in the Project, Project costs, Project time-lines, use of Project funds or sources of funding for the Project.

- G. As required by Florida Law, secure competitive bids or proposals for all work to be performed by third party contractors.
- H. Be responsible to pay all costs of the Project and shall be solely responsible to resolve and discharge any and all liens, claims, demands, and judgments associated with Project work. The City shall be solely responsible to resolve all Project construction contract disputes, claims, and demands, and the payment of any additional monies required thereby.
- I. 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 an accurate total Project cost and accounting for all funding of the Project, to include the use of the County's grant funds hereunder and administration of this agreement. The City shall make available at their offices at reasonable times such books, records, documents, and other evidence for inspection and audit by authorized County representatives for a minimum of three (3) years after completion of construction of the Project or as otherwise longer required by Generally Accepted Accounting Practices (GAAP).
- J. Notify the County in writing of the satisfactory completion of the Project. The City shall provide a certification of final Project costs, sources of funds received for the Project and use of Project funds. Said certification shall include a

statement reflecting City's calculations as to compliance with Section Eight (E) hereof, if applicable.

- K. At its own expense and pursuant to Law, hold harmless and defend any and all claims, actions, suits, or proceedings that may be brought against the County and its employees by third parties in connection with this agreement or the City's construction, operation, or maintenance of this Project, and to further satisfy, pay, and discharge any and all judgments that may be entered against the County and its employee in any such action or proceeding.

SECTION NINE: INDEPENDENCE OF CITY ON PROJECT

It is understood and agreed by the Parties hereto that the County, its officials, and employees are neither agents, employees, or representatives of the City on the Project for any purpose whatsoever. Likewise, the City, its officials and employees are not agents, employees, or representatives of the County for any purpose whatsoever relating to the City Project. The County's sole responsibility under this agreement is to provide the City with County funds for the Project, pursuant to the terms of this agreement. The City, its officials and employees shall remain independent with respect to all services performed and responsibilities incurred by the City on the Project. It is not intended that the County, its officers, or employees shall in any respect be in privity of contact with, or have any financial responsibility to, the City's contractors or suppliers on the Project. This is an exclusive Interlocal Agreement by and between County and City for reimbursable funding between the two local government entities, and no third party may rely hereon and/or have or maintain any claim(s) under the terms or conditions herein.

SECTION TEN: CANCELLATION

This agreement and the County's obligation to provide any future funding or payments to the City per Section Five hereof are subject to cancellation by the County upon the County providing thirty (30) days prior written notice of the violation to the City, with the City having the opportunity to cure the articulated violation within thirty (30) days from the receipt of the County's written notice, for the following reasons:

- A. City's failure to issue a notice to proceed to initiate any Capital Repair work on the Project within one hundred twenty (120) days of City award of said construction contract for work for which the County is to reimburse the City.
- B. City's failure to timely construct and complete the work for the Project funded hereunder per the timelines provided in "Exhibit A" hereto, Schedule of Completion.
- C. City's failure to timely provide for any additional City funding to complete the Project should the actual cost to complete the Project exceed the estimates as provided in "Exhibit A" hereto.

County's exercise of its cancellation rights in this section will not waive or preclude County from exercising its termination rights as provided in this agreement, and the County retains the sole right and option of electing which remedy it wishes to pursue, as so deemed appropriate.

SECTION ELEVEN: TERMINATION OF AGREEMENT

- A. (i) Failure of City to materially comply with any of the provisions of this agreement shall be considered a breach of the agreement and shall be cause for immediate termination of the agreement at the discretion of the County. Such

termination by County will not cancel or terminate the obligation of the City to repay to County the sum of any County funds as County may have previously disbursed on a reimbursable basis by the County to the City per Section Five hereof.

(ii) Failure of City to maintain Trailhead Park open to the general public during the term of this agreement shall be considered a breach of the terms of this agreement subject to immediate termination by the County.

(iii) Any breach of this agreement will be provided in writing to the City by the County via certified mail.

- B. Upon said County termination as provided for in this Section, City shall be responsible for and shall repay to the County all County funds that have been disbursed to the City per Section Five hereof to include any fees and costs incurred by County in collecting the payment of said funds due and owing by the City hereunder.
- C. Either City or County may terminate or cancel this agreement without cause by providing ninety (90) days prior written notice to the other party. Under no circumstances may City terminate or cancel this agreement prior to the successful completion of the Project without a refund or repayment to Lee County of the county funds as provided and paid by the County to the City hereunder, per Section Five.
- D. Per Section Seven hereof, the County in its annual Budget Hearing and appropriation process exercises its sole legislative discretion not to budget and appropriate to the City and this Interlocal Agreement any County funds. The City

will not have the opportunity to cure County cancellation based upon this section, as same is not deemed a breach of the agreement.

SECTION TWELVE: CONFORMITY TO THE LAW

The City shall comply with all federal, state, and applicable local laws and any rules or regulations adopted thereunder, in its performance under this agreement.

SECTION THIRTEEN: WAIVER OR MODIFICATION

There shall be no waiver or modification of this agreement or of any covenant, condition, or limitation herein contained unless mutually agreed upon by the County and the City and reduced to written amendments to this agreement.

SECTION FOURTEEN: INDEMNIFICATION

The City agrees to be fully responsible for its acts of negligence, or its agents' acts of negligence when acting within the scope of their employment or agency, and agrees to be liable for any damages to the County resulting from any such negligence pursuant to Law. Nothing herein is intended to serve as a waiver of sovereign immunity by any entity to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract. This is an exclusive agreement by and between the County and the City; no third parties shall have or maintain any claims under the terms or conditions hereunder.

SECTION FIFTEEN: SEVERABILITY

If any provision or any portion thereof contained in this agreement is held to be unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this agreement, or portion(s) thereof, shall be deemed severable, and shall not be affected by such determination and shall remain in full force and effect.

SECTION SIXTEEN: AGREEMENT COVERED BY FLORIDA LAW

This agreement and performance hereunder and all suits and proceedings hereunder shall be construed in accordance with the laws of the State of Florida.

SECTION SEVENTEEN: AGREEMENT MANAGEMENT

City and County hereby respectively designate the following persons as the liaison between the City and County for purposes of administration of this agreement and any notices and/or filings shall be forwarded in writing to:

CITY OF FORT MYERS

Austin Morris

Recreation Manager

P.O. Drawer 2217

Fort Myers, FL 33902-2217

(239) 338-2280

LEE COUNTY

John Yarborough, Parks & Recreation

Director

P.O. Box 398

Fort Myers, FL 33901-0398

(239) 461-7410

With an additional copy sent to

the same address to the attention of:

Marie Adams, City Clerk

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the day and year first written above.

ATTEST
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY

By: _____
Deputy Clerk

By: _____
Chair

Date: _____

ATTEST

CITY OF FORT MYERS, FLORIDA
a Municipal Corporation

Marie Adams
Marie Adams, CMC
City Clerk

By: Anthony Shoemaker
Tony Shoemaker, City Manager

Date: April 17, 2007

APPROVED AS TO FORM:
LEE COUNTY ATTORNEY'S OFFICE

APPROVED AS TO FORM:
CITY OF FORT MYERS CITY ATTORNEY'S
OFFICE

By: _____
Lee County Attorney

Grant Williams Alley 04/20/2007
for Grant Williams Alley
City Attorney

“Exhibit A” to Interlocal Agreement between Lee County and City of Fort Myers

Grantee: City of Fort Myers

Project Name: North Colonial Trailhead Park Facility

A list identifying the quantity and type of outdoor recreation areas and facilities and support facilities to be constructed, and cost estimate for each item.

Facilities/Areas:

Estimated Cost:

Playground	\$60,000.00
Picnic Facilities	\$10,000.00
Hiking Trails	\$6,000.00
Nature Trails	\$4,000.00
Exercise Trails	\$30,000.00
Bike Trail Connection	\$10,000.00
Trailhead Park Amenities (Shelters)	\$90,000.00
Restrooms	\$100,000.00
Trailhead Parking/Access Road	\$220,000.00

Site Development and Engineering:

Clearing and Grubbing	\$40,000.00
Site fill and Drainage	\$200,000.00
Vegetation Management	\$60,000.00
Sodding/Landscaping	\$70,000.00
Engineering/Permitting	\$100,000.00

Total Project Cost **\$1,000,000.00**

All project elements are scheduled for completion by April 30, 2009.