

Town of Fort Myers Beach  
Agenda Item Summary

Blue Sheet Number: **2012-060**

**1. Requested Motion:** Motion to approve the Estero Boulevard Interlocal Agreement and forward to Lee County for their Consideration.

**Meeting Date:** Aug 6, 2012

**Why the action is necessary:** Interlocal agreements must be approved by a vote of the Town Council.

**What the action accomplishes:** Approves an Interlocal Agreement with Lee County to provide for coordination between the two governmental bodies in accomplishing the improvements that are to be made to Estero Boulevard.

**2. Agenda:**

Consent  
 Administrative

**3. Requirement/Purpose:**

Resolution  
 Ordinance  
 Other

**4. Submitter of Information:**

Council  
 Town Staff  
 Town Attorney

**5. Background:** The proposed Interlocal agreement was discussed at the joint meeting with the Board of County Commissioners earlier this year. The purpose of the agreement is to describe the how the parties will cooperate in the improvement of Estero Boulevard and the relative responsibilities of the parties. The agreement also provides for conflict resolution in the event a disagreement between the parties occurs.

**6. Alternative Action:** Modify or decline to approve the Interlocal Agreement.

**7. Management Recommendations:** Approve the Interlocal Agreement.

**8. Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

**9. Council Action:**

Approved     Denied     Deferred     Other

## **INTERLOCAL AGREEMENT**

**THIS INTERLOCAL AGREEMENT** is made and entered into between LEE COUNTY, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, the governing body thereof (hereinafter referred to as “COUNTY”), and the TOWN OF FORT MYERS BEACH, a Florida municipal corporation, acting by and through its Town Council (hereinafter referred to as TOWN).

### **RECITALS:**

**WHEREAS**, the Florida Legislature has enacted the “Florida Interlocal Cooperation Act of 1969” so that local governmental units can make the most efficient use of their powers by cooperating on a basis of mutual advantage and thereby provide services and facilities that will accord best with geographic, economic, population and other factors that influence the needs and development of local communities; and

**WHEREAS**, pursuant to the Florida Interlocal Cooperation Act of 1969 the COUNTY and the TOWN mutually desire to enter into an Interlocal Agreement for the purpose of providing a coordinated project that includes roadway, sidewalk, bike path and utility improvements to that portion of Estero Boulevard that is located within the TOWN (hereinafter referred to as the “PROJECT”); and

**WHEREAS**, the TOWN is planning to replace certain potable waterlines and the COUNTY has plans to replace certain wastewater lines in the vicinity of Estero Boulevard; and

**WHEREAS**, the level of service for Estero Boulevard can be enhanced by a coordinated approach that includes a design that will maximize the traffic flow on this heavily travelled roadway; and

**WHEREAS**, the COUNTY and the TOWN desire to enter into an interlocal agreement whereby each party will identify their responsibilities and obligations relating to the improvements contemplated for Estero Boulevard.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and provisions contained herein, the parties hereby agree as follows:

**SECTION 1. PURPOSE**

It is the intent of this Interlocal Agreement for the COUNTY and the TOWN to cooperate in completing the PROJECT. The project shall consist of the master planning, design and improvement of Estero Boulevard commencing at the TOWN side of the Matanzas Bridge and ending at the intersection of Estero Boulevard and the west end of the San Carlos Bridge. The parties believe that cooperating in the completion of the PROJECT is in the best interest of the public, will avoid needless and wasteful duplication of expenses for improvements to be included in the PROJECT, will assure the provision of such improvement to the residents of the TOWN without delay or uncertainty and will advance the access and circulation of that roadway to the benefit of residents and visitors of the TOWN.

**SECTION 2. OBLIGATIONS OF THE COUNTY**

COUNTY shall provide notice of and allow TOWN to actively participate in all meetings held by COUNTY concerning the project. Such meetings shall include, but not be limited to, all meetings with design consultants, all internal COUNTY staff meetings relating to the PROJECT, and all project pre-construction meetings.

**SECTION 3. OBLIGATIONS OF THE TOWN**

TOWN, at its sole expense, shall be responsible for the engineering design and plans preparation for the relocation of TOWN's utility facilities. At the appropriate submittal stages

that coincide with the COUNTY's published design schedules, TOWN shall provide electronic files to the COUNTY in a timely manner to meet the project milestones. COUNTY shall incorporate TOWN's utility relocation plans into the plans for the project and any and all documents necessary for bidding purposes.

**SECTION 4. CONSIDERATION OF ALTERNATE DESIGN.**

In the event TOWN retains the services, at its own expense, of a professional consultant to study and provide recommendations to try to alleviate traffic congestion on Estero Boulevard in the area of the Matanzas Bridge and Times Square, COUNTY agrees to consider those recommendations and modify the design, if necessary, in the interest of providing the best possible result from the Estero Boulevard improvement project.

**SECTION 5. CHANGES IN THE SCOPE OF WORK.**

TOWN shall have the right to request reasonable changes, alterations or additions to the scope of the work being performed by COUNTY, as described in the construction plans. If a change is requested, COUNTY will provide TOWN with a written estimate of the increase in cost associated with such change and whether COUNTY is willing to incur such cost, or whether TOWN will be required to bear all of a portion of the cost for the requested change.

**SECTION 6. DISPUTE RESOLUTION.**

As a condition precedent to termination of this Agreement by a party or to either party filing suit for breach of this Agreement, the party terminating or filing suit must first notify the other party in writing of the nature of the dispute and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party who is acceptable to both parties. The parties shall each pay fifty percent

(50%) of all costs for the services provided by such third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

This remedy shall be supplemental to any other remedies available by law.

#### **SECTION 7. EFFECTIVE DATE AND TERM**

(a) This Interlocal Agreement shall take effect on the date this Interlocal Agreement is filed with the Clerk of the Circuit Court for Lee County in the Public Records of Lee County. The COUNTY shall be responsible for filing the certified copy of this Interlocal Agreement.

(b) Unless earlier terminated, this Interlocal Agreement shall remain in effect for a period of ten(10) years from the effective date of this Interlocal Agreement.

#### **SECTION 8. NOTICES**

Any notices must be in writing, and shall be served by registered or certified mail, return receipt requested, or by hand delivery (with a signed receipt) to the address and addressee set forth below:

#### **SECTION 9. NO WAIVER OF SOVEREIGN IMMUNITY.**

Nothing herein shall constitute or be construed as a waiver of the COUNTY's or the TOWN's sovereign immunity pursuant to Section 768.28, Florida Statutes.

#### **SECTION 10. ENTIRE AGREEMENT.**

This Interlocal Agreement constitutes the entire agreement among the Parties pertaining to the subject matter hereof, and there are no warranties, representations or other agreements between the Parties in connection with the subject matter hereof, except as specifically set forth herein.

**SECTION 11. APPLICABLE LAW.**

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

**SECTION 12. AMENDMENTS.**

This Interlocal Agreement may be amended upon mutual agreement of the Parties. Amendments shall be in writing and signed by all Parties. Any amendments to the Interlocal Agreement shall become effective on the date said amendment is filed with the Clerk of the Circuit Court of Lee County pursuant to Section 163.01, Florida Statutes.

**SECTION 13. COUNTERPARTS.**

This Interlocal Agreement shall be executed in counterparts, each of which shall be deemed an original.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

**LEE COUNTY**

Attest: \_\_\_\_\_

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

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

**TOWN OF FORT MYERS BEACH**

Attest: \_\_\_\_\_

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