

1. Discussion Objective:

Work Session Date: August 5, 2013

Review and discuss the draft Interlocal Agreement between Fort Myers Beach and Lee County as it relates to the Estero Blvd. improvements project.

2. Submitter of Information:

- Council
- Town Staff - PW
- Town Attorney

3. Estimated Time for this item:

20 Minutes

5. Background:

The Town and Lee County have been working on the planning and design to make the much needed improvements along the County road known as Estero Blvd. Up to and including the current project phase, the agencies have worked together to plan a program that benefits the Town of Fort Myers Beach as well as all of the residents of Lee County. Moving forward from the current activities, final design and construction activities will occur. It is imperative that the Town be a party to all decisions made regarding project activities. It is also necessary for the Town to replace the water distribution system within the limits of the Estero Blvd. right-of-way as part of the island wide water utility improvements.

The attached draft Interlocal agreement was prepared in concert with Lee County staff. Both agencies' staff has reviewed and find the attached document acceptable for its purpose.

This agreement is separate and independent from the pending Interlocal related to utility improvements planned for the Town owned roadways. In no way does this agreement restrict the Town's ability to extend its water improvements project to Estero Blvd, but recognizes the advantages of replacing the Town's water utility infrastructure at the same time as the comprehensive project is constructed.

Once Town Council is comfortable with the document, it will be moved to a Town Council meeting for approval, after which Lee County staff will take it forward for approval by the Board of County Commissioners.

Attachments: Draft Estero Blvd. Interlocal Agreement

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

MASTER TRANSPORTATION AGREEMENT
REGARDING THE LEE COUNTY-MAINTAINED PORTION
OF ESTERO BOULEVARD
WITHIN THE TOWN OF FORT MYERS BEACH

THIS MASTER TRANSPORTATION AGREEMENT is made and entered into on this ____ day of _____, 20__, by and between **LEE COUNTY BOARD OF COUNTY COMMISSIONERS**, a charter county and political subdivision of the State of Florida, 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), collectively "the Parties".

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, the TOWN has identified through its comprehensive plan and its Streetscape Master Plan a desired reconfiguration of the six-mile section of Estero Boulevard located within the TOWN and maintained by the COUNTY to better accommodate alternative modes of travel on this heavily-congested roadway to meet its future vision for the community; and

WHEREAS, in response to the TOWN's interest, the COUNTY initiated Phase One of the Estero Boulevard Corridor Analysis and Design that was jointly funded with the TOWN in 2007, to evaluate roadway reconstruction concepts and identify the first, roughly, one mile section to start with as a pilot project; and

WHEREAS, upon completion of Phase One of the Estero Boulevard Corridor Analysis

and Design both the TOWN and COUNTY determined that more detailed right-of-way information for the entire Estero Boulevard corridor was needed prior to the design of the first segment, thereafter the funds designated for Phase Two were shifted to conducting a right-of-way survey, which was completed in 2010; and

WHEREAS, in the last few years the COUNTY has also completed a resurfacing of the entire six-mile section of Estero Boulevard that it maintains and has set aside funding for some interim improvements desired by the TOWN until the reconstruction can be scheduled, one of which included completion of a trolley pull-off and sidewalk at Newton Park; and

WHEREAS, the COUNTY budgeted funds in FY 2011/2012 to restart the preliminary design for the entire six-mile section of Estero Boulevard by hiring a consultant in June, 2012; and

WHEREAS, upon completion of the preliminary design for the entire roadway and a determination of appropriate segmentation, the Project will continue into Segment One design and permitting using already budgeted funds from FY 2012/2013; and

WHEREAS, the COUNTY also has funds budgeted in FY 2013/2014 for the construction and related engineering inspection for Segment One; 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, which will need to be coordinated with the roadway reconstruction effort; and

WHEREAS, pursuant to the Florida Interlocal Cooperation Act of 1969 the COUNTY and the TOWN mutually desire to enter into a Master Transportation Agreement whereby each Party will identify their responsibilities and obligations relating to the improvements contemplated for Estero Boulevard, 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 maintained by the COUNTY and located within the TOWN, from the Matanzas Pass Bridge to the Big Carlos Pass Bridge (hereinafter referred to as the "PROJECT"); and

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

SECTION 1. **RECITALS**

The Recitals as set forth above are incorporated into the terms of the Agreement as if set out herein at length.

SECTION 2. **PURPOSE**

It is the intent of this Master Transportation Agreement for the COUNTY and the TOWN to cooperate in completing the PROJECT. The PROJECT shall consist of the preliminary design, design/permitting and construction of the Estero Boulevard reconstruction commencing at the TOWN side of the Matanzas Pass Bridge and ending at the intersection of Estero Boulevard and the west end of the Big Carlos Pass 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 expand the accessibility and usage of that roadway to the benefit of residents and visitors of the TOWN.

SECTION 3. **PRELIMINARY DESIGN STUDY**

The COUNTY has hired the consulting firm TY Lin to complete the preliminary design effort for the entire six mile section of Estero Boulevard that started in 2007, with input from the

TOWN on the scope of services and consultant selection. Notice-to-proceed was issued in June, 2012, with contract duration of 18 months. The preliminary design will re-examine the previously-defined typical cross-sections in light of the more detailed right-of-way information now available; consider how to deal with any right-of-way conflicts with adjacent businesses; define the ultimate location of specific features such as sidewalks and utility lines so future installations of those facilities in advance of the reconstruction won't be in conflict; determine how to handle the roadway drainage; define a segmentation plan; quantify reconstruction costs; and reach a 30% design stage for the entire six-mile length.

The preliminary design includes a significant public involvement effort to obtain input to refine the concepts, including use of a computer website and a number of public meetings in the TOWN. COUNTY shall provide notice of and allow TOWN to actively participate in all monthly progress meetings held with the consultant concerning the PROJECT and all public meetings. Results of the preliminary design will be presented to TOWN Council and COUNTY Commission, with concurrence of both bodies being sought specifically on the limits of Segment One of the roadway reconstruction.

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, including, but not limited to, the area of the Matanzas Bridge and Times Square, COUNTY agrees to consider those recommendations and may modify the preliminary design, if provided in a timely fashion and in sufficient detail. However, the TOWN's alternative concept may be incorporated into the more detailed design and permitting effort for that segment of the roadway reconstruction, whenever that may be scheduled.

SECTION 4.

SEGMENT ONE RECONSTRUCTION DESIGN AND PERMITTING

Upon completion of the preliminary design and agreement on the limits of the Segment One reconstruction, COUNTY anticipates moving forward with the Final Plan design and permitting for the Segment One reconstruction using already-budgeted funds. TOWN will be invited to participate in: a) defining the scope of work b) selection of the consultant, and c) the regularly-scheduled progress meetings and any public meetings during the design/permitting effort.

The TOWN, at its sole expense, shall be responsible for the engineering design, plans and specifications preparation for the relocation of TOWN's utility facilities within the limits of the Segment One reconstruction and for future Segments, and for providing that information in a timely fashion to COUNTY to incorporate into the overall roadway reconstruction design and into the construction bid packages.

The TOWN, in its sole discretion, may proceed with the reconstruction of its utility facilities within the limits of Segment One or any following Segments in advance of the County proceeding with any forthcoming Segment based on the TOWN's need to proceed with its utility reconstruction project in a timely manner. The TOWN and COUNTY acknowledge that the TOWN will proceed with these construction activities at its own risk, understanding that the COUNTY will, to the best of its ability, provide TOWN ~~will~~ with all available project design plans and information so that TOWN will have knowledge of the intended location of the utility infrastructure to avoid future conflicts. More detailed definition of jurisdictional responsibilities for the future Segment One design and permitting and for subsequent Segments is expected, through amendment of this Agreement or in subsequent joint supplemental agreements under this Master Transportation Agreement.

SECTION 5. **SEGMENT ONE CONSTRUCTION AND CONSTRUCTION
ENGINEERING INSPECTION**

COUNTY has revenues budgeted in FY 2013/2014 to fund the construction and the construction engineering inspection for the Segment One reconstruction on Estero Boulevard. Funding for additional Segments of reconstruction is not budgeted at this time. TOWN would be responsible for financing costs related to their water line replacement in conjunction with COUNTY's reconstruction efforts. More detailed definition of jurisdictional responsibilities for the future Segment One construction and construction engineering inspection and for subsequent Segments is expected, through amendment of this Agreement or in subsequent joint supplemental agreements under this Master Transportation Agreement.

SECTION 6. **CHANGES IN THE SCOPE OF WORK**

TOWN shall have the right to request in writing reasonable changes, alterations or additions to the scope of work being performed by COUNTY, as described in the construction plans, provided such changes, alterations or additions do not affect the functionality of Estero Boulevard (including unreasonably increasing the cost of maintaining the roadway). COUNTY will consider the request, and provide to the TOWN a written response as to whether the requested change, alteration or addition is reasonable and acceptable to COUNTY. If the change, alteration or addition is approved by COUNTY, COUNTY will provide TOWN with a written estimate of the increase in cost, if any, associated with such change, alteration or addition and whether COUNTY is willing to incur such cost, or whether TOWN will be required to bear all or a portion of the cost for the requested change, alteration or addition.

SECTION 7. **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 8. EFFECTIVE DATE AND TERM

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

SECTION 9. 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) and addressed to the respective Parties as set forth below:

Lee County: Lee County Board of County Commissioners
Attention: County Manager
Post Office Box 398
Fort Myers, Florida 33902-0398

Town of
Fort Myers Beach: Town Council, Town of Fort Myers Beach
Attention: Town Manager
2523 Estero Boulevard
Fort Myers Beach, Florida 33931

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

SECTION 12. AMENDMENTS

This Agreement may be amended upon mutual agreement of the Parties. Amendments shall be in writing and signed by all Parties. Any amendments to the 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 Agreement shall be executed in counterparts, each of which shall be deemed an original.

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IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed on the day and year first written above.

ATTEST:

TOWN OF FORT MYERS BEACH

By: _____
Clerk, Town of Fort Myers Beach

By: _____

APPROVED AS TO FORM:

By: _____
Fowler White Boggs, Town Attorney

ATTEST: LINDA DOGETT
CLERK OF THE COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Cecil L. Pendergrass, Chair

APPROVED AS TO FORM:

By: _____
Office of the County Attorney