

1. Discussion Objective:

Work Session Date: August 5, 2013

Review and discuss the draft Interlocal Agreement between Lee County and Fort Myers Beach related to the Town's water utility improvements.

2. Submitter of Information:

- Council
- Town Staff - PW
- Town Attorney

3. Estimated Time for this item:

20 Minutes

5. Background:

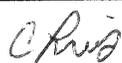
Lee County brought forward to the Town their need to replace portions of the sanitary sewer collection and distribution system within the Town's public right-of-way and expressed an interest in combining this work with the activities associated with the Town's water utility improvements project.

This Interlocal is separate and independent from the pending Interlocal related to Estero Blvd. This agreement primarily relates to utility infrastructure on Town rights-of-way. In no way does this agreement restrict the Town's ability to extend its water improvements project to Estero Blvd.

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

Once Town Council is comfortable with the document, Lee County staff will take it forward to the Board of County Commissioners for approval, after which Town Council will be in a posture to approve the same.

Attachments: Draft Interlocal and attachments

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

Interlocal Agreement between Lee County and the Town of Fort Myers Beach for a Utility Relocation Project within the corporate limits of the Town of Fort Myers Beach.

This Interlocal Agreement has been entered into on ____, 2013, by and between the Lee County Board of County Commissioners, a Charter County, (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 enabling them to cooperate with other localities on a basis of mutual advantage thereby providing 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 Water Distribution System Evaluation Report and its Basin Based Neighborhood Flood Mitigation and Stormwater Quality Improvement Project, a desired replacement of certain potable water and stormwater infrastructure located within the corporate limits of the Town; and

Whereas, the Town has identified and funded certain improvements to the potable water and stormwater utilities located within the corporate limits of the Town; and

Whereas, the Town has programmed the rehabilitation of its island wide potable water system to be phased over a five to seven year period, and may also include stormwater infrastructure improvements in conjunction with the potable water line replacement; and

Whereas, these improvements contemplate the replacement of certain potable water lines and installation of stormwater conveyances that may have the effect of displacing County wastewater lines in the vicinity of Estero Boulevard; and

Whereas, the County desires to replace certain aging wastewater lines at the same time as the Town replaces its potable water and stormwater infrastructure; and

Whereas, the Town and the County wish to coordinate the replacement of the utility infrastructure in the affected areas; and

Whereas, the County has budgeted funds in fiscal year 12/13 and will continue to fund, in future fiscal years as may be necessary, the design and installation of wastewater line replacement/relocation necessary within the corporate limits of the Town; and

Whereas, it is the intent of the Parties that the County will fund the replacement/relocation of wastewater lines and connections made necessary by the Town's public works improvements related to water and stormwater; and

Whereas, the Parties mutually desire to enter into an Agreement that identifies their respective responsibilities and obligations related to the water, stormwater and wastewater line improvements contemplated for Town roads adjacent to and along Estero Boulevard.

Now therefore, in consideration of the mutual covenants, terms, and provisions herein the Parties agree as follows:

1. Recitals. The Recitals set forth above are incorporated into this Agreement as findings of fact.
2. Purpose. The purpose of this Agreement is to outline the respective rights and responsibilities of the County and Town relative to the replacement/relocation of wastewater lines along Town roads adjacent to, and including, Estero Boulevard and water line and stormwater improvements by the Town.
3. Project Area. The geographic area covered by this Agreement is defined as the Project and is depicted by the map attached hereto as Exhibit A, and in particular, Town roads located adjacent to, and including, Estero Boulevard and identified by name on Exhibit B.

4. Project Management. The Town has selected a design-build firm through the Town's procurement process that will design and construct the water, stormwater and wastewater utilities within the project boundary. The Town will serve as the project manager with the primary responsibility for permitting, procurement, management and engineering supervision of the design-build contractor and construction work relating to the potable water, stormwater and wastewater improvements within the project area.
5. Design Standards for Wastewater Lines. The Parties agree that the design and construction of the wastewater line relocation/replacement will be performed in compliance with the Lee County Utilities Design Manual. The County's designated project manager will participate in the design-build of the wastewater improvements to the extent provided in this Agreement. In addition, County Utilities' staff will have the opportunity to review the wastewater design plans at design intervals established by the Town's design-build contract and prior to construction. At each interval, the County will have 15 calendar days from receipt to provide comment.
6. Cooperation in Management and Oversight. County agrees to cooperate and provide staff assistance and oversight upon the request of the Town as well as cooperate as necessary in the management and oversight of the project. The County will have unrestricted access to construction sites to inspect construction progress and accomplish any required maintenance of existing wastewater lines.
7. Scheduling of Improvements. The Town agrees to be responsible for scheduling the County wastewater line improvements in a coordinated manner with the Town's proposed construction of water and stormwater improvements.
8. Design-Build Contract Costs. The County agrees to fund the associated cost of wastewater line replacement/relocation as desired or made necessary by the water and storm water utility improvements planned by the Town. The Town's design-build contract(s) will provide guaranteed maximum prices (GMPs), separating out, for each phase, the anticipated County portion for design and construction. The County's funds, including any amount established by County as a contingency, will be deposited with the Town for

each phase and only released for payment to the design-builder upon Lee County Utilities Director's written authorization.

The County agrees to reimburse the Town for the design of the wastewater line at each design interval established by the Town's design-build contract(s). Reimbursement will be issued based upon verified engineering invoices and progress summaries provided to the County. Payment for permitting fees for the replacement/relocation of wastewater lines will be the responsibility of the County. The design scope of services and fee schedule are made part of this Agreement and attached as Exhibit C*¹. The County agrees to reimburse the Town for the construction costs associated with the wastewater line replacement/relocation in accordance with a schedule of values to be included in the design-build contract(s) and made part of this Agreement and attached as Exhibit D*. Requests for reimbursement will include the schedule of values with current and total line item quantities and sufficient supporting invoices and documentation. The sufficiency of the documentation will be determined by County, who may seek additional information as the circumstances require. Upon receipt of all necessary information, the County will have 14 calendar days to respond to the Town's request for reimbursement.

9. Changes in Scope. The Town agrees to furnish County with copies of all proposed changes in scope pertaining to and affecting County's wastewater line improvements within the project area. The County agrees to review and respond to the Town within 14 calendar days after receiving, in writing, the proposed change in scope. If a proposed change in scope results in the need for additional funds~~needed~~, the funds will be reimbursed using the design-build GMP contingency established and funded by County, upon County staff authorization. If the proposed change in scope exceeds the GMP contingency, additional time will be necessary to obtain Board of County Commissioners' review and approval. When time permits, the Parties agree to meet and discuss alternatives to proposed changes in scope. The Parties agree that the County must approve/authorize changes directly pertaining to the County's wastewater line improvements prior to the commencement of work contemplated by the change.

¹ *Exhibits C and D will be added in the first amendment to this agreement.

10. Verification of Design and Permitting Costs. Design and permitting costs eligible for reimbursement by County include, but are not limited to, engineering, surveys, permit fees, permit and compliance with all regulatory agencies having jurisdiction over the replacement or relocation of the existing wastewater lines, and compliance with the permitting requirements of the Town of Fort Myers Beach (if required). Costs must be verified by a licensed engineer and approved by Lee County Utilities prior to payment.
11. Ownership of Wastewater Line Improvements. Upon completion and acceptance of the work, the County agrees to take title, own, maintain and control the wastewater line improvements within the rights-of-way. The Town will furnish to the County, in a form acceptable to the County, record drawings of the wastewater line improvements.
12. 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~~ will 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 ~~shall~~ will not excuse the Parties from performance pursuant to this Agreement. This remedy shall ~~shall~~ will be supplemental to any other remedies available by law.
13. Applicable Law. This Interlocal Agreement will be construed in accordance with the Laws of the State of Florida. Venue for actions under this Agreement is in Lee County. The prevailing party will be entitled to recover attorney's fees and costs in any litigation arising hereunder.
14. No Joint Liability. The Parties agree that this Agreement will not be interpreted to establish joint liability among the Parties acting pursuant to the terms of the Agreement. Each party agrees to be responsible for and bear its own costs in defending claims or litigation arising out of this Agreement.

Nothing in this Agreement will be construed or intended to waive the protections of sovereign immunity.

15. Notices. Notices or demands under this Interlocal Agreement will be deemed given by the noticing Party and received by the noticed party:
- a. Upon hand delivery to the noticed party at the address provided below; or
 - b. Three days after deposit of the notice with the United States Mail, certified mail, returned receipt requested, properly addressed to the noticed party at the addresses provided below:

As to the County:

Lee County Attorney
Lee County Attorney's Office
2115 Second Street, 6th Floor, PO Box 398
Fort Myers, FL 33902-0398

With a copy to:

Director, Lee County Department of Utilities
1500 Monroe Street, PO Box 398
Fort Myers, FL 33902-0398

As to Town:

Town Manager
Town of Fort Myers Beach
2523 Estero Boulevard
Fort Myers Beach, FL 33931

With a copy to:

Marilyn Miller, Esquire
Fowler White, PA
PO Box 1567
Fort Myers, FL 33901

16. Termination. In recognition of certain industry standard uncertainties inherent in the Project and the estimated cost projections herein, this Agreement may be terminated upon the mutual consent of all parties, should satisfactory Project completion become unfeasible due to the need for increased additional funding for reasons which are unavoidable through the exercise of due diligence and beyond the lawful control of the parties. Prior to any such termination, the parties agree to coordinate with and discuss between

themselves and make a good faith effort to reasonably resolve the outstanding funding and completion issues.

In the event of termination pursuant to the paragraph above, County will fully compensate Town for all authorized and accepted work performed through the termination date.

17. Entire Agreement, Modification. This Agreement including all its exhibits, constitutes the entire Agreement between the Parties. Modifications to this Agreement ~~shall~~ will be accomplished by documents entitled "Amendment No. to the Interlocal Agreement between Lee County and the Town of Fort Myers Beach for a Utility Relocation Project located within the corporate limits of the Town" and must be executed with the same formality as the Agreement and filed with the Lee County Clerk of Court.
18. Effective Date. This Agreement will be effective following filing the fully executed Agreement with the Lee County Clerk of Court in accordance with Section 163.01(11), F.S.

ATTEST:
LINDA DOGGETT, CLERK

BY: _____
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Cecil L Pendergrass, Chair

Approved as to form by:

County Attorney's Office

ATTEST:
TOWN OF FORT MYERS BEACH, CLERK

BY: _____
Town Clerk

TOWN OF FORT MYERS BEACH
TOWN COUNCIL

BY: _____

Approved as to form by:

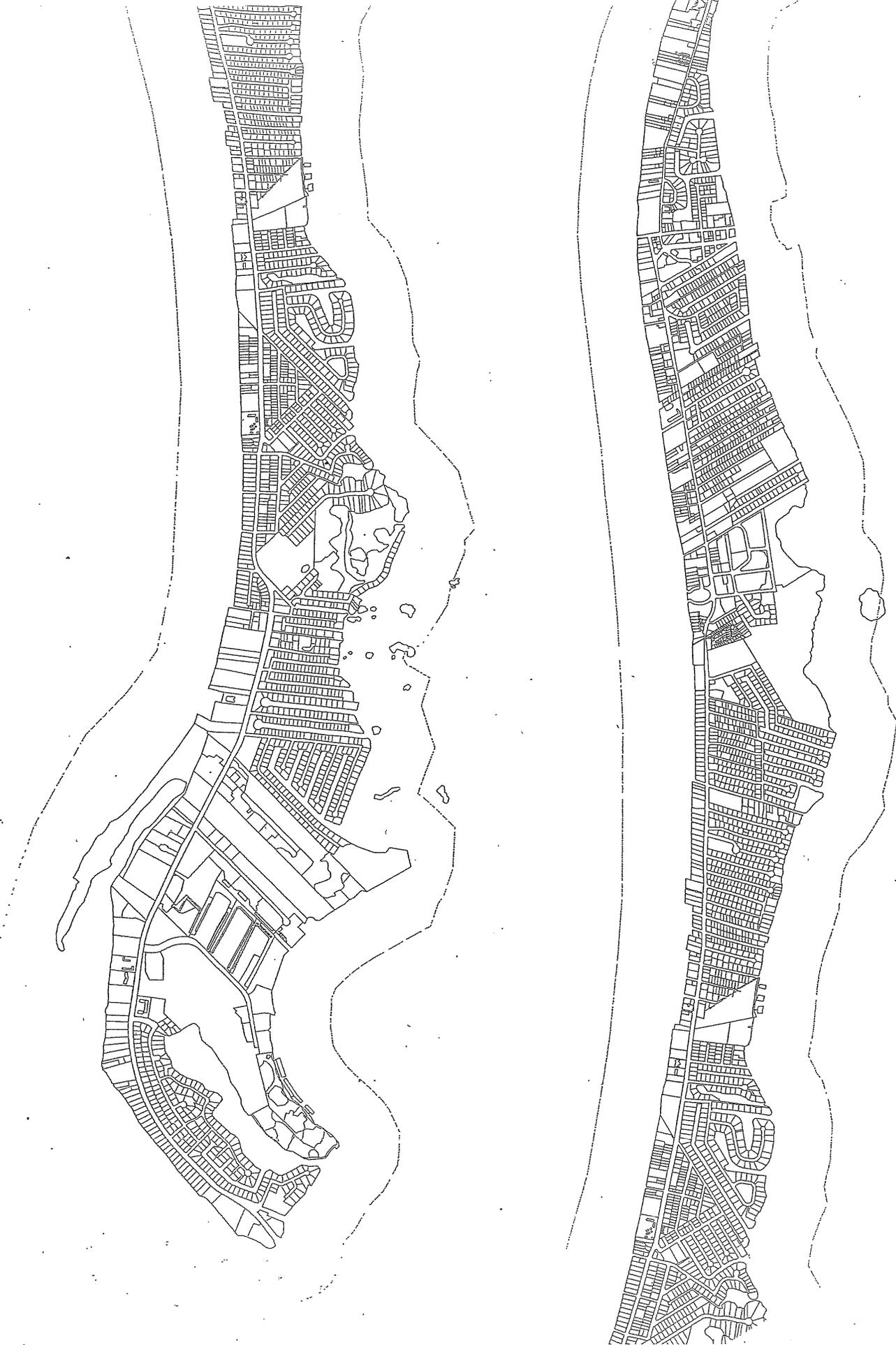
Marilyn Miller, Esquire

Exhibits:

- A: Sketch (map reflecting areas within the scope of the sewer line replacement project)
- B: List of Side Streets off Estero Boulevard subject to the contemplated sewer line relocation/replacement project.
- C: Design Scope of Services and Fee Reimbursement Schedule^{*2}
- D: Construction Cost Schedule of Values^{*2}

² *Exhibits C and D will be added in the first amendment to this agreement.

Town of Fort Myers Beach
Town Road Names
EXHIBIT "A"



**Town of Fort Myers Beach
Town Road Names
EXHIBIT "B"**

ABERDEEN AVE
ALBATROSS ST
ALVA DR
ANCHORAGE ST
ANDRE MAR DR
AVENIDA CARITA
AVENIDA PESCADORA
AVENUE A
AVENUE C
AVENUE E
BAHIA VIA
BAY BEACH LN
BAY MAR DR
BAY RD
BAY VILLAGE DR
BAYLAND RD
BAYSIDE RD
BAYVIEW AVE
BAYVIEW BLVD
BAYVIEW DR
BONITA ST
BUCCANEER DR
BUCCANEER LAGOON ST
CANAL ST
CARITA AVE
CARLOS CIR
CAROLINA AVE
CENTER ST
CHAPEL ST
CLEARVIEW BLVD
COCONUT DR
COMPASS LN
CONNECTICUT ST
COQUINA RD
CORAL RD
CORTEZ WAY
COTTAGE AVE
COURT ST
CRESCENT ST
CURLEW ST
DAKOTA AVE
DEEP PASSAGE LN
DELMAR AVE
DOLPHIN LN
DONORA BLVD
DRIFTWOOD LN
DUNDEE RD

EASY ST
EGRET ST
ESTERO BLVD
ESTRELLITA DR
EUCALYPTUS CT
FAIRVIEW BLVD
FAIRWEATHER LN
FALKIRK ST
FIFTH AVE
FIRST ST
FLAMINGO ST
FOURTH ST
GLENVIEW MANOR DR
GULF BEACH RD
GULF CT
GULF DR
GULF ISLAND DR
GULFVIEW AVE
HARBOR CT
HERCULES DR
HIBISCUS DR
IBIS ST
INDIAN BAYOU DR
ISLAND PINES WAY
JEFFERSON CT
JEFFERSON ST
KEY WEST CT
LAGOON LN
LAGOON RD
LAGOON ST
LANARK AVE
LAUDER ST
LAZY WAY
LENELL RD
LEWIS ST
LITTLE CARLOS LN
LOVERS LN
MADERA RD
MADISON CT
MANDALAY RD
MANGO ST
MID ISLAND DR
MIRAMAR ST
MOUND RD
NANCY LN
NATUREVIEW CT
NODDYTERN DR

OAK RIDGE AVE
OAK ST
OHIO AVE
OLD SAN CARLOS
OLD SAN CARLOS BLVD
OSTEGO DR
PALERMO CIR
PALM AVE
PALMETTO ST
PALMVIEW BLVD
PEARL ST
PEPITA ST
POMPANO ST
PRIMO DR
RANDY LN
REDFISH RD
RHODE ISLAND PLACE
SABAL DR
SAND DOLLAR LN
SANDERS DR
SANTOS RD
SCHOOL ST
SEAHORSE LN
SEAVIEW ST
SECOND ST
SEMINOLE WAY
SHELBY LN
SHELL MOUND BLVD
ST PETERS DR
STARFISH CIR
STERLING AVE
STRANDVIEW AVE
SUNVIEW BLVD
TARPON RD
THIRD ST
TROPICAL SHORES WAY
VIRGINIA AVE
VOORHIS ST
WASHINGTON AVE
WASHINGTON CT
WIDGEON TER
WILLIAMS DR