

1 **VILLAGE OF ESTERO, FLORIDA**

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3 **RESOLUTION NO. 2015 - 37**

4  
5 **A RESOLUTION APPROVING THE FIRE CONTROL AND**  
6 **PREVENTION INTERLOCAL AGREEMENT BETWEEN THE**  
7 **ESTERO FIRE DISTRICT AND THE VILLAGE OF ESTERO**  
8 **REGARDING FIRE CONTROL AND PREVENTION**  
9 **SERVICES FOR THE VILLAGE OF ESTERO; AND**  
10 **PROVIDING AN EFFECTIVE DATE.**

11  
12 **NOW, THEREFORE,** be it resolved by the Village Council of the Village of Estero,  
13 Florida:

14  
15 **SECTION ONE.** The Fire Control and Prevention Interlocal Agreement between the  
16 Estero Fire Rescue District and the Village of Estero regarding Fire Control and Prevention  
17 Services, a copy of which is attached hereto and incorporated herein by this reference, is  
18 approved; and

19  
20 **SECTION TWO.** The Mayor is hereby authorized to execute the Interlocal  
21 Agreement between the Estero Fire Rescue District on behalf of the Village.

22  
23 **SECTION THREE.** This Resolution shall take effect immediately upon adoption.

24  
25 **ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero, Florida this \_\_\_\_\_ day  
26 of July, 2015.

27  
28 Attest:

**VILLAGE OF ESTERO, FLORIDA**

29  
30 By: \_\_\_\_\_  
31 Kathy Hall, MMC, Village Clerk

By: \_\_\_\_\_  
Nicholas Batos, Mayor

32  
33 Reviewed for legal sufficiency:

34  
35 By: \_\_\_\_\_  
36 Burt Saunders, Esq., Village Attorney

**INTERLOCAL AGREEMENT  
RELATING TO FIRE CONTROL AND PREVENTION AND  
COLLECTION AND DISBURSEMENT OF FIRE IMPACT FEES**

THIS INTERLOCAL AGREEMENT is made and entered into between the ESTERO FIRE RESCUE DISTRICT, an independent special fire control district created by the Florida Legislature, with its principal office located at 21500 Three Oaks Parkway, Estero, Florida 33928 (hereinafter referred to as the "DISTRICT"); and the VILLAGE OF ESTERO, a Florida municipal corporation whose address is 21500 Three Oaks Parkway, Estero, Florida 33928 (hereinafter referred to as the "VILLAGE").

WITNESSETH:

WHEREAS, the Florida Interlocal Cooperation Act of 1969, codified as Section 163.01, Florida Statutes, authorizes all governments in the state of Florida to jointly exercise any constitutional or statutory power, privilege or authority which either governmental might exercise separately; and,

WHEREAS, the VILLAGE and the DISTRICT are political subdivisions and local governments within the meaning of the Florida Interlocal Cooperation Act and desire the joint exercise of power which each government might exercise separately for the purpose of enforcing the Florida Fire Safety Code, Chapter 633, Florida Statutes and local ordinances relating to fire control and prevention and the collection and disbursement of fire impact fees; and

WHEREAS, the VILLAGE will not employ a Fire Official, Fire Marshal or Fire Safety Inspector and will not provide fire rescue services within the VILLAGE and will rely for such services within the jurisdiction of the DISTRICT on the resources and personnel of the DISTRICT; and,

WHEREAS, both the VILLAGE and the DISTRICT possess the statutory authority to collect and utilize fire impact fees to provide for additional fire rescue resources required to serve the VILLAGE as its population grows; and,

WHEREAS, the VILLAGE has the statutory authority pursuant to Chapter 553, Florida Statutes, the Florida Building Code, and Part II, Chapter 163, Florida Statutes, Florida's Growth Management Act to regulate, control and permit all development within municipal boundaries as specified by law; and,

WHEREAS, the DISTRICT and the VILLAGE agree that fire impact fees specified by DISTRICT policy, as it may be amended from time to time, will be collected by the VILLAGE as part of the process of issuance of building permits for new construction or redevelopment within the VILLAGE and disbursed to the DISTRICT, less an administrative fee as specified by this interlocal agreement.

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and promises contained herein, the DISTRICT and the VILLAGE agree as follows:

## SECTION ONE: RECITALS

The recitals contained above are incorporated into this interlocal agreement as if they were set forth in full below.

## SECTION TWO: FIRE CONTROL AND PREVENTION

1. The VILLAGE and the DISTRICT acknowledge and agree that fire control, prevention, and rescue within the territory and jurisdictional boundary of the DISTRICT and located within the boundary of the VILLAGE are the responsibility of the DISTRICT.
2. The VILLAGE and the DISTRICT agree that the Fire Chief of the DISTRICT shall act as the Fire Official for the VILLAGE, and shall meet or exceed the following qualifications:
  - a. Shall have a high school diploma or equivalency certificate, shall be certified by the State of Florida as a firefighter and shall be certified by the State of Florida as a fire inspector. In lieu of such certifications, any combination of experience or training which has resulted in equivalent knowledge, skills, abilities and certifications may be accepted.
  - b. Shall be appointed by and certified as qualified by the DISTRICT's governing body, and notice of the certification and appointment shall be filed with the VILLAGE Clerk, with a copy to the VILLAGE Manager.
3. The VILLAGE and the DISTRICT agree that the Fire Marshal of the DISTRICT shall act as the Fire Safety Inspector for the VILLAGE, as described in Section 633.081, Florida Statutes, and shall meet or exceed the statutory requirements of that Section, as set out in Exhibit A, attached hereto and incorporated herein.
4. The Fire Marshal may be either the Fire Chief of the DISTRICT, the Fire Marshal of the DISTRICT or another qualified person appointed and certified as qualified by the DISTRICT's Fire Chief. Notice of the certification shall be filed with the VILLAGE Clerk, with a copy to the VILLAGE Manager.
5. The VILLAGE and the DISTRICT agree that all of the duties of the Fire Official, Fire Marshal or Fire Safety Inspector may be exercised by any deputy, assistant or designee who meets the qualifications for the respective function and has been so designated by the Fire Chief.
6. The Fire Chief as Fire Official, the Fire Marshal as Fire Safety Inspector and their deputies, assistants or designees set forth in the list attached and incorporated herein as Exhibit B, are hereby appointed as Code Inspectors/Code Enforcement Officers for the VILLAGE within the meaning of Chapter 162, 166, 553 and 633, Florida Statutes and ordinances, and the VILLAGE's charter and ordinances. The list of officials on Exhibit B may be revised upon notification of the VILLAGE Clerk with a copy to the VILLAGE

Manager. Any revised list shall be incorporated into the agreement upon notification to the VILLAGE Clerk. The designees on Exhibit B may enforce all applicable state or local Fire Codes.

7. The DISTRICT agrees to provide assistance to the VILLAGE to properly interpret and enforce the Florida Fire Prevention Code, the Florida Building Code to the extent it relates to fire safety inspection and fire prevention, and any ordinances and duly enacted policies and regulations of the VILLAGE relating to fire safety, fire inspection and fire control.
8. The VILLAGE and the DISTRICT will coordinate their efforts to provide for a smooth, efficient and timely process for receiving and reviewing construction applications and plans and for permit issuance. A sample of the current permitting process is set out in Exhibit C, attached hereto and incorporated herein. The VILLAGE Manager and the Fire Chief, or their designees, will be responsible for coordination of the permitting process and may make changes to the process by mutual written agreement or memorandum as necessary.
9. The VILLAGE will provide civil enforcement services to the DISTRICT for the following:
  - a. The VILLAGE's code enforcement ordinances or corresponding state law,
  - b. The VILLAGE's nuisance abatement procedures, or
  - c. Any other civil enforcement method permitted by law.
10. If a fine is paid to the VILLAGE, the VILLAGE may retain its costs plus 1/3 of the collected fine amount, with the disbursed to the DISTRICT. If an enforcement procedure involves costs greater than the amount collected from fines, the VILLAGE and the DISTRICT will, in good faith, negotiate a cost sharing agreement regarding services to be provided by the DISTRICT or the VILLAGE

### SECTION THREE: FIRE IMPACT FEE COLLECTION AND DISBURSEMENT

1. The schedule of fire impact fees within the DISTRICT's jurisdictional boundary that are currently collected by Lee County and disbursed to the DISTRICT as a provision of the current building permit fee collection procedure shall be collected by the VILLAGE and disbursed to the DISTRICT pursuant to this Agreement once the VILLAGE has established a building permit procedure, permit fees and impact fees pursuant to the necessary ordinance (the "Ordinance").
2. The VILLAGE will be entitled to keep up to three percent (3%) of the fire impact fees collected pursuant to the Ordinance in order to recover costs in collecting the fees and administering the Ordinance.

3. The determination of the amount of impact fee credits, if any, authorized by the Ordinance will be made by the VILLAGE consistent with the provisions of the Ordinance.
4. The determination of whether a refund is owed pursuant to the Ordinance will be made by the VILLAGE consistent with the provisions of the Ordinance. Refunds will be paid by the VILLAGE and charged back to the DISTRICT and collected by deducting the appropriate amount from the VILLAGE's next payment of net impact fee collections due the DISTRICT.
5. The DISTRICT shall be bound by the interpretations of the Ordinance which is established under the appeals provisions of the Ordinance. If an administrative decision is appealed to the Circuit Court, the appeal shall be defended by the VILLAGE unless the DISTRICT elects to provide defense of the case.
6. The DISTRICT, in cooperation with the VILLAGE, will establish administrative and records keeping procedures that are necessary to implement the Ordinance.
7. The VILLAGE will maintain all records of impact fees collected by reference to the fee payer's name and address, the amount paid in cash and by the use of credits, and the specific permit for which the fees were collected. Similar records shall be maintained for exemptions from the Ordinance.
8. The DISTRICT shall maintain records of all impact fees spent by reference to the payee's name and address, the specific amount paid and the capital improvement acquired. All required approvals of disbursement of the DISTRICT impact fees will be coordinated between the DISTRICT, the VILLAGE and Lee County, if necessary.
9. Until the VILLAGE adopts the necessary building permit and the Ordinance or ordinances, Lee County shall continue to collect impact fees for the District. When the VILLAGE adopts the Ordinance, establishes building permit and impact fee collection procedures and so notifies Lee County, the County shall cease collecting impact fees for the DISTRICT within the DISTRICT service area within the VILLAGE's municipal boundary. Upon notification by Lee County that the County has ceased collection of impact fees for the DISTRICT within the municipal boundary, the VILLAGE shall collect and distribute impact fees to the DISTRICT pursuant to this Agreement.

#### SECTION FOUR: SOVEREIGN IMMUNITY

The parties agree that by execution of this Agreement, no party will be deemed to have waived its statutory defense of sovereign immunity, or increased its limits of liability as provided by Florida Statutes.

## SECTION FIVE: SCOPE OF THE AGREEMENT

This Agreement embodies the whole understanding between the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written.

## SECTION SIX: AMENDMENTS TO THE AGREEMENT

This Agreement may only be amended by a written document signed by both parties and filed with the Clerk of the Circuit Court of Lee County, Florida.

## SECTION SEVEN: TERM

This Agreement shall run perpetually, unless terminated by the parties. Provided, this Agreement, or portions thereof, may only be terminated by mutual consent of the parties in writing.

## SECTION EIGHT: EFFECTIVE DATE

This Agreement shall become effective on the date of execution by the last party to execute the Agreement.

## SECTION NINE: MISCELLANEOUS

1. The parties represent and warrant that they have full authority to enter into and sign this Agreement.
2. The drafting of this Agreement has been a joint endeavor between the parties and shall not, solely as a matter of judicial construction, be interpreted more strictly against one party than the other.
3. The invalidity of any provision hereof shall in no way affect or invalidate the remainder of this Agreement.
4. In no case shall either party be liable for either consequential or special damages of any kind whatsoever, including but not limited to lost revenues, profits or any other damages of any kind whatsoever in any way related to damage, interference, down time or relocation of its equipment resulting from any breach or default under this Agreement.
5. Venue for any disputes between the parties requiring adjudication shall be the Circuit Court for Lee County, Florida. All disputes arising under this Agreement shall be governed by the laws of the State of Florida. The prevailing party in any dispute, as evidenced by a final, un-appealed order of the court granting the relief requested, shall be entitled to an award of reasonable attorney's fees and allowable costs.

ATTEST:

VILLAGE OF ESTERO

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

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

Date signed: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Village Attorney

ATTEST:

ESTERO FIRE RESCUE DISTRICT

By: \_\_\_\_\_  
Bruce A. Philp, Secretary/Treasurer

By: \_\_\_\_\_  
Richard G. Schweers, Chair

Date signed: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
District Attorney

“EXHIBIT A”

QUALIFICATIONS

633.081, Florida Statutes (2013)

....

...

(2) Except as provided in s. 633.082(2), every firesafety inspection conducted pursuant to state or local firesafety requirements shall be by a person certified as having met the inspection training requirements set by the State Fire Marshal. Such person shall:

- (a) Be a high school graduate or the equivalent as determined by the department;
- (b) Not have been found guilty of, or having pleaded guilty or nolo contendere to, a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States, or of any state thereof, which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases;
- (c) Have her or his fingerprints on file with the department or with an agency designated by the department;
- (d) Have good moral character as determined by the department;
- (e) Be at least 18 years of age;
- (f) Have satisfactorily completed the firesafety inspector certification examination as prescribed by the department; and

(g)1. Have satisfactorily completed, as determined by the department, a firesafety inspector training program of not less than 200 hours established by the department and administered by agencies and institutions approved by the department for the purpose of providing basic certification training for firesafety inspectors; or

2. Have received in another state training which is determined by the department to be at least equivalent to that required by the department for approved firesafety inspector education and training programs in this state.

(3)(a)1. Effective July 1, 2013, the classification of special state firesafety inspector is abolished, and all special state firesafety inspector certifications shall expire at midnight June 30, 2013.

2. Any person who is a special state firesafety inspector on June 30, 2013, and who has failed to comply with paragraph (b) or paragraph (c) may not perform any firesafety inspection required by law.

3. A special state firesafety inspector certificate may not be issued after June 30, 2011.

(b)1. Any person who is a special state firesafety inspector on July 1, 2011, and who has at least 5 years of experience as a special state firesafety inspector as of July 1, 2011, may take the firesafety inspection examination as provided in paragraph (2)(f) for firesafety inspectors before July 1, 2013 to be certified as a firesafety inspector under this section.

2. Upon passing the examination, the person shall be certified as a firesafety inspector as provided in this section.

3. A person who fails to become certified must comply with paragraph (c) to be certified as a firesafety inspector under this section.

(c)1. To be certified as a firesafety inspector under this section, any person who:

a. Is a special state firesafety inspector on July 1, 2011, and who does not have 5 years of experience as a special state firesafety inspector as of July 1, 2011; or

b. Has 5 years of experience as a special state firesafety inspector but has failed the examination taken as provided in paragraph (2)(f), must take an additional 80 hours of the courses described in paragraph (2)(g).

2. After successfully completing the courses described in this paragraph, such person may take the firesafety inspection examination as provided in paragraph (2)(f), if such examination is taken before July 1, 2013.

3. Upon passing the examination, the person shall be certified as a firesafety inspector as provided in this section.

4. A person who fails the course of study or the examination described in this paragraph may not perform any firesafety inspection required by law on or after July 1, 2013.

(4) A firefighter certified pursuant to s. 633.35 may conduct firesafety inspections, under the supervision of a certified firesafety inspector, while on duty as a member of a fire department company conducting inservice firesafety inspections without being certified as a firesafety inspector, if such firefighter has satisfactorily completed an inservice fire department company inspector training program of at least 24 hours' duration as provided by rule of the department.

(5) Every firesafety inspector certificate is valid for a period of 3 years from the date of issuance. Renewal of certification is subject to the affected person's completing proper application for renewal and meeting all of the requirements for renewal as established under this chapter or by rule adopted under this chapter, which shall include completion of at least 40 hours during the preceding 3-year period of continuing education as required by the rule of the department or, in lieu thereof, successful passage of an examination as established by the department.

(6) The State Fire Marshal may deny, refuse to renew, suspend, or revoke the certificate of a firesafety inspector if the State Fire Marshal finds that any of the following grounds exist:

(a) Any cause for which issuance of a certificate could have been refused had it then existed and been known to the State Fire Marshal.

(b) Violation of this chapter or any rule or order of the State Fire Marshal.

(c) Falsification of records relating to the certificate.

(d) Having been found guilty of or having pleaded guilty or nolo contendere to a felony, whether or not a judgment of conviction has been entered.

(e) Failure to meet any of the renewal requirements.

(f) Having been convicted of a crime in any jurisdiction which directly relates to the practice of fire code inspection, plan review, or administration.

(g) Making or filing a report or record that the certificateholder knows to be false, or knowingly inducing another to file a false report or record, or knowingly failing to file a report or record required by state or local law, or knowingly impeding or obstructing such filing, or knowingly inducing another person to impede or obstruct such filing.

(h) Failing to properly enforce applicable fire codes or permit requirements within this state which the certificateholder knows are applicable by committing willful misconduct, gross negligence, gross misconduct, repeated negligence, or negligence resulting in a significant danger to life or property.

(i) Accepting labor, services, or materials at no charge or at a noncompetitive rate from any person who performs work that is under the enforcement authority of the certificateholder and who is not an immediate family member of the certificateholder. For the purpose of this paragraph, the term "immediate family member" means a spouse, child, parent, sibling,

grandparent, aunt, uncle, or first cousin of the person or the person's spouse or any person who resides in the primary residence of the certificateholder.

(7) The Division of State Fire Marshal and the Florida Building Code Administrators and Inspectors Board, established pursuant to s. 468.605, shall enter into reciprocity agreement to facilitate joint recognition of continuing education recertification hours for certificateholders licensed under s. 468.609 and firesafety inspectors certified under subsection (2).

(8) The State Fire Marshal shall develop by rule an advanced training and certification program for firesafety inspectors having fire code management responsibilities. The program must be consistent with the appropriate provisions of NFPA 1037, or similar standards adopted by the division, and establish minimum training, education, and experience levels for firesafety inspectors having fire code management responsibilities.

(9) The department shall provide by rule for the certification of firesafety inspectors.

“EXHIBIT B”

LIST OF FIRE DISTRICT OFFICIALS AND EMPLOYEES DESIGNATED  
AS VILLAGE CODE INSPECTORS/CODE ENFORCEMENT OFFICERS

NAME

TITLE

- |                      |                                    |
|----------------------|------------------------------------|
| 1. Scott Vanderbrook | Fire Chief/Fire Official           |
| 2. Mark Wahlig       | Assistant Fire Chief/Fire Official |
| 3. Phillip Green     | Fire Marshal/Firesafety Inspector  |
| 4. Johnny Manning    | Fire Inspector                     |
| 5. Scott Danielson   | Fire Inspector                     |

“EXHIBIT C”

INSPECTION PROCEDURES

(Subject to Amendment by Agreement of the VILLAGE Manager and the Fire Chief)

The DISTRICT hereby will review with respect to the Florida Fire Prevention Code, Florida Building Code as it relates to fire safety and fire prevention, and the VILLAGE Building Code as they relate to fire safety and fire prevention, the following: All development site plans, DCI cases and building plans submitted for building permits (excluding one and two-family dwellings) in the manner described below.

A. Development Site plans, DCI Cases, Subdivision Plats

Upon receipt of applications for DCIs and requests for subdivision approval, the VILLAGE staff and DCI review will take place. A copy of the site plan and staff consents shall be sent to the District where the development is located in the VILLAGE. The District may submit written comments in respect to the development to the DCI Coordinator located within the Division of Community Development. The comments of the VILLAGE staff and the District will be submitted to the Zoning Board at the zoning hearing. The District may appear at the Zoning Board hearing and the Zoning Appeals Board hearing.

B. Building Permits and Certificates of Occupancy – Simultaneous Plan Review

Upon receipt of an application and building plan for a building permit, the staff review will take place, including review by the VILLAGE Building Official and DISTRICT Fire Official, and/or their respective designees with regard to the application Building Codes and Florida Fire Prevention Code. A copy of the plan will be picked up by the DISTRICT within one (1) working day of the VILLAGE receiving the application. The DISTRICT shall complete its review within five (5) working days of receipt of application and building plan. Should the review require additional time due to the size of the project, a reasonable extension of time may be granted by the VILLAGE Building Official upon request of the DISTRICT Fire Official. If the DISTRICT disputes that the plan complies with the applicable Fire Code or there is a question as to interpretation of the Fire Code, the procedures set out in Paragraph 11 of the VILLAGE/DISTRICT Interlocal Agreement shall go into effect. A copy of amendments to building plans shall be sent to the DISTRICT. The DISTRICT shall not approve amendments to approved plans unless said plans have been processed through the VILLAGE review in the same manner as the original plans. Permits and certificates will be issued only upon review and approval of the respective parties.

C. Final Inspection

Prior to issuance of a Certificate of Occupancy, a final inspection shall be conducted by the DISTRICT. The inspection shall be conducted by the DISTRICT within 2 working days of the receipt of the application for Certificate of Occupancy forwarded by the VILLAGE. The Certificate of Occupancy shall not be issued until a final decision is rendered that the project is in compliance with the applicable fire code or other code as it relates to fire safety or fire control. If, in the determination of the Fire Official, no immediate life safety hazard exists, a Conditional Certificate of Occupancy may be issued.