

ATTACHMENT 1

DESIGN AND PERMITTING COST SHARING AGREEMENT

This Design and Permitting Cost Sharing Agreement (“**Agreement**”) is made effective as of this _____ day of _____, 2020 (“**Effective Date**”), by and between SD Estero Crossings, LLC, a Florida Limited Liability Corporation (hereafter “SD”), whose address is 2639 Professional Circle, Suite 101, Naples, FL 34119, and the Village of Estero, a Florida municipal corporation (hereafter “Village”) whose address is 9401 Corkscrew Palms Circle, 2nd Floor, Estero, Florida, 33928.

RECITALS

- A. SD is the owner of certain real property located in Lee County, Florida, (“**Property**”).
- B. The SD Property (Property) is adjacent or proximate to that certain roadway intersection (“**Intersection**”) of Corkscrew Road (running roughly east to west) and Puente Lane / Estero Town Commons Place (running roughly south to north).
- C. Village authorized the acceleration of the design, specifications and permitting of the traffic signal device and related improvements as described more in-depth herein.
- D. SD is required by condition 5 and 6 of Ordinance 2019-29, the zoning ordinance for the SD Property, to pay a proportionate share of the cost of the design and permitting of a traffic signal device and related improvements at the Intersection, including, but not limited to, traffic lights and signage, mast arms, pedestrian signals and signage, pedestrian crossing bars, curb modifications, loops, controllers, electrical service, and pavement markings, all as may be applicable (collectively, “**Traffic Signal Improvements**”). The payment must be made prior to the issuance of a development order for the development approved in Ordinance 2019-29. Upon payment of the proportionate share of the design and permitting, and the payment of the proportionate share of the construction to Lee County, SD will have satisfied its obligations regarding the Traffic Signal Improvements.
- E. SD’s proportionate share percentage was determined by an outside transportation consultant for the Village. SD’s share is 23.39% (percent) of the cost of the design and permitting of the Traffic Signal Improvements. The payment to the Village for design and permitting is \$38,480.06.

NOW, THEREFORE, SD and Village do hereby agree as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated herein by reference.
2. **Design; Permitting; Construction.** The Village of Estero retained Stantec on February 6, 2019, to undertake the design and permitting of the Traffic Signal Improvements (Contract number EC2019-07). The total cost of the design, specifications and permitting is \$164,515.00. The Village, through its consultant, has applied for and is diligently pursuing the issuance of all applicable governmental permits and approvals necessary for construction of the Traffic Signal Improvements, including, but not necessarily limited to, permits and/or approvals from the Florida Department of Transportation and/or the Lee County Department of Transportation, and South Florida Water Management District (collectively, the “**Permits**”).
3. **Project Costs.** SD agrees to pay, and is hereby obligated to pay, its pro-rata share of the design and permitting of the Traffic Signal Improvements. SD’s respective pro-rata share of the design and permitting is 23.39%.

a. Funding of Design and Specifications. By no later than five (5) days after the Effective Date hereof, SD shall remit to the Village of Estero its Pro-Rata Share of the Costs for Design and Permitting.

b. Construction Costs. The construction costs shall be addressed by the SD, and other parties obligated to pay a proportionate share, either jointly or separately in an agreement with Lee County, a political subdivision of the State of Florida. A copy of the agreement executed by SD shall be provided to the Village of Estero.

4. Non-Performance. If SD fails to comply with the terms and conditions of this Agreement, the Village may deliver written notice (“**Cure Notice**”) to SD to cure such failure within fifteen (15) days after delivery of the Cure Notice (or, if a non-monetary breach cannot reasonably be cured within fifteen (15) days, commence to cure within fifteen (15) days after delivery of the Cure Notice and thereafter diligently pursue and effectuate a cure). If SD fails to timely cure (or commence to cure, as applicable), the Village may elect to issue a Stop Work Order and to withhold future permits until full payment has been made by SD. Any amount payable under this Agreement which is not paid within thirty (30) days of the date due shall accrue interest at a rate equal to the lesser of eighteen percent (18%) per annum or the highest legal interest rate under Florida law.

5. Default. If any party defaults under this Agreement, then the other parties shall be entitled to pursue all legal and equitable remedies available under law.

6. Notices. All notices, demands, requests, and other communications required hereunder shall be in writing. All such notices, demands, requests and other communications (and copies thereof) shall be deemed to be delivered: (a) if sent by messenger, upon personal delivery to the Party to whom the notice is directed; (b) if sent by facsimile or electronic mail or other electronic transmission, upon transmission; (c) if sent by overnight courier, with request for next business day delivery, on the next business day after sending; or (d) whether actually received or not, two (2) business days after deposit in a regularly-maintained receptacle for the United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows (or to such other address as the Parties may specify by notice given pursuant to this Section):

If to SD: SD ESTERO CROSSINGS, LLC
Attn: Keith Gelder
2639 Professional Circle, Suite 101
Naples, Florida 34119
Phone: 239-592-7344
Fax:
Email: Kgeld@stockdevelopment.com

With a copy to: Craig Grider, Esq.
Coleman, Yovanovich & Koester, P.A.
4001 Tamiami Trail N., Suite 300
Naples, Florida 34013
Phone: 239-435-3535
Fax: 239-435-1218
Email:

If to Village: Steven R. Sarkozy, Village Manager
Village of Estero
9401 Corkscrew Palms Circle, 2nd Floor

Estero, FL 33928
Phone: (239) 221-5035
Email: sarkozy@estero-fl.gov

With a copy to:

Derek P. Rooney, Esq.
Grey Robinson
1404 Dean Street, Suite 300
Fort Myers, FL 33901
Phone: (239) 254-8455
Email: Derek.Rooney@gray-robinson.com

7. Binding Effect; Amendment; Term. This Agreement shall run with title to the Properties and be binding upon and inure to the benefit of SD its assigns and successors in title. No prior or present agreements or representations regarding the subject matter hereof shall be binding upon SD unless incorporated in this Agreement. No modification or changes in this Agreement shall be valid or binding upon SD unless in writing and executed by SD. The Agreement shall remain in effect until the completion of construction of the Traffic Signal Improvements by Lee County, Florida including any time frames required for certification of the improvements and any ensuing warranty periods, and until completion of the improvements permitted in Ordinance 2019-29 are completed and certified as complete.

8. Severability and Waiver. In the event that any provision of this Agreement shall be held to be invalid or unenforceable, that provision shall be deleted from this Agreement without affecting, in any respect whatsoever, the validity of the remainder of this Agreement. No waiver of any provisions of this Agreement shall be binding, unless executed in writing by SD making the waiver. No waiver of any of the provisions of this Agreement shall be deemed or inferred from SD's conduct or for any other reason, nor shall any waiver of a provision constitute a waiver of any other provisions, whether or not similar. No waiver of any provision of this Agreement shall constitute a continuing waiver.

9. Further Assurances. Without additional consideration, the Parties will sign, acknowledge, and deliver any other documents and take any other action necessary or appropriate, and reasonably requested by the other, to carry out the intent and purpose of this Agreement.

10. Attorneys' Fees. If any Party initiates or is made a party to legal proceedings (whether judicial, administrative, declaratory, in arbitration or otherwise) in connection with this Agreement, then the non-prevailing Party in those proceedings will pay the costs and attorneys' fees, including the costs and attorneys' fees of appellate proceedings, incurred by the prevailing Party. This obligation to pay attorneys' fees and costs will apply also to settlements of disputes and to collection efforts.

11. Waiver of Jury Trial. THE PARTIES EACH EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT. ANY DISPUTE RELATED TO THIS AGREEMENT SHALL BE ADJUDICATED SOLELY BY A JUDGE.

12. Governing Law; Venue. This Agreement shall be construed under the laws of the State of Florida. The exclusive jurisdiction and venue for any disputes under this Agreement shall be in the Circuit Court of Lee County, Florida.

13. Time of the Essence; Force Majeure. Time is of the essence for each and every provision of this Agreement. Notwithstanding anything in this Agreement to the contrary, if any Party shall be delayed or hindered in, or prevented from the performance of, any non-monetary act required under this

Agreement by reason of strike, lockout, civil commotion, warlike operation, invasion, rebellion, hostilities, military or usurped power, sabotage, government regulations or controls, inability to obtain any required material, floods, other natural disasters, or acts of God, or for any other cause beyond the reasonable control of the Party who is seeking additional time for the performance of such act, then the time allotted for performance of such act shall be extended for the period of the delay; provided, however, in no event shall this paragraph apply to obligations for the payment of money under this Agreement.

14. Counterparts; Signatures. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument. Signatures hereon transmitted by facsimile or electronic means shall be deemed original for all purposes.

15. No Recording. In no event shall this Agreement or any memorandum hereof be recorded in the Public Records of any county without the prior written consent of all Parties.

Signatures appear on the following page.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

SD ESTERO CROSSINGS, LLC
A Florida Limited Liability Company

Witness Signature

By _____
Brian K. Stock

Printed Name

Title _____
Manager

Witness Signature

Printed Name

STATE OF _____

COUNTY OF _____

I hereby certify that the foregoing instrument was acknowledged and executed before me this _____ day of _____, 2020, by Brian K. Stock, Manager of SD Estero Crossings, LLC, a Florida Limited Liability Company. He is [] personally known to me, or [] has produced _____ as identification.

[Notary Seal]

Notary Public, State of _____
Printed Name: _____
My Commission Expires: _____

Attest:

VILLAGE OF ESTERO, FLORIDA

By: _____
Kathy Hall, MMC, Village Clerk

By: _____
William Ribble, Mayor

Reviewed for legal sufficiency:

By: _____
Derek P. Rooney, Esq.
Village Attorney