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**VILLAGE OF ESTERO, FLORIDA**

**RESOLUTION NO. 2015-35**

**A RESOLUTION APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE VILLAGE OF ESTERO AND LEE COUNTY TO ADMINISTER AND ENFORCE LAND DEVELOPMENT REGULATIONS REGARDING FLOODPLAIN MANAGEMENT; AUTHORIZING THE VILLAGE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Village of Estero is requesting participation in the National Flood Insurance Program and desires to meet the requirements of Title 44 Code of Federal Regulations necessary for such participation; and

**WHEREAS**, Lee County has been a participant in the National Flood Insurance Program since October 19, 1984, and continues to meet the requirements of Title 44 Code of Federal Regulations necessary for such participation; and

**WHEREAS**, the Village Council of the Village of Estero has determined that it is in the best interest of the Village of Estero to enter into an Interlocal Agreement with Lee County to provide services to the Village of Estero to administer and enforce floodplain management regulations.

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

**SECTION ONE.** The Village Council hereby approves the Interlocal Agreement between the Village of Estero and Lee County to administer and enforce floodplain management regulations for the Village of Estero, a copy of which is attached hereto and incorporated herein by this reference.

**SECTION TWO.** The Village Council authorizes the Village Mayor to execute the Interlocal Agreement between the Village of Estero and Lee County to administer and enforce floodplain management regulations for the Village of Estero.

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

**THIS SPACE INTENTIONALLY LEFT BLANK**

47       **ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero, Florida this 3<sup>rd</sup>  
48 day of June, 2015.  
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52 Attest:

**VILLAGE OF ESTERO, FLORIDA**

53  
54 By: Kathy Hall  
55 Kathy Hall, MMC  
56 Village Clerk  
57  
58  
59

By: Nicholas Batos  
Nicholas Batos  
Mayor

60 Reviewed for legal sufficiency:

61  
62 By: Burt Saunders  
63 Burt Saunders, Esq.  
64 Village Attorney

INTERLOCAL AGREEMENT  
BETWEEN  
LEE COUNTY  
a political subdivision of the State of Florida  
AND  
VILLAGE OF ESTERO, FLORIDA,  
a Florida Municipal Corporation

THIS INTER-LOCAL AGREEMENT is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the Lee County Board of County Commissioners, a political subdivision of the State of Florida (hereinafter "COUNTY") and Village of Estero, a municipal corporation of the State of Florida (hereinafter "VILLAGE"), both of which understand and agree as follows:

**WHEREAS**, COUNTY and VILLAGE have legal authority to perform general government services within their respective jurisdictions; and

**WHEREAS**, in accordance with Chapters 125, 163, 166, and 553, Florida Statutes, the Parties hereto have the common power and responsibility to adopt, administer, and enforce land development regulations, including floodplain management regulations, and to enforce the Florida Building Code within their jurisdictional limits; and

**WHEREAS**, pursuant to Section 12.5(a) of the Charter of the Village of Estero, all Lee County codes and ordinances, which included floodplain management, became codes and ordinances of the Village until changed or repealed by the Village; and

**WHEREAS**, the VILLAGE desires and requests the COUNTY to provide services necessary to administer and enforce the floodplain management regulations adopted by the VILLAGE within the corporate limits of the VILLAGE; and

**WHEREAS**, the COUNTY is willing and able to provide such services subject to the terms and conditions set forth herein; and

**WHEREAS**, pursuant to Chapter 163, Florida Statutes, the Parties are authorized to enter into Inter-Local agreements;

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the COUNTY and the VILLAGE hereby agree as follows:

**1. PURPOSE.**

Pursuant to Section 163.01, Florida Statutes, the purpose of this Agreement is to establish the responsibilities of the Parties and procedures whereby COUNTY will provide specified services

to administer and enforce the floodplain management regulations of the VILLAGE within the corporate limits of the VILLAGE.

**2. ADMINISTRATION AND ENFORCEMENT OF FLOODPLAIN MANAGEMENT REGULATIONS DEFINED.**

The Parties agree that the administration and enforcement duties of COUNTY contemplated by this Agreement are those duties that are necessary and appropriate to enforce the floodplain management regulations within VILLAGE, including the duties of the Floodplain Administrator set forth therein, and other duties that shall generally and naturally stem from the participation of the VILLAGE in the National Flood Insurance Program. Activities required to be performed only by the VILLAGE under the National Flood Insurance Program are not included in this Agreement.

The Parties expressly agree that, unless explicitly identified in writing by the VILLAGE, no performance standards other than those which are generally applicable to similar enforcement activities by COUNTY elsewhere outside of the corporate limits of the VILLAGE, are intended or should be inferred as a result of this Agreement.

The Parties also expressly agree that COUNTY may elect to enforce the regulations of the VILLAGE using any of the methods established by COUNTY.

**3. REPRESENTATIVES OF THE PARTIES.**

The Parties hereby designate the following as their duly authorized representatives responsible for the implementation of this Agreement, including establishment of specific procedures and processes to facilitate the purpose and intent:

LEE COUNTY

*(County Official, by title)*  
*(Address)*

VILLAGE OF ESTERO

Peter Lombardi, Interim Village Manager  
21500 Three Oaks Parkway  
Estero, FL 33928

**4. DUTIES OF THE VILLAGE, acting through its designed representative shall:**

a. Be responsible to the National Flood Insurance Program for administration and enforcement of the floodplain management regulations of the VILLAGE.

b. Upon request by the Florida Division of Emergency Management or the Federal Emergency Management Agency, attend meetings and/or participate in telephonic and electronic communications related to the VILLAGE's participation in the National Flood Insurance Program, including but not limited to Community Assistance Visits, Community Assistance Contacts, and Community Rating System verification visits, if applicable.

c. In coordination with COUNTY, undertake appropriate actions identified in writing by the Florida Division of Emergency Management or the Federal Emergency Management Agency as

necessary to resolve matters related to continued participation in good standing in the National Flood Insurance Program.

d. In coordination with COUNTY, support actions deemed appropriate after events that damage buildings, to determine whether such buildings, if located in special flood hazard areas, have sustained substantial damage as such term is defined in the floodplain management regulations of the VILLAGE.

## **5. DUTIES OF COUNTY.**

COUNTY, acting through its designated representative, shall administer and enforce the floodplain management regulations of the VILLAGE throughout the term of this Agreement, and shall:

a. Maintain records identified in said regulations in a form and manner that allows production of records pertinent to the VILLAGE upon request by the VILLAGE, the Florida Division of Emergency Management, or the Federal Emergency Management Agency.

b. COUNTY will provide supporting documentation necessary for Community Rating System matters.

c. Upon request by the Florida Division of Emergency Management or the Federal Emergency Management Agency, attend meetings and/or participate in telephonic and electronic communications related to the VILLAGE's participation in the National Flood Insurance Program, including but not limited to Community Assistance Visits, Community Assistance Contacts, and Community Rating System verification visits, if applicable.

d. In coordination with the VILLAGE, undertake appropriate actions identified in writing by the Florida Division of Emergency Management or the Federal Emergency Management Agency as necessary to resolve matters related to continued participation in good standing in the National Flood Insurance Program.

e. In coordination with the VILLAGE, undertake actions deemed appropriate after events that damage buildings, to determine whether such buildings, if located in special flood hazard areas, have sustained substantial damage as such term is defined in the floodplain management regulations of the VILLAGE.

## **6. MODIFICATION.**

This Agreement may not be modified unless such modifications are in the form of a written amendment, executed by both Parties.

## **7. TERMINATION.**

a. This Agreement shall remain in effect until September 30, 2015, unless an extension is agreed upon by both Parties. This Agreement may be terminated by either Party, without cause, for any reason upon thirty (30) days written notice to the other Party.

b. Upon termination, the Parties shall concur on an appropriate transition that ensures adequate administration and enforcement of the floodplain management regulations of the VILLAGE, with particular attention to the delivery by the COUNTY to the VILLAGE, of all records and data in its possession, regardless of the medium. Costs associated with delivery of records and data to the VILLAGE shall be borne by the VILLAGE.

## **8. REIMBURSEMENT.**

For the initial period of this Interlocal Agreement, the VILLAGE, through the currently existing MSTU, has provided funds for this program to the COUNTY through September 30, 2015. As additional compensation for COUNTY's services, COUNTY shall collect and retain all revenues derived from permit and/or inspection fees relating to floodplain management generated within the VILLAGE; such fees shall not exceed fees charged COUNTY residents for similar services.

Appropriate compensation for services provided by COUNTY shall be negotiated for any extension of this Agreement.

## **9. LIABILITY.**

The Parties, their respective elected officials, officers, and employees shall not be deemed to assume any liability for the acts, omissions, or negligence of the other Party:

a. The VILLAGE, as a subdivision of the State of Florida and pursuant to Section 768.28, Florida Statutes, agrees to be fully responsible for its negligent acts or omissions or tortuous acts which result in claims or suits against COUNTY and agrees to be fully liable for any damages proximately caused by said acts or omissions.

b. COUNTY, as a subdivision of the State of Florida and pursuant to Section 768.28, Florida Statutes, agrees to be fully responsible for its negligent acts or omissions or tortuous acts which result in claims or suits against the VILLAGE and agrees to be fully liable for any damages proximately caused by said acts or omissions.

Nothing herein is intended to serve as a waiver of sovereign immunity by the VILLAGE or by COUNTY. Nothing herein shall be construed to create any indemnification by one Party of another, and nothing herein shall be construed as consent by the VILLAGE or COUNTY to be sued by third parties in any matter arising out of this Agreement.

## **10. CLAIMS.**

COUNTY shall notify the VILLAGE in writing, within 5 days of its receipt or knowledge of any claims or pending claims arising out of the performance of the services rendered hereunder.

**11. SEVERABILITY.**

If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability, or the occurrence of any event rendering any portion or provision of this Agreement void, shall not be deemed to affect the validity and enforceability of any other parts of the Agreement.

**12. ASSIGNMENT.**

This Agreement shall be binding on the Parties, their representatives, successors and assigns, and any interest herein shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by either Party, without the prior written consent of the Parties. Specifically, no duty or responsibility of the Parties shall be assigned or contracted to a third Party, whether a public or private entity, unless the Parties first modify this Agreement to set forth the duties of said third Party.

**13. APPLICABLE LAW.**

This Agreement shall be construed, controlled and interpreted according to the laws of the State of Florida. The parties agree that any action relating to this Agreement shall be instituted and prosecuted in the courts of Lee County, Florida, and therefore, each Party to this Agreement hereby waives the right to any change of venue.

**14. PRIOR AGREEMENTS SUPERSEDED.**

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understanding applicable to the matters contained herein, and the Parties agree that there are no commitments that are not contained in this Agreement or the written procedures and processed developed by the representatives of the Parties.

**15. ENTIRETY OF AGREEMENT.**

This Agreement sets forth the entire agreement between the Parties and that there are no promises or understands other than those stated herein.

**16. EXECUTION.**

This Agreement shall be executed in triplicate, with each fully executed copy treated as an original.

**17. EFFECTIVE DATE.**

This Agreement shall become effective upon the filing of fully executed copies with the Clerk of the Circuit Court of Lee County, Florida. A copy of the executed Agreement shall be provided to the Florida Division of Emergency Management.

**IN WITNESS WHEREOF**, the Parties hereto have made and executed this Agreement on the respective dates under each signature: Lee County, Florida through its Board of County Commissioners, signing by and through its authorized Chair, and the Village of Estero, signing by and through its authorized Mayor.

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Brian Hamman, Chair  
Lee County Commission

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Nicholas Batos, Mayor  
Village of Estero