

VILLAGE OF ESTERO, FLORIDA

RESOLUTION NO. 2015 - 52

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE VILLAGE OF ESTERO AND LEE COUNTY PERTAINING TO THE COLLECTION OF IMPACT FEES; AUTHORIZING THE VILLAGE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. The Interlocal Agreement Pertaining to the Collection of Impact fees between the Village of Estero and Lee County, attached and incorporated herein as Exhibit A, is hereby approved; and

Section 2. The Village Council authorizes the Village Mayor to execute the Interlocal Agreement for Services between the Village of Estero and Lee County.

Section 3. This Resolution shall take effect immediately upon adoption.

ADOPTED BY THE VILLAGE COUNCIL of the Village of Estero, Florida this 10th day of August, 2015.

Attest:

VILLAGE OF ESTERO, FLORIDA

By: Kathy Hall
Kathy Hall, MMC, Village Clerk

By: Nicholas Batos
Nicholas Batos, Mayor

Reviewed for legal sufficiency:

By: Burt Saunders
Burt Saunders, Village Attorney

EXHIBIT A

**INTERLOCAL AGREEMENT BETWEEN
LEE COUNTY AND THE VILLAGE OF ESTERO
PERTAINING TO THE COLLECTION OF IMPACT FEES**

THIS INTERLOCAL AGREEMENT made on this ____ day of ____, 2015, by and between **LEE COUNTY**, a political subdivision and charter county of the State of Florida ("County"), and the **VILLAGE OF ESTERO**, a municipal corporation of the State of Florida ("Village"), collectively the Parties hereto.

WHEREAS, the Village became an incorporated municipality on December 31, 2014; and,

WHEREAS, pursuant to Chapter 99-428, Florida Statutes, Section 72.(A), the then existing Lee County Land Development Code, including the impact fee provisions set forth therein became the Village's Land Development Code; and,

WHEREAS, the Florida Interlocal Cooperation Act of 1969 (the "Act") set forth in Florida Statutes Section 163.01 et seq. contemplates Interlocal Agreements between governmental entities; and,

WHEREAS, the purpose of the Act is to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local community; and,

WHEREAS, the purpose of this Agreement is to establish procedures for the County's collection and distribution of impact fees generated from development activity within the Village; and,

WHEREAS, the Village's Transitional Land Development Regulations include impact fee regulations governing roads, fire-EMS, community parks, and regional parks; and,

Schools,

WHEREAS, the County and the Village desire to delineate their respective rights and obligations as set forth below;

NOW, THEREFORE, it is agreed as follows:

1. This Agreement is made pursuant to the Florida Interlocal Cooperation Act of 1969 set forth in Florida Statutes Section 163.01.
2. As long as this Agreement remains in effect, the impact fees imposed by the Village's Land Development Code (LDC) will be collected by the County before any building permit, development order for a public golf course, Mine Operation

Permit, mobile home move-on permit or recreational vehicle development order, as these terms are defined in the LDC, is issued for development within the boundaries of the Village.

3. The County will collect and remit road, community and regional ^{park} impact fees on behalf of the Village at the impact fee rate adopted by the Village.
4. The county is entitled to charge and collect an amount ^{up} ~~equal~~ to three percent of impact fees it collects in cash, or by a combination of cash and credits, as an administrative fee to offset the costs of administering this Agreement. This administrative charge is in addition to the impact fee amount required by the LDC. The applicant is responsible for payment of the administrative charge in conjunction with the payment of impact fees at the time a building permit or development order is issued. This provision will apply to all future fees collected and retroactively to all fees collected after December 31, 2014.
5. The balance of the road, community, and regional parks impact fees collected, plus any interest accrued, will be forwarded to the Village. These impact fees will be remitted to the Village on the 5th day of January, April, July, and October of each year. If the 5th falls on a weekend or holiday, then the fees will be remitted on the next business day. The balance of the fire impact fees will be forwarded to the Estero and San Carlos Fire Control and Rescue Districts.
6. Lee County will retain all EMS impact fees since this service is provided countywide by the Lee County Division of Public Safety.
7. The balance of the School impact fees will be forwarded to the Lee County School Board.
8. Impact fee revenues collected by the County and remitted to the Village must be used in accordance with the regulations in place at the time the impact fees were collected, including those regulations limiting the manner and time in which impact fees are to be used. Subject to the limitations as set out in Florida Statutes §768.28, the Village agrees to indemnify, hold harmless, and defend the County, its employees and agents from and against all claims, losses, demands, payments, actions, judgments, and liability, including litigation costs and attorney's fees, due to any act or omission by the Village, its employees, agents or subcontractors, arising from the Village's use of impact fees that were collected by the County and remitted to the Village in accordance with this Agreement.
9. Pursuant to the LDC and County Administrative Code, the County will determine the amount of road impact fee credits that may be created for construction of improvements to County Right of Way or the dedication of land for ROW to the County. Credits issued pursuant to this Agreement will be

accepted within the Village. The Village will determine the amount of road impact fee credits that may be created for construction of improvements to Village owned Right of Way or the dedication of land for ROW to the Village. If the impact fee credits are issued in accordance with County regulations for creation of impact fee credits, then those credits issued by the Village may be used within the County's relevant impact fee district.

10. The determination of whether a requested permit is exempt from the impact fee requirements of the Village's Land Development Code will be made by the County's building official consistent with the categories established in the LDC.
11. The determination of whether a refund is owed pursuant to the LDC will be made by the County's building official consistent with the provisions of the Code. Refunds will be paid by the County from the Village's corresponding impact fee account.
12. If a permit is requested for a type of land development that is not specifically listed in the Code, the County will consult with the Village Manager or his designee, who will determine the amount of the fee to be charged.
13. Appeals of administrative decisions will be heard by the Village Council in accordance with procedures set out in the LDC. If any decision of the Village Council pursuant to such appeals is later appealed to the Circuit Court, the appeal will be defended by the Village at the Village's expense, unless the County elects to participate in or provide the defense of the case.
14. The County will maintain all records of impact fees collected from permitting activities on development within the Village by reference to the fee payer's name and address ^{and STRAY number}. The records will include the amount paid, in cash or by the use of credits, and the specific permit for which the fee was collected. The County will maintain similar records for exemptions from the Code. The County will provide the Village, or any auditing or accounting firm acting as agent for the Village, with access to these records upon request during normal business hours.
15. The Impact Fees the County has collected in the boundaries of the Village after December 31, 2014, will be turned over to the Village upon execution of this agreement.
16. If suit or legal action is brought to contest the validity of the impact fee provisions of the Land Development Code for fees that were assessed for development within the Village or for improper use of impact fees, the Village will provide legal defense necessary at no cost to the County. If a Court orders a refund of impact fees paid, or if a refund is agreed to by settlement of the suit or legal action, 100% of the refund will be paid solely by the Village. Any funds paid to the County in administering the impact fee

program or in furtherance of this Agreement will not be refunded by the County.

17. This agreement will terminate when the Village assumes responsibility for issuing permits for development within its jurisdiction. County will remit any outstanding balance of impact fees within ten days of termination.
18. The adjudication of disputes and disagreements arising from this Agreement will be resolved through mediation between the County and the Village. If mediation fails, disputes will be resolved by presentation of the matter to the 20th Judicial Circuit Court.
19. This agreement embodies the whole understanding of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement supersedes all previous communications, representations or agreements either verbal or written, between the County and the Village.
20. This Agreement may be amended only by a written document signed by both parties and filed with the Clerk of the Circuit Court of Lee County, Florida.
21. This Agreement becomes effective on the date that the last party hereto signs the Agreement.
22. This Agreement will apply retroactively to all impact fees collected by the County since January 1, 2015, for development within the Village.

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

ATTEST:

VILLAGE OF ESTERO

By: _____
Clerk, Village of Estero

By: _____
Nick Batos, Mayor

APPROVED AS TO FORM:

By: _____
Village Attorney

ATTEST: LINDA DOGGETT
CLERK OF THE COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Brian Hamman, Chairman

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

By: _____
Office of the County Attorney