VILLAGE COUNCIL SPECIAL MEETING OF JUNE 26, 2015

The Village of Estero Council Special Meeting was held on this date at the Estero Fire Rescue District Meeting Room, 21500 Three Oaks Parkway, Estero, Florida.

Present: Mayor Nick Batos - District 6, Vice-Mayor Howard Levitan - District 2, Councilmember Bill Ribble, District 1, Councilmember Katy Errington - District 4, Councilmember Jim Boesch - District 5, and Councilmember Jim Wilson - District 7.
Absent: Councilmember Donald Brown - District 3 (excused absence).

Also present: Village Manager Peter Lombardi, Village Attorney Burt Saunders, Attorney Tom Cloud, partner with Gray-Robinson Orlando office, Village Clerk Kathy Hall, and Finance Director Lisa Pace.

1. CALL TO ORDER

Mayor Batos called the meeting to order at 9:00 a.m.

2. PLEDGE OF ALLEGIANCE

Mayor Batos led the Pledge of Allegiance.

3. ROLL CALL

Village Clerk Kathy Hall called the roll; all members were present with the exception of Councilmember Brown, whose absence had been previously excused.

Mayor Batos provided an explanation regarding Councilmember Brown's excused absence.

Village Attorney Burt Saunders introduced Attorney Tom Cloud, partner with Gray-Robinson Orlando office, and spoke to Mr. Cloud's municipal experience. Attorney Saunders explained that he would be taking a brief leave of absence to take care of some health issues.

Mayor Batos provided an explanation regarding the topic of today's special meeting, which was to bring Council up to date on progress related to the Interlocal Agreement with Lee County.

4. APPROVAL OF AGENDA

No motion taken.

5. COUNCIL BUSINESS

(A) Interlocal Agreement with Lee County

Mayor Batos stated that a meeting was held with Commissioner Kiker, County Attorney Richard Wesch, and Assistant County Manager Peter Winton. Mayor Batos said they reviewed the draft of the Interlocal Agreement that was provided by the County; Attorney Saunders provided a number of items to be added or deleted; then proceeded to go over a number of items they felt needed clarification or to verify positions on. He noted that those items remained open as there were still differences on them; they agreed to take each of those back to their committee over the next few days, and would get back to the Mayor and Attorney Saunders next week on those areas. The position that they have had in the past was they were supplying the Village services for a period of January 1 through September 30 and for that they would be entitled to all of the revenues that they had in the past; there were differences of that opinion and those differences

were discussed; the length of the agreement was also discussed and there didn't seem to be a problem with a one year agreement. Mayor Batos continued that the draft agreement contained a six month notice clause to get out of the agreement or any portion of it, which he and Attorney Saunders indicated six months was too long and that they would like to have a one, two, or three month notice period. The County representatives expressed their reasons why they put in the six month notice clause initially, which was having the ability to gear down if the Village decided not to have a service with them; this was discussed at length and they agreed to review their position.

Mayor Batos believed the big item discussed was some of the arrangements with the Community Development Department and how things would be handled; there were still differences on that and he thought that once they respond, the Village would be in a position to indicate whether or not to go forward. He noted that this negotiation was a little different than what he has ever been involved with.

Village Attorney Burt Saunders added that one of the major concerns with the agreement was that the Village would be making payments for services and there was nothing in the agreement to assure that there would be a certain level of service provided. The County representatives were going to go back and take a look at their standards for types of operations throughout the County, which would be attached to the agreement, so there would be a standard by which to judge. Attorney Saunders continued that they talked about solid waste franchise fees which would be something the Village Council would want to consider. He noted that they were taking the initial position that they were not required to pay to the Village any franchise fees for solid waste because they were providing all of the solid waste services. He indicated that Mayor Batos and he disagreed with that position and that this may be a separate discussion.

With regard to the Communications Services Tax (CST), Attorney Saunders explained that there was either a change in position or clarification because he and the Mayor were under the impression that the Village would either get a check for the Communications Services Tax for the 2015 time period or receive a credit. The County's position was that they have used that money to provide services within the Village, so if they were to remit funds for the tax, they would also provide an invoice for services of equal amount. They have agreed that the Interlocal Agreement will not be held up for that issue; they have also agreed that this issue may need to be dealt with down the road.

Regarding opt-out provisions, Attorney Saunders clarified that they were going to go through each of the services and there may be an opt-out time period that will be different depending upon the services. He thought the meeting was cordial and agreed that the Village had a little bit of a disadvantage; however, one of the real successes was that they were willing to enter into a very short term agreement and were willing to provide the opt-out provision. Attorney Saunders stated that the other big issue was the land development code issue; it was beginning to look like this may be a situation where the Village has to take over those services.

Vice Mayor Levitan inquired whether the discussion regarding the Communications Services Tax (CST) related to 2015; Mayor Batos responded "yes." Vice Mayor Levitan inquired what the difference was if they were willing to give it to the Village for 2016. Village Manager Peter Lombardi responded that the statute provides the ability to collect the CST regardless of any agreement with the County; the only thing they could control were the proceeds from 2015. Vice Mayor Levitan referred to the Charter, inquired about the Village's legal position with respect to the CST if mediation was necessary, and Attorney Tom Cloud responded the

Intergovernmental Coordination Act, Chapter 164; however, a prior filing against the County would be necessary. Brief discussion ensued.

Attorney Saunders noted that the practical issue was whether the issue of the 2015 tax would be resolved in a timely fashion if it was part of the Interlocal Agreement. Vice Mayor Levitan inquired regarding assurance that they wouldn't take the same position for next year; the Village had a right to collect the tax per statute, but wondered whether that was clear in order to put it in the budget. Attorney Saunders believed it was clear because they were indicating the level of services they were going to provide and indicated the amount. Vice Mayor Levitan said that the Interlocal Agreement did not talk about other fees; for example, planning and zoning fees, building permit fees, and did not talk about revenue at all. He inquired whether the Village would be collecting the tax directly or whether it would come from the County. Village Manager Lombardi responded that the CST would come directly to the Village from the State.

Vice Mayor Levitan stated the concern was that the Council make certain the revenue sources for fiscal year 2015/2016, as indicated in the proposed budget, were available. Attorney Cloud responded that the statute as currently written provides for direct collection by the Village; the bigger threat to the tax was the Legislature.

Vice Mayor Levitan noted that he had reviewed the Interlocal Agreement between Lee County and Fort Myers Beach from 1999; the agreement was strikingly the same, but clearly talked about revenue sources, specifically addressed fees and provided price lists.

Mayor Batos inquired whether it would be proper to include possible revenue sources that were anticipated being received in the Interlocal Agreement so that it was understood. He continued that at the meeting while discussing Community Development, the County representatives were asked to provide the number that the County receives; they agreed to provide the numbers.

Vice Mayor Levitan stated that discussions held within the Estero community indicated the number one priority was to get control of the land development process; it was important to move forward and take control. He noted that he had been asked by Council to negotiate with third party vendors, which he was in the process of doing. He believed there shouldn't be any animosity between the Village and the County; they have different points of view regarding services and revenue sources. Vice Mayor Levitan continued that the Village should ultimately look to creating a realistic partnership with the County for those services that they are better able to provide, which may be in the transportation area and natural resources, and similar services where they have skills that the Village would never have or be able to get through contract; however, the Department of Community Development is not one of those; given the importance of that to the Village of Estero, the Council should move forward and make the best deal possible with the County.

Councilmember Wilson inquired about the scope of services on page 2; whether services for operations included projects such as road widening, resurfacing, bike paths, sidewalks, and whether that meant on streets that the Village takes control of. Mayor Batos responded that the direction taken at this point, since it was uncertain which roads the Village would and would not take, and what the implications were, the issue of roads would be deferred for the first year and then make that decision during or after the first year; the County would keep all the roads the first year. Councilmember Wilson inquired whether that would make it impossible to add bike paths and sidewalks, etc., if roads stayed under the County. Mayor Batos responded that the Village would not have control of it; however, his understanding was that it did not mean that the

Village could not enter into an agreement with the County to do a project on a joint basis; he did not believe that it precluded the possibility. He added that there was uncertainty with the roads, such as maintenance on bridges, etc.

Councilmember Wilson stated that he wanted to make certain that the Village would be able to participate in a process that would make improvements. Mayor Batos explained that other cities have periodically entered into agreements with the County to work jointly, getting road work done on a County road. Vice Mayor Levitan inquired whether that provision would be made clear in the Interlocal Agreement, that Council could defer the decision as to which roads the Village would take to avoid misunderstanding a year from now. Councilmember Wilson suggested a statement that the Village would have the right to request and spell out things that Council might want to request. Mayor Batos believed that there were two different issues – one was beginning to negotiate taking over roads and Councilmember Wilson's issue was a different issue about being able to do some work on roads that the Village did not own at this point. Attorney Saunders stated that a sentence could be added to the agreement that stated the decision as to which roads, if any, that will be taken over by the Village would be made in the next year; it could be made clear so that there was no confusion; however, in terms of trying to list types of things where the Village might want to enter into an agreement for repair of roads or additions, etc., he believed it would be best to stay away from putting in the agreement. He believed that there would not be resistance if the Village went to the County to propose an improvement that the Village intended to pay for; there had been no indication that the County would not be cooperative going forward.

Councilmember Wilson inquired regarding paying 50% of the fees on January 1 indicated on page 3. Mayor Batos stated they brought that up and was one of the items that they were going to reconsider. Councilmember Wilson inquired whether the Village would have the funds on January 1. Discussion followed and Finance Director Lisa Pace added it was her experience that it had been commonplace to pay the County quarterly. She also stated that the Village would receive the ad velorem taxes, the bulk of which would begin in November/December; therefore, the bulk of revenue would be received prior to January 1.

Councilmember Errington inquired about County animal control. Finance Director Pace responded that Lee County Animal Control Services had not segregated the Village of Estero out for animal control services from the remainder of unincorporated Lee County; however, they have been in interlocal agreements with the bulk of the other municipalities for a very long time and have been tracking the activity based on a combination of many things, such as officers on the ground for enforcement, strays, facilities for animal control, and utilization of services. She noted that Lee County said they did not have historic information for Estero; however, they would begin tracking activities in the Village. Councilmember Errington spoke to raccoon control issues. Mayor Batos stated that, based on discussions, the County expected to collect funds for the first year of the Interlocal Agreement, consider all of the information collected during that year, and adjust for the following year after tracking.

Councilmember Wilson inquired regarding Item B, page 4, payment for elections. Mayor Batos responded that this was discussed and they agreed to look at it again.

Councilmember Wilson inquired regarding what was hoped to be achieved by Section 6, which spoke to the Village specifying municipal service or services the Village wants to discontinue, providing on October 1, 2016 notice shall be given not less than 180 days. Discussion ensued. Mayor Batos responded that the County representatives understood that the Village would have

an opt-out; however, they were asking for six months and the Village's position was for one, two, or three; their response was that they may come back and say this service you can opt out in a month or this service may have an opt out in six months. Mayor Batos understood that if the Village decided not to have a particular service before the agreement was signed, that the Village would not take it. Attorney Saunders stated that there was one caveat – the Council could decide which services not to take, but the County representatives pointed out that they used an average of the fee; they indicated that 32% of their budget was for planning, but they were only charging 8.2% of their budget because they used that number for all services; they did say that if the Village started pulling out a lot of the services, they may have to reevaluate charges for some of the other services. Vice Mayor Levitan inquired whether the Council should at least get them to agree that if an entire area was pulled, that there wouldn't be reallocation of cost to the other areas. Attorney Saunders responded that the position will be taken that if the Village takes over Community Development, the County should not be charging more for other services. Mayor Batos stated that he agreed, however, the Council would need to look at the big picture going forward rather than the small picture of one year.

Mayor Batos spoke to the process: Mr. Winton and the County attorney would come up with the changes, the attorney would supply the information to Village Attorney Saunders, and Mr. Winton would supply the information to Village Manager Lombardi (staff to staff).

Councilmember Boesch stated that, in the last two years, the residents as well as the Transportation Committee had brought the demand that something had to be done with the sidewalks on Estero Parkway. He said that they felt strongly that the County was obligated to sit down and have a discussion with the Village regarding how this was going to be reconciled. Councilmember Boesch believed that the Village had a chance to secure substantial funding from the County based on the fact that the improvements being done in Fort Myers Beach were originally scheduled for $50M and was now $70M just to fix the main street; the Village would be asking for $1,350,000 to fix a dangerous situation. He thought that the County Commissioners might agree; however, nothing would happen until the Interlocal Agreement was signed; therefore, it was time to move on.

Councilmember Errington inquired what it meant in regards to all the properties that were currently on the books that were controlled by someone other than ourselves if the Village stayed with the land development code. Mayor Batos explained that this had nothing to do with existing projects. Councilmember Errington inquired whether the Village had to accept what was done 10 years ago. Mayor Batos responded that if it met the code and there were no violations, that it was the right of the landowner. Vice Mayor Levitan provided an explanation regarding land use.

Councilmember Ribble inquired regarding the next process. Mayor Batos responded that the agreement was to wait until next week to receive answers from the questions discussed yesterday, review the answers, and by the end of July we would know what we are doing and if we could come to agreements. Councilmember Ribble pointed out that the key issues were not getting solved, for example the land development issue. Mayor Batos stated that their position was clear that whether the Village kept it or the County kept it, had no bearing on their decisions regarding negotiations; if Council wanted to take something out, or all of it out, that was fine with them. Attorney Saunders noted that, in terms of timing, Lee County Commissioners were on vacation in July and that they would like to have the Mayor's signature on the agreement prior to it being submitted to Lee County for approval. Vice Mayor Levitan noted that the

Council had two upcoming budget workshops and all of these decisions impact the budget; the Village's position needed to be determined and the agreement signed.

Vice Mayor Levitan inquired regarding impact fees and said he noticed the budget proposal contained a footnote regarding issue of legal interpretation. He asked if the County negotiations have taken a position on impact fees and whether the fees were part of the revenues the County deemed as theirs. Mayor Batos responded "no", that he asked specifically and Mr. Winton explained that they would make arrangements to transfer the funds to the Village accounts.

Vice Mayor Levitan stated that he didn't believe the Council had taken any position or official action with respect to the sidewalks on Estero Parkway. He said he did not know what the priority was for the sidewalks or whether the Village was going to take Estero Parkway; the issue was clear with respect to safety; however, it depended on what the Council decided to do about taking Estero Parkway or not and who was going to pay for it all. He reiterated that he did not recall the Council taking official action and Council should not be negotiating with the County based on a position that the Council has not taken.

Councilmember Boesch inquired whether the issue could be placed on the next meeting agenda. Mayor Batos responded that capital items would be coming up as a discussion item on an upcoming workshop agenda and believed that sidewalks would be appropriate for that area; however, it would be the beginning of discussion and no decision would be made at the workshop.

Village Manager Lombardi provided an explanation of the road and park impact fees; in the budget they were listed as restricted reserves in the General Fund. Under the statute, both impact fee revenues had specific time periods in which to expend or encumber the funds. When the County released the funds, those funds would be put into the restricted reserve funds and the only time they would be expended would be when the Council established the five year capital improvement program; when the Council decided on the capital projects, the funds would be expended. Vice Mayor Levitan inquired whether one of those restricted reserves was for regional parks. Discussion ensued; the understanding was that park restricted funds could be expended for capital projects at the Community Park. Vice Mayor Levitan noted that Estero residents have always planned for the completion of the western entrance to the Community Park which was also a regional County park; he believed it would be appropriate to negotiate with the County and utilize restrictive park revenue. Mayor Batos stated that this subject had already been opened.

Mayor Batos reiterated that updates would be coming next week, stated that he would let Council know how they were proceeding, and would also be looking at whatever other options there were between now and then in case things did not work out.

Mayor Batos called for public comment and no one came forward.

Councilmembers' Comments:

Councilmember Ribble asked that each Councilmember provide him with the colors and styles of shirts to allow for placing the Village shirt order. It was noted that the Village logo would be in calligraphy and would be embroidered. Discussion ensued regarding the Village logo after an inquiry whether the logo could be used by Councilmembers if they were to order their own shirts and whether the Village needed to file a trademark for the logo. Village Manager Lombardi

responded that the Village would not need to file a trademark for the logo and then provided an explanation regarding the registered official Village seal, which would be adopted by the Council at some point in the future. Vice Mayor Levitan inquired whether the Village name should be trademarked and addressed concern regarding other agencies or companies using the Village name and implying they are part of the Village government. Mayor Batos asked that this issue be turned over to counsel for recommendation. Village Attorney Saunders stated that he would be able to handle any trademark issues for Council.

Councilmember Errington reported that she attended the recent Design Review Board meeting. She addressed concern regarding public involvement; the clear cutting application that was before the Board; discouragement with the process; and notice that was given 10 years ago. She stated that it set a bad example when the Council said they supported public participation and it was ignored.

Councilmember Boesch reported that Apple has said they were willing to put on a training program. Village Manager Lombardi stated that he had received an email from them explaining they would provide training classes at a cost of $500 for Councilmembers who had Apple computers and phones. He indicated that he would be paying the fee and emails would be sent to Councilmembers to advise of the availability of the training. Mayor Batos suggested that, prior to paying the fee, the Village Manager find out if there was interest in the training. Village Manager Lombardi said he would be sending an email to see what the interest was on the part of Council prior to paying the fee.

Mayor Batos called for public comment and no one came forward.

6. ADJOURN

Mayor Batos adjourned the meeting at 10:10 a.m.

ATTEST:

By: Kathy Hall

Kathy Hall, MMC
Village Clerk

VILLAGE OF ESTERO, FLORIDA

By: Nicholas Batos

Nicholas Batos
Mayor

Minutes approved as presented: August 10, 2015