

**INTERLOCAL AGREEMENT BETWEEN
VILLAGE OF ESTERO AND LEE COUNTY UTILITIES
FOR RELOCATION AND / OR REPLACEMENT OF LCU INFRASTRUCTURE
COST REIMBURSEMENT**

This Interlocal Agreement has been entered into on _____, 2024, by and between the Lee County Board of County Commissioners, a Charter County, (hereinafter referred to as County), and the Village of Estero, a Florida municipal corporation, acting by and through its Village Council (hereinafter referred to as Village), collectively "The Parties".

Recitals

WHEREAS, Florida Statutes § 163.01, the Florida Interlocal Cooperation Act of 1969 (the Act), was enacted 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 communities; and,

WHEREAS, the Act provides that a Florida public agency "may exercise jointly with any other public agency of the state, of any other state, or of the United States Government any power, privilege, or authority which such agencies share in common and which each might exercise separately", and that such joint exercises of power "shall be made by contract in the form of an interlocal agreement"; and,

WHEREAS, the Village has identified that County owned and maintained water, wastewater, and reuse infrastructure (herein referred to as LCU Infrastructure) may be in conflict with the Village's improvement projects located within the corporation limits of the Village; and

WHEREAS, the County may desire to replace certain aging LCU infrastructure at the same time as the Village improvements are under construction; and

WHEREAS, the Village and the County wish to coordinate the relocation or replacement of LCU infrastructure in the affected areas; and

WHEREAS, it is the intent of the Parties that the County will fund the

replacement or relocation of LCU infrastructure and connections made necessary by the Village's public works improvements; and

WHEREAS, the Village may desire to construct new LCU infrastructure within existing or new Lee County utility easements as a part of the Village's septic to sewer projects; and

WHEREAS, the Parties mutually desire to enter into an Agreement that identifies their respective responsibilities and obligations related to the LCU infrastructure located within the Village's corporation limits; and

WHEREAS, the Village will assume all initial financial responsibility and by way of a County Project Authorization (CPA), the Village and County will agree to a not-to-exceed reimbursable amount per project; and

WHEREAS, the County will reimburse the Village all actual reasonable costs associated with the relocation and / or replacement of LCU infrastructure; and

WHEREAS, the Village will assume all financial responsibility for actual costs associated with the construction of new (not relocation and/or replacement) LCU infrastructure and will turn it over to LCU for acceptance upon completion of construction and inspection; and

WHEREAS, the County authorizes the Village to perform LCU infrastructure work within existing or new Lee County utility easements.

Now therefore, in consideration of the mutual covenants, terms, and provisions herein the Parties agree as follows:

1. Recitals. The Recitals set forth above are incorporated into this Agreement as findings of fact.
2. Purpose. The purpose of this Agreement is to outline the respective rights and responsibilities of the County and Village relative to the replacement, relocation, and / or new construction of LCU infrastructure within the corporation limits of the Village.
3. Projects. The geographic area covered by this Agreement is defined by the map attached hereto as Exhibit A. Each CPA, Exhibit B, or County Project Modification (CPM), Exhibit C, will outline the specific project

details, including but not limited to estimated project costs and the project area, which must be within the Village's corporation limits in which LCU infrastructure is impacted.

4. Project Management. The Village will legally Procure vendor(s) that shall design, construct, and may provide Engineering oversight (where necessary) for the Village's projects, and if the County's infrastructure must be relocated or replaced, the Village will collaborate with the County to relocate or replace said LCU infrastructure. The Village shall serve as the project manager with the primary responsibility for permitting, procurement, management and engineering supervision of the contractor and construction work within the project area.
5. Design Standards. The Parties agree that the design, construction, and Engineering oversight of the relocation or replacement of LCU infrastructure, also referred to as Construction Engineering Inspection (CEI) services, shall be performed in compliance with the Lee County Utilities Design Manual. The County's designated project manager will participate in all phases of each project to the extent provided in this Agreement. In addition, County Utilities' staff will have the opportunity to review the design plans at design intervals established by the Village's contracts and prior to construction. At each interval, the County will have 21 calendar days from receipt to provide comment.
6. Cooperation in Management and Oversight. County agrees to cooperate and provide staff assistance and oversight upon the request of the Village as well as cooperate as necessary in the management and oversight of authorized projects. The County will have unrestricted access to construction sites to inspect construction progress and accomplish any required maintenance of existing infrastructure.
7. Scheduling of Improvements. The Village agrees to be responsible for scheduling the County infrastructure relocation, replacement, or new construction in a coordinated manner with the Village's proposed construction project.
8. Contract Costs. The County agrees to fund the reasonable associated cost of the LCU infrastructure replacement or relocation as desired or made necessary by the Village's improvement project(s). The reasonable costs should be related to required relocations or new facilities due to functional improvements and / or mutually agreed upon

by both parties. The Village's contract(s) will provide not-to-exceed (NTE) line items for each phase, with the ability to revise costs based upon mutually agreeable change order(s) documents if necessary. The County's allocated funds, including any amount established by County as contingency, will be reimbursed to the Village as agreed upon, with no more than one (1) reimbursement pay application packet submitted monthly. The County will only reimburse actual agreed upon costs. Reimbursement will be issued based upon verified engineering invoices and progress summaries provided to the County. Payment for permitting fees for the replacement or relocation of LCU infrastructure will be the responsibility of the County.

9. Changes in Scope. The Village agrees to furnish the County with copies of all proposed changes in scope pertaining to and affecting LCU infrastructure within the project area. The County agrees to review and respond to the Village within 21 calendar days after receiving, in writing, the proposed change in scope. If a proposed change in scope results in the need for additional funds, the funds will be reimbursed using the contingency funds established within the NTE amount, upon County staff authorization. If the proposed change in scope exceeds the contingency within the NTE amount or contingency was not included within the NTE amount, additional time will be necessary to obtain Lee County Board of County Commissioners' review and approval. When time permits, the Parties agree to meet and discuss alternatives to the proposed changes in scope. The Parties agree that the County must approve/authorize changes directly pertaining to the County's infrastructure improvements prior to the commencement of work contemplated by the change.

10. Verification of Design and Permitting Costs. Design and permitting costs eligible for reimbursement by County include, but are not limited to, engineering, surveys, permit fees, permit and compliance with all regulatory agencies having jurisdiction over the replacement or relocation of LCU infrastructure, and compliance with the permitting requirements of the Village (if required). Costs must be verified by a licensed engineer and approved by LCU prior to payment. All general conditions, mobilization, CEI services and other costs associated with projects that are not associated with specific line items for LCU infrastructure and are considered shared costs will be assigned as a percentage of the total actual project construction costs. Each project shall complete a comprehensive true-up at project

completion.

11. Ownership of LCU Infrastructure. Upon completion and acceptance of the work, the County agrees to take title to, own, maintain and control LCU infrastructure improvements within the rights-of-way and/or utility easements, where applicable. The Village will furnish to the County, in a form acceptable to the County, record drawings of the LCU infrastructure.
12. Dispute Resolution. As a condition precedent to termination of this Agreement by a Party or to either Party filing suit for breach of this Agreement, the Party terminating or filing suit must first notify the other Party in writing of the nature of the dispute and seek in good faith to resolve the dispute through negotiation. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party who is acceptable to both Parties. The Parties will each pay fifty percent (50%) of all costs for the services provided by such third party as such costs are incurred. The existence of a dispute will not excuse the Parties from performance pursuant to this Agreement. This remedy will be supplemental to other remedies available by law.
13. Applicable Law. This Interlocal Agreement will be construed in accordance with the Laws of the State of Florida. Venue for actions under this Agreement is in Lee County. The prevailing party will be entitled to recover attorney's fees and costs in any litigation arising hereunder.
14. No Joint Liability. The Parties agree that this Agreement will not be interpreted to establish joint liability among the Parties acting pursuant to the terms of the Agreement. Each party agrees to be responsible for and bear its own costs in defending claims or litigation arising out of this Agreement. Nothing in this Agreement will be construed or intended to waive the protections of sovereign immunity.
15. Notices. Notices or demands under this Interlocal Agreement will be deemed given by the noticing Party and received by the noticed party:
 - Upon hand delivery to the noticed party at the address provided below; or
 - Electronic notification to the LCU Project Manager identified on each CPA, who will obtain Director approval; or

- Three days after deposit of the notice with the United States Mail, certified mail, returned receipt requested, properly addressed to the noticed party at the addresses provided below:

As to the County:

Lee County Attorney
Lee County Attorney's Office
2115 Second Street, 6th Floor, PO Box
398 Fort Myers, FL 33902-0398

With a copy to:

Director, Lee County Department of Utilities
1500 Monroe Street, 3rd Floor
Fort Myers, FL 33901

As to Village:

Village Manager
9401 Corkscrew Palms Circle
Estero, FL 33928

With a copy to:

Village Attorney
9401 Corkscrew Palms Circle
Estero, FL 33928

16. Termination. In recognition of certain industry standard uncertainties inherent in projects and the estimated cost projections herein, this Agreement may be terminated upon the mutual consent of all parties, should satisfactory project completion become unfeasible due to the need for increased additional funding for reasons which are unavoidable through the exercise of due diligence and beyond the lawful control of the parties. Prior to termination, the parties agree to coordinate with and discuss between themselves and make a good faith effort to reasonably resolve the outstanding funding and completion issues.

In the event of termination pursuant to the paragraph above, County will fully compensate Village for all authorized and accepted work performed through the termination date.

17. Entire Agreement. Modification. This Agreement including all its exhibits, constitutes the entire Agreement between the Parties. Modifications to

this Agreement will be accomplished by documents entitled County Project Authorization (CPA) and / or County Project Modification (CPM) and must be executed in accordance with the LCU Procurement Policy.

18. Effective Date. This Agreement will be effective following filing the fully executed Agreement with the Lee County Clerk of Court in accordance with Section 163.01(11), F.S.

ATTEST:
KEVIN C. KARNES
CLERK OF CIRCUIT COURT

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Mike Greenwell, Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

County Attorney's Office

VILLAGE OF ESTERO

BY: _____
Steve Sarkozy, Village Manager