
RESOLUTION NUMBER 20-23

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY FLORIDA, APPROVING THE ESTERO BOULEVARD LANDSCAPE MAINTENANCE AGREEMENT WITH LEE COUNTY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature has enacted the Florida Interlocal Cooperation Act of 1969 so that local governmental units can make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage thereby providing services and facilities that will accord best with geographic, economic, population and other factors that influence the needs and development of local communities; and

WHEREAS, in connection with the Estero Boulevard road improvement project underway within the Town, the Town and the County have a common interest in the maintenance of landscaping on Estero Boulevard south of Crescent Street; and

WHEREAS, as part of this improvement, the Town and the County wish to define and coordinate their respective responsibilities relating to installation and maintenance; and

WHEREAS, the Parties mutually desire to enter into an Agreement that identifies their respective responsibilities and obligations related to the various improvements contemplated for the affected portions of Estero Boulevard south of Crescent Street.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. Adoption of Recitals. The above recitals as set forth in the various “Whereas” clauses are hereby adopted and incorporated into the body of this Resolution.

Section 2. Approval and Authorization for Mayor to execute same. The Town Council of the Town of Fort Myers Beach hereby approves the attached Agreement, authorizes the Mayor to execute same on behalf of the Town.

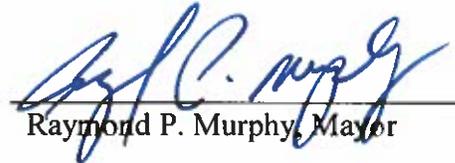
Section 3. Effective Date. This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

THE FOREGOING RESOLUTION was adopted by the Town Council upon motion by Council Member Allers and seconded by Vice Mayor Hosafros and, upon being put to a vote, the result was as follows:

Raymond P. Murphy, Mayor	Aye
Rexann Hosafros, Vice Mayor	Aye
Dan Allers, Council Member	Aye
Jim Atterholt, Council Member	Aye
Bill Veach, Council Member	Aye

ADOPTED this 17th day of August, 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

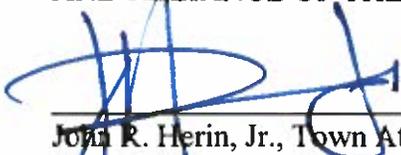
TOWN OF FORT MYERS BEACH


Raymond P. Murphy, Mayor

ATTEST:


Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:


John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 21st day of August 2020.

**INTERLOCAL AGREEMENT
BETWEEN TOWN OF FORT MYERS BEACH
AND LEE COUNTY, FLORIDA
FOR LANDSCAPING ON ESTERO BOULEVARD**

This INTERLOCAL AGREEMENT (the "Agreement") made and entered into this ^{17th} day of August, 2020, by and between the Town of Fort Myers Beach, a Florida municipal corporation (the "Town"), and Lee County, a political subdivision and Charter County of the State of Florida (the "County") (collectively the "Parties").

RECITALS

WHEREAS, the Florida Legislature has enacted the Florida Interlocal Cooperation Act of 1969 so that local governmental units can make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage thereby providing services and facilities that will accord best with geographic, economic, population and other factors that influence the needs and development of local communities; and

WHEREAS, in connection with the Estero Boulevard road improvement project underway within the Town, the Town and the County have a common interest in the maintenance of landscaping on Estero Boulevard south of Crescent Street; and

WHEREAS, as part of this improvement, the Town and the County wish to define and coordinate their respective responsibilities relating to installation and maintenance of landscaping in the affected areas; and

WHEREAS, the Parties mutually desire to enter into an Agreement that identifies their respective responsibilities and obligations related to the various improvements contemplated for the affected portions of Estero Boulevard south of Crescent Street.

NOW, THEREFORE in consideration of the mutual covenants and promised contained 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 memorialize the assignment of responsibilities for maintenance of landscaping to be installed along Estero Boulevard south of Crescent Street as part of the road improvement project underway in the area.

3. County Responsibilities. The County shall pay to the Town the sum of eight hundred and twenty thousand dollars (\$820,000.00), representing the County's contribution toward the costs of installation and perpetual maintenance of final landscaping along Estero Boulevard south of Crescent Street as part of the road improvement project underway in the area. This sum represents the County's total contribution to the Town for final landscaping (excluding any partial landscaping, or temporary landscaping, including grass or "roadway" turf, installed prior to the completion

of the project) for all segments of the Estero Boulevard project south of Crescent Street. The County shall have no other payment obligations for landscaping of Estero Boulevard south of Crescent Street.

4. Town Responsibilities. In consideration for the County's payment as set forth in section 3 above, the Town shall be solely responsible for the installation, perpetual maintenance, upkeep and all other aspects related to landscaping along Estero Boulevard as part of the road improvement project underway in the area.

5. Repair. In the event that landscaping installed by the Town interferes with the operation of motor vehicles, motorcycles or bicycles on the roadway, or pedestrian movement on the sidewalk along that portion of Estero Boulevard covered by this Agreement, or otherwise impairs the County's ability to maintain or repair any damage to the roadway, the Town shall take the necessary steps to remove such landscaping or otherwise cooperate with the County's efforts to address any roadway damage or other issues. Roadway or sidewalk damage caused by landscaping installed by the Town will be repaired by the Town at no cost to the County. In addition, the Town agrees to be fully responsible and hold the County harmless for all liabilities and damages arising from any accidents caused in whole or in part by trees or other landscaping planted in the "Clear Zone" of the roadway that may affect motorists. However, this indemnification is limited and only applies to trees or other landscaping that does not comply with the County's applicable landscape and "clear zone" regulations. The Town agrees that it will also pay for any needed repairs to the roadway associated with the removal or replacement of landscaping in such locations.

6. Applicable Law. This Interlocal Agreement will be governed by the laws of the State of Florida. Venue for actions under this Agreement is in the Circuit Court of Lee County, Florida. The prevailing party will be entitled to recover attorney's fees and costs in any litigation arising hereunder, including any appeals.

7. No Joint Liability. To the extent allowed by law and subject to the limitations contained in section 768.28, Florida Statutes, each party assumes responsibility for the negligent or wrongful acts or omissions of its own employees, agents or other representatives while acting within the scope of their employment or otherwise within an authorized capacity, arising from any of the authorized activities under this Agreement. Any claims, lawsuits, judgments, damages, losses and expenses, including attorney's fees, arising from this Agreement shall be governed by Florida law. However, except as provided in this Agreement, nothing in this provision shall require either party to indemnify the other for any losses, damages or injuries caused by or otherwise arising from the negligent or wrongful act or omission of its employees, agents or representatives. The Parties agree that, by execution of this Agreement, no party will be deemed to have waived its statutory defense of sovereign immunity, or have increased its limits of liability under §768.28, Florida Statutes, as may be amended from time to time. Each party shall retain all rights and defenses under Florida law in the event of any claims, suits or other disputes arising from its performance of the obligations of this Agreement.

a. 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

b. 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 Transportation
1500 Monroe Street, PO Box 398
Fort Myers, FL 33902-0398

As to Town:

Town Manager, Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL 33931

With a copy to:

Town Attorney
Fox Rothschild, LLP
2 S. Biscayne Boulevard, Suite 2750
Miami, FL 33131

Every notice, approval, consent or other communication authorized or required by this Agreement shall not be effective unless same shall be in writing and sent postage prepaid by United States mail, Certified mail, Return Receipt Requested, directed to the other party at its address provided for below or such address as either party may designate by notice given from time to time in accordance with this section.

9. Severability. If any provision of this Agreement is deemed invalid or otherwise unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall not be affected thereby and shall remain in full force and effect.

10. Amendment. This Agreement shall not be amended or modified unless in writing and properly authorized and executed by the County and the Town.

11. Filing. The County shall file this Agreement with the Lee County Clerk of Court immediately upon its approval and execution by the parties.

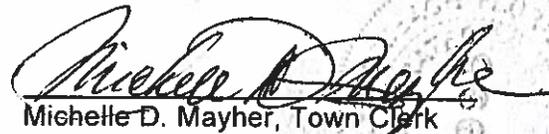
13. Effective Date. Pursuant to Florida Statutes section 163.01(11), this Agreement will be effective following filing the fully executed Agreement with the Lee County Clerk of Court.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their proper officials, duly authorized to do so the date above first written.

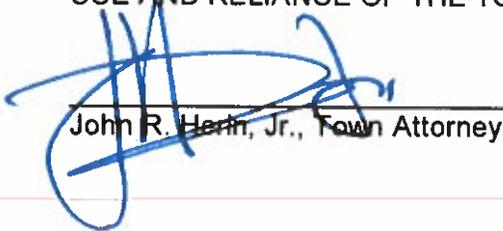
TOWN OF FORT MYERS BEACH


Raymond P. Murphy, Mayor

ATTEST:


Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:


John R. Harth, Jr., Town Attorney

Linda Doggett, Clerk

BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA

By: 
Deputy Clerk

By: 
Chairman



Approved as to form for the Reliance of Lee County only:


Lee County Attorney's Office

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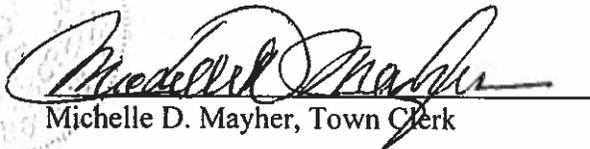
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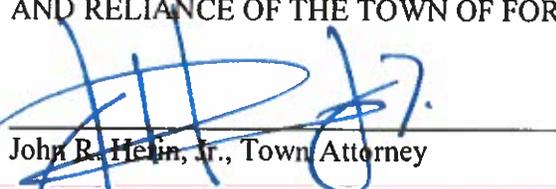
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John R. Healin, Jr., Town Attorney

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