

RESOLUTION NUMBER 23-34

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE TOWN AND LEE COUNTY, FLORIDA, FOR THE PURPOSE OF REIMBURSEMENT FOR THE CLEANUP OF FISH AND MARINE LIFE WASHING UP ON BEACHES CAUSED BY RED TIDE AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach ("Town") empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Florida Department of Environmental Protection provided grant funds to the County for the purpose of assisting with the cleanup of the large numbers of fish and marine life washing up dead on Lee County's beaches and its waterways which desires to disburse the grant funds to the Town for cleanup of the dead marine life; and

WHEREAS, the Town desires to receive reimbursement for current and future expenditures related to cleanup on the beaches cause by Red Tide events; and

WHEREAS, the Town desires to enter into an Interlocal Agreement with the County that grants the County the authority to administer and provide reimbursement for expenditures made on efforts to remove dead fish and marine life from the local beaches; and

WHEREAS, it is in the best interest of the Town, its business owners, property owners, residents, and visitors to enter into the Interlocal Agreement with the County attached as Exhibit "A" to this Resolution.

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

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The Interlocal Agreement ("Agreement") between the Town and the County attached as Exhibit "A" is approved and the Mayor is authorized to execute the Agreement on behalf of the Town and the Town Manager or designee is authorized to take all necessary actions and expend budgeted funds to implement this Resolution and the Agreement.

Section 3. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

Section 4. This Resolution shall become effective upon adoption by the Town Council.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member King and seconded by Council Member Woodson, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	aye
Jim Atterholt, Vice Mayor	aye
Bill Veach, Council Member	aye
John King, Council Member	aye
Karen Woodson, Council Member	aye

ADOPTED this 17th day of April 2023, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



Dan Allers, Mayor

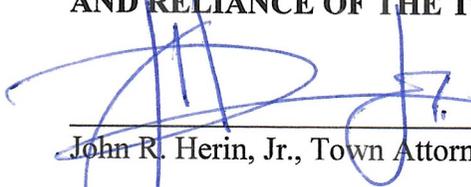


ATTEST:



Amy Baker, Town Clerk

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



John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 21 day of April 2023.

**INTERLOCAL AGREEMENT BETWEEN
LEE COUNTY AND THE TOWN OF FORT MYERS BEACH**

THIS INTERLOCAL AGREEMENT is made and entered into this _____ day of _____, 2023, by and between LEE COUNTY, a political subdivision and charter county of the State of Florida ("County"), and the TOWN OF FORT MYERS BEACH, a municipal corporation of the State of Florida ("Town"), collectively the Parties hereto, for the purpose of reimbursement for cleanup of fish and marine life washing up dead on beaches caused by Red Tide.

WHEREAS, the Board of County Commissioners approved a \$90,000.00 grant from the Florida Department of Environmental Protection on December 20, 2022, in response to the Harmful Algal Blooms causing large numbers of fish and marine life to wash up dead on Lee County's beaches; and

WHEREAS, the Board of County Commissioners approved the first amendment to the grant agreement for an additional 120 days, through May 28, 2023; and

WHEREAS, the Florida Department of Environmental Protection provided grant funds to the County for the purpose of assisting with the cleanup of the large numbers of fish and marine life washing up dead on Lee County's beaches and its waterways; and

WHEREAS, the Town has spent monies to cleanup of the large numbers of fish and marine life washing up dead on its beaches and waterways; and

WHEREAS, the County desires to disburse the Florida Department of Environmental Protection (FDEP) grant funds to the Town for cleanup of the dead marine life; and

WHEREAS, the Town Council is the governing body in and for the Town of Fort Myers Beach; and the Board of County Commissioners is the governing body in and for Lee County; and

WHEREAS, both the County and the Town are duly empowered pursuant to Florida Statutes, in particular Section 163.01, Florida Statutes, to enter into Interlocal Agreements; and

WHEREAS, it is in the public's interest for the County and Town to enter into this Agreement.

NOW, THEREFORE, the Parties agree to the following terms and conditions hereinafter set forth, the County and the Town, intending to be legally bound, hereby agree as follows:

1. Recitals as set forth above are incorporated into the terms of this Interlocal Agreement as if set forth herein at length.
2. This Agreement is effective as of February 28, 2023.
3. This Agreement is a cost reimbursement Agreement. The County may pay the Town for the cleanup of the Town's beaches in response to fish and marine life washing up dead because of Red Tide. Reimbursement for the expenses related to the dead fish and marine life cleanup will depend on the amount of grant monies received from FDEP and the contributions to other governmental entities for their cleanup. The County shall not provide the Town an advance of the grant funds under this Agreement.
4. If, in either Parties' determination, changes to this Agreement are required by law or otherwise desirable, such determining Party shall provide written notice of all such changes to the other Party. Such other Party shall then be responsible for any due

diligence necessary to determine the impact of the modification. Any modification of this Agreement must be in writing and duly signed by all Parties in order to be enforceable.

5. This Agreement is subject to the provisions of chapter 119, Florida Statutes, relating to public records. Any document the Town submits to the County under this Agreement may constitute public records under the Florida Statutes.
6. The County may terminate the Agreement if Town fails to honor any term of the Agreement, abide by any statutory, regulatory, or licensing requirement; funds to finance this Agreement become unavailable or if state funds upon which this Agreement is dependent are withdrawn.
7. The County, by written notice to Town may terminate this Agreement in whole or in part when the County determines in the County's sole and absolute discretion that it is in the County's interest to do so.
8. Notwithstanding anything in this Agreement to the contrary, the County has an absolute right to recoup the grant funds based on the FDEP conditions for the grant funds. The County may refuse to reimburse the Town for any cost if the County determines that such cost was not incurred in compliance with the terms of this Agreement.
9. The County may refuse to reimburse the Town for any cost if the County reasonably determines that such cost was not incurred in connection with the cleanup of dead marine life as required by the terms of this Agreement.
10. No assignment, delegation, transfer, or novation of this Interlocal Agreement or any part thereof shall be made, unless approved in writing by the County and the Town.

11. Any notices or other documents permitted or required to be delivered pursuant to this Interlocal Agreement, shall be delivered to the County at the Office of the County Manager and to the Town, at the Office of the Town Manager.
12. This Interlocal Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
13. The Parties agree that by execution of this Agreement, no Party will be deemed to have waived its statutory defense of sovereign immunity, or increased its limits of liability as provided for by Florida Statutes.
14. This Agreement embodies the entire agreement of the Parties with respect to the subject matter hereof. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement; and this Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the Parties. If a court of competent jurisdiction voids or hold unenforceable any provisions of this Agreement, then that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable, and all other provisions shall remain in full force and effect.
15. The laws of the State of Florida shall govern the construction, enforcement, and interpretation of this Agreement. The Parties expressly consent to exclusive jurisdiction and venue in any state court located in Lee County, Florida.
16. Each Party shall pay its own attorneys' fees and costs in connection with the execution and delivery of this Agreement and the transactions contemplated hereby.

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

ATTEST:

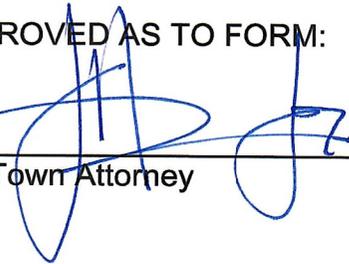
TOWN OF FORT MYERS BEACH

By: 
Clerk, Town of Fort Myers Beach

By: 
Dan Allers, Mayor



APPROVED AS TO FORM:

By: 
Town Attorney

ATTEST:
CLERK OF THE COURTS
Kevin C. Karnes, Clerk

**LEE COUNTY BOARD OF
COUNTY COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
Brian Hamman, Chairman

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

By: _____
Office of the County Attorney