

RESOLUTION NUMBER 24-15

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE TOWN AND LEE COUNTY FOR THE CONSTRUCTION OF THE ESTERO ISLAND BEACH RENOURISHMENT PROJECT AND PROVIDING FOR 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 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 Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes, encourages and empowers local governments to cooperate with one another on matters of mutual interest and advantage, and enter into agreements between the local governments on matters of mutual interest; and,

WHEREAS, beach erosion is a threat to the economy and general welfare of the visitors and residents of both the Town and County; and,

WHEREAS, both the Town and the County are responsible to properly manage, protect, and maintain beaches fronting on the Gulf of Mexico from erosion through beach restoration and nourishment projects as part of their governmental duties; and,

WHEREAS, certain beaches of Estero Island have been designated by the State of Florida as critically eroded; and,

WHEREAS, the Town desires to continue to implement beach maintenance, erosion control and nourishment of certain Estero Island beaches to afford continued protection to upland property and enhance the tourist economy in the Town as well as the County and Southwest Florida; and

WHEREAS, it is in the mutual interest of the Town and the County to cooperate in completing projects related to beach maintenance, erosion control, and nourishment of Estero Island beaches; and

WHEREAS, the Town and the County have previously entered into agreement to do so and to date have successfully completed all obligations from prior maintenance and nourishment agreements; and

WHEREAS, for these reasons, the Town and the County believe it is in the interest of the public health, safety and welfare to continue to cooperate in completing beach maintenance, mitigating erosion, and nourishment on Estero Island beaches in order to improve the protection of upland development and infrastructure, the tourist economy, recreational interests, and wildlife habitat.

WHEREAS, the Town Council has determined it is in the best interest of the Town to approve the requested Interlocal Agreement between the Town and Lee County to construct Estero Island Beach Renourishment Project.

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

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

Section 2. The Town Council hereby approves the Interlocal Agreement between the Town and Lee County for the construction of the Estero Island Beach Renourishment Project. A copy of the Interlocal Agreement is attached hereto as Attachment "A".

The foregoing Resolution was adopted by the Town Council upon a motion by Vice Mayor Atterholt and seconded by Mayor Allers, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 1st day of April 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL



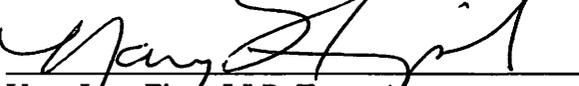
Dan Allers, Mayor

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:



Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 1st day of April 2024.

**INTERLOCAL AGREEMENT by and between
LEE COUNTY and the TOWN OF FORT MYERS BEACH**

THIS AGREEMENT is made and entered into this 1st day of April 2024, by and between the TOWN OF FORT MYERS BEACH, a Florida municipal corporation, hereinafter referred to as the “Town”, and the Board of County Commissioners of LEE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the “County”.

WHEREAS, the Florida Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes, encourages and empowers local governments to cooperate with one another on matters of mutual interest and advantage, and enter into agreements between the local governments on matters of mutual interest; and,

WHEREAS, beach erosion is a threat to the economy and general welfare of the visitors and residents of both the Town and County; and,

WHEREAS, certain beaches of Estero Island have been designated by the State of Florida as critically eroded; and,

WHEREAS, the Town desires to continue to implement beach maintenance, erosion control and nourishment of certain Estero Island beaches to afford continued protection to upland property and enhance the tourist economy in the Town as well as the County and Southwest Florida; and

WHEREAS, it is in the mutual interest of the Town and the County to cooperate in completing projects related to beach maintenance, erosion control, and nourishment of Estero Island beaches; and

WHEREAS, for these reasons, the Town and the County believe it is in the interest of the public health, safety and welfare to cooperate in mitigating erosion on Estero Island beaches in order to improve the protection of upland development and infrastructure, the tourist economy, recreational interests, and wildlife habitat.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the Town and the County agree as follows:

SECTION ONE **INCORPORATION OF RECITALS**

The Recitals as set forth above are incorporated into the terms of this Agreement.

SECTION TWO **PURPOSE**

The purpose of this agreement is to reduce to writing the parties’ agreement to a method for allocation of costs and responsibilities for “The Estero Island Beach Nourishment Project”, hereinafter referred to as the “Project”. This Agreement shall supersede and replace in its entirety

the June 22, 2010, Interlocal Agreement between the County and the Town for Estero Island Beach Restoration. The parties acknowledge and agree that all terms and conditions of the June 22, 2010, Interlocal Agreement have been satisfied.

SECTION THREE **PROJECT SCOPE**

The parties agree the scope of the Project shall include the necessary design, permitting, engineering, construction, project management, and environmental protection and monitoring required by state and federal permits for the Estero Island shoreline extending from R175 at the northern end of Estero Island to R198 (“the North-Central Project Segment”), and from R203 to R207 (“the South Project Segment”). The scope of the Project includes post-construction maintenance and monitoring for a period of seven years, unless a shorter time is required or permitted by state or federal permits for the Project. For the purpose of this Agreement, maintenance includes additional fill placement as authorized by Project permits to address erosion hot spots that develop prior to the next scheduled nourishment subject to the Cost Allocations and Cancellation provisions herein. The Project shall be constructed in accordance with applicable local, state and federal rules, regulations, and permits.

SECTION FOUR **COUNTY OBLIGATIONS**

The County agrees to:

- a) Cooperate with the Town and Town Contractors as necessary to facilitate state funding applications, design, permitting, and implementation of the Project.
- b) Maintain any public access and parking under the County’s control used to qualify for state cost sharing.
- c) Cooperate with the Town in coordinating overlapping monitoring or maintenance areas to eliminate duplication of effort associated with the completion of post-construction maintenance and monitoring for a period of seven years unless a shorter time is required or permitted by the state and federal permits for the Project. Maintenance responsibilities under this Agreement will be limited to tilling and scarp removal required by permits for the Project.
- d) Not object to the Town’s desire to be able to commence construction activities 24 hours a day, every day of the year in order to maximize construction efficiency and reduce construction costs.
- e) Allow the Town the use of County owned properties adjacent to the Project for Town Contractors and equipment for the purpose of reasonable staging, beach access, and construction. Reasonable staging and access shall be subject to prior written approval by the County Manager or designee, the terms and conditions of which shall be binding on the Town and Town Contractors as necessary to protect the County’s interests.
- f) Provide funding for the Project based on an allocation of costs in accordance with Section Six of this Agreement. The County will not be responsible for providing payment in any form for expenses for experimental technologies, LiDAR, aerial oblique photography, surveys not required by the Florida Department of Environmental Protection (hereinafter DEP) approved physical monitoring plan, economic studies and benefits analysis, fines, penalties, interest, and work completed on private properties not authorized by a signed construction easement.

SECTION FIVE

TOWN OBLIGATIONS

The Town agrees to:

- a) Monitor the Project area as required by permits and provide the results of the monitoring to the County concurrent with submittal to permitting agencies.
- b) Apply for all necessary permits for the Project.
- c) Seek state cost sharing to help reduce overall costs to the Town and County and provide the County with copies of all funding applications and agreements within thirty (30) days of execution.
- d) Prepare detailed plans and specifications for the Project including provision that any County property used for staging and beach access, including use of parking areas for Town Contractors, construction and equipment, is left in conditions equal to or better than before it was used for the Project. This will include protection of natural resources and construction of dunes on County Parks where requested by the County.
- e) Maintain any public access and parking under the Town's control used to qualify for state cost sharing.
- f) Acquire all easements necessary to complete the Project and provide a detailed list to the County.
- g) Provide copies of Project technical reports to the County at the same time provided to DEP.
- h) Provide funding for the Project based on an allocation of costs in accordance with Section Six of this Agreement.
- i) Keep books, records, documents and other evidence pertaining to costs and expenses incurred for the construction to the extent and in such detail as will properly reflect total Project costs and funding of the Project. The Town will make available at its office at reasonable times, such books, records, documents and other evidence for inspection and audit by authorized County representatives for a minimum of seven years after completion of construction of the Project.
- j) The Town or its agents will act as Project sponsor and manager.
- k) Notify the County of the final completion of Project monitoring tasks required by state and federal permits within thirty (30) days of completion of each task.
- l) The Town may, at its sole option and discretion, coordinate regionally with other eligible government entities when it is in the best interests of the Town and County, particularly in sharing resources for cost savings purposes.

SECTION SIX

COST ALLOCATIONS

The Parties agree to share in the eligible costs for the Project in accordance with the following:

- a) The cost allocation between the Town and County will be based on total eligible Project costs as defined herein and documented by the Town pursuant to Section Four (f) and Section Five (i) above.
- b) Operational expenses including staff time of Town and County personnel are not considered Project expenses for the purposes of this Agreement.
- c) The County will pay a share of eligible Project costs including those incurred prior to the date of this Agreement but only those on or after April 24, 2023, and listed on

Exhibit A. The Town will invoice no more than once per month and the schedule for payments will be as follows:

- i. For eligible expenses incurred prior to the date of execution of this Agreement, payment will be made by the County within thirty (30) days of receiving a detailed invoice from the Town including adequate documentation of the scope of work and proof of payment for eligible Project costs. Completed DEP reports as described in Section Five (g) above and including copies of supporting documentation will satisfy this requirement.
 - ii. The County will advance a sum to the Town equal to ninety percent (90%) of the County share estimated from the bid documents for sand placement. The County will make payment to the Town within thirty (30) days of receiving a notice from the Town including their approved bid and executed contract. Upon receipt of a detailed invoice, notification from the Town that the sand placement has been completed, and accounting documentation, the County will pay the balance of funds due for completed sand placement within thirty (30) days.
 - iii. For eligible expenses other than the sand placement incurred after the date of execution of this Agreement, payment will be made by the County within thirty (30) days of receiving a detailed invoice from the Town including adequate documentation of the scope of work and proof of payment. This includes costs for permit required post-construction monitoring and maintenance.
- d) The payment amounts will be calculated using the cost sharing methods described as follows:
- i. Pursuant to Sections 161.091 - 161.161, F.S., the DEP provides financial assistance to eligible governmental entities for beach erosion control and inlet management activities under the Florida Beach Management Funding Assistance Program. Any State funding provided through the DEP is typically based on criteria described in Chapter 62B-36, Florida Administrative Code but may also include hurricane recovery funding. The total state funding is known as the State Share.
 - ii. Project funding provided by entities other than the DEP Beach Management Funding Assistance Program, County or Town shall collectively be referred to as Grant Funding. This may include but is not limited to Project funding from the Florida Division of Emergency Management (FDEM) and the Federal Emergency Management Agency (FEMA).
 - iii. The costs remaining after deduction of the State Share shall be known as the Local Share. In accordance with Section 5c above, the Town will seek Grant Funding to reduce the overall Local Share. Any such funding will apply to the Town Share first, with any balance applied to the County Share.
 - iv. The distribution of the Local Share has been determined based on a prior Benefit Analysis. The Benefit Analysis determined that 12.4% of the benefits are for storm protection, and 87.6% of the benefits are for recreation.
 - v. The County owns approximately 1954 linear feet or 8.1% of the Estero Island North-Central Project Segment shoreline primarily at Bowditch Point, Lynn Hall, and Crescent Beach Parks and will pay the proportional storm protection cost for those facilities equal to 1.0% of the Local Share (i.e., 12.4% x 8.1% x Local Share).

- vi. The North-Central Project Segment shoreline is 83.4% publicly accessible as defined by DEP for construction. Accordingly, a portion of the Local Share attributable to recreation will be paid by the County equal to 73.1% of the Local Share (i.e., 87.6% x 83.4% x Local Share).
- vii. The South Project Segment is State owned as defined by DEP for beach funding purposes. As such construction costs for the South Project Segment are paid 100% by the State and not part of the Local Share.
- viii. For Post-construction monitoring costs, the Project shoreline is 86.0% publicly accessible as defined by DEP. Accordingly, a portion of the Local Share attributable to recreation will be paid by the County equal to 75.3% of the Local Share (i.e., 87.6% x 86.0% x Local Share) for permit required post-construction monitoring costs of the North-Central and South Segments.
- ix. The total County Share will be the sum of the County North-Central storm protection share (Section 6(d)v), the County North-Central recreation share (Section 6(d)vi), and post-construction monitoring expenses cost shared in accordance with Section 6(d)viii. All other expenses and financial obligations are the sole responsibility of the Town.

SECTION SEVEN

HOLD HARMLESS

Each party shall be liable for its own actions, negligence and, to the extent permitted by law, Town shall indemnify, defend and hold harmless the County against any actions, claims for damages arising out of Town's negligence in connection with this Agreement, and County shall indemnify, defend and hold harmless the Town against any actions, claims for damages arising out of County's negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions.

SECTION EIGHT

CANCELLATION

- a) Prior to award of the construction contract, the Town shall provide the County with the estimated maximum County contribution under the terms of this Agreement. In the event that the County's maximum contribution is estimated to exceed \$9,200,000, the terms of this Agreement will become null and void unless the County and Town mutually agree in writing to proceed with the Project. The written Agreement to proceed must provide the maximum County contribution prior to award of the construction contract. The Town hereby agrees not to award a contract or incur any costs attributable to the County until such time as the County agrees to proceed. The Town will be responsible for all costs incurred without prior approval to proceed from the County.
- b) If the Agreement is canceled, any conditions necessitated by a permit will continue in full force and effect.
- c) The breach of a material obligation of this Agreement shall be grounds for immediate cancellation of this Agreement by the non-breaching party. The non-breaching party must provide the party in default with 30 days, from the date of notice of the default, to cure said

default. If the breach is not curable, the non-breaching party may terminate the Agreement without waiting 30-days and seek any remedies available under Florida law.

SECTION NINE **AMENDMENT TO AGREEMENT**

This Interlocal Agreement may only be amended as provided for herein, with the express consent of both Parties and executed with the same formality and dignities as this original Agreement.

SECTION TEN **INTERPRETATION OF AGREEMENT**

This Interlocal Agreement shall be construed and interpreted pursuant to Florida law. Venue for any disputes between the Parties arising under this Interlocal Agreement shall be the Twentieth Judicial Circuit Court, in and for Lee County, Florida.

SECTION ELEVEN **INTEGRATION OF DOCUMENT**

This Agreement, including any incorporated exhibits or amendments, constitutes the entire Agreement between the Parties and shall supersede and control over any or all prior Agreements or understandings, either written or oral, relating to the matters herein.

SECTION TWELVE **NOTICE PROVISIONS**

All notices or demands are deemed to have been given or made when delivered in person or delivered by certified or registered mail, return receipt requested, postage prepaid, United States mail, and addressed to the respective Parties as follows:

Mayor
Town of Fort Myers Beach
2523 Estero Boulevard
Fort Myers Beach, Florida 33931

Chair, Board of County Commissioners
Lee County
Post Office Box 398
Fort Myers, Florida 33902

SECTION THIRTEEN **EFFECTIVE DATE**

This Agreement will be effective on the last date signed by the County acting through its Board of County Commissioners or the Town acting through the Town Council.

SECTION FOURTEEN **TERM**

This Agreement shall commence upon execution and continue from year to year uninterrupted and shall terminate upon reimbursement of eligible costs associated with the last date of the monitoring required for the Project under the Project's state and federal permits. The rights and obligations of

each party that arise prior to the expiration of the term shall survive any expiration of the term of this Agreement.

SECTION FIFTEEN **SEVERABILITY**

Should any portion of this Agreement be found invalid by a court of law, the remaining portions of this Agreement shall remain in effect insofar as they can reasonably be severed from the invalid portion.

SECTION SIXTEEN **ATTORNEY'S FEES AND COSTS**

If either Party brings or commences legal action or proceeding to enforce the terms of this Agreement, the Parties agree that each will pay for its own costs and expenses of litigation, including reasonable attorneys' fees. In the event of a dispute and prior to litigation, the parties agree to consider alternative dispute resolution opportunities, include but not limited to mediation. Should the Parties agree to mediation, the Parties agree to equally divide the costs of the mediation.

SECTION SEVENTEEN **MISCELLANEOUS**

1. The Parties represent that they have full authority to enter into and execute this Agreement.
2. The terms and conditions of this Agreement shall extend to and bind the successors and assigns of the County and the Town.
3. The drafting of this Agreement has been a joint endeavor between the Parties and shall not, solely as a matter of judicial construction, be interpreted more strictly against one Party than the other.
4. Except as otherwise provided for herein, neither Party shall be liable to the other for either consequential or special damages of any kind whatsoever, including, but not limited to, lost revenues, or any other damages of any kind relating to this Agreement.

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: 
Amy Baker, Town Clerk

By: 
Dan Allers, Mayor

APPROVED AS TO FORM:

By: 
Vose Law Firm, Town Attorney

ATTEST:
KEVIN C. KARNES, CLERK

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY,

BY: _____
DEPUTY CLERK

CHAIR

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

BY: _____
Office of the County Attorney

Exhibit A

Project Expenses incurred prior to Agreement execution but after April 24, 2023, total approximately \$47,120.00 for activities including:

- a) \$47,120.00: 2023 Annual Monitoring of Estero Island; Update Bid Plans with Current Survey Data; Coastal Engineering Consultants STA #16.