



CAPTIVA EROSION PREVENTION DISTRICT RESOLUTION 2023-03

A RESOLUTION OF THE CAPTIVA EROSION PREVENTION DISTRICT APPROVING THE INTERLOCAL AGREEMENT BETWEEN CEPD AND LEE COUNTY FOR EVACUATION ROUTE ARMORING; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the CEPD Board has published on a duly noticed agenda, reviewed, discussed and taken public comment on April 17th, 2023;

WHEREAS, the CEPD Board desires to approve or approve with conditions the following attachments and course of action;

NOW THEREFORE, BE IT RESOLVED by the CAPTIVA EROSION PREVENTION DISTRICT:

Section 1. The CEPD Board resolves and approves the following:

Approve the Interlocal Agreement provided by Lee County as written and seen as in Exhibit A.

Section 2. This Resolution shall take effect immediately upon adoption.

DULY INTRODUCED, PASSED AND ENACTED by the Board of Commissioners of the CAPTIVA EROSION PREVENTION DISTRICT, on Captiva Island, in Lee County, Florida on April 17th, 2023.

DocuSigned by:
Robert Walter
0B05BA9464E4428...

CEPD Chairman Bob Walter

ATTEST:

DocuSigned by:
Daniel Munt
DC0A8779E14D4C5

CEPD Executive Director Daniel Munt

Approved as to legal sufficiency:

DocuSigned by:
[Signature]
0CDB79C95D79490

CEPD Attorney Ralf Brookes

Record of the Vote:

Commissioner Miville	<u>Aye</u>
Treasurer Pyle	<u>Aye</u>
Secretary Laird	<u>Aye</u>
Vice Chairman Silvia	<u>Aye</u>
Chairman Walter	<u>Aye</u>

INTERLOCAL AGREEMENT
BETWEEN CAPTIVA EROSION PREVENTION DISTRICT AND
THE LEE COUNTY BOARD OF COUNTY COMMISSIONERS

THIS INTERLOCAL AGREEMENT is made and entered into this 17th day of April 2023, by and between the **CAPTIVA EROSION PREVENTION DISTRICT**, a political subdivision of the State of Florida, hereinafter referred to as "CEPD," and the **LEE COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida, hereinafter referred to as the "County."

WHEREAS, the County possesses Home Rule powers as a charter county pursuant to Article VIII, Section 1(g), Florida Constitution, and Section 125.01, Florida Statutes; and,

WHEREAS, the Captiva Erosion Prevention District is a beach and shore preservation district re-created and re-established under Chapter 161, Florida Statutes, and exercise powers and duties of a beach and shore preservation authority and independent special district; and,

WHEREAS, the Board of County Commissioners ("Board") is the governing body in and for Lee County; and,

WHEREAS, the Board of Commissioners ("District Board") is the governing body for the District; and,

WHEREAS, section 161.25, Florida Statutes, establishes that the Board of County Commissioners is a beach and shore preservation authority for the County, and in this capacity, may at its own initiative take all necessary steps as soon as practicable and desirable to implement beach and shore preservation projects; and,

WHEREAS, CEPD has applied for and received state and federal permits to allow beach re-nourishment for areas including Captiva, in the unincorporated area of Lee County, and a portion of northern Sanibel; and

WHEREAS, the County has requested that CEPD allow the County to conduct a one-time emergency beach nourishment project in the area of Northern Sanibel under the authority of, and in accordance with, the CEPD state and federal permits and under the terms and conditions of this Interlocal Agreement; 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 provide for interlocal agreements between local governments on matters of mutual interest; and,

WHEREAS, beach erosion is a threat to the economy and general welfare of the visitors and citizens of Lee County; and,

WHEREAS, it is a necessary governmental responsibility to properly manage and protect Lee County beaches fronting on the Gulf of Mexico from erosion through beach restoration and nourishment projects; and,

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

WHEREAS, it is in the mutual interest of the District and the County to cooperate in beach maintenance and nourishment of the Northern Sanibel Island beaches; and

WHEREAS, the District and the County believe it is in the interest of the public health, safety and welfare to cooperate in preventing erosion on Northern Sanibel Island, which includes 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 District and the County agree as follows:

SECTION ONE **INCORPORATION OF RECITALS**

The Recitals as set forth above are true and correct and are hereby incorporated into the terms of this Agreement as if fully set forth below.

SECTION TWO **PURPOSE**

CEPD holds a Florida Department of Environmental Protection (DEP) permit to periodically restore and nourish the beach of Captiva Island and to nourish the beach at the northern portion of Sanibel Island. Pursuant to such application, CEPD has received a Consolidated Joint Coastal Permit and Sovereign Submerged Lands Authorization as DEP Permit Number 0200269-009-JC (hereinafter the "DEP Permit"), and an Army Corps of Engineers permit (SAJ-1994-03952 (SP-MMB)) for the same Captiva Island and northern Sanibel Island beach nourishment authorization (hereinafter the "Army Corps Permit") (the DEP permit and Army Corps permit are hereinafter referred to collectively as the "Agency Permits"). CEPD hereby agrees to and authorizes the County to conduct work and engage in a one-time emergency placement of trucked sand for the protection of Sanibel Captiva Rd, hereinafter referred to as the "Project", pursuant to the authority of the Agency Permits issued to CEPD in accordance with the terms and conditions of the Agency Permits and the procedures, terms, requirements and conditions set forth in this Interlocal Agreement.

SECTION THREE **PROJECT SCOPE**

The Project includes the necessary design, engineering, construction, project management, and environmental protection and monitoring required by the permit for the Sanibel Island shoreline extending from R110 at Blind Pass to R118 at Bowmans Beach. The Project will also include all post-construction maintenance and monitoring in accordance with state and federal permits for the Project. The Project will be constructed in accordance with applicable local, state and federal rules, regulations, and permits.

SECTION FOUR **COUNTY OBLIGATIONS**

County shall be responsible for all costs and expenses associated with the beach nourishment project conducted by the County and such costs shall include, but shall not be limited to, the costs of consultants, experts, contractors, materialmen and materials, transportation and hauling costs, traffic control, safety notifications and barriers, and any costs associated with any claim that the County has failed to adhere to the applicable Agency Permit requirements, including any remediation or other activities that may be required by DEP or the Army Corps of Engineers.

SECTION SEVEN **HOLD HARMLESS**

Each party shall be liable for its own actions and negligence, and to the extent permitted by law, District shall indemnify, defend and hold harmless the County against any actions, claims for damages arising out of District's negligence in connection with this Agreement, and County shall indemnify, defend and hold harmless the District 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**

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 written 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 Interlocal 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:

Board of Commissioners
Captiva Erosion Prevention District
Post Office 365
Captiva Island, FL 33924

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 Chair or Vice-Chair of the Board of County Commissioners of Lee County, Florida, or Chair or Vice-Chair of the District Board.

SECTION FOURTEEN **TERM**

This Agreement shall commence upon execution and shall terminate upon completion of all post-construction maintenance and 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, each party shall pay their own costs and expenses of litigation, including reasonable attorneys' fees.

SECTION SEVENTEEN **MISCELLANEOUS**

- a) The Parties represent that they have full authority to enter into and execute this Interlocal Agreement.
- b) The terms and conditions of this Interlocal Agreement shall extend to and bind the successors and assigns of the County and the District.
- c) The drafting of this Interlocal 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.
- d) In no case shall either Party 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.

The rest of this page left intentionally blank.

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

ATTEST:

CAPTIVA EROSION

PREVENTION DISTRICT

DocuSigned by:
Linda Laird
By: _____
Linda Laird, Secretary

DocuSigned by:
Robert Walter
By: _____
Robert walter, Chairman

APPROVED AS TO FORM:

DocuSigned by:
Ralf Brookes
By: _____
Ralf Brookes, Special Counsel to the District

ATTEST:
CLERK OF CIRCUIT COURT
Kevin C. Karnes, Clerk

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY

By: _____
Deputy Clerk

By: _____
Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

By: _____
Office of the County Attorney

Attachments

Agency Permits:

DEP Permit Number 0200269-009-JC

Army Corps of Engineers Permit (SAJ-1994-03952 (SP-MMB))