

RESOLUTION NO. 2022- 66

**CITY OF POMPANO BEACH
Broward County, Florida**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF POMPANO BEACH RELATING TO THE BROWARD COUNTY, SEGMENT II, SHORE PROTECTION PROJECT; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That a First Amendment to the Interlocal Agreement between Broward County and the City of Pompano Beach relating to the Broward County, Segment II, Shore Protection Project, a copy of which First Amendment is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said First Amendment between Broward County and the City of Pompano Beach.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 25th day of January, 2022.

DocuSigned by:
Rex Hardin
502CB780EB3F480...
REX HARDIN, MAYOR

ATTEST:

DocuSigned by:
Asceleta Hammond
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ASCELETA HAMMOND, CITY CLERK

/jrm
10/18/21
l:reso/2022-25





FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF POMPANO BEACH RELATING TO THE BROWARD COUNTY, SEGMENT II, SHORE PROTECTION PROJECT

This First Amendment ("First Amendment") to the Agreement (hereinafter defined) is made and entered into by and between Broward County, a political subdivision of the State of Florida ("County"), and the City of Pompano Beach, a Florida municipal corporation ("City") (each a "Party," collectively referred to as the "Parties").

RECITALS:

A. On April 20, 2016, County and City entered into an Interlocal Agreement ("Agreement") providing County's restoration and replenishment of the beach within City's portion of Segment II of the Shore Protection Project ("Project"), to be funded by the U.S. Army Corps of Engineers ("Federal Contribution"), the State of Florida, County, and City.

B. The Agreement provides for City to reimburse County for a portion of the local share of Project costs.

C. The Parties agree it is in the best interests of each Party to divide the scope of the Project into two parts: (i) the Completed Construction Project, as described in Exhibit B-1 as attached hereto and incorporated herein, and (ii) the Ongoing Construction Project, as described in Exhibit B-2 as attached hereto and incorporated herein. For the avoidance of doubt, (i) and (ii) collectively refer to the Project.

D. County has constructed the Completed Construction Project and delivered the same to City.

E. County has incurred expenses in the amount of approximately Fifty-One Million Four Hundred Thousand and 00/100 Dollars (\$51,400,000.00) in connection with the Project.

F. County anticipates that the cost of the Ongoing Construction Project will be approximately Twenty Million One Hundred Thousand and 00/100 Dollars (\$20,100,000.00), of which Fourteen Million Nine Hundred Thousand and 00/100 Dollars (\$14,900,000.00) are currently allocated for the cost of the construction of an artificial reef.

G. City has not reimbursed County pursuant to the Agreement for any Project costs County has incurred to date.

H. County has not received any Federal Contribution amounts to date.

I. County is amenable to advancing the costs of the Ongoing Construction Project so long as City agrees to (i) provide assistance and cooperation in connection with County's application(s) for Federal Contribution(s) and (ii) pay its share of the cost of the Completed Construction Project as detailed in this First Amendment.

J. On December 7, 2021, the Board of County Commissioners of Broward County, Florida ("Board"), authorized the County Administrator to execute this First Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. Recitals. Each Party represents that the Recitals stated above are true and correct and are incorporated herein by reference.

2. ARTICLE 1 of the Agreement is hereby amended (words stricken through are deletions from existing text and words underlined are additions to existing text) as follows:

ARTICLE 1

SCOPE OF SERVICES

1.1 County ~~shall~~ has caused the Completed Construction Project, as described in Exhibit B-1 as attached hereto and incorporated herein, to be completed in accordance with permit conditions, construction contract documents, plans, and specifications for the Completed Construction Project. City and County agree that County's ~~has performance~~ fulfilled all of its obligations with respect to the Completed Construction Project, as described in Exhibit B-1, under this the Agreement ~~is subject to County obtaining all necessary permits, and is subject to adequate funding assurances from federal, State, and local governments, and subject to a bid from CONTRACTOR which is acceptable to County.~~

1.2 County shall cause the Ongoing Construction Project, as described in Exhibit B-2 as attached hereto and incorporated herein (the Completed Construction Project and the Ongoing Construction Project are collectively referred to as the "Project"), to be completed in accordance with permit conditions, construction contract documents, plans, and specifications for the Ongoing Construction Project. City and County agree that County's performance under the Agreement is subject to County obtaining all necessary permits, and is subject to adequate funding assurances from federal, State, and local governments (as determined by County in its reasonable discretion), and subject to a bid from Contractor that is acceptable to County.

1.3 County agrees, and City acknowledges, that all monies contributed by City pursuant to ~~this~~ the Agreement shall be ~~expended~~ allocated exclusively for the Completed Construction Project, and in accordance with permit conditions, construction contract documents, plans, and specifications for the Completed Construction Project.

~~County shall ensure that the Project is constructed so that all sand placed onto the beach is beach compatible sand in accordance with the approved technical and~~

~~environmental documents for the Project.~~

- 1.4 County shall provide City with access to all records and shall allow the audit of any books, documents, and papers associated with the Project.
- 1.5 City shall reimburse County for:
 - 1.5.1 City's ~~apportioned share of the costs~~ of in connection with the Completed Construction Project, as set forth in Section 3.1.1.
 - 1.5.2 City's ~~shall be responsible in its~~ apportioned share of the Ongoing Construction Project, as set forth in Section 3.1.2, for any obligations, financial or otherwise, imposed on County by the State or federal government as a result of County's construction, operation, maintenance, and monitoring of the Ongoing Construction Project. Notwithstanding the foregoing, County agrees to advance payment for City's portion of the Ongoing Construction Project as set forth in Section 3.1.2.
- 1.6 In accordance with Section 402 of the Water Resources Development Act of 1986 (33 U.S.C. 701b-12), as amended, City shall ~~prepare a~~ implement the floodplain management plan prepared by City pursuant to the Agreement within one (1) year after the effective date of this Agreement First Amendment ~~and shall implement such plan not later than one (1) year after completion of construction of the Project~~. The plan ~~shall be~~ was designed by City to reduce the impacts of future flood events in the Project area, including, but not limited to, addressing those measures to be undertaken by nonfederal interests to preserve the level of flood protection provided by the Project. If not already provided, City shall provide an informational copy of the plan to County upon ~~its preparation~~ execution of this First Amendment.
- 1.7 Through the duration of this Interlocal Agreement, as amended, City shall prevent obstructions or encroachments on the Project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) such as any new developments on Project lands, easements, and rights-of-way, or the addition of facilities ~~which~~ that might reduce the level of protection the Project affords, hinder operation and maintenance of the Project, or interfere with the Project's proper function.
- 1.8 Except as set forth in Sections 1.5, 1.6, and 1.7 above, and the obligation to provide assistance and cooperation in connection with County's application(s) for Federal Contribution(s) as provided throughout this Amendment, City shall have no duties, obligations, or responsibilities of any nature with respect to the construction of the Project.

3. ARTICLE 2 of the Agreement is hereby amended (words stricken through are deletions from existing text and words underlined are additions to existing text) as follows:

ARTICLE 2

TERM OF AGREEMENT

2.1 The term of this Agreement shall begin upon execution by County and, unless terminated by either party sooner pursuant to Article 6, shall terminate on December 31, ~~2021~~2024. Notwithstanding the termination of this Agreement, County shall reimburse City ~~for any State or Federal funding Contribution, consistent with Section 3.1.2, for received by County in connection with the Ongoing Construction Project received after the termination date, consistent with Section 3.1,~~ up to the ~~Cost Share Participation~~ Not-to-Exceed a Amount set forth in Section 3.1.2. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes.

2.2 All duties, obligations, and responsibilities of ~~p~~Parties required by this Agreement shall be completed no later than December 31, ~~2021~~2024. Time shall be deemed to be of the essence in performing the duties, obligations, and responsibilities required by this agreement.

4. Article 3 of the Agreement is hereby amended (words stricken through are deletions from existing text and words underlined are additions to existing text) as follows:

ARTICLE 3

BILLING AND PAYMENT

3.1 Costs:

3.1.1 ~~Final~~ City's Completed Construction Project cost is Two Million Two Hundred Fifty Thousand and 00/100 Dollars (\$2,250,000.00) ("Completed Construction Project Cost"). The Completed Construction Project costs Cost shall include the costs of design, permitting, engineering, and construction, and annual monitoring costs for five (5) years post-construction monitoring incurred as of the date that this First Amendment is executed. The Completed Construction Project Cost shall be paid by City pursuant to the schedule set forth in Section 3.4.1 of the Agreement.

3.1.2 The Ongoing Construction Project cost is currently estimated to be Twenty Million One Hundred Thousand and 00/100 Dollars (\$20,100,000.00) ("Ongoing Construction Project Cost"), but is subject to change. Each City's proportionate share of the Cities' Contribution to the Final Ongoing Construction Project Costs shall be determined based on a City's

~~proportionate share of the volume of sand placed on the portion of the beaches lying within that City's boundaries relative to the total volume of sand placed on the beaches pursuant to the Project ("proportionate share") twenty-two and three-tenths percent (22.3%) of the total Ongoing Construction Project Cost. Final Project costs and City's proportionate share shall be determined after bid award, pursuant to a preconstruction survey. City's total reimbursement amount shall be calculated in accordance with the following formula:~~

~~**Project costs – State and Federal Contributions – County Contribution x .33 x City's Proportionate Share = City's Total Reimbursement Amount**~~

~~However, the Town of Lauderdale by the Sea's Total Reimbursement Amount shall not exceed Three Hundred Fifty Thousand and 00/100 (\$350,000.00). If application of the foregoing formula results in a Total Reimbursement Amount for the Town of Lauderdale by the Sea exceeding Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00), County shall be responsible for the difference between the Town's Total Reimbursement Amount, thereby ensuring that the Total Reimbursement Amount for the other City(ies) participating in the Project remain unaffected. Any additional State and federal funding received by County after the effective date of this Agreement shall require recalculation of City's total reimbursement amount, by increasing the State and Federal Contributions. If City has made payments pursuant to this Agreement at the time such subsequent funding is received, and the amount of such funding exceeds the amount due under this Agreement, County shall reimburse City for the difference between its original reimbursement amount and the recalculated reimbursement amount. In no event, however, shall such recalculated reimbursement amount be less than the amount calculated in accordance with the following formula:~~

~~**[(.10 x Project Costs) – (.33 x County Contribution)] x City's Proportionate Share = Cost Share Participation.**~~

~~As beach renourishment projects are anticipated to be an ongoing and recurring expense, a minimum participation of ten percent (10%) gives all parties a vested interest in current and future projects. Any State or Federal Contribution that would cause City reimbursement to be less than the Cost Share Participation shall be retained by County for future beach renourishment purposes.~~

~~County agrees to advance each City's proportionate share of the Ongoing Construction Project Cost so long as each City agrees to assist and to cooperate with County in connection with any and all matters related to County's application for Federal Contribution(s). If each City so assists and~~

cooperates and if such Federal Contribution(s) is/are received by the County, City and County agree that the Federal Contribution received shall first be applied to any amounts advanced by County in connection with the Ongoing Construction Project Costs. If no Federal Contribution amount is received or if the Federal Contribution amount received is less than the Ongoing Construction Project Costs advanced by County, City shall not be required to provide additional funding towards the Ongoing Construction Project Costs.

If there are Federal Contribution funds remaining after the Ongoing Construction Project Costs advanced by County have been fully reimbursed, the Cities shall be entitled to any Federal Contribution funds remaining, to be distributed to each City pursuant to the following Reimbursement Percentages, not-to-exceed the amounts listed below:

<u>City:</u>	<u>Reimbursement Percentage:</u>	<u>Not-to-Exceed Amount:</u>
<u>Fort Lauderdale</u>	<u>72.4%</u>	<u>Two Million Seven Hundred Seventy Thousand and 00/100 Dollars (\$2,770,000.00)</u>
<u>Pompano Beach</u>	<u>22.3%</u>	<u>Eight Hundred Fifty Thousand and 00/100 Dollars (\$850,000.00)</u>
<u>Lauderdale-by-the-Sea</u>	<u>5.3%</u>	<u>Two Hundred Thousand and 00/100 Dollars (\$200,000.00)</u>

For the avoidance of doubt, City acknowledges and agrees that: (i) there is no guarantee that a Federal Contribution will be awarded; (ii) that City's cooperation and assistance is required in order to receive the Federal Contribution amounts, if any; (iii) it may take up to twenty (20) years to receive any Federal Contribution amounts; and (iv) any Federal Contribution amounts received may be received, applied, and/or refunded in piecemeal form.

...

3.3 METHOD OF BILLING AND PAYMENT

- 3.3.1 City shall reimburse County for the Completed Construction Costs. Reimbursement payments in connection with the Completed Construction Costs shall be made in three (3) equal yearly payments. Commencing on the 15th of October after the Pompano Beach Shoreline has been renourished pursuant to this Agreement and each October 15th for two (2) years thereafter October 15, 2022, and on October 15, 2023, and October 15, 2024, County shall submit an original invoice plus one (1) copy to City for payment in accordance with Section 3.1 above.
- 3.3.2 No later than 15th of November 15, 2022, after the Pompano Beach Shoreline has been renourished pursuant to this Agreement and no later than each November 15th for two (2) years thereafter for two (2) years thereafter in 2023 and 2024, City shall submit payment in connection with the Completed Construction Costs in accordance with Section 3.1.1 above.
- 3.3.3 In the event City is entitled to a reimbursement pursuant to Section 3.1.2, County shall provide written notice to City and shall remit such reimbursement to City within ninety (90) days after such written notice.

...

5. Preparation of this First Amendment has been a joint effort of the Parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other.

6. Each individual executing this First Amendment represents and warrants that he or she is, on the date he or she signs this First Amendment, duly authorized by all necessary and appropriate action to execute this First Amendment on behalf of such Party and does so with full legal authority.

7. Multiple originals of this First Amendment may be executed by the Parties, each of which, bearing original signatures, shall have the force and effect of an original document.

8. City acknowledges that, through the date hereof, it has no claims against County with respect to any of the matters covered by the Agreement, as amended.

9. Pursuant to Subsection 163.01(11), Florida Statutes, this First Amendment shall be effective upon filing of the fully executed First Amendment with the Clerk of the County for Broward County.

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IN WITNESS WHEREOF, the Parties have made and executed this First Amendment on the respective dates under each signature: Broward County, through its Board of County Commissioners, signing by and through its County Administrator, authorized to execute same by Board action on the _7th day of _December_____, 2021__, and City of Pompano Beach, signing by and through its _____ Mayor _____, duly authorized to execute same.

COUNTY

WITNESSES:

BROWARD COUNTY, by and through its County Administrator

Signature

By: _____

_____ day of _____, 20__

Print Name

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

Signature

Print Name

By: _____
Kristin M. Carter (Date)
Assistant County Attorney

By: _____
Maite Azcoitia (Date)
Deputy County Attorney

FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF POMPANO BEACH RELATING TO THE BROWARD COUNTY, SEGMENT II, SHORE PROTECTION PROJECT

CITY OF POMPANO BEACH

By: ^{DocuSigned by:} Rex Hardin
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REX HARDIN, MAYOR

By: ^{DocuSigned by:} Gregory P. Harrison
7052A67F15A44C8...
GREGORY P. HARRISON, CITY MANAGER

Dated: February 1, 2022

Attest:

^{DocuSigned by:} Asceleta Hammond
62AB0835850F4A1...
ASCELETA HAMMOND, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

^{DocuSigned by:} Mark E. Berman
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MARK E. BERMAN, CITY ATTORNEY



Exhibit B-1
Completed Construction Project

Project Description: The project, completed in December 2016, consisted of the nourishment of approximately 4.94 miles of critically eroding shoreline within Segment II (Hillsboro Inlet to Port Everglades). About 693,200 cubic yards (cy) of compatible sand were placed on the subject beaches, with 146,900 cy being placed in Pompano Beach with a design taper extending down into Lauderdale-By-The-Sea (R-36.5 to R-41).

Exhibit B-2
Ongoing Construction Project

Project Description: To offset permitted impacts to the nearshore hardbottom area as a result of the 2016 Segment II beach nourishment project, Broward County is creating a mitigation reef consisting of 4,114 individual units. Each unit is 6 ft wide, 12 ft long, and 3 ft high, weighs approximately 15,000 pounds, and is constructed of reinforced concrete with limestone rock embedded in the upper surface of the units. The reef design is meant to mimic the natural nearshore hardbottom which is relatively flat with a calcium carbonate (limestone) structure. The reef is being constructed off the coast of Lauderdale-by-the-Sea and, once complete, will be 6.8 acres in size.

Reef construction began in August 2021 and 1,324 units have been deployed, to date. Unit construction and deployment are currently on hold as County staff and consultants work with the vendor on issues that have arisen in the manufacturing process. It is anticipated that the reef construction will be complete by October 2022.