

**INTERLOCAL AGREEMENT FOR  
BONITA BEACH NOURISHMENT**

This Interlocal Agreement for Bonita Beach Nourishment ("*Agreement*") made and entered into this 4th day of August, 2020, by and between LEE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "*County*" and the CITY OF BONITA SPRINGS, a municipal corporation of the State of Florida, hereinafter referred to as the "*City*." Collectively, the foregoing may be referred to as the parties ("*Parties*"), or individually as a party ("*Party*").

**RECITALS:**

WHEREAS, the County, pursuant to §161.25, Florida Statutes, has the authority to develop and execute plans for beach and shore preservation; and

WHEREAS, the County and City entered into an Interlocal Agreement for Bonita Beach Nourishment on November 9, 2010, which agreement will conclude on or about November 9, 2020 ; and

WHEREAS, the City, the State of Florida Department of Environmental Protection, the U.S. Army Corps of Engineers, and the County have worked cooperatively in 1995, 2004, and 2014 to restore the shores of Little Hickory Island including sand nourishment and construction of two rock groins ("*Project*"); and

WHEREAS, it is in the interest of the public health, safety and welfare of the County and the City to cooperate and continue the Project; and

WHEREAS, the City desires the County to continue to be the local sponsor for the Project; and

WHEREAS, the County agrees to continue to be the local sponsor for the Project; and

WHEREAS, the Project has previously been funded by and is eligible to apply again to the Beach Management Funding Assistance Program administered by the Florida Department of Environmental Protection, Office of Resilience and Coastal Protection; and

WHEREAS, the City will budget funds in anticipation of cost sharing in the Project; and

WHEREAS, the County has been provided funding from Tourist Development Tax revenues for beach nourishment.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants, benefits and promises contained herein, the sufficiency of which is acknowledged, the Parties agree as follows:

C20  
08/04/20R

## **SECTION ONE: INCORPORATION OF RECITALS**

The Recitals as set forth above are true and incorporated into the terms of this Agreement as if set out herein at length.

## **SECTION TWO: PURPOSE AND SCOPE**

- A. The purpose of this Agreement is to define the obligations of the City and the County and to identify the funding sources to be utilized in completing the Project. All terms and conditions of this Agreement will be interpreted in a manner consistent with and in furtherance of the purpose as set forth in this Section.
- B. The scope of Project will be the initiation and prosecution to completion of the Project, consisting of the design, permitting, and placement of sand along approximately 4,300 feet of the northern end of Little Hickory Island. The Project will also include maintenance and monitoring as required by the permitting agencies and necessary to manage the Project. The Project will be constructed in accordance with all local, state and federal rules, regulations, approvals and permits.

## **SECTION THREE: OBLIGATIONS OF THE COUNTY**

Under the terms of this Agreement, the County will:

- A. Prepare detailed plans, specifications and a general program outlining the order, rate of prosecution and method of accomplishing the Project.
- B. Apply for and obtain the necessary permits to construct the Project.
- C. Work jointly with the City in the acquisition of necessary interests in land, easements and rights-of-way.
- D. Secure bids and proposals for all work to be performed by contracts, in accordance with County procurement policy. The City will be invited to attend the selection committees for all competitive negotiation processes related to the Project. The County's Project Manager will consult with the City during each stage of the Project, specifically during the critical design element.
- E. Prior to award of construction contract(s), submit to the City a detailed estimate of costs, a tabulation of all bids received, and furnish a copy of the contract to be awarded to the lowest responsible bidder.
- F. Prior to encumbering any cost, submit to the City an updated Project summary including a statement estimating the total Project costs, sources of funds, and uses of funds for all phases of the Project.
- G. Act as Project Manager for all phases of the Project.

- H. Inform the City in writing of any change in the Project costs, sources of funding and use of Project funds.
- I. Establish a Project account for the receipt and use of all funds contributed by the City, the County and any other funding source for Project expenses made pursuant to this Agreement.
- J. Provide adequate and continuous Project management and no less than quarterly progress reports showing the work completed throughout the Project.
- K. Keep books, records, documents and other evidence pertaining to costs and expenses incurred for the Project to the extent and in such detail as will properly reflect total costs. The County will make available at its office at reasonable times, such books, records, documents and other evidence for inspection and audit by authorized City representatives for a minimum of three years after completion of the Project.
- L. Notify the City of the satisfactory completion of each Project milestone. The County will provide a certification of final costs, sources of funds received and use of Project funds.
- M. Upon completion the Project, the County will, at the earliest date practicable, furnish the City with copies of its final and complete billing of all costs incurred in conjunction with the work performed hereunder, such statements should follow as closely as possible the order of the items contained in the job estimate. Billings must show the description and site of the Project; the date on which the first work was performed; the date on which the earliest item of billed expense was incurred; the date on which the last work was performed or the last item of billed expense was incurred; and the location where the records and accounts bill can be audited. Sufficient reference must be made to the County's records, accounts or other relevant documents. All cost records and accounts will be subject to audit by representative(s) of either the County or the City, at their election.
- N. Cooperate with the City in the procurement of grants for the Project.
- O. If grants are awarded for the Project from any source during or after the completion of the Project, upon notification of receipt of such grants for the Project, at the completion of the Project or upon the receipt of grants subsequent to completion, the County will provide an accounting and distribute such grant monies in accordance with Section Five of this Agreement.

- P. Maintain those beach accesses, parking areas and other public use facilities already maintained by the County during the period prior to construction and thereafter, as reasonably permitted in consideration of the public health, safety and welfare. Any parking spaces used to calculate the state's share must be maintained and kept open. In the event the County removes any parking spaces resulting in a diminished funding level, the County will pay any cost differences.
- Q. Where reasonably possible, provide all County permits as necessary for the construction of the Project after plans, applications, drawings, or specifications are properly submitted and approved by the appropriate County officials.
- R. Provide funding for the Project from the Major Maintenance budget, based on an allocation of costs in accordance with Section Five of this Agreement.
- S. Obtain professional services from a qualified coastal engineering consultant to provide services related to design, engineering, bidding, construction management, monitoring and other required elements of the Project.

**SECTION FOUR: OBLIGATIONS OF THE CITY**

Under the terms of this Agreement, the City will:

- A. Work jointly with the County to acquire the necessary interests in land, easements and rights-of-way as required by law or necessary to complete the Project.
- B. Maintain those beach access parking areas and other public use facilities already maintained by the City during the period prior to construction and thereafter, as reasonably permitted in consideration of the public health, safety and welfare. Any parking spaces used to calculate the state's share must be maintained and kept open. In the event the City removes any parking spaces resulting in a diminished funding level, the City will pay any cost differences.
- C. Where reasonably possible, exempt from this Project any City permits necessary for the construction of the Project after plans, applications, drawings or specifications are properly submitted and approved by the appropriate City officials. The City will pay for any remaining required City permits.
- D. Assist the County in the procurement of grants for the Project.
- E. Provide funding for the Project based on an allocation of costs in accordance with Section Five of this Agreement.

- F. Budget for and provide a statement to the County indicating its financial capability to reimburse its anticipated share of the Project costs. Upon receipt of invoices and appropriate supporting documentation from the County, the City agrees to pay the County within thirty (30) days. If the City fails at any point to provide timely payment, the County may call for and the City agrees to place the anticipated balance of Project funds due, plus ten percent contingency, into an escrow account from which the County can draw to cover Project expenses.
- G. In the event any of the costs invoiced by the County are disputed by the City, the City agrees to provide written documentation of the dispute and a proposed resolution within ten calendar days of receipt of the disputed invoice. The County will respond within ten days of receipt of the proposed resolution.
- H. Upon completion the Project, the County will, at the earliest date practicable, furnish the City with copies of its final and complete billing of all costs incurred in conjunction with the work performed hereunder, such statements should follow as closely as possible the order of the items contained in the job estimate. Billings must show the description and site of the Project; the date on which the first work was performed; the date on which the earliest item of billed expense was incurred; the date on which the last work was performed or the last item of billed expense was incurred; and the location where the records and accounts bill can be audited. Sufficient reference must be made to the County's records, accounts or other relevant documents. All cost records and accounts will be subject to audit by representative(s) of either the County or the City, at their election.

**SECTION FIVE: COST ALLOCATION**

- A. The cost allocation between the City and County will be based on actual Project costs, which will include the final Project costs for the Project at completion of all required tasks, as certified by the County pursuant to Section THREE herein.
- B. Mutually agreeable shares of the local cost are identified as 38.28% City and 61.72% County. The local cost is defined as remaining Project costs after all reimbursements or payments from any State or Federal agency have been accounted. The cost share is based on the public accessibility and ratio of recreational to storm protection benefits. The Florida Department of Environmental Protection has previously determined that 74% of the Project shoreline is accessible to the public. The results of economic studies done on other Lee County beaches have been interpolated to determine the Project benefits are 82% recreational and 18% storm protection. If either the City or County provides any evidence to suggest that the accessibility has changed or that the benefits ratio is different from the values contained herein, the cost sharing may be recalculated. Any modification to the cost sharing must be by formal amendment of this Agreement and subject to approval by both the Lee County Board of County Commissioners and the City Council of Bonita Springs.

## **SECTION SIX: BREACH OR DISPUTE**

- A. As a condition precedent to a Party bringing any suit for breach of this Agreement, that party must first notify the other Party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation.
- B. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both Parties. The Parties each agree pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute will not excuse the parties from performance pursuant to this Agreement. This remedy is supplemental to any other remedies available at law.
- C. Upon completion the Project the County will, at the earliest date practicable, furnish the City with copies of its final and complete billing of all costs incurred in conjunction with the work performed hereunder, such statements should follow as closely as possible the order of the items contained in the job estimate. Billings must show the description and site of the Project; the date on which the first work was performed; the date on which the earliest item of billed expense was incurred; the date on which the last work was performed or the last item of billed expense was incurred; and the location where the records and accounts bill can be audited. Sufficient reference must be made to the County's records, accounts or other relevant documents. All cost records and accounts will be subject to audit by representative(s) of either the County or the City, at their election.

## **SECTION SEVEN: LIABILITY**

- A. Each Party hereby agrees to assume liability for the negligent acts of its own officers, employees and agents arising directly, or indirectly, from that Party's activities pursuant to the terms of this Agreement and will defend all claims, causes of action, damages, suits or other actions which any person may pursue based on the willful or negligent acts of that Party's officers, employees or agents during the term of this Agreement. Neither Party assumes any liability beyond that allowed by §768.28, Florida Statutes.
- B. Additionally, both Parties agree when Project construction, maintenance or monitoring is not performed by either County or City employees, only licensed and insured consultants and contractors with an insurance policy in an amount not less than One Million Dollars, will be used. Further, either Party may request to be named as an "additional insured" if the work is being performed on their respective property by a consultant or contractor engaged by the other Party.

- C. Notwithstanding the above, as consideration for the nourishment of the beaches by the Project, and upon satisfactory completion of the Project, the City, pursuant to this Agreement, waives any claim for liability for erosion or Project effectiveness and specifically releases the County from any and all liability that may have accrued as a result of Project completion.

## **SECTION EIGHT: NOTICES**

Notices to the respective Parties will be forwarded, in writing, to the following Parties, or their written designee(s):

If to Lee County:

Chair, Board of County Commissioners  
Lee County, Florida  
P.O. Box 398  
Fort Myers, FL 33902-0398

With a copy to:

Director, Division of Natural Resources  
Lee County Board of County Commissioners  
P.O. Box 398  
Fort Myers, FL 33902-0398

If to the City of Bonita Springs:

Mayor, City of Bonita Springs  
9101 Bonita Beach Road  
Bonita Springs, FL 34135

## **SECTION NINE: TERM**

The term of this Agreement will be for ten (10) years from the date of execution, subject to the cancellation provisions as hereinafter enumerated, or upon full performance by the Parties hereto with respect to the terms, conditions, requirements and mutual obligations herein, whichever first occurs. Provided, however, that this Agreement may be extended thereafter in writing pursuant to terms and conditions mutually agreeable to the Parties.

**SECTION TEN: CANCELLATION OF THE AGREEMENT**

Either Party may cancel this Agreement at any time. Any costs incurred prior to a cancellation will be proportioned in accordance with the provisions of this Agreement. The Party canceling the Project must give by certified mail sixty (60) days written notice of its intention to cancel the Agreement. If canceled, all terms and conditions of this Agreement will be void, except for any conditions necessitated by a permit, which cannot reasonably be modified because it is a requirement of a regulatory permitting agency.

**SECTION ELEVEN: NO THIRD PARTY BENEFICIARIES.**

Nothing in this Agreement may be construed as creating any rights or entitlement that inure to the benefit of any person or entity not a party of this Agreement.

**SECTION TWELVE: AMENDMENTS**

This Agreement may only be amended in writing duly executed by the City and the County.

**SECTION THIRTEEN: GOVERNING LAWS AND SEVERABILITY**

This Agreement will be controlled and interpreted according to the laws, rules and regulations of the State of Florida. Any provision hereof found to be unlawful or unenforceable will be severable and will not affect the validity of the remaining provisions hereof.

(End of provisions – Signature page follows)



IN WITNESS WHEREOF, the Parties have executed this Agreement intending to be bound as of the date first written above.

ATTEST:

CITY OF BONITA SPRINGS

By: *Daba Filipiak*  
City Clerk

By: *Pat Simmonds*  
Mayor

APPROVED AS TO FORM:

By: *[Signature]*  
City Attorney

ATTEST  
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: *Joyce Townsend*  
Deputy Clerk  
*Joyce Townsend*  
[Type or print name]

By: *Brian Hamman*  
[Signature]  
*Brian Hamman*  
[Type or print name]  
Chair/Vice-Chair



APPROVED AS TO FORM FOR  
RELIANCE OF LEE COUNTY ONLY

By: *[Signature]*  
Office of the Lee County Attorney

(051520/1330)

**AGENDA ITEM REPORT**

**DATE:** August 4, 2020  
**DEPARTMENT:** Natural Resources  
**REQUESTER:** Roland Ottolini  
**TITLE:** Approve Interlocal Agreement for Bonita Beach Nourishment

---

**I. MOTION REQUESTED**

Approve and execute Interlocal Agreement with the City of Bonita Springs for Bonita Beach nourishment.

**II. ITEM SUMMARY**

Approves an interlocal agreement with the City of Bonita for maintaining Bonita Beach. The northern end of Bonita Beach is designated by the state as a critically eroded shoreline. Lee County has worked to manage the erosion since 1995 including cooperation with the City of Bonita Springs since their incorporation. Beach nourishment is anticipated to be necessary to keep a sandy beach at this location in the future and the proposed Interlocal Agreement will define the roles and responsibilities of Lee County and the City of Bonita Springs in order to implement that project.

**III. BACKGROUND AND IMPLICATIONS OF ACTION****A) Board Action and Other History**

The northern approximately 0.8 miles of Bonita Beach has been designated by the Florida Department of Environmental Protection (FDEP) as critically eroded. Prior to the initial restoration, most of the area was a seawall with no dry beach at high tide. An MSBU funded construction of two terminal groins at Big Hickory Pass and construction of a sandy beach in 1995.

Following the restoration, a County park (Little Hickory Island Beach Park, AKA Access 10) was opened allowing for public access and also qualifying for future use of tourism development taxes (TDT) and FDEP grant funding. The first nourishment, already planned prior to incorporation of the City, was completed in June 2004 using a combination of those funding sources.

In November 2010, the County and City entered into an Interlocal Agreement (11/09/10, C8b) to define roles and responsibilities for the second nourishment event, including a financial contribution from the City that was proportional to project benefits for storm protection and private recreation. The most recent nourishment was completed successfully in September 2014 using TDT, FDEP, and City funding. The project placed 134,484 cubic yards of sand along 0.8 miles of shoreline. Cost including design, permitting, construction, monitoring, and permit compliance totaled approximately \$2 million.

Subsequent to construction, monitoring indicates that the project continues to provide storm protection, environmental benefits such as sea turtle nesting, and recreational opportunities, but is eroding over time as anticipated. The next nourishment will be sequenced based on further monitoring but is expected to be late 2022 or 2023.

**B) Policy Issues**

The 2010 Agreement expires in November 2020. In anticipation of the next nourishment event, a new Interlocal Agreement is proposed by staff.

In consideration of the effective completion of the 2014 nourishment, the terms are consistent with the 2010 Agreement. The County would be the lead on project implementation and the City would support the efforts and contribute financially.

**C) BoCC Goals**

Tourism, funding source

**D) Analysis**

The County and City will cooperate to seek FDEP funding. Costs not covered by grants are proposed to be allocated with the County paying for storm protection for our beach park and recreational benefits for the general public. The City will pay for the balance of storm protection and recreational benefits in areas without public access as defined by FDEP.

The resulting cost shares, less any grant funding, are estimated to be 38.28% City and 61.72% County.

TDT funds are anticipated to be available to cover the County share. Based on prior costs and FDEP grants, projected cost estimates for the next nourishment are \$1.3M FDEP, \$1.3M TDT, \$0.8M City.

E) OptionsIV. **FINANCIAL INFORMATION**

A)	Current year dollar amount of item:	No funding required
B)	Is this item approved in the current budget?	N/A
C)	Is this a revenue or expense item?	N/A
D)	Is this Discretionary or Mandatory?	N/A
E)	Will this item impact future budgets? If yes, please include reasons in III(D) above.	Yes
F)	Fund: Capital Improvement – Tourist Development Beach Projects Program: Major Maintenance Project: Account Strings:	
G)	Fund Type?	General Fund
H)	Comments:	

V. **RECOMMENDATION**

Approve

VI. **TIMING/IMPLEMENTATION**

The City approved the Interlocal Agreement on June 17, 2020.

Upon approval of the Interlocal Agreement by the County, it is anticipated that design work would begin in 2021 to update the permits and identify the sand sources. Construction would be timed based on results of ongoing monitoring, but is anticipated to be around the end of 2022. Any design contract or construction award would be subject to future Board approval.

VII. **FOLLOW UP****ATTACHMENTS:**

Description	Upload Date	Type
<a href="#">Interlocal Agreement</a>	7/10/2020	Agreement
<a href="#">Talking Points</a>	6/22/2020	Backup Material

**REVIEWERS:**

Department	Reviewer	Action	Date
Natural Resources	Ottolini, Roland	Approved	7/24/2020 - 8:17 AM
Budget Services	Guttery, Angela	Approved	7/24/2020 - 9:42 AM
Budget Services	Winton, Peter	Approved	7/24/2020 - 9:51 AM
County Attorney	Fredyma, John J.	Approved	7/24/2020 - 10:17 AM
County Manager	Harner, David	Approved	7/27/2020 - 8:44 AM