

INTERLOCAL AGREEMENT

Between

BROWARD COUNTY

and

CITY OF FORT LAUDERDALE

relating to the

BROWARD COUNTY, SEGMENT II,
SHORE PROTECTION PROJECT

This is an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, hereinafter referred to as "COUNTY,"

AND

CITY OF FORT LAUDERDALE, a municipal corporation existing under the laws of the State of Florida, hereinafter referred to as "CITY."

WHEREAS, this Agreement is entered into pursuant to Chapter 163.01, Florida Statutes, also known as the "Florida Interlocal Cooperation Act of 1969"; and

WHEREAS, since the inception of the Beach Management Program in the late 1960s, COUNTY has acted as the local sponsor for the U.S. Army Corps of Engineers ("Corps") Shore Protection Program through Interlocal Agreement; and

WHEREAS, the United States, the State of Florida, COUNTY, and CITY intend to engage in a cooperative effort to restore and replenish the beach within the CITY's portion of Segment II of the Shore Protection Project, hereinafter called PROJECT, as more particularly described in Exhibit "A," attached hereto and incorporated herein with the CITY's portion of Segment II of the PROJECT being described in Exhibit "B" attached hereto and incorporated herein; and

WHEREAS, the State of Florida has committed Ten Million Four Hundred Thirty-three Thousand and 00/100 Dollars (\$10,433,000.00) ("STATE Contribution"), and COUNTY has committed Ten Million One Hundred Thousand and 00/100 Dollars (\$10,100,000.00) ("COUNTY Contribution") to the PROJECT to defray PROJECT costs; and

WHEREAS, COUNTY has sought reimbursement from the Corps pursuant to a Project Partnership Agreement, along with additional State funding, to defray PROJECT costs ("FEDERAL Contribution"); and

WHEREAS, COUNTY has agreed to fund sixty-seven percent (67%), and the Cities of Fort Lauderdale, Pompano Beach and the Town of Lauderdale-by-the-Sea (the "Cities") have collectively agreed to fund thirty-three percent (33%) of the PROJECT costs as reduced by STATE contribution and FEDERAL contribution ("Local PROJECT Costs"); and

WHEREAS, it is anticipated that COUNTY will enter into an agreement with an engineering consultant to develop the plans and specifications, and to provide necessary engineering consulting services for the PROJECT ("CONSULTANT"); and

WHEREAS, it is anticipated that COUNTY will solicit a contractor capable of completing the required work in accordance with the PROJECT plans and specifications that include truck hauling of fill material, versus offshore dredging projects ("CONTRACTOR"); and

WHEREAS, CITY and COUNTY have entered into a Temporary Access Agreement for the PROJECT, Segment II, that provides temporary access on, over, across, and through CITY property for the purpose of facilitating the design, construction, installation, inspection, and maintenance of the PROJECT; and

WHEREAS, the parties are desirous of entering into a reimbursement agreement for the PROJECT whereby each of the Cities will collectively reimburse COUNTY for thirty-three percent (33%) of the Local PROJECT Costs (the "CITIES' Contribution"), NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, COUNTY and CITY agree as follows:

ARTICLE 1

SCOPE OF SERVICES

- 1.1 COUNTY shall cause the PROJECT to be completed in accordance with permit conditions, construction contract documents, plans, and specifications for the PROJECT. CITY and COUNTY agree that COUNTY's performance under this 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 agrees that all monies contributed by CITY pursuant to this Agreement shall be expended exclusively for the CITY's portion of Segment II of the

PROJECT, and in accordance with permit conditions, construction contract documents, plans, and specifications for the PROJECT.

- 1.3 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 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 CITY's apportioned share of the cost of the CITY's portion of Segment II of the PROJECT, as set forth in Section 3.1. CITY shall be responsible in its apportioned share of the CITY's portion of Segment II of the PROJECT, as set forth in Section 3.1, 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 CITY's portion of Segment II of the PROJECT.
- 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 floodplain management plan within one (1) year after the effective date of this Agreement and shall implement such plan not later than one (1) year after completion of construction of the PROJECT. The plan shall be designed to reduce the impacts of future flood events in the CITY's portion of Segment II of 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. CITY shall provide an informational copy of the plan to COUNTY upon its preparation.
- 1.7 Through the duration of this Interlocal Agreement, CITY shall prevent obstructions or encroachments on the CITY's portion of Segment II of the PROJECT (including prescribing and enforcing regulations to prevent such obstructions or encroachments) such as any new developments on the CITY's portion of Segment II of the PROJECT lands, easements, and rights-of-way or the addition of facilities which 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, CITY shall have no duties, obligations, or responsibilities of any nature with respect to the construction of the PROJECT.

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. Notwithstanding the termination of this Agreement, COUNTY shall reimburse CITY for any State or federal funding for the PROJECT received after the termination date, consistent with Section 3.1, up to the Cost Share Participation amount set forth in 3.1. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and availability of funds in Chapter 129, Florida Statutes.
- 2.2 All duties, obligations, and responsibilities of parties required by this Agreement shall be completed no later than December 31, 2021. Time shall be deemed to be of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

ARTICLE 3

BILLING AND PAYMENT

- 3.1 Final PROJECT costs shall include costs of design, permitting, engineering, construction, and annual monitoring costs for five (5) years of post-construction monitoring. Each City's proportionate share of the CITIES' Contribution to the Final PROJECT Costs shall be determined based on a City's proportionate share of the volume of sand placed on each of the beaches lying within the Cities of Fort Lauderdale and Pompano Beach and the Town of Lauderdale-by-the-Sea, respectively ("proportionate share"). 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 Dollars (\$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 Cities of Fort Lauderdale and Pompano Beach 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:

$$[(.10 \times \text{PROJECT Costs}) - (.33 \times \text{COUNTY Contribution})] \times \text{CITY's Proportionate Share} = \text{Cost Share Participation.}$$

As beach renourishment projects are anticipated to be an ongoing and recurring expense, Cities shall participate by providing ten percent (10%) of PROJECT Costs. 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.

- 3.2 Any excessive costs resulting from onerous or impractical conditions placed on the PROJECT by CITY, will be the financial responsibility of CITY, and shall be reimbursed promptly by the CITY following written notice of excessive cost by COUNTY. Excessive costs will be mutually determined by COUNTY and CITY after reviewing the change of PROJECT construction at the direction of CITY. CITY would not bear financial responsibility necessitated by force majeure conditions or conditions beyond the control of CITY.
- 3.3 As a result of damage to the beach within CITY's boundaries caused by Hurricane Sandy, the parties have incurred additional costs for the A1A Emergency Beach Repairs. The total cost of the A1A Emergency Beach Repairs was One Million Two Hundred Forty Thousand Three Hundred Twenty Two and 79/100 Dollars (\$1,240,322.79) ("A1A Costs"). COUNTY agrees to fund sixty-seven percent (67%) of the A1A Costs, or Eight Hundred Thirty-one Thousand Sixteen and 27/100 Dollars (\$831,016.27), and CITY agrees to fund thirty-three percent (33%) of the A1A Costs, or Four Hundred Nine Thousand Three Hundred Six and 52/100 Dollars (\$409,306.52). CITY previously paid Two Hundred Five Thousand Eight Hundred Seventeen and 00/100 Dollars (\$205,817.00) of the A1A Costs for design work and COUNTY paid the balance of the A1A Costs of One Million Thirty Four Thousand Five Hundred Five and 79/100 Dollars (\$1,034,505.79) for sand delivery, grading, tiling, monitoring and testing. CITY shall reimburse COUNTY for the balance of its share of the A1A Costs which are estimated at Two Hundred Three Thousand Four Hundred Eighty Nine and 52/100 Dollars (\$203,489.52). The above referenced costs are unaudited and parties shall reconcile to their mutual satisfaction with payment on or before October 15, 2016.

3.4 METHOD OF BILLING AND PAYMENT

3.4.1 CITY Reimbursement payments shall be made in three (3) equal yearly payments. Commencing on October 15, 2016, and each October 15th for two (2) years thereafter, COUNTY shall submit an original invoice plus one (1) copy to CITY for payment in accordance with Section 3.1 above.

3.4.2 No later than November 15, 2016, and no later than each November 15th for two (2) years thereafter, CITY shall submit payment in accordance with Section 3.1 above.

3.5 Payment will be made to COUNTY at:

Broward County Environmental Protection and Growth Management Department
Environmental Planning and Community Resilience Division
Attn: Nicole S. Sharp, P.E., Natural Resources Administrator
115 South Andrews Avenue, Room 329H
Fort Lauderdale, Florida 33301

ARTICLE 4

GOVERNMENT IMMUNITY

Nothing herein is intended to serve as a waiver of sovereign immunity by any party except as provided herein, nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. COUNTY and CITY are political subdivisions as defined in Chapter 768.28, Florida Statutes, and shall be fully responsible for the negligent or wrongful acts and omissions of any of their employees while acting within the scope of the employee's office or employment within the limitations of liability set forth in Section 768.28, Florida Statutes (2015).

ARTICLE 5

INSURANCE

5.1 COUNTY and CITY are entities subject to Section 768.28, Florida Statutes (2015), and COUNTY and CITY shall furnish the Risk Manager for CITY and COUNTY, respectively, with written verification of liability protection in accordance with state law prior to final execution of this Agreement.

5.2 Prior to COUNTY, CONTRACTOR, or CONSULTANT commencing any PROJECT work on the beach within the CITY's portion of Segment II of the PROJECT, COUNTY shall require such CONTRACTOR or CONSULTANT to provide general liability and casualty insurance coverage in accordance with

COUNTY's standards, naming COUNTY and CITY as additional insureds against any claims arising from the performance of work within CITY under this Agreement.

ARTICLE 6

TERMINATION

Prior to the time that COUNTY notifies CITY that the PROJECT will be commencing on the beach within the CITY's portion of Segment II of the PROJECT, this Agreement may be terminated by either party upon ninety (90) days' written notice to the other party of such termination pursuant to Section 7.4, NOTICES. However, prior to termination by CITY, all expenses reasonably incurred by the CONSULTANT or CONTRACTOR shall be reimbursed by CITY in proportion to its proportionate share of the volume of sand to be placed on CITY's portion of Segment II of the PROJECT, as described in Section 3.1 of this Agreement. After COUNTY has provided notice to CITY of commencement of or has commenced the PROJECT on the beach within CITY's portion of Segment II of the PROJECT, CITY shall not be entitled to terminate this Agreement. Notwithstanding the termination of this Agreement, COUNTY shall reimburse CITY for any State or federal funding for the PROJECT received after the termination date, consistent with Section 3.1. COUNTY may terminate this Agreement at any time for cause for reasons including, but not limited to, CITY's violation of Sections 1.5, 1.6, and 1.7. The obligations of Sections 1.5, 1.6, and 1.7 shall survive the expiration or earlier termination of this Agreement for a period not in excess of five (5) years after expiration or earlier termination of this Agreement.

ARTICLE 7

MISCELLANEOUS

7.1 DONATION OF BEACH COMPATIBLE SAND FROM THE FAIRWINDS PROJECT

A new development project known as "Fairwinds" (f/k/a Ireland's Inn, 2200 North Atlantic Boulevard) has been approved by CITY and is anticipated to commence construction within the term of this Agreement. Fairwinds is a 4.55 acre beachfront mixed-use, twenty-two (22) story project consisting of one hundred seventy-one (171) residential units and health spa with five hundred eighty-eight (588) subterranean garage spaces.

The Developers of Fairwinds Project anticipate excavating 3,000 – 4,000 cubic yards of sand that is thought to be compatible with the beach sand to be used in the PROJECT. Said compatibility will be determined by the Florida Department of Environmental Protection. If compatible, the Developers of Fairwinds Project have offered to donate the beach compatible sand to CITY to be used in CITY's portion of the PROJECT on the condition that CITY receive credit from COUNTY

as to the value of the sand so donated to CITY's portion of the PROJECT. To that end, the parties agree to negotiate in good faith an agreement regarding the mechanisms or formula by which such a donation of beach compatible sand can be accepted for placement on CITY's portion of the PROJECT and the corresponding receipt of appropriate credits from COUNTY to CITY for the value of the sand so donated.

7.2 RESTORATION

If property damage is suffered within that portion of the beach within CITY in the performance of any work in connection with the PROJECT, COUNTY shall ensure that CONTRACTOR, promptly and with due diligence, repairs, replaces or restores the damaged property to the condition that existed prior to the damage being suffered prior to the commencement of work under the PROJECT.

7.3 THIRD PARTY BENEFICIARIES

Neither CITY nor COUNTY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

7.4 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR BROWARD COUNTY:

County Administrator
115 South Andrews Avenue, Suite 409
Fort Lauderdale, Florida 33301

FOR CITY:

City Manager

7.14 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits "A" and "B" are incorporated into and made a part of this Agreement.

7.15 REPRESENTATION OF AUTHORITY

The individuals executing this Agreement on behalf of any entity do hereby represent and warrant that they are, on the date of this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of their principal.

7.16 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.


7.17 EFFECTIVE DATE

Pursuant to Subsection 163.01(11), Florida Statutes, this Interlocal Agreement shall be effective upon filing of the fully executed Interlocal Agreement with the Clerk of the County for BROWARD COUNTY.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 10th day of November, 2015, and CITY, signing by and through its Mayor, duly authorized to execute same.

COUNTY

ATTEST:


Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

BROWARD COUNTY, by and through
its Board of County Commissioners

By 
Mayor
20 day of April, 2016

Insurance requirements
approved by Broward County
Risk Management Division

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

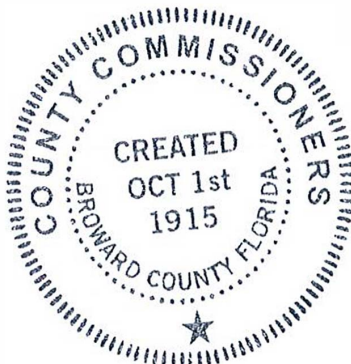
By  4/13/16
Risk Management Division (Date)

Jacqueline A. Binns
Risk Insurance and
Contracts Manager

By  4/13/16
Daphne E. Jones (Date)
Assistant County Attorney

By  4/13/16
Maite Azcoitia (Date)
Deputy County Attorney

DEJ/gmb
BC-Shore project
09/02/15
15-058



INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF FORT
LAUDERDALE RELATING TO THE BROWARD COUNTY, SEGMENT II, SHORE
PROTECTION PROJECT.

Attest:



City Clerk



By Mayor-Commissioner

1st day of March, 20 16



By City Manager

29th day of February, 20 16

APPROVED AS TO FORM:



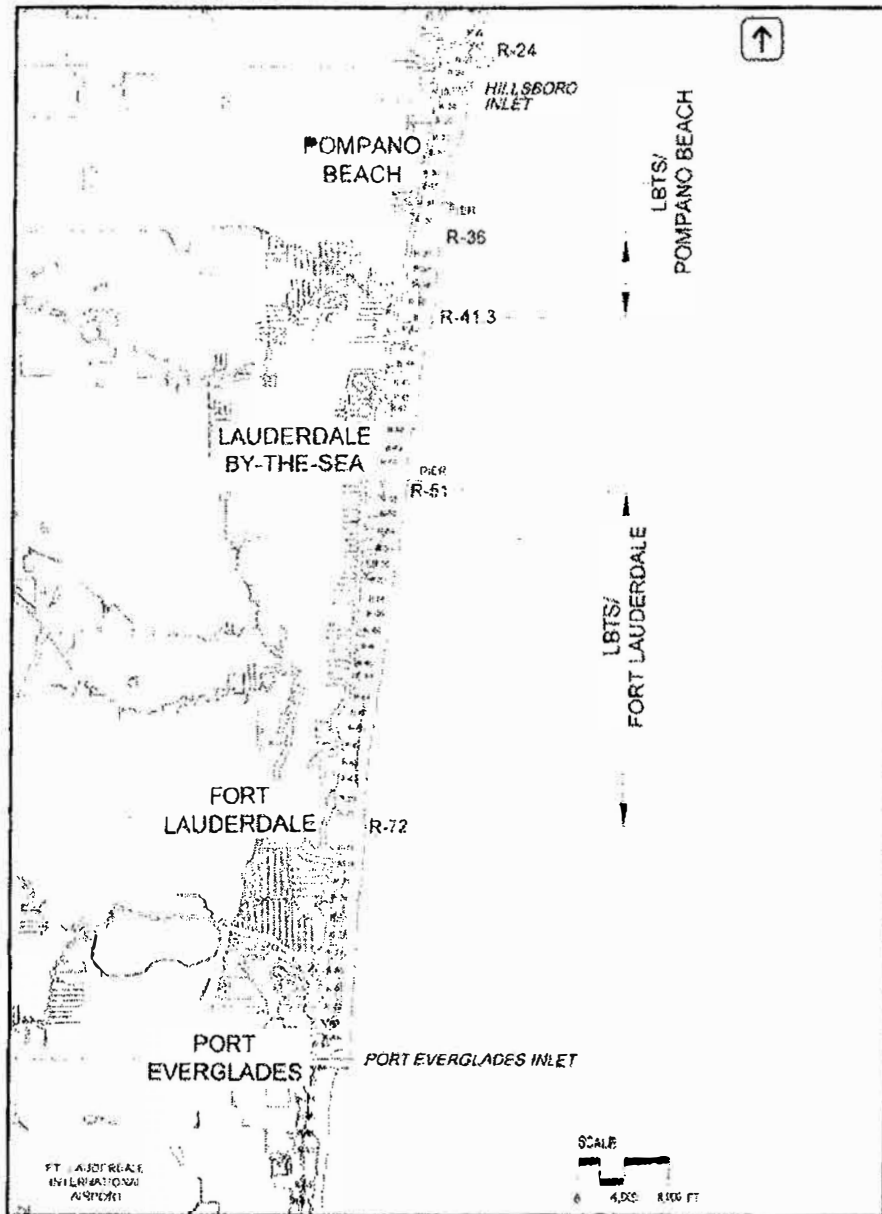
By Assistant City Attorney

EXHIBIT "A"
Broward County Segment II Shore Protection Project

Project Description: The project consists of the nourishment of approximately 4.94 miles of critically eroding shoreline within Segment II (Hillsboro Inlet to Port Everglades). About 750,000 cubic yards of compatible sand will be placed on the subject beaches, which will include portions of south Pompano Beach, north and south Lauderdale-By-The Sea, and north and central Fort Lauderdale. Sand for the project will be obtained from upland sand mines and delivered to the project area by truck. The attached drawings illustrate the current project design. The attached design is subject to change in accordance with state or federal permit conditions, which are presently in negotiation.

Segment II Project Location: Previously constructed areas, for which an Erosion Control Line is established and recorded, lie between R25 and R53. For the proposed project, beach fill will be placed between DEP monuments R36 and R41.3 (SE 4th Street in Pompano Beach, to Ocean Colony Condominium in Lauderdale-By-The-Sea), and between monuments R51 and R72 (-300 feet south of Anglin's Pier in Lauderdale-By-The Sea, to Terramar Street in Fort Lauderdale), the Eastern boundary of which is Mean High Water Line (MHWL") or Erosion Control Line ("ECL"), where one exists or will be established during the term of this Agreement; the Westward boundary of which is State Road A-1A, any bulkhead, seawall, revetment, privacy wall or fence that exists on the property.

EXHIBIT A LOCATION MAP



BROWARD COUNTY
SHORE PROTECTION PROJECT
SEGMENT II
LOCATION MAP

EXHIBIT A

EXHIBIT "B"

CITY'S PORTION OF SEGMENT II OF THE PROJECT

That area of the beach that is landward of the Mean High Water Line ("MHWL") or Erosion Control Line ("ECL"), where one exists or will be established during the term of this Agreement and seaward of State Road A-1-A, any bulkhead, seawall, revetment, privacy wall, fence and bounded on the North by State of Florida Department of Environmental Protection ("DEP") Reference Monument R-51 (approximately 300 feet South of Anglin's Pier in Lauderdale-by-the-Sea) and bounded on the South by DEP Reference Monument R-72 at Terramar Street in the CITY.