

MEMORANDUM

Agenda Item No. 8(L)(1)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

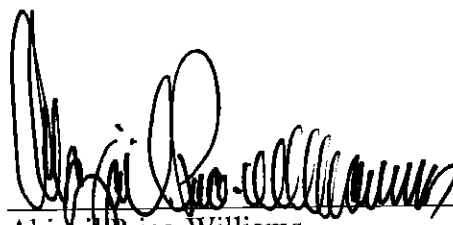
DATE: January 22, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution authorizing the
County Mayor to develop,
negotiate, accept, and execute
agreements and other related
documents with development
interests for placement of
appropriate beach sand in favor
of Miami-Dade County under the
authority of permits held by
Miami-Dade County; and
directing the County Mayor to
make periodic reports to this
Board on such Beach
Renourishment Agreements

Resolution No. R-46-20

The accompanying resolution was prepared by the Regulatory and Economic Resources Department and placed on the agenda at the request of Prime Sponsor Infrastructure and Capital Improvements Committee.



Abigail Price-Williams
County Attorney

APW/lmp

Memorandum



Date: January 22, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
County Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over a horizontal line.

Subject: Resolution Authorizing the County Mayor or County Mayor's Designee to Develop, Negotiate, Accept, and Execute Agreements for Placement of Beach Sand in Favor of Miami-Dade County

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached resolution authorizing the County Mayor or County Mayor's designee to develop, negotiate, accept, and execute agreements and other related documents with development interests for the placement of beach sand in favor of Miami-Dade County, and to direct the County Mayor or County Mayor's designee to prepare and present periodic reports to the Board on any executed Beach Renourishment Agreements and place the reports on an agenda of the Board. The Beach Renourishment Agreement form is attached as Exhibit 1 to the resolution.

Scope

Work authorized by this resolution may occur in all districts having recreational beaches, including District 4, represented by Commissioner Sally A. Heyman; District 5, represented by Commissioner Eileen Higgins; and District 7, represented by Commissioner Xavier L. Suarez.

Fiscal Impact/Funding Source

Under the proposed Beach Renourishment Agreements, the County will receive a net positive beneficial fiscal impact by receiving free beach sand funded by private developers. The County's costs will be limited to the staff time required to prepare the Beach Renourishment Agreements and monitor the work.

Track Record/Monitor

The Assistant Director for the Division of Environmental Resources Management in the Department of Regulatory and Economic Resources (RER-DERM), Lee Hefty, will monitor the proposed Beach Renourishment Agreements.

Background

Chapter 62B-33 of the Florida Administrative Code (FAC) requires that sandy material excavated during development, or redevelopment, of the coastal beach and dune system must be maintained onsite unless otherwise authorized by permits issued by the Florida Department of Environmental Protection (FDEP), Miami-Dade County, and the U.S. Army Corps of Engineers. Miami-Dade County holds such permits that allow the County to grant temporary access to outside interests to place compatible sand on the permitted beach areas in accordance with all applicable permits and plans. Developers request such access to permits held by Miami-Dade County in order to comply with the FAC requirements by placing a comparable volume of beach-quality sand from approved and appropriately permitted sand sources.

Maintaining the County's beaches is critical to protecting our residents, development, infrastructure, tourism economy and natural habitat from storm surge and related storm damage. Allowing developers to place compatible sands on our beaches, at little to no cost to the County, benefits both the County and development interests. The proposed resolution would allow the County to execute Beach Renourishment Agreements that provide the County with legal recourse if the sand placement is not conducted in accordance with the approved plans, the applicable permits held by Miami-Dade County, or the terms of the Beach Renourishment Agreement.

All Beach Renourishment Agreements will be reviewed by the County Attorney's Office prior to execution. The County will not be required or compelled to execute such Agreements if the terms or conditions are not favorable to the County.



Jack Osterholt
Deputy Mayor



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: January 22, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(L)(1)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☒ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor Agenda Item No. 8(L)(1)
Veto _____ 1-22-20
Override _____

RESOLUTION NO. R-46-20

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO DEVELOP, NEGOTIATE, ACCEPT, AND EXECUTE AGREEMENTS AND OTHER RELATED DOCUMENTS WITH DEVELOPMENT INTERESTS FOR PLACEMENT OF APPROPRIATE BEACH SAND IN FAVOR OF MIAMI-DADE COUNTY UNDER THE AUTHORITY OF PERMITS HELD BY MIAMI-DADE COUNTY; AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO MAKE PERIODIC REPORTS TO THIS BOARD ON SUCH BEACH RENOURISHMENT AGREEMENTS

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

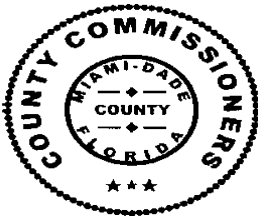
Section 1. This Board hereby authorizes the County Mayor or County Mayor's designee to develop, negotiate, accept, and execute agreements with development interests for placement of appropriately permitted and approved sand, in favor of Miami-Dade County, and other related documents and agreements in order to authorize and facilitate such Beach Renourishment Agreements, in substantially the form attached hereto as Exhibit 1, to the extent that the County, as the holder of the required permits issued by the Florida Department of Environmental Protection, the United States Army Corps of Engineers, Miami-Dade County, and any other applicable agency, has the ability and the authority to authorize such uses, upon review and final approval of such Beach Renourishment Agreements by the County Attorney's Office for legal sufficiency.

Section 2. This Board hereby directs the County Mayor or County Mayor's designee to prepare and present periodic reports on any executed Beach Renourishment Agreements and place the completed reports on an agenda of the Board pursuant to Ordinance No. 14-65.

The foregoing resolution was offered by Commissioner **Rebeca Sosa**, who moved its adoption. The motion was seconded by Commissioner **Esteban L. Bovo, Jr.** and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman			
Rebeca Sosa, Vice Chairwoman			
Esteban L. Bovo, Jr.	aye	Daniella Levine Cava	aye
Jose "Pepe" Diaz	aye	Sally A. Heyman	absent
Eileen Higgins	aye	Barbara J. Jordan	aye
Joe A. Martinez	aye	Jean Monestime	aye
Dennis C. Moss	aye	Sen. Javier D. Souto	aye
Xavier L. Suarez	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 22nd day of January, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

Linda L. Cave

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Hugo Benitez

Hb

6

EXHIBIT 1

BEACH RENOURISHMENT AGREEMENT BETWEEN XXXXXX AND MIAMI-DADE COUNTY

THIS BEACH RENOURISHMENT AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 20____, by and between the _____ (hereinafter referred to as the "Owner") and Miami-Dade County, a political Subdivision of the State of Florida (hereinafter referred to as the "County").

WHEREAS, the County is the Primary Local Sponsor for all beach nourishment activities in Miami-Dade County; and

WHEREAS, the County is permitted to conduct certain beach nourishment activities pursuant to: Miami-Dade County Class I Coastal Construction Permit No. _____; the Florida Department of Environmental Protection (FDEP) Joint Coastal Permit (JCP) No. _____; and the United States Army Corps of Engineers (the "Corps") Jacksonville (SAJ) Permit No. _____, as they may be amended from time to time (collectively, the "County Permits").

WHEREAS, the Owner is redeveloping the upland project known as _____, located at _____; and

WHEREAS, the Owner proposes to place approximately _____ cubic yards of beach sand sourced from an approved sand source as per the applicable local, state, and federal permits, and is requesting the County's authorization to perform this work under said County Permits, to place this sand between FDEP monuments _____ and _____ in _____, Florida; and

WHEREAS, the Owner needs the County's authorization to work under the County's Permits for placing the beach sand; and

WHEREAS, the Owner has presented a project plan for the proposed work, and the County has approved such project plan, which consists, at a minimum, of an Environmental Protection Plan (EPP) incorporated in Exhibit A; a set of Construction Plans signed and sealed by a Florida Licensed Professional Engineer incorporated in Exhibit B; a copy of all the latest applicable local, state and federal permits and permitting modifications for the execution of the work, incorporated in Exhibits C, D, and E, respectively; as well as any other supplementary attached exhibits deemed necessary by the County, which collectively include all the pertinent and necessary information for execution and authorization to implement the proposed work.

WHEREAS, the EPP shall, at a minimum, present pertinent information on the following:

- A listing of all required project deliverables;
- Proposed project timeline(s) and implementation schedule(s);
- Proposed timelines for all deliverables required by the County to meet all the requirements of applicable County Permits;
- Truck haul schedule(s), delivery routes and staging, operating hours and traffic control plan(s);
- Sand material source(s) and type(s), specific sand placement location(s), and placement methods;
- Dune and beach vegetation protection strategies, best management practices and methods;
- Environmental monitoring and safeguards to protect marine or beach fauna from impacts and prevent ecosystem degradation during the construction process, including but not limited to, all required coordination with the County Parks and Recreation for turtle monitoring ahead of and during the work;
- Name of licensed firm to conduct post construction compaction testing, completion of testing report, and plan and method to be used for tilling the placement area if required based on compaction test results to meet the approved Sediment Quality Assurance/Quality Control Plan;

BEACH RENOURISHMENT AGREEMENT

- Any other project-specific issues deemed important by the local, state and federal permitting agencies;
- Local applicable right-of-way permits to conduct the project; and
- Any applicable agreements to use private or government properties for access and/or staging related to the project and release by private or governmental entity at the end of the project.

WHEREAS, the Owner shall submit the following documents to be reviewed and accepted by the local, state and federal agencies for full compliance with this Agreement:

- Pre- and post-construction shoreline surveys, as well as any required compaction tests and associated engineering reports;
- Post-Construction Physical Monitoring Report in accordance with applicable permits;
- Post-construction Biological Opinion Report in accordance with applicable permits; and
- Reports on tilling and results, if applicable.

WHEREAS, the project plan is acceptable to the County, the County desires additional sand on its beaches, and the County wishes to allow the Owner to work under the County's Permits to place sand pursuant to the Plan,

NOW THEREFORE, in consideration of these premises and mutual covenants contained herein, the parties hereby agree as follows:

The foregoing recitals are hereby incorporated into this Agreement and made a part hereof.

1. The Owner shall comply with all the Agreement provisions as per the approved project plan attached as Exhibits A, B, and any supplementary attached exhibits deemed necessary by the County, as well as the most current applicable version of the County Permits in effect at the time that the work is conducted.
2. The Owner shall adhere to and uphold all conditions of all applicable County Permits, including, but not limited to, the requirements for the placement of sand material within the approved locations, placement of sand material that is free of contaminants, debris and solid waste, and placement of beach quality sand sourced from appropriately permitted sand sources and approved by the County prior to any sand placement.
3. It is the Owner's responsibility to review and comply with all relevant County Permit conditions and deadlines.
4. The Owner shall submit all deliverables required by the project plan to the County with adequate time for the County to review and approve prior to the deadlines or timelines by which the County must submit such deliverables to the respective agencies, as set forth in the respective County Permits, pursuant to the schedule as approved in the project plan. The County, as the permittee, will submit said materials, after review and approval, to the appropriate permitting agency, unless the County makes a request in writing to the Owner. Nothing in this Agreement shall empower the Owner to act as an agent of the County, nor is the Owner authorized to seek modification of any of the County's permits, or otherwise bind the County in any way.
5. The Owner shall expeditiously implement, and shall be solely responsible for implementing, the project plan, and the Owner shall implement the project plan in accordance with all County Permits. The Owner shall be responsible for all aspects of the project plan (contracting, planning, engineering specs, obtaining municipality approval/permits as necessary, purchasing sand, truck hauling/transporting sand, certification of lands for obtaining staging/access, providing for pedestrian safety, spreading sand to permitted grade, pre- and post-construction surveying, environmental monitoring, etc.), with the

BEACH RENOURISHMENT AGREEMENT

exception of the submission of documents and notices to the respective permitting agencies for the County Permits. All such submittals and notices to the permitting agencies of the County Permits shall be made by the County, unless otherwise requested by the County to the Owner. In addition, the Owner shall prepare all plans and specifications that are required for Permit modifications, as determined by the County.

6. The Owner shall reimburse the County for any costs incurred by the County associated with modifying a County Permit for the project plan.
7. If the Owner does not uphold any and all of the applicable County Permit conditions, or does not submit any and all of the County Permit-required deliverables as approved in the project plan and required by the County, by the deadlines provided in this Agreement, the County may require the Owner to take all necessary corrective actions, at the discretion of the DERM Director or its designee. Such corrective actions may include, but are not limited, to, the removal of all or part of the deposited beach sand and replacement with a different and approved source of sand, providing for additional documentation as required by the respective permitting agencies of the County Permits, and reimbursing the County for all of the County staff time used in preparing and implementing any and all corrective actions needed. Any and all corrective actions shall be at the Owner's sole cost and expense, including the payment of all associated penalties.

Additionally, should the federal, state, and local permitting agencies require the County to take corrective actions or pay penalties related to actions or inaction by the Owner, the Owner shall immediately engage in discussions with the agency requesting these corrective actions and shall keep the County fully apprised of these discussions and shall consult with the County and obtain County approval prior to performing any subsequent corrective work under County permits. The Owner shall conduct any and all final ordered corrective actions and pay any and all associated required penalties.

8. The Owner shall keep records which shall include, but not be limited to, project documents, contracts, deliverables, and correspondence. All such records will be retained by the Owner for not less than five (5) years beyond the end date of this Agreement. This Agreement, with any appendices and attachments, is a public record and is subject to public inspection under Chapter 286, Florida Statutes, popularly known as the "Government in the Sunshine Law". When the Owner advises the County in writing of the sensitive nature of information claimed to be proprietary, to the extent that Chapter 286, Florida Statutes, allows proprietary information to be withheld from public inspection, the County shall respect the sensitive nature of such proprietary information and not reveal such information only to the extent allowed by law.
9. The Owner shall provide the County with access to all of its records related to this Agreement and shall provide such assistance as may be necessary to facilitate the review of such records by the County. Additionally, all contracts between the Owner and third parties for work or materials related to the activities contemplated by this Agreement shall be provided to the County and the County shall have the right to audit records associated with these contracts. The County shall have the right to access all records for not less than five (5) years beyond the end of this Agreement. The Owner shall make all records or documents which relate to this Agreement available to the County electronically, if so available.
10. Before commencing any construction work authorized under this Agreement, the Owner shall execute, record in the public records of the County and deliver to the County, a payment and performance bond, in satisfaction of the requirements of Section 255.05 of the Florida Statutes and in satisfaction of the County, in the full amount of the proposed work for such project. The requirement that the Owner shall provide this payment and performance bond is in addition to all other requirements of this Agreement, and shall not be construed as a limitation on the extent of Owner's responsibility or liability pursuant to the indemnification provisions of this Agreement. The County will provide standard payment and

9

BEACH RENOURISHMENT AGREEMENT

performance bond forms as needed.

11. The Owner shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, cases of actions or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this Agreement by the Owner or its employees, agents, servants, partners, principals or subcontractors. The Owner shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments and attorney's fees which may issue thereon. Provided, however, this indemnification shall only be to the extent and within the limitations of Section 768.28 Fla. Stat., subject to the provisions of that Statute whereby the Owner shall not be held liable to pay a personal injury or property damage claim or judgment or portions thereof, which, when totaled with all other claims or judgment by any one person which exceeds the sum of \$200,000.00, or any claim or judgment by any one person which, when totaled with all other claims or judgment paid by the Owner arising out of the same incident or occurrence, exceed the sum of \$300,000.00 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of the Owner.
12. The Owner agrees to indemnify the County from all liens, claim of liens, charges or encumbrances whatsoever, associated with any third party or private agreements, authorizing temporary construction or access, or grant of easements, which may be required for the successful completion of this work. If any such third party agreements are required, the Owner shall disclose them and, as appropriate, identify these locations on the Construction Plans and will provide copies of said third party agreements to the County so that they can be incorporated as exhibits into the Agreement. At the conclusion of this work Owner shall provide Letters of Release to the County, confirming that no liens exist and that that any encumbrances associated with any third party or private agreements have been fully discharged and satisfied.
13. The term "Owner" shall include the Owner and its agents and employees.
14. Nothing in this Agreement relieves the Owner from the need to obtain any other local, state or federal permits or approvals, as may be required.
15. In the event of a breach of any of the provisions of this Agreement by the Owner, the County may pursue correction pursuant to paragraph 7 above, and/or terminate this Agreement, and/or seek to enforce any of its provisions. The following provisions shall survive the termination of this Agreement: All obligations for deliverables pursuant to the County Permits as required by the project plan.
16. The County's Department of Regulatory and Economic Resources, Division of Environmental Resources Management (hereinafter referred to as "DERM") may conduct periodic site inspections of the work to ensure compliance with all the conditions of the project plan, and Owner shall ensure that the County has access to conduct any such site inspections.
17. This Agreement shall be for a term of three (3) years, beginning on the date of execution by all parties. This Agreement may be extended by amendment upon mutual written agreement of both parties. The project plan may be modified/amended, as reviewed and approved by the County in writing.
18. No payment from the County or other consideration from the County is required as part of this Agreement. The sole consideration provided by the County to Owner for Owner's placement of sand and the work contemplated by this Agreement is the ability of Owner to work under the County Permits as described herein. This is agreed to be valuable consideration to the Owner.

BEACH RENOURISHMENT AGREEMENT

19. All notices required or permitted to be given under the terms and provisions of this Agreement by either party to the other shall be in writing and shall be sent by registered or certified mail, return receipt required, to the parties as follows:

As to the County:

Lee Hefty, Assistant Director
Department of Regulatory and
Economic Resources, DERM
701 N.W. 1 Court, Suite 400
Miami, Florida 33136

As to the Owner:

(Contact name/title)
(Company name)
(Address)
(Address)
(Contact phone #)

or to such other address as may hereafter be provided by the parties in writing. Notices by registered or certified mail shall be deemed received on the delivery date indicated by the U.S. Postal Service on the return receipt.

20. This Agreement shall be governed and construed in accordance with the laws of the State of Florida. Any litigation hereunder shall be brought in the Circuit Court of the Eleventh Judicial Circuit of Miami-Dade County, Florida.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representative(s) on the latest day and year noted below.

[corporate name of "Owner"]

By: _____
Signature of President or as authorized Date

(corporate seal here)

By: _____
Print Name Print Title

MIAMI-DADE COUNTY

By: _____
Mayor or Mayor's Designee Date

Attest:

By: _____
Deputy Clerk