6. **PRESENTATION(S)**

a. Presentation and request Council to direct staff to prepare plans and cost estimates for permitting, work scope and funding to restore water flow in the canals and waterways impacted by the box culvert under Sanibel Captiva Road connecting Dinkins and Clam Bayous (Harvey Padewer, President Pine Tree Drive Association)

ii. 2004 Interlocal Agreement between the Captiva Erosion Prevention District, Lee County and the City of Sanibel

INTERLOCAL AGREEMENT BETWEEN THE CAPTIVA EROSION PREVENTION DISTRICT, LEE COUNTY, AND THE CITY OF SANIBEL

THIS AGREEMENT is made and entered into this 22nd day of June, 2004, by and between the CAPTIVA EROSION PREVENTION DISTRICT, a political subdivision of the State of Florida, hereinafter referred to as the "District", LEE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "County", and the CITY OF SANIBEL, a Florida municipal corporation, hereinafter referred to as "City".

WITNESSETH:

WHEREAS, Part 1 of Chapter 163, Florida Statutes, permits public agencies as defined therein to enter into interlocal agreements with each other to jointly exercise any power, privilege, or authority that such agencies share in common and that each might exercise separately; and

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

WHEREAS, the District is a beach and shore preservation district created under Section 161.32, Florida Statutes, with authority to develop and execute plans for beach and shore preservation; and

WHEREAS, the City has a beach management plan, the home rule authority and ability to implement and cooperate on projects to preserve or enhance the coastal zone; and

WHEREAS, an interlocal agreement between the aforementioned parties dated April 18, 2000, (the "2000 Interlocal Agreement") provides for a method for allocation of future costs and responsibilities associated with the Blind Pass Project; and

WHEREAS, the District, County and City have worked together cooperatively in developing an Inlet Management Plan, including the placement of mitigative sand south of the groin at Blind Pass, and have cooperated to complete the Blind Pass Ecozone Feasibility Study (the "Feasibility Study"); and

WHEREAS, the aforementioned parties desire to cooperate in the permitting, financing and construction of the Blind Pass Ecozone Restoration Project, hereinafter referred to as "Project"; and

WHEREAS, it is in the interest of the public health, safety and welfare to cooperate in the planning, permitting, and implementation of the Project with the

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understanding that successful construction of the Project will be cost-shared by all benefiting parties;

Now, therefore, in consideration of the foregoing and the mutual covenants contained herein, the District, County and City agree as follows:

1. Purpose of Agreement. The purpose of this agreement is to acknowledge joint support for and to define a method for allocation of future costs and responsibilities associated with the Blind Pass Ecozone Restoration Project.

2. Blind Pass Ecozone Restoration Project. The Project consists of the following interrelated elements.

    a. Establishing a hydraulic connection between Clam Bayou and Dinkins Bayou under Sanibel Captiva Road, with the intent of restoring tidal flushing to over 100 acres of mangroves that have been negatively impacted by the impoundment of Clam Bayou. This element shall be known as the Flushing Channel.

    b. Excavation of sand from the channel seaward (west) of the Blind Pass Bridge to restore some flushing through Blind Pass while placing dredged material on adjacent critically eroded beaches.

    c. Excavation of material trapped in the inlet flood shoal channel east of the bridge and placement of suitable material on the adjacent beaches in a location that minimizes shoreline erosion while maintaining an open pass in an economically feasible manner.

    d. The District and the County will continue to monitor beaches between DNR Reference Monuments R108 and R120 as required by the 2000 Interlocal Agreement. Beach compatible sand placed on the adjacent beaches of Sanibel as part of the Blind Pass Project will be credited against all future obligations of the District and County as mitigation for groin impacts as described in the 2000 Interlocal Agreement.

    e. Maintenance and operation of Project elements as required by permits.

3. The Term. The term of this Agreement shall be through April 18, 2015, identical to the 2000 Interlocal Agreement, subject to the cancellation provisions as hereinafter enumerated; provided however that the agreement may be extended thereafter in writing pursuant to terms and conditions mutually agreeable to the parties. A copy of the 2000 Interlocal Agreement is attached as Exhibit "A".

4. Obligations of the County. Excluding the Flushing Channel element of the Project, the County shall:

a. Monitor the Project area on a biannual basis or as required by permit, whichever is greater, and provide the results of the monitoring to the District and City. The monitoring area may be reduced by other efforts conducted by the City or District.

b. Apply for all necessary permits for the Project elements.

c. Prepare detailed plans, specifications and a general program outlining the order, rate of prosecution and method of accomplishing the Project in a configuration demonstrated by the Feasibility Study or other competent evidence satisfactory to the City, County and District, to maximize the stability of the channel while minimizing the potential negative impacts and maintenance requirements.

d. 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.

e. Endeavor to secure grant funding to pay a portion of the costs of the Project.

f. Acquire the necessary interests in land, easements and rights of way in cooperation with City and the District.

g. Complete the establishment of the Erosion Control Line, if required by state law.

h. Secure competitive bids for all work to be performed by contracts.

i. Prior to award of construction contract (s), submit to City and the District a detailed estimate of costs, a tabulation of all bids received, and furnish a copy of the contract to be awarded to the lowest qualified bidder.

j. Prior to award of construction contract (s), submit to City and the District a statement certifying the total Project costs, sources and uses of funds for the Project as determined by bid awards and showing such costs and funds in an updated projection summary.

k. Inform City and the District in writing of any change in the Project costs, sources of funding for the Project and use of Project funds during prosecution of work on the Project.

l. Establish a Project construction account for the receipt and use of all funds contributed by the District, City and any other funding source for Blind Pass Project funding, pursuant to this Agreement.

m. Provide adequate and continuous engineering inspection and quarterly progress reports showing the work completed throughout the construction of the Project and make the reports available for inspection at the reasonable request (s) of City or the District.

n. Keep books, records, documents and other evidence pertaining to costs and expenses incurred for the construction to the extent and in such detail as will properly reflect total Project costs and funding. The County shall make available at its office at reasonable times, such books, records, documents and other evidence for inspection and audit by authorized City or District representatives for a minimum of three years after completion of construction of the Project.

o. Notify City and the District of the satisfactory completion of the Project. The County shall provide a certification of final Project costs, sources of funds received for the Project and use of Project funds.

p. Cooperate with City and the District in the procurement of grants for the Flushing Channel element.

q. If grants are awarded from any source for the projection that provide unanticipated reimbursement of expenses already incurred, notification shall be made of said grants and, at the completion of the Project or upon the receipt of grants subsequent to completion, the County shall provide an accounting and distribute such grants monies according to the cost sharing provisions of this Agreement.

r. Maintain those beach accesses, parking areas, and other public use facilities under its control during the period prior to construction and thereafter, as reasonably permitted in consideration of the public, health, safety and welfare.

s. Contribute to the Project costs according to the cost sharing provisions of this Agreement.

5. Obligations of the District. The District shall:

a. Maintain those beach accesses, parking areas, and other public use facilities under its control during the period prior to construction and thereafter, as reasonably permitted in consideration of the public, health, safety and welfare.

b. Cooperate with the County and City in the procurement of grants for the Project.

c. Cooperate in the acquisition of necessary interests in land, easements and rights of way for the construction of the Project.

d. Cooperate in the establishment of the Erosion Control Line, if required by state law.

e. Cooperate with the County and City in the completion of monitoring of the Project area, including completion of any monitoring required of the District by existing or future permit conditions associated with beach renourishment activities.

f. Contribute to the Project costs according to the cost sharing provisions of this Agreement.

6. Obligations of City. City shall:

a. Apply for all necessary permits for the Flushing Channel, specifying in the application that anticipated restoration of the Clam Bayou mangrove habitat is intended to be mitigation for any potential impacts associated with the dredging of the Blind Pass flood shoal complex.

b. Acquire the necessary interests in land, easements and rights of way for the Flushing Channel and cooperate in the acquisition of necessary interest in land, easements and rights of way for the balance of the Project.

c. Cooperate in the establishment of the Erosion Control Line, if required by state law.

d. Maintain those beach accesses, parking areas, and other public use facilities already maintained by City during the period prior to construction and thereafter, as reasonably permitted in consideration of the public, health, safety and welfare.

e. Provide all City permits as necessary for the construction of the Project after plans, applications, drawings or specifications are properly submitted and approved by the appropriate City officials.

f. Seek grant funding for the Flushing Channel and cooperate with the District and the County in the procurement of grants for the balance of the Project.

g. Cooperate with the County and District in the completion of monitoring of the Project area.

h. Prepare detailed plans, specifications and a general program outlining the order, rate of prosecution and method of accomplishing the Flushing Channel in a configuration demonstrated by the Feasibility Study or other competent evidence satisfactory to the City, County and District to provide control of water elevations and flushing to Clam Bayou.

i. Secure competitive bids for all work to be performed by contracts for the Flushing Channel.

j. Prior to award of any construction contract (s), submit to District and the County a detailed estimate of costs, a tabulation of all bids received, and furnish a copy of the contract to be awarded to the lowest qualified bidder.

k. Prior to award of any construction contract (s), submit to District and the County a statement certifying the costs, sources and uses of funds for the Flushing Channel as determined by bid awards and showing such costs and funds in an updated projection summary.

l. Inform District and the County in writing of any change in the Flushing Channel costs, sources of funding and use of funds during prosecution of work on the Flushing Channel.

m. Provide adequate and continuous engineering inspection and quarterly progress reports showing the work completed throughout the construction of the Flushing Channel and make the reports available for inspection at the reasonable request (s) of District or the County.

n. Keep books, records, documents and other evidence pertaining to costs and expenses incurred for the construction to the extent and in such detail as will properly reflect total Flushing Channel costs and funding of the Flushing Channel. City shall make available at its office at reasonable times, such books, records, documents and other evidence for inspection and audit by authorized District or County representatives for a minimum of three years after completion of construction of the Flushing Channel.

o. Notify District and the County of the satisfactory completion of the Flushing Channel. City shall provide a certification of final Flushing Channel costs, sources of funds received for the Flushing Channel and use of Flushing Channel funds.

p. Notify District and County prior to installation or operation of any gates or other devices intended to block or impede water flow through the Flushing Channel.

q. If grants are awarded from any source for the Project that provide unanticipated reimbursement of expenses already incurred, notification

shall be made of said grants and, at the completion of the Project or upon the receipt of grants subsequent to completion, City shall provide an accounting and distribute such grants monies according to the cost sharing provisions of this Agreement.

r. Contribute to the Project costs according to the cost sharing provisions of this Agreement.

7. Cost Sharing Provisions.

a. The City will pay for all costs associated with the Flushing Channel element of the Project.

b. The County and District will pay equal shares of all costs to complete the Project components not associated with the Flushing Channel. Costs include but are not limited to Project management, permitting, design, engineering, construction, acquisition and recording of lands, and monitoring.

i. The County will budget funding necessary to complete the Project.

ii. The District will budget for and provide a statement to the County indicating its financial capability to reimburse its anticipated share of the Project costs.

iii. Upon receipt of invoices and appropriate supporting documentation from the County, the District agrees to pay the County within thirty (30) days.

iv. If the District fails at any point to provide timely payment, the County may call for and the District 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.

v. In the event any of the costs invoiced by the County are disputed by the District, the District 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 to the proposed resolution within ten days of receipt of the proposed resolution.

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.

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 shall each 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 shall not excuse the parties from performance pursuant to this Agreement. This remedy is supplemental to any other remedies available at law.

vi. Beach compatible sand placed on the adjacent beaches of Sanibel as part of the Blind Pass Project will be credited against all future obligations of the District and County as mitigation for groin impacts as described in the 2000 Interlocal Agreement.

c. The respective permit holders will be responsible to ensure that monitoring requirements are met to the satisfaction of the permitting agencies. The County, District, and City agree to coordinate and schedule, to the extent possible, previously required or planned surveys or other monitoring, such that potential duplication and cost to the other parties are reduced.

8. Cancellation or Modification of the Agreement.

a. This Agreement may be cancelled or modified only upon the written approval of each party to the Agreement.

b. Notices to the respective parties shall be forwarded, in writing, to:

Board of County Commissioners
Lee County, Florida
Post Office Box 398
Fort Myers, Florida 33902

Board of Commissioners
Captiva Erosion Prevention District
Post Office Box 365
Captiva, Florida 33924

City Council
City of Sanibel
800 Dunlop Road
Sanibel, Florida 33957

c. Modifications of provisions of this Agreement shall be valid only after they have been written, signed, and incorporated into this Agreement.

9. Hold Harmless

a. Subject to the limitations as set out in Florida Statutes § 768.28 and §252.51, the County shall defend, hold harmless and indemnify District and City from and against any and all claims, actions, damages, liability, cost and expense, including those arising from bodily injury , death and/or property damage or any other lawful expense, including but not limited to, attorney's fees and court costs, brought by third parties arising from the act or omission of the County, its agents, employees, contractors or during the performance of this agreement.

b. Subject to the limitations as set forth in Florida Statutes, § 768.28 and § 252.51, District and City shall defend, hold harmless and indemnify the County from and against any and all claims, actions, damages, liability cost expense, including those arising from bodily injury, death and/or property damage or any other lawful expense, including, but not limited to, attorney's fees and court costs, brought by third parties arising form the acts or omissions of City or District or its agents, employees, and contractors during the performance of this agreement. The provisions of this paragraph are not intended to abrogate the sovereign immunity of the District or the City beyond that set forth in Section 768.28, Florida Statutes.

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IN WITNESS WHEREOF, Lee County, Florida has caused this Agreement to be signed by the Chairman of the Board of County Commissioners and the seal of said Board to be affixed hereto and attested by the Clerk of said Board, pursuant to authority granted by said Board; the Captiva Erosion Prevention District has caused this Agreement to be signed by the Chairman of the Board of Commissioners of the Captiva Erosion Prevention District and its corporate seal to be affixed hereto, attested by its Secretary, and the City of Sanibel has caused this Agreement to be signed by the Mayor of the City of Sanibel and the seal of said City to be affixed hereto and attested by the City Clerk on the date and year first above written.

FOR THE COUNTY:

ATTEST:
CHARLIE GREEN, CLERK

BY: _____
DEPUTY CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
CHAIRMAN

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY

BY: _____
LEE COUNTY ATTORNEY'S OFFICE

FOR THE DISTRICT:

ATTEST:

BY: _____
SECRETARY

BOARD OF COMMISSIONERS
CAPTIVA EROSION PREVENTION DISTRICT

BY: _____
CHAIRMAN

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY

BY: _____
DISTRICT ATTORNEY

FOR THE CITY:

ATTEST:

BY: _____
CITY CLERK

CITY OF SANIBEL

BY: _____
MAYOR/VICE MAYOR

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY

BY: _____
CITY ATTORNEY