

## EXECUTIVE SUMMARY

**Recommendation to terminate for convenience Construction Agreement 23-8111 with Phillips and Jordan, Inc., as the contractor of the Reach A 2023 “Collier 2023 Emergency Truck Haul and Construction” project, and authorize the Chairman to sign Change Order No. 1 to Agreement No. 18-7432-CZ with APTIM Environmental and Infrastructure, LLC, for the professional engineering services providing re-survey, re-design, bidding assistance, and post-design services for the remaining South Naples emergency berm, and make a finding that this item promotes tourism. (Project No. 50280)**

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**OBJECTIVE:** To obtain Board approval to terminate for convenience Construction Agreement No. 23-8111 with Phillips & Jordan, Inc. (“P&J”), for the Reach A “Collier 2023 Emergency Berm Truck Haul and Construction” project for approval of Change Order No. 1 to Agreement No. 18-7432-CZ with APTIM Environmental and Infrastructure, LLC (“APTIM”) for the professional engineering services providing re-survey, re-design, bidding assistance, and post-design services for the remaining South Naples emergency berm.

**CONSIDERATIONS:** On September 28, 2022, Hurricane Ian and its associated storm surge caused major damage to Collier County beaches, destroying much of the dunes and vegetation at the landward edge of the beach. The loss of the dunes left already damaged beachfront properties vulnerable to flooding from future tropical storms and winter cold fronts.

On December 13, 2022 (Agenda Item 11.D.), the Board certified the existence of a valid public emergency and approved an emergency Work Order in a not-to-exceed amount of \$187,636.25 with APTIM for the design services related to the emergency berm project required to protect upland structures along the County’s beaches.

On January 24, 2023 (Agenda Item 11.B), the Board authorized the expenditure of Tourist Development Tax funds in a not-to-exceed amount \$24,000,000 for the construction of an emergency berm for eligible beaches and authorized the Board to delegate authority to the County Manager to execute contracts for the berm construction, subject to being later ratified by the Board at its next regular meeting.

On February 28, 2023, the Procurement Services Division issued Construction Invitation to Bid No. 23-8111, Collier 2023 Emergency Berm Truck Haul and Construction, which was divided into two beach areas, Reaches "A" and "B". On April 25, 2023, (Agenda Item 11.A), the Board ratified the County Manager's award of the Collier 2023 Emergency Berm Truck Haul and Construction, Reach "A" to P&J in the amount of \$6,723,041.50.

Reach "A" consisted of Park Shore, Naples, and South Naples beaches. Park Shore and Naples beaches have been regularly renourished as part of the County's ongoing beach management program. Since South Naples is not considered a publicly accessible beach as defined by Florida Department of Environmental Protection (FDEP), it was excluded from the County's FDEP renourishment permit. Soon after Hurricane Ian was deemed to be a threat to Florida's coast, Governor Ron DeSantis issued Executive Order Number 22-218, declaring a state of emergency for coastal counties, including Collier County. On September 24, 2022, FDEP issued an Emergency Final Order which allowed for the immediate restoration of dune systems damaged by the storm, including dunes on beaches not within FDEP permit limits. On December 9, 2022, FDEP issued the “Hurricanes Ian and Nicole Recovery Plan”, which included a recommendation for 100% State funding for the restoration of the dunes in South Naples.

The beach in South Naples is private property seaward to the Mean High Water Line (“MHWL”). In order to construct the berm on private property, Temporary Beach Restoration Easements (“TBRE”s) is needed

for each property fronting the beach. Staff began work to acquire the TBREs soon after the issuance of the FDEP's December 9, 2022, Recovery Plan with the intent of having the easements in place by the time construction was to begin in South Naples in late spring 2023. P&J began constructing Reach "A" from Naples Pier to Doctors Pass on April 3, 2023, and then moving to Park Shore on May 3, 2023. After finishing Park Shore, construction moved back to Naples beach, south of Naples Pier on May 22, 2023. By the time P&J were ready to continue southward to finish the project in South Naples on May 26, 2023, only about 30% of the easements had been acquired. Sea Turtle nesting season had also already begun on May 1, 2023, and nests had already been established along South Naples beaches. Staff opted to forego construction in South Naples until the necessary easements had been acquired and sea turtle nesting season ends in November of 2023. P&J was issued a Stop Work Notice on June 6, 2023, with the intent to restart their contract in the fall / winter of 2023. Staff also issued a Stop Work Notice to APTIM on July 13, 2023, to allow them to return in the fall to provide post-design services for South Naples.

On August 30, 2023, Hurricane Idalia passed offshore of Collier beaches, providing a test for the newly constructed emergency berm. Staff visited Naples beach during the hours of the storm and in particular at a seasonal high "King" tide at noon the same day. The berm performed very well along all of Naples beach, but in South Naples the lack of the berm allowed a storm surge of between 2 to 4 feet to encroach into landward properties. A more significant storm would likely cause more extensive flooding if the berm were not completed there. Thus, the same emergency conditions that existed when the Board certified the existence of a valid public emergency in December 2022 still exists today.

As fall of 2023 approached, conversations with P&J began in order to create a Change Order to allow for the additional work related to re-mobilization of crews and equipment to South Naples. Easement acquisitions proceeded during the summer, but by October 2023, a dozen or more were still outstanding. On October 12, 2023, P&J indicated they would not be able to complete the remainder of the work because of the delay in the progress in the work resulting from the lack of easements. Because the Section 10.4 of the General Terms & Conditions of the Construction Agreement allows the contractor to terminate for convenience after work has been stopped for 180 days, and Staff still has concerns about having all easements in-hand by that time, Staff is recommending that the County terminate the Agreement for convenience to allow sufficient time for re-bidding the project for construction prior to the beginning of sea turtle nesting season on May 1, 2024.

In order to re-bid the construction of the South Naples berm, APTIM's services will be needed to provide bidding assistance to Staff. APTIM will also need to re-survey the beach and make any necessary modifications to its original design due to changes in beach topography which have occurred since May 2023. Change Order No. 1 will allow for additional funding in the amount of \$54,136.50, and an additional 180 days to provide bidding assistance, the revised survey, design, post-design services, and project certification necessary to close out the project.

This item is consistent with the Infrastructure and Asset Management element of Collier County's Strategic Plan by preparing for the impacts of natural disasters on our critical infrastructure and natural resources.

**GROWTH MANAGEMENT IMPACT:** This item is consistent with the Conservation and Coastal Management Element of the County's Growth Management Plan.

**ADVISORY COMMITTEE RECOMMENDATIONS:** This item will be presented to the Coastal Advisory Committee (CAC) on November 9, 2023, and the Tourist Development Council (TDC) on November 20, 2023.

**LEGAL CONSIDERATIONS:** This item is approved as to form and legality and requires majority vote for Board approval. —SRT

**FISCAL IMPACT:** Approval of this change order results in a net increase to work order of \$54,136.50. Funding is available in TDC Beach Renourishment Fund (1105) and FEMA Disaster Fund (1813) within Hurricane Ian Project (50280), with potential for reimbursement from FEMA. The County will seek FEMA reimbursement of 75% of the costs associated with the construction of the emergency berm plus an additional 12.5% share from the State of Florida Emergency Management Services.

**RECOMMENDATION:** To terminate for convenience Construction Agreement No. 23-8111 with Phillips and Jordan, Inc., as the contractor of the Reach A “2023 Collier 2023 Emergency Berm Truck Haul and Construction” project, and authorize the Chairman to sign Change Order No. 1 to Agreement No. 18-7432-CZ with APTIM Environmental and Infrastructure, LLC, for the professional engineering services providing re-survey, re-design, bidding assistance, and post-design services for the remaining South Naples emergency berm, and make a finding that this item promotes tourism. (Project No. 50280)

Prepared By: Andrew Miller, P.E., Coastal Zone Management, Capital Project Planning, Impact Fees, and Program Management Division