

**INTERLOCAL AGREEMENT
BY AND BETWEEN
CITY OF CAPE CORAL AND
MATLACHA/PINE ISLAND FIRE CONTROL DISTRICT
PROVIDING FOR AUTOMATIC AND MUTUAL
AID OF FIRE RESCUE SERVICES**

THIS INTERLOCAL AGREEMENT BY AND BETWEEN CITY OF CAPE CORAL AND MATLACHA/PINE ISLAND FIRE CONTROL DISTRICT PROVIDING FOR AUTOMATIC AND MUTUAL AID OF FIRE RESCUE SERVICES (the "Agreement") is entered into this 7th day of September, 2023, by and between the City of Cape Coral, Florida, the address of which is 1015 Cultural Park Boulevard, Cape Coral, Florida 33990 (called the "City") and Matlacha/Pine Island Fire Control District, the address of which is 5700 Pine Island Road, Bokeelia, Florida 33922 (called the "District").

ARTICLE 1
BACKGROUND; PURPOSE AND INTENT, AND DEFINITIONS

- 1.1 It is the purpose and intent of this agreement for the City and the District, pursuant to Section 163.01, Florida Statutes, to cooperate and provide for a means by which each governmental entity may exercise its respective powers, privileges, and authorities which they share in common and which each might exercise separately in order to further a common goal.
- 1.2 The elected body of the City and the District find that mutual cooperation in the delivery of fire rescue services can best be accomplished within a cooperative, interlocal configuration. To further that cause, both parties willingly enter into this cooperative Agreement, which extends beyond the concept of mutual aid for fire and rescue services.
- 1.3 For the purposes of this Agreement and the various covenants, conditions, terms, and provisions which follow, the definitions set forth below are assumed to be true and correct and are agreed upon by the parties.
 - 1.3.1 Automatic Aid Coverage: means the temporary assignment of one (1) Equipped Apparatus staffed minimally with two (2) State Certified Firefighter/Emergency Medical Technicians, to provide fire rescue services in a different Primary Response Zone from the Primary Response Zone in which the apparatus and personnel are normally assigned. Such temporary assignment will generally be incorporated into the respective jurisdictions' computer-aided dispatch (CAD) system. Automatic aid will be used for the specific response types defined in Article 2.
 - 1.3.2 Incident Command: means the first arriving unit will assume initial Incident Command, until the arrival of a Primary Jurisdiction Response Unit, at which time the Primary Jurisdiction Unit may assume Incident Command at its sole discretion.

- 1.3.3 Mutual Aid: means at the time of fire, rescue, emergency, or disaster, the Primary Response Zone Units may have firefighting, rescue, emergency, or disaster relief-related demands made upon its equipment and/or personnel greater than the capacity of the equipment and/or personnel available within its own department, thereby requiring assistance from another agency. When local resources are determined to be inadequate to respond to a fire, rescue, emergency, or disaster, the Incident Commander will request assistance through the respective communications center
- 1.3.4 Primary Response Zone: means a specific geographic area in which fire and/or rescue services are provided, which area does not require the relocation of apparatus and personnel by a single resource. The Primary Response Zones for each party are their respective individual jurisdictions.
- 1.3.5 Responding Party: means the agency which is providing assistance to another agency that has declared an emergency incident.
- 1.3.6 Requesting Party: means the agency which is requesting assistance from an outside agency to assist in mitigating an emergency incident.
- 1.4 For purposes of this Agreement, the Primary Response Zones to be covered or response types responded to by the parties may be amended during the term of this agreement through a mutual agreement in writing by the Fire Chiefs of the City and the District. Such changes will be designed to improve response times or otherwise increase the efficiency of services provided pursuant to this Agreement.
- 1.5 Both parties agree to review service response demands on a bi-annual basis. The parties agree that the Fire Chiefs of the City and the District will define and adjust in response area and/or response types to limit any unnecessary demand on either party.
- 1.6 Both parties agree that the Fire Chiefs of the City and the District may agree to cooperative or mutual training of their agencies.

ARTICLE 2
COVERAGE COMMITMENT

- 2.1 Mutual Aid: Upon request, the parties agree to provide mutual aid coverage to each other unless otherwise unavailable.
 - 2.1.1 Terms and Procedures:
 - A. A participating agency will answer for mutual aid only to the extent that the available personnel and equipment are not required for adequate protection of that agency's jurisdiction. The Chief of the agency, or

designee, shall have the sole authority to determine the amount of personnel and equipment, if any, available for cooperative assistance.

- B. A request for mutual aid shall be made by the Chief of the agency, or designee.
- C. Whenever the employees of one party to this agreement are rendering aid to the other party pursuant to the authority contained in this agreement, such employees shall have the same powers, duties, rights, and immunities as if they were acting within their employing jurisdiction.

2.2 Automatic Aid: The parties agree to provide automatic aid coverage, as defined in Section 1.3.1.

2.2.1 Automatic Aid, Response Types. Automatic Aid Coverage, as defined in Section 1.3, shall be activated for emergency incidents.

2.2.2 Automatic aid will be used for call types agreed upon by the Fire Chiefs or designee from the City and the District.

2.2.3 Automatic aid zones will be agreed upon by the Fire Chiefs or designees from the City and the District.

2.2.4 Neither party shall be eligible for financial compensation for services rendered during routine mutual or automatic aid.

ARTICLE 3

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

The City and the District shall be responsible for complying with all federal, state and local laws, rules, regulations, and codes including, but not limited to, the Health Insurance Portability and Accountability Act ("HIPAA") and its implementing regulations.

ARTICLE 4

LIABILITY

- 4.1 To the extent permitted by law, the parties shall defend any action or proceeding brought against its respective agency arising in connection with this agreement and shall be responsible for all its own costs, attorneys' fees, expenses and liabilities for actions or inactions of its own employees incurred as a result of any such claims, demands, suits, actions, damages and causes of action, including the investigation or the defense thereof, and from and against any orders, judgments or decrees which may be entered as a result thereof. Each party shall indemnify and hold harmless the other party for claims, demands, suits, actions, damages and causes of action incurred directly or indirectly as a result of their own employees' actions or inactions. Nothing in this section shall constitute a waiver of either party's sovereign immunity, or the limits of Section 768.28, Fla. Stat.

- 4.2 Each party is entitled to the privileges and protections of sovereign immunity pursuant to Section 768.28, Florida Statutes, and subject to the limitations of that provision shall bear its own responsibility and be liable for any claims, demands, suits, actions, damages and causes or actions arising out of or occurring during travel to or from its own emergency or disaster site or to or from an emergency or disaster site covered by this Agreement, and no indemnification or hold harmless agreement shall be in effect concerning such claims, demands, suits, actions, damages and causes of action.
- 4.3 Neither party hereto shall be deemed to have waived its sovereign immunity by entering into this Agreement, 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.
- 4.4 For purposes of this Article, any use of the words "individually, separate, and each" are intended to refer to each agency's independent responsibilities and shall not be construed, in any manner, to impose personal liability upon the City and the District commissioners, or any other individual.
- 4.5 This section shall survive the termination of this Agreement.

ARTICLE 5 **TERMINATION**

- 5.1 This Agreement shall be deemed automatically terminated and of no further force and effect if either Party permanently closes or discontinues service from its fire station closest to the mutual aid area due to budgetary constraints, or any other reason.
- 5.2 This Agreement shall be deemed automatically terminated and of no further force and effect if either Party has filed or consented to the filing of a petition for reorganization or bankruptcy or is otherwise adjudicated insolvent.

ARTICLE 6 **DEFAULT**

If either party fails to perform or observe any of the material terms and conditions of this Agreement for a period of ten (10) days after receipt of written notice of such default from the other party, the party giving notice of default shall be entitled, at its option, but is not required, to terminate this Agreement. Failure of any party to exercise its rights in the event of any breach by the other party shall not constitute a waiver of such rights. No party shall be deemed to have waived any failure to perform by the other party unless such waiver is in writing and signed by the waiving party. Such waiver shall be limited to the terms specifically contained therein. This paragraph shall be without prejudice to the rights of any party to seek a legal remedy for any breach of the other party as may be

available to it in law or equity.

ARTICLE 7
TERM OF AGREEMENT

- 7.1 The first term (the “Initial Term”) obligating the Parties to perform under this Agreement shall be five (5) years and will commence as of the date in which the last Party executes this agreement. After the Initial Term, this Agreement will automatically renew for a one-year term (the “First Renewal Term”) unless written notice of non-renewal has been provided, in accordance with Section 8.6 herein, no less than forty-five (45) calendar days prior to the expiration of the Initial Term. After the First Renewal Term, this Agreement will annually automatically renew for successive one-year terms (the “Annual Renewal Term”) unless written notice of non-renewal has been provided, in accordance with Section 8.6 herein, no less than forty-five (45) calendar days prior to the expiration of the current Annual Renewal Term.
- 7.2 This Agreement shall commence immediately upon its signing and unless requested by either party to terminate shall automatically renew each year thereafter.
- 7.3 In the event either Party enters into joint powers, consolidated service area, or interlocal agreement which includes additional parties that agreement may supersede and provide for termination of this Agreement.

ARTICLE 8
MISCELLANEOUS

- 8.1 Joint Participation: The preparation of this Agreement has been a joint effort of the parties hereto, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 8.2 Entire Agreement and Modification: This Agreement incorporates, supersedes and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matter contained herein. No change, alteration or modification in the terms and conditions contained herein shall be effective unless contained in a written document signed by the City and the District.
- 8.3 Records: Each party shall permit the other party to examine all records pertinent to this Agreement and grants to the other party, the right to audit any books, documents and papers related to this Agreement that are generated during the term of this Agreement. The parties shall maintain the records, books, documents and papers associated with this Agreement in accordance with the records retention schedules outlined in the Florida Statutes for said records.
- 8.4 Agreement Administration: In the administration of this agreement as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Fire Chiefs, or designees, of the City and the District.

8.5 Recordation/Filing: With the Lee County Clerk of the Court, Lee County, Florida, as required by Section 163.01(11), Florida Statutes.

8.6 Notices: Any notice under this Agreement will be in writing addressed to the appropriate party at its address immediately below and given personally or by registered or certified mail, postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt:

Notices to City: City Manager
City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, FL 33990
(mailing address: P.O. Box 150027, Cape Coral, FL 33915-0027)

With a copy to: City Attorney
City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, FL 33990
(mailing address: P. O. Box 150027, Cape Coral, FL 33915-0027)

Notices to District: Fire Chief
Matlacha/Pine Island Fire Control District
5700 Pine Island Road
Bokeelia, FL 33922

With a copy to: Roetzel & Andress LPA
2320 First Street, Suite 1000
Fort Myers, FL 33901
Attn: Sarah E. Spector

8.7 Automatic Aid Agreements: Both parties acknowledge that any current automatic aid agreements with any other agency will continue in full force and effect notwithstanding execution and implementation of this Agreement.

8.8 Third Party Beneficiaries: Neither Party intends to directly or substantially benefit a third party by this Agreement. Therefore, there are no third-party beneficiaries to this Agreement, and no third party will be entitled to assert a claim against either party based upon this Agreement.

8.9 Assignment: Neither this Agreement nor any interest herein shall be assigned, transferred or encumbered by either party without the written consent of the other party.

8.10 Waiver of Breach and Materiality: Failure by either party to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed

a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

- 8.11 Compliance with Laws: Both parties shall comply with all federal, state, and local laws, codes, ordinances, rules and regulations in performing their respective duties, responsibilities, and obligations related to this Agreement.
- 8.12 Severance: In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless either party elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made and written notice shall be provided to the other party within thirty (30) days after the finding by the court becomes final.
- 8.13 Applicable Law and Venue: This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Venue for litigation concerning this Agreement shall be in Lee County, Florida. Both parties hereby agree to waive a jury trial, and will proceed to a trial by judge, if necessary. Should the parties be involved in legal action arising under, or connected to, this Agreement, each party will be responsible for their own attorney's fees and costs.
- 8.14 Multiple Originals: Multiple copies of this Agreement may be fully executed by all parties, each of which shall be deemed to be an original.
- 8.15 C.O.P.C.N.: Both parties shall maintain, throughout the term of this Agreement, a Certificate of Public Convenience and Necessity ("C.O.P.C.N.") and an appropriate State of Florida license enabling each to provide emergency medical services, as well as, basic life support services, to patients upon arrival at emergency scenes requiring immediate emergency medical care.
- 8.16 Medical Director: Both parties presently have and shall maintain, throughout the term of this Agreement and any renewal term, a Medical Director as required by Chapter 401.265, Florida Statutes.

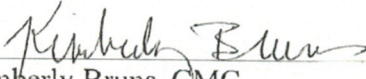
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IN WITNESS WHEREOF, the authorized representative for each party has executed this Agreement on the date provided below.


FOR THE CITY OF CAPE CORAL:

ATTEST:

SIGNED:



Kimberly Brun, OMC
City Clerk




John Gunter
Mayor

Date: 9-8-2023

Date: 9-7-23

Approved as to Form:



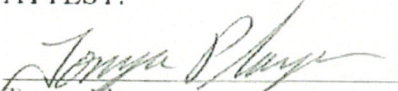
Brian R. Bartos, Esq.
Deputy City Attorney

Date: 8/30/23

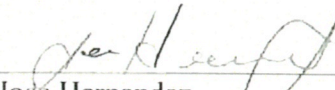
FOR MATLACHA/PINE ISLAND FIRE CONTROL DISTRICT:

ATTEST:

SIGNED:



Tonya Player
District Chair

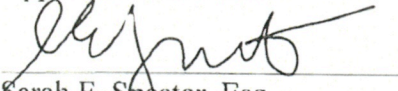


Jose Hernandez
District Vice Secretary

Date: 8/23/23

Date: 8/23/2023

Approved as to Form:



Sarah E. Spector, Esq.
District Legal Counsel

Date: 8.23.2023

**INTERLOCAL AGREEMENT BY AND BETWEEN
CITY OF CAPE CORAL AND
MATLACHA/PINE ISLAND FIRE CONTROL DISTRICT**

THIS INTERLOCAL AGREEMENT BY AND BETWEEN CITY OF CAPE CORAL AND MATLACHA/PINE ISLAND FIRE CONTROL DISTRICT (the "Agreement") is entered into this 7th day of September, 2023, by and between the City of Cape Coral, Florida, the address of which is 1015 Cultural Park Boulevard, Cape Coral, Florida 33990 (called the "City") and Matlacha/Pine Island Fire Control District, the address of which is 5700 Pine Island Road, Bokeelia, Florida 33922 (called the "District"). The City and the District may hereinafter be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the City is a municipality of the State of Florida, located in Lee County, Florida, and as such is a general purpose governmental entity under the Florida Constitution, Florida Statutes and its City Charter; and

WHEREAS, the District is an Independent Special Fire Control District of the State of Florida, located in Lee County, Florida, and as such is a special purpose governmental entity exercising fire control and first responder emergency services under the Florida Constitution, Florida Statutes, and its District Charter; and

WHEREAS, the City and the District are engaged in a dispute that arises out of the voluntary annexations approved by the City Council by adoption of City Ordinance 41-22 and City Ordinance 42-22 on May 18, 2022, which annexations involved real property that lies within the boundaries of the District; and

WHEREAS, the District has invoked the provisions of Chapter 164, Florida Statutes, Sections 164.101-164.1061, the "Florida Governmental Conflict Resolution Act", and the City and the District have met to assess the possibility of resolving and settling their dispute; and

WHEREAS, since the District invoked the provisions of Chapter 164, Florida Statutes and met with City, the City has approved an additional voluntary annexation by adoption of City Ordinance 91-22 on November 2, 2022, which annexation also involved real property that lies within the boundaries of the District.

NOW, THEREFORE, in consideration of the foregoing, and the mutual promises contained herein, the Parties mutually agree as follows:

1. The foregoing recitals are incorporated herein.
2. Each Party recognizes and agrees that the other Party is a governmental entity, engaged in and providing important public services.
3. Each Party recognizes and agrees that while its elected officials and employees serve a constituency within their respective boundaries, they also are part of an important larger local and regional system to promote the health, safety, and welfare of the public.

4. Each Party recognizes voluntary annexations and, potentially, contractions may occur in the future. To resolve the beforementioned voluntary annexations approved by the City in Ordinances 41-22, 42-22, and 91-22, and any future voluntary annexations or contractions, the District and the City agree to the following terms and methodology.

5. Each Party recognizes and agrees that the prompt provision of fire and first responder services, including the availability of the necessary equipment and resources, crosses legal boundaries and provides a crucial benefit to the public as outlined in the county-wide mutual aid agreement. To provide a greater benefit to the public and the Parties' individual constituents, the Parties agree to enter into a separate automatic aid agreement for the Annexed Properties as described in Paragraph 6 below, and to a service area to be defined within said automatic aid agreement, the terms of which shall be negotiated by the City Fire Chief and the District Fire Chief to be subsequently approved by the City Council of Cape Coral and the District's Board of Commissioners.

6. As to the properties included in the annexations adopted by the City in Ordinances 41-22 and 42-22 adopted on May 18, 2022 and City Ordinance 91-22 adopted on November 2, 2022, with descriptions attached as Exhibit A to each ordinance (the "Annexed Properties"):

a. The City shall provide fire service, fire plan reviews, and fire inspections (collectively referred to hereinafter as the "Fire Services") to the Annexed Properties upon the approval of this Interlocal Agreement by both the City Council of the City of Cape Coral and the District's Board of Commissioners.

b. In recognition of the right of the District to continue to provide the Fire Services to the Annexed Properties, and collect the ad valorem taxes associated therewith, the City shall pay to the District the estimated ad valorem taxes to be billed to the Annexed Properties over the next ten (10) years (the "Estimated Ad Valorem Taxes"). The Estimated Ad Valorem Taxes shall be calculated using the average increase in ad valorem taxes billed to the Annexed Properties for the three years immediately preceding. This average increase in taxes shall be applied annually and calculated forward ten (10) years. The Estimated Ad Valorem Taxes shall be paid to the District within ninety (90) days of the Effective Date of this Interlocal Agreement, as defined in Paragraph 13 hereof.

c. The City acknowledges the proposed development of the Annexed Properties will have an impact on the District's resources as a result of the automatic aid agreement contemplated by this Interlocal Agreement. In recognition of this impact, the City shall pay the District ten percent (10%) of the Fire Impact Fee the City receives relative to development of the Annexed Properties within the four (4) years following the date of annexation (the "Impact Fees"). The City shall pay the Impact Fees over to the District within ninety (90) days of the date the Impact Fees are received by the City.

7. For future voluntary annexations of property within unincorporated Lee County serviced by the District into the boundary of the City ("Future Annexed Properties"), the Parties agree as follows:

a. The City shall provide notification to the District of any proposed voluntary annexation of properties within the boundaries of the District. The notification shall be made at least 45 days prior to the public hearing on such voluntary annexation. Said notice is intended to advise the District of the pending voluntary annexation and to allow the Parties time to verify calculations of ad valorem taxes due pursuant to this Paragraph 7. This is consistent with the City's Comprehensive Plan, Intergovernmental Coordination Element.

b. Upon notification by the City of a proposed voluntary annexation, the District shall not oppose such voluntary annexation by initiating any adverse cause of action, including, but not limited to, initiating the conflict resolution procedure pursuant to section 164.1052, Florida Statutes.

c. The City shall provide Fire Services to the Future Annexed Properties commencing from the date such annexations are adopted by the City. In recognition of the right of the District to continue to provide the Fire Services to the Future Annexed Properties, and collect the ad valorem taxes associated therewith, the City shall pay the District an amount equal to the ad valorem taxes that would have been received by the District for the ten (10) years following annexation had the property remained in the District based on the most recent use prior to annexation. Said payments by the City to the District shall be paid in ten (10) annual installments.

8. The Parties further agree as follows:

a. The City shall not initiate, endorse, or approve any annexation of the areas known as Saddlewood, Cape Royal, or Matlacha Isles into the City boundaries during the term of this Interlocal Agreement. This prohibition against annexation shall include but not be limited to legislative action that would have the effect of annexing the specified properties into the City boundaries.

b. The Parties agree voluntary annexations from individual property owners within the areas of Saddlewood, Cape Royal, and Matlacha Isles, shall be subject to the provisions within Paragraph 7 above.

c. The District acknowledges that the City is pursuing the purchase of a ten (10) acre tract in Saddlewood, adjacent to the City owned Trafalger Sports Complex. Should the City purchase said tract and apply for voluntary annexation, the provisions of Paragraph 7 above shall apply.

9. Upon any future voluntary contractions of properties within the City into unincorporated Lee County that results in such property being within the District's jurisdiction, the City shall provide notice to the District as stated in Paragraph 7.a., above. The District shall provide Fire Services for such contracted properties commencing from the date such contractions are adopted by the City.

10. The representatives of each Party will submit this Agreement to their respective governing bodies for consideration of approval as provided in Chapter 164, Florida Statutes.

11. If any terms contained in this Agreement are determined to be invalid or unenforceable for any reason, the remainder of the Agreement shall survive such determination. If the entire Agreement is determined by a court to be invalid or to sunset at any time before any right or responsibility has been fully executed, the Parties will meet within sixty (60) days after such determination to reform the Agreement to be as close to this Agreement as may be legally feasible.

12. The Parties shall bear their own costs and attorneys' fees related to the Chapter 164 proceeding and this Agreement.

13. This Agreement will become effective upon the date that the last person designated below to execute the Agreement has done so.

14. The duration of the provisions of this Agreement is ten (10) years, with two (2), five (5) year automatic renewals, unless a Party is in default of its obligations pursuant to this Agreement. The Parties may mutually agree to revise, amend, or extend the Agreement after notice as provided in paragraph 16 herein.

15. This Agreement is to be governed by the laws of the State of Florida.

16. Any notice under this Agreement will be in writing addressed to the appropriate Party at its address immediately below and given personally or by registered or certified mail, postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt:

Notices to City: City Manager
City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, FL 33990
(mailing address: P.O. Box 150027, Cape Coral, FL 33915-0027)

With a copy to: City Attorney
City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, FL 33990
(mailing address: P. O. Box 150027, Cape Coral, FL 33915-0027)

Notices to District: Fire Chief
Matlacha/Pine Island Fire Control District
5700 Pine Island Road
Bokeelia, FL 33922

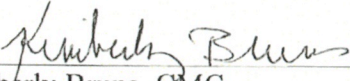
With a copy to: Roetzel & Andress LPA
2320 First Street, Suite 1000
Fort Myers, FL 33901
Attn: Sarah E. Spector

17. This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts shall be deemed an original for all purposes, and such counterparts shall, collectively, constitute one agreement.

IN WITNESS WHEREOF, the authorized representative for each Party has executed this Agreement on the date provided below.

FOR THE CITY OF CAPE CORAL:

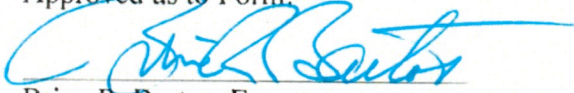
ATTEST:



Kimberly Bruns, CMC
City Clerk

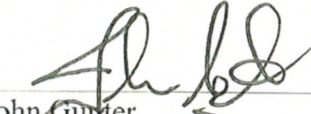
Date: 9-8-2023

Approved as to Form:



Brian R. Bartos, Esq.
Deputy City Attorney

SIGNED:



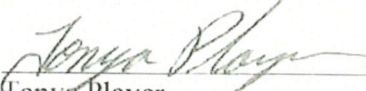
John Gunter
Mayor

Date: 9-7-23

Date: 8/30/23

FOR MATLACHA/PINE ISLAND FIRE CONTROL DISTRICT:

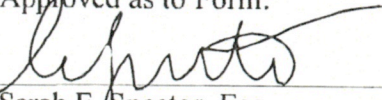
ATTEST:



Tonya Player
District Chair

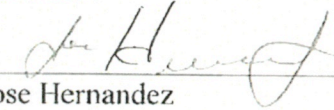
Date: 8/23/23

Approved as to Form:



Sarah E. Spector, Esq.
District Legal Counsel

SIGNED:



Jose Hernandez
District Vice Secretary

Date: 8/23/2023

Date: 8.23.2023