



Protecting our bays and estuaries

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May 20, 2021

To: CBBEP Board of Directors

From: Ray Allen, Executive Director

Re: CBBEP Interlocal Agreement

Now that the revised bylaws have been approved by the Board, it is time for the parties to the Interlocal Agreement (ILA) to move forward with the updated version that was prepared by Dane Bruun (attached). The one remaining issue in the ILA to provide for the participation of other local governments. The original ILA did provide an opportunity for smaller counties and cities to sign on at a reduced annual fee level.

In addition to those parties already named in the revised ILA, these counties and cities were included:

(Proposed at the \$5,000.00 level)

Aransas County
Kleberg County
City of Aransas Pass
City of Ingleside
City of Kingsville
City of Port Aransas
City of Portland
City of Robstown
City of Rockport

(Proposed at the \$500.00 level)

Refugio County
Kenedy County
City of Bayside
City by the Sea
City of Fulton
City of Ingleside by the Bay
City of Mathis
City of Riviera

**COASTAL BEND BAYS & ESTUARIES PROGRAM
INTERLOCAL AGREEMENT
JANUARY 1, 2020**

PREAMBLE

This **COASTAL BEND BAYS & ESTUARIES PROGRAM INTERLOCAL AGREEMENT** ("Interlocal Agreement") updates the original Interlocal Agreement adopted _____ and is based on five basic principles:

1. Governance of the Coastal Bend Bays & Estuaries Program ("CBBEP") will include local governments, based on their financial participation, State and Federal resource agencies, and other diverse stakeholders.
2. Local government participation is purely voluntary. A local government can withdraw at any time without penalty, subject only to meeting its obligation as to any financial commitments previously made.
3. The CBBEP will have no powers of taxation or regulation, nor formal permit-review role.
4. CBBEP activities will only be conducted within the territorial jurisdiction of a local government Party with the consent of that government.
5. The CBBEP is authorized to accept funding from Federal, State, local, and private sources to carry out its activities.

AGREEMENT

This Interlocal Agreement is updated and entered into effective January 1, 2020 (the "Effective Date") by and between the undersigned governmental entities to create the Coastal Bend Bays & Estuaries Program, whose representatives have signed this Interlocal Agreement with the authorization of their governing bodies. Reference is made to the following facts:

The Corpus Christi Bay National Estuary Program ("CCBNEP") was established in 1993 to develop a comprehensive plan to restore and protect the bays and estuaries in the program area. The CCBNEP was governed by a management conference comprised of representatives from State and Federal agencies, local government entities, other local groups, and individuals interested in the program area. The CCBNEP, now CBBEP, is part of a national network of twenty-eight (28) estuary programs established under the Federal Clean Water Act

and administered nationally by the EPA.

The management conference of the CCBNEP developed and unanimously adopted the Coastal Bend Bays Plan (the "Bays Plan") for the program area, which was presented by Governor George W. Bush to the EPA for approval and approved by the EPA on February 26, 1999. The Bays Plan, second edition which was updated and approved by a unanimous vote of the Board of Directors in August 2018, is specifically incorporated herein by reference and made a part of this Interlocal Agreement, a copy of which is available at <https://www.cb bep.org>. The Bays Plan defines the program area as lands and waters within Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Nueces, Refugio and San Patricio Counties, but focuses primarily upon the coastal counties of Aransas, Kenedy, Kleberg, Nueces, Refugio, and San Patricio Counties.

The Bays Plan seeks to ensure that the Coastal Bend bays and estuaries remain a vibrant part of the region's environmental and economic landscape by preserving and enhancing their roles as a recreational resource, international seaport, and habitat for fish and wildlife.

The Bays Plan addresses the Coastal Bend Bays Priority Issues, including limited freshwater inflows into bays and estuaries, the condition of living resources, loss of wetlands and estuarine habitats, degradation of water and sediment quality, altered estuarine circulation, declining bird populations, coastal resiliency, bay debris, and public health issues. The Bays Plan encompasses fifteen Action Plans, including human uses, which includes actions related to bay tourism and recreation, bay debris, public health, and shoreline management; maritime commerce and dredging; habitat and living resources; coastal birds; water and sediment quality, which includes actions related to water and sediment quality, and nonpoint source management; freshwater resources; public education and outreach; delta discovery; and coastal resilience. In addition, the Bays Plan includes a detailed implementation strategy, governance structure, regional monitoring strategy, and Federal consistency review procedures. The Bays Plan emphasizes regional cooperation and flexibility that allows the Parties and Implementation Partners to select the most cost-effective and environmentally beneficial bay improvement options for their communities to meet the specific goals of the Bays Plan. Promotion of viable and enhanced local economies was established as a key element of the Bays Plan.

The Parties to this Interlocal Agreement desire to adopt an

organizational framework to ensure that the Bays Plan is properly and effectively implemented.

By this Interlocal Agreement, the Parties and Implementation Partners hope to create a consensus-based organization that seeks mutually agreeable solutions to problems the Parties and Implementation Partners hold in common. Absolutely nothing in this Interlocal Agreement is to be construed to usurp any prerogative of any unit of local government, political subdivision of the State of Texas, or State agency, nor place any restriction on such a unit. When used herein, the term "local government" shall mean a unit of general local government as defined in Chapter 791 of the Texas Government Code.

NOW THEREFORE, in consideration of the mutual promises contained in this Interlocal Agreement, the receipt and adequacy acknowledged by them, the Parties agree as follows:

ARTICLE ONE

Term

1.1 Term. The term of this updated Interlocal Agreement ("Term") is for a twenty (20) year period that commenced on the first day of January, 2020 and shall continue from year to year thereafter, unless terminated by vote of the Board of Directors. If any Party gives notice of its intent to withdraw from this Interlocal Agreement, this Interlocal Agreement will remain in effect for all of the other Parties.

1.2 Review. This Interlocal Agreement shall be subject to review by the Board of Directors ten (10) years from the effective date, and every ten (10) years thereafter.

ARTICLE TWO

Basic Understandings

2.1 Bays Plan. The Bays Plan is hereby agreed to and adopted by each of the Parties. Proposed Amendments to the Bays Plan shall be reviewed every 5 years and shall require the unanimous approval of the Board of Directors. Each Party's consent is to be decided in their respective sole and absolute discretion.

2.2 Interlocal Agreement. This Interlocal Agreement is made pursuant to Chapter 791 of the Texas Government Code ("Interlocal Cooperation Act"), to allow the Parties to carry out their commitments under the Bays Plan. This Interlocal Agreement will be used by the Parties to implement the Bays Plan. The entity, now

known as the Coastal Bend Bays & Estuaries Program, was created through the Corpus Christi Bay National Estuary Program's Management Conference, and is being implemented and governed by this Interlocal Agreement. Each Party authorizes the Coastal Bend Bays & Estuaries Program, which is created by this Interlocal Agreement, to carry out the governmental functions enumerated in this Interlocal Agreement. Any proposed changes to this Interlocal Agreement shall require the unanimous approval of the Board of Directors and each of the Parties that are still Parties to this Interlocal Agreement.

ARTICLE THREE Structure

3.1 Entity. The Coastal Bend Bays & Estuaries Program is an administrative agency established under this Interlocal Agreement as authorized by Section 791.013(a) of the Interlocal Cooperation Act. The CBBEP is an association of the Parties. The Parties hereby acknowledge that the CBBEP is authorized as the agent of the Parties to implement the Bays Plan, pursuant to the terms of this Interlocal Agreement. The CBBEP shall have all functions and responsibilities authorized by Texas law. The CBBEP has also been established as a non-profit corporation under the law of the State of Texas, for which the articles of incorporation and the By-Laws of said corporation established an organization and a governance structure substantially as outlined in the Bays Plan and this Interlocal Agreement.

3.2 Parties. The Parties are the units of local governments and political subdivisions of the State of Texas whose representatives have signed this Agreement with the authorization of their governing bodies (the "Parties"). Each Party hereby agrees to make an annual financial contribution to the CBBEP (see Article Six).

3.3 Implementation Partners. The Implementation Partners include: the United States Environmental Protection Agency, an agency of the federal government ("EPA"); the Texas Commission on Environmental Quality, an agency of the State of Texas ("TCEQ"); the Texas General Land Office, an agency of the State of Texas ("TGLO"); the Coastal Bend Bays Foundation, a Texas non-profit corporation organized under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended ("Bays Foundation"); the Port Industries of Corpus Christi, a trade association ("Port Industries"); and other organizations designated from time to time by majority vote of the Board of Directors whose representatives sign an Approval or Memorandum of Understanding as evidence of their group's approval of the Bays Plan and concurrence with this Interlocal Agreement

(collectively, the "Implementation Partners"). The Implementation Partners are not parties to this Interlocal Agreement. The Bays Foundation and Port Industries have each executed the above-referenced Approval or Memorandum of Understanding.

3.4 By-Laws. The Board of Directors by unanimous vote may create, adopt and amend By-Laws for the governance of the CBBEP. The latest version of the By-Laws are available at <https://www.cbbep.org>. In the event of any conflict between the By-Laws and this Agreement, the terms of this Agreement shall control.

3.5 Board of Directors. The Board of Directors of the CBBEP consist of the following representatives of the Parties and Implementation Partners:

- a. The County Judge of Nueces County or the County Judge's designee;
- b. The County Judge of San Patricio County or the County Judge's designee;
- c. The Mayor of the City of Corpus Christi or the Mayor's designee;
- d. The Chairman of the Port Commission for the Port of Corpus Christi Authority or the Chairman's designee;
- e. The Chair of the Coastal Bend Bays Foundation or the Chair's designee; and
- f. The Chair of the Board of Directors for Port Industries of Corpus Christi or the Chair's designee.

3.6 Additional Members. The Board of Directors may, by a unanimous vote of all members, appoint additional members to the board. The additional members may be individuals or representatives of additional cities, counties, or local universities. The number of additional members chosen by the Board of Directors shall not exceed ___ (__) additional members at any given time. These additional board members shall serve for a period of one year and may be reappointed by unanimous vote of all members. The Board of Directors may authorize TCEQ, EPA and CBBEP employees to serve as ex-officio members of the board.

ARTICLE FOUR

Functions of Coastal Bend Bays & Estuaries Program

4.1 Purpose. The CBBEP will coordinate and develop plans and programs that will protect and enhance the local environment to facilitate achievement of the Goals of the Bays Plan, produce net environmental benefits, promote efficiency, and lower costs of

implementation.

4.2 Duties. The CBBEP shall:

- a. Develop and administer research and projects to carry out the Bays Plan.
- b. Develop and administer a cost-sharing monitoring program. Special emphasis should be placed on developing a cost-effective method of developing data that can serve the largest possible range of program needs. Where testing or monitoring activities are contractually undertaken by the CBBEP for a State agency or a local government, the CBBEP's employees and contractors will be working on behalf of the State agency or local government requesting the services.
- c. Develop and administer programs to protect, conserve, and restore the rich and diverse habitats in the program area, so local residents and visitors can appreciate the natural wonders of the region.
- d. Develop funding mechanisms to achieve the Goals of the Bays Plan.
- e. Receive and administer funds received from State and Federal agencies and grants and gifts from non-government entities and individuals.
- f. Develop recommendations on how local governments can exercise their powers, under the existing laws and constitutions of the State of Texas and of the United States, in a manner that promotes the enhancement of the local environment and the development of the local economy, within real-world constraints on funding.
- g. Ensure its activities are consistent with the Texas Coastal Management Program.

4.3 Elements. In addition to the elements normally involved in weighing environmental issues, while fulfilling its purpose and performing its duties, the CBBEP shall consider as elements in the decision-making process the following elements of concern to local governments and citizens:

- a. Assisting local governments in their efforts to improve the health, safety, and general welfare of the local

residents and visitors and improve: the regional transportation infrastructure; drainage systems; sanitary sewers and treatment systems, including on-site treatment systems; recreational facilities; growth and development of local industries and agriculture; standard of living of local residents; and local economies.

- b. The development of practical, cost-effective solutions to allowing continued residential, commercial, industrial, and agricultural development in the region, while limiting the adverse impacts of such development on the local environment.
- c. The needs of the participating State agencies and local governments, including assisting them achieve their required monitoring and testing through contract assistance and administration.

4.4 Permitted Activities. The CBBEP may:

- a. When approved by the Board of Directors, the CBBEP may comment on proposed permits and consistency determinations. Comments on Federal consistency shall be consistent with the federal project review procedure and strategy stated in the Bays Plan.
- b. Coordinate its activities and take actions to ensure that the Texas Coastal Management Program advances the implementation of the Bays Plan.

ARTICLE FIVE Responsibilities of the Parties

5.1 Interpretation of Agreement and Bays Plan. The Parties agree that this Interlocal Agreement is intended to make the Bays Plan a guide by which regulatory actions may be taken within the framework of existing rules and regulations. Thus, if a Goal of the Bays Plan is being furthered by an Action Plan, the local governments and State agencies will attempt to allow such suggested actions to occur so long as they are within the parameters of existing rules and regulations. By participation in this Interlocal Agreement, the local governments, State agencies, and political subdivisions of State of Texas do not subordinate or relinquish any of their regulatory authority or the power to act independently and apart from this Interlocal Agreement.

5.2 Responsibilities of all Parties. By entering into this

Interlocal Agreement, the intent of the Parties is to assure effective and timely implementation of recommended actions and to adjust strategies as needed in the future to protect the Coastal Bend bays and estuaries. To that end, each of the Parties hereby agrees to:

- a. Determine how they will contribute toward the attainment of the Goals, including their individual goals and timeframes for achieving those goals.
- b. Where they deem appropriate, submit their conceptual action plans outlining the projects, initiatives, and strategies that it will undertake to achieve the Goals for the Texas bays, estuaries, watersheds and related properties.

5.3 Additional Responsibilities of the Agencies Where They Deem Appropriate.

- a. The State and Federal agencies that are Implementation Partners herein (an "Agency" or "Agencies") endorse the goals of regulatory flexibility incorporated in the Bays Plan. The flexibility contemplated is sometimes referred to as regulatory reinvention and is intended to facilitate achievement of the Goals of the Bays Plan to produce a net environmental benefit. The regulatory flexibility contemplated herein is an expression of intention to cooperate and to seek innovative solutions for the implementation of the Bays Plan.
- b. The Agencies agree that, to the extent that they deem appropriate and at their sole discretion, they may extend as much flexibility as is legally permissible to further the implementation of the Bays Plan.
- c. The responsibilities and roles of the Agencies reflected in the Bays Plan are adopted herein.
- d. Each Agency shall appoint a representative to any Project Action Committee created under the Bays Plan that may fall within the scope of the Agency's regulatory authority, for the purpose of assisting the CBBEP with the implementation of the proposed project.
- e. The Agencies will consider any comments received from the CBBEP during that Agency's regulatory review process that would facilitate the implementation of the Bays Plan.

- f. The provisions of this Section 5.3 are the expressions of the intention of the Agencies to facilitate actions contemplated by the Bays Plan, and in no manner shall it provide any right of action by any of the Parties claiming that the provisions of this Section 5.3 have been breached.

5.4 Additional Responsibilities of the Local Governments Where They Deem Appropriate.

- a. Include the goals contained in its applicable Action Plans (as they may be amended from time to time) into its comprehensive plan and needed actions in its capital improvement plans as such are further amended from time to time.
- b. Identify regulatory flexibility to be exercised by local governments in attaining Goals of the Bays Plan.
- c. The provisions of this section 5.4 are the expressions of the intention of the local governments to facilitate actions contemplated by the Bays Plan, and in no manner shall it provide any right of action by any of the Parties claiming that the provisions of this section 5.4 have been breached.

5.5 Responsibilities of the CBBEP. The CBBEP shall:

- a. Serve as the coordinating body for the Action Plans and assist the Parties in gathering information necessary for the development of Action Plans and the subsequent implementation thereof.
- b. Report annually to the Board of Directors on the status of the implementation of Action Plans.
- c. Prepare, every ten (10) years, an environmental monitoring report on conditions and trends in the CBBEP program area.
- d. Assist the Parties in locating grants and other funds to aid in implementation of the projects set forth in the individual Action Plans.
- e. Coordinate outreach programs to promote public participation and facilitate restoration activities that

support the Goals of the Bays Plan.

- f. Coordinate the re-examination and updating of the Bays Plan every ten (10) years.
- g. Promote cooperation and build consensus among the Parties.
- h. Track research projects.
- i. Develop proposed action plans to address goals not being addressed through other Action Plans.
- j. Participate through the Texas Coastal Management Program (CMP) Federal consistency review process to ensure that relevant federally funded or permitted projects are consistent with the Goals of the Bays Plan.

Specific action to accomplish such goals must be approved by the Board of Directors.

5.6 The CBBEP shall prepare and submit an annual written report for each of the Parties to this Interlocal Agreement at the end of each fiscal year of the activities accomplished by CBBEP during the year. The CBBEP shall be available to make presentation to the governing body of the Parties to this Interlocal Agreement as requested regarding the activities of the CBBEP.

ARTICLE SIX Funding and Reporting

6.1 State and Federal Funding. The CBBEP receives annual funding from TCEQ and EPA for program administration and Bays Plan implementation. TCEQ funding has and will be used to meet the one-to-one match requirement established by EPA. In addition, CBBEP has received and will continue to seek additional funding from TCEQ, EPA and other state and federal resource agencies for the implementation of the Bays Plan.

6.2 Local Annual Funding. Each of the Parties and Implementation Partners listed below (collectively, the "Participants") agree to make the annual payments as specified in this Section 6.2 that is payable in equal monthly, quarterly, semi-annually or annually payments due on or before the 10th day of each payment month of each year. In order to remain a Participant and have a designated member of the Board of Directors, each Participant shall make its annual cash payment, subject to appropriation by the Participant,

or other agreement, in the amount specified on the line for that participant shown below. Failure to make such annual payments shall automatically terminate such Participant's rights and obligations under this Interlocal Agreement. This Interlocal Agreement may be amended by the Parties to add additional Participants. The current Participants, and their annual cash payment requirements, are as follows:

Participants	Annual Cash Payment
a. City of Corpus Christi	\$75,000
b. San Patricio County	\$50,000
c. Nueces County	\$75,000
d. Port of Corpus Christi Authority	\$75,000
e. Port Industries of Corpus Christi	\$75,000

All payments made herein will be made from current revenues of the paying party.

6.3 Financial Obligations of Parties. Each Party's financial obligations under this Agreement are limited to appropriations made by each Party in its sole discretion.

ARTICLE NINE Miscellaneous

7.1 Default. In the event any Party or Implementation Partner fails to make its annual cash payment pursuant to Section 6.2, such Party or Implementation Partner's rights shall be terminated, unless the Board of Directors votes to the contrary, and the Board of Directors shall remove such non-complying Party or Implementation Partner from this Agreement. Prior to any such vote by the Board of Directors, the non-complying Party or Implementation Partner shall be given a notice of its non-compliance and an opportunity to remedy the problem within a reasonable period or to have a public hearing before the Board of Directors, if there is a dispute whether a default exists. If any Party or Implementation Partner is discharged under this Section 7.1, then: a. all monies previously paid hereunder shall be conclusively deemed earned and not subject to return to such Party or Implementation Partner; b. any future funding responsibility of such Party or Implementation Partner shall terminate; and c. this Agreement shall continue as to the remaining Parties and Implementation Partners. Provided, however, any funds paid before termination but not expended shall only be used by the CBBEP in accordance with the approved budget for which such contribution was made.

7.2 Notices. Any and all notices required or permitted to be given hereunder shall be in writing, and shall be provided if either personally delivered to the Party at the addresses set forth on its signature page, transmitted by electronic mail to the address listed, or sent by U.S. certified or registered mail, postage prepaid, return receipt requested, to the mailing address listed, all such notices being effective upon delivery to and receipt by the Parties, unless the respective Party or Parties notify all other Parties in writing in accordance herewith of a change of address and/or representative at such address authorized to receive any and all such notices, in which case any and all such notices shall be delivered and/or mailed as aforesaid to said Party or Parties at such new address with respect to such Party.

7.3 Withdrawal of a Party. Notwithstanding anything contained in this Agreement to the contrary, any Party or Implementation Partner hereto shall have the right to withdraw as a Party or Implementation Partner to this Agreement by providing thirty (30) days prior written notice to the Executive Director and the Chair of the Board of Directors as set forth in section 7.2, above. On the day following the end of such thirty (30) day period, the withdrawing Party or Implementation Partner shall no longer be considered a Party or Implementation Partner to this Agreement and its representative will no longer be a member of the Board of Directors. If a Party or Implementation Partner withdraws under this Section 7.3: (a) all monies previously paid hereunder shall be conclusively deemed earned and not subject to return to such Party or Implementation Partner; (b) any funding responsibility of such Party or Implementation Partner shall cease; (c) this Agreement shall continue as to the remaining Parties and Implementation Partners; and (d) the withdrawing Party or Implementation Partner is no longer entitled to the benefits of being a Party to this Agreement.

7.4 No Third-Party Beneficiaries. This Interlocal Agreement shall inure to the benefit of the Parties and the Implementation Partners. This Interlocal Agreement is for the exclusive benefit of the Parties and the Implementation Partners and shall not be deemed to be made for the benefit of any other persons not so specified.

7.5 Modification. This Interlocal Agreement may be modified, altered or amended only by a written instrument executed by the Parties to this Agreement from time to time.

7.6 Complete Agreement. This Interlocal Agreement constitutes the full, complete, and wholly independent agreement among the Parties with regard to the matters addressed herein. This Interlocal

Agreement also supersedes all prior agreements, understandings, representations, and statements among the Parties with respect to the matters addressed herein, either written or oral.

7.7 Severability Clause. If any clause, provision or section of this Agreement shall be held to be illegal or invalid by any court, the invalidity of such clause, provision or section shall not effect any of the remaining clauses, provisions or sections hereof, and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained herein.

7.8 Governing Law. Existing and future laws, rules and regulations of the United States and its agencies, the State of Texas and its agencies, and the other Parties to this Agreement shall take precedence over the terms and provisions of this Agreement in case of conflict or inconsistencies between them. The laws of the United States or the State of Texas appropriate and applicable, shall govern the validity, performance and enforcement of this Agreement, regardless of the state in which this Agreement is being executed.

7.9 Venue. Venue for any cause of action brought under or in relation to this Interlocal Agreement or the Bays Plan shall be in a court of competent jurisdiction in the county in the CBBEP program area in which the cause of action arose. Venue for any other cause of action brought under or in relation to this Interlocal Agreement or the Bays Plan shall be in Nueces County, Texas. Despite the other provisions of this paragraph relating to venue, a State agency may bring a cause of action under or in relation to this Interlocal Agreement or the Bays Plan in Travis County, Texas.

7.10 Public Purpose. This Agreement satisfies, fulfills and is pursuant to and for a public and municipal purpose, is in the public interest, and is a proper exercise of each Party's power and authority under each Party's individual municipal or governmental authority.

7.11 Performance Standards. None of the provisions in this Agreement shall be deemed in any manner to amend, modify or otherwise change any of the provisions or regulations or ordinances of any municipality, subdivisions of State government or governmental agency which is a Party to this Agreement to allow a performance standard less than is otherwise required under the terms of those provisions or regulations or ordinances, except as specifically provided herein.

7.12 Survival. All of the representations and warranties set forth in this Agreement shall survive the consummation of any and all of the transactions described in the Agreement and the termination of this Agreement, and shall not be deemed to be merged in the Agreement or any other instrument which may be executed and delivered pursuant to this Agreement.

7.13 Authority. None of the Parties or the Implementation Partners has any authority to bind or make any oral or written representations on behalf of the other Parties or the Implementation Partners with differing interests hereunder, and nothing contained in this Agreement shall constitute anyone or more of the Parties as partners with or agents for anyone or more of the other Parties.

7.14 Counterparts. This Agreement may be executed in one or more counterparts, each of which may be executed by less than all of the parties but all of which shall be construed together as a single instrument.

7.15 Binding Effect. This Agreement shall bind the successors and assigns of the Parties.

IN WITNESS WHEREOF, the Parties hereto cause this Interlocal Agreement to be deemed updated by attached acceptances executed under seal effective January 1, 2020. By such executed acceptances, the updated Interlocal Agreement is approved, agreed and entered into to authorize and continue the Coastal Bend Bays & Estuaries Program Plan.

(Signatures and Acknowledgements to follow on next pages.)